IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

180 LAND CO, LLC, FORE STARS LTD.,
Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS,
Respondent/Cross-Appellant.

No. 84640

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 16

County Clark Judge Honorable Timothy C. Williams

District Ct. Case No. A-17-758528-J

2. Attorney filing this docketing statement:

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Firm Law Office of Kermitt L. Waters

Address 704 S. 9th Street, Las Vegas, NV 89101

Client(s) 180 LAND CO, LLC, FORE STARS LTD., identified in Question No. 22 below.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

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Client(s) City of Las Vegas

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Address 396 Hayes Street
San Francisco, CA 94102

Client(s) City of Las Vegas

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☒ Other disposition (specify): Post Trial Motion

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

180 Land, LLC vs. City of Las Vegas, NV S.C. Case No. 77771
City of Las Vegas vs. 180 Land, NV S.C. Case No. 78792
City of Las Vegas vs. 180 Land, NV S.C. Case No. 84221
City of Las Vegas vs. 180 Land, NV S.C. Case No. 84345

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Please see attached.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the District Court err in not basing its determination of prejudgment interest on competent evidence of a proper rate of return to include a rate of return that could have been achieved had the Landowners invested their money in land similar to the land taken in this matter.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This matter presented inverse condemnation claims for the taking of private property for public use under the Nevada Constitution. Prejudgment interest is part of just compensation and therefore involves Article 1, §§ 8 and 22 of the Nevada Constitution.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter falls under cases retained by the Supreme Court as it raises as a principle issue a question of statewide public importance involving the Nevada Constitution. See NRAP 17 (a)(12).

14. Trial. If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 1 & 18, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served April 1 & 18, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed April 25, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Plaintiffs, 180 Land Co LLC and Fore Star LTD, appealed April 25, 2022
Defendant, City of Las Vegas, appealed April 29, 2022

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The appeal in this matter is taken from a final judgment issued by the District Court.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs: 180 Land Co. LLC, Fore Stars, LTD.

Defendant: City of Las Vegas

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

On May 14, 2020, the District Court held a hearing on Plaintiffs' Motion to Dismiss Seventy Acres LLC. On June 15, 2020, the District Court entered an order granting the Motion to Dismiss finding that Seventy Acres LLC did not have an ownership interest in the 35-Acre Property and holding that it could not force standing when Seventy Acres LLC wanted to be voluntarily dismissed from the case.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Please see attached.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

180 Land Co., LLC and Fore Stars, Ltd. Name of appellant	Autumn Waters Name of counsel of record
May 19, 2022 Date	/s/ Autumn Waters Signature of counsel of record
Nevada, Clark County State and county where signed	

CERTIFICATE OF SERVICE

I certify that on the 19th day of May , 2022 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Please see attached Certificate of Service.

Dated this 19th day of May , 2022

Sandy Guerra
Signature

3. Additional attorneys representing respondents:

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8. Nature of the Action

This is an Article 1, §§ 8 and 22 constitutional proceeding wherein the City of Las Vegas ("the City") has *per se* taken the Landowners' Property for the surrounding neighbors' use as recreation and open space. The City informed the surrounding neighbors that the Landowners' Property was the publics to use for recreation and open space and the public is using the property as such. The City effectuated this taking by passing ordinances that authorize the public to use the Landowners' Property and the City denied the Landowners any use of their own privately-owned property that would conflict with the public's use for recreation and open space, which included prohibiting the Landowners from fencing or accessing their own Property and denying all development. The district court held the City "clearly" took the Landowners' Property for public use and awarded just compensation.

The district court properly followed Nevada's three-step mandatory procedure for resolving this inverse condemnation case, which is: (1) determine the property interest; (2) determine if that property interest was taken; and (3) if so, determine just compensation for the taking. *ASAP Storage v. City of Sparks*, 123 Nev. 639, 642 (2007). First, the district court decided the Landowners' property interest based on the R-PD7 residential zoning, which includes the right to develop residential units. Second, the district court held a four-day evidentiary hearing on the takings issue and concluded it was "clear" the City has taken the Landowners' property. Third, the district court held a bench trial and post-trial hearings that resulted in an award of just compensation, which includes the value for the land taken, costs, attorney fees, reimbursement of taxes, and prejudgment interest. Nev. Const. art. 1, section 22(4) ("Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.").

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

On May 15, 2019, 180 Land Co, LLC and Fore Stars, Ltd. filed their Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation and brought the following *alternative* claims which were adjudicated in favor of the Landowners after a four-day hearing via summary judgment on October 25, 2021. The District Court held a bench trial on October 27, 2021 and awarded just compensation pursuant to the evidence submitted on November 18, 2021 in the amount of $34,135,000.

- Per Se Regulatory Taking, Inverse Condemnation – among other City actions, the City adopted ordinances which preserved the Landowners' Property for public use and

authorized the public to use the Landowners' Property. This claim was resolved in the Landowners' favor by summary judgment on October 25, 2021.

- Categorial Taking, Inverse Condemnation – The City's actions and ordinances deprived the Landowners of all economically viable use of their property. This claim was resolved in the Landowners' favor by summary judgment on October 25, 2021.
- Nonregulatory Taking, Inverse Condemnation – The City's actions in the aggregate, including denying four applications to use the property and adopting ordinances which preserved the Landowners' Property for public use and authorized the public to use the Landowners' Property rendered the property useless and valueless to the Landowners. This claim was resolved in the Landowners' favor by summary judgment on October 25, 2021.
- *Penn Central* Taking, Inverse Condemnation – The City passed ordinances which targeted solely the Landowners' Property and left the Landowners' Property without an economically viable use. Because there has been a physical taking of the Landowners' Property the Landowners did not move for summary judgment on this claim. However, the City asserted that if the other takings claims were satisfied, then a *Penn Central* claim was also satisfied. As the City presented no admissible evidence of any economically viable use remaining of the Landowners' Property after the City's actions, the District Court granted summary judgment in the Landowners' favor on this claim on October 25, 2021.
- After finding a taking under all four of Nevada's taking standards, set forth above, the District Court awarded $34,135,000 as the fair market value for the property taken by the City.

- Temporary Taking, Inverse Condemnation – If the City abandons its taking, a temporary taking will result. To date, the City has not abandoned its taking. Because this claim was brought as an alternative claim and because the District Court determined that the City had taken the Landowners' Property, this claim was resolved on October 25, 2021.
- Judicial Taking, Inverse Condemnation - Had the District Court determined that zoning did not govern the use of the Landowners' Property as has always been the law in Nevada, then such a shift in fundamental property law could have implicated the law of judicial takings. Because the District Court did not initiate such a shift in fundamental law, this alternative claim was necessarily resolved on October 25, 2021.

27. Attach file-stamped copies of the following documents:

- **The latest-filed complaint, counterclaims, cross-claims, and third-party claims**
- **Any tolling motion(s) and order(s) resolving tolling motion(s)**
- **Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims**
- **and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal**
- **Any other order challenged on appeal**
- **Notices of entry for each attached order**

Index of attached documents on following page:

INDEX OF ATTACHED DOCUMENTS

Index No.	Date	Description
1	May 15, 2019	Second Amendment and First Supplement to Complaint for Severed Alterative Verified Claims in Inverse Condemnation
2	June 15, 2020	Order Granting Plaintiffs' Motion to Dismiss Seventy Acres LLC on Order Shortening Time and Order re Status Check
3	June 15, 2020	Notice of Entry of Order Granting Plaintiffs' Motion to Dismiss Seventy Acres LLC on Order Shortening Time and Order re Status Check
4	October 12, 2020	Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"
5	October 12, 2020	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"
6	October 25, 2021	Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief; and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief
7	October 25, 2021	Notice of Entry of: Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief; and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief
8	November 18, 2021	Findings of Fact and Conclusions of Law on Just Compensation
9	November 24, 2021	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation
10	December 21, 2021	City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution
11	February 25, 2022	Order Denying City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution
12	February 28, 2022	Notice of Entry of Order Denying City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution
13	April 1, 2022	Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest
14	April 1, 2022	Notice of Entry of Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest

15	April 18, 2022	Final Judgment in Inverse Condemnation
16	April 18, 2022	Notice of Entry of Final Judgment in Inverse Condemnation

CERTIFICATE OF SERVICE

I hereby certify that the foregoing DOCKETING STATEMENT – CIVIL APPEALS was filed electronically with the Nevada Supreme Court on the 19th day of May, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Document 1

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

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

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

SECOND AMENDMENT and FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION

(Exempt from Arbitration – Action Seeking Review of Administrative Decision and Action Concerning Title To Real Property)

LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendant.

COMES NOW Plaintiff, 180 Land Company, LLC, FORE STARS, Ltd., and SEVENTY ACRES, LLC, a Nevada Limited Liability Company, ("Landowner") by and through its attorneys of record, The Law Offices of Kermitt L. Waters and Hutchison & Steffen, for its Second Amendment and First Supplement To Complaint For Severed Alternative Claims In Inverse Condemnation complains and alleges as follows:

PARTIES

1. Landowners 180 Land Company, LLC, FORE STARS, Ltd., and SEVENTY ACRES, LLC, a Nevada Limited Liability Company, are organized and existing under the laws of the state of Nevada.

2. Respondent City of Las Vegas ("City") is a political subdivision of the State of Nevada and is a municipal corporation subject to the provisions of the Nevada Revised Statutes, including NRS 342.105, which makes obligatory on the City all of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601-4655, and the regulations adopted pursuant thereto. The City is also subject to all of the provisions of the Just Compensation Clause of the United States Constitution and Article 1, sections 8 and Article 1, section 22 of the Nevada Constitution, also known as PISTOL (Peoples Initiative to Stop the Taking of Our Land).

3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X

(hereinafter collectively referred to as " DOEs") inclusive are unknown to the Landowner at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other entities with standing to sue under the allegations set forth herein.

4. That the true names and capacities, whether individual, corporate, associate, or otherwise of Defendants named herein as 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 (hereinafter collectively referred to as "ROEs"), inclusive are unknown to the Landowner at this time, who therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Defendants when the same are ascertained; that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or actions, either alone or in concert with the aforementioned defendants, resulted in the claims set forth herein.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the alternative claims for inverse condemnation pursuant to the United States Constitution, Nevada State Constitution, the Nevada Revised Statutes and pursuant to the Court Order entered in this case on February 1, 2018.

6. Venue is proper in this judicial district pursuant to NRS 13.040.

GENERAL ALLEGATIONS

PROPERTY INTEREST / VESTED RIGHTS

7. Landowner owns approximately 250 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005; 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-202-001 ("250 Acre Residential Zoned Land").

8. This Complaint more particularly addresses Assessor Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres").

9. At all relevant times herein, the Landowner had a property interest in the 35 Acre Property.

10. At all relevant times herein, the Landowner had the vested right to use and develop the 35 Acre Property.

11. At all relevant times herein the hard zoning on the 35 Acre Property has been for a residential use, including R-PD7 (Residential Planned Development District – 7.49 Units per Acre).

12. At all relevant times herein the Landowner had the vested right to use and develop the 35 Acre Property up to a density of 7.49 residential units per acre as long as the development is comparable and compatible with the existing adjacent and nearby residential development.

13. The Landowner's property interest in the 35 Acre Property and vested property rights in the 35 Acre Property are recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

14. The Landowner's property interest and vested right to use and develop the 35 Acre Property is confirmed by the following:

15. On March 26, 1986, a letter was submitted to the City Planning Commission requesting zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) and the zoning that was sought was R-PD as it allows the developer flexibility and shows that developing the 35 Acre Property for a residential use has always been the intent of the City and all prior owners.

16. The Landowner's property interest and vested right to use and develop the 35 Acre Property residentially has further been confirmed by the City of Las Vegas in writing and orally in, without limitation, 1996, 2001, 2014, 2016, and 2018.

17. The City of Las Vegas adopted Zoning Bill No. Z-2001, Ordinance 5353, which specifically and further demonstrates that the R-PD7 Zoning was codified and incorporated into the City of Las Vegas' Amended Atlas in 2001. As part of this action, the City "repealed" any prior City actions that could possibly conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances ***or*** parts of ordinances ***or*** sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are ***hereby repealed."***

18. At a November 16, 2016, City Council hearing, Tom Perrigo, the City Planning Director, confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

19. Long time City Attorney Brad Jerbic has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

20. The City of Las Vegas Planning Staff has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

21. Even the City of Las Vegas' own 2020 master plan confirms the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

22. The City issued two formal Zoning Verification Letters dated December 20, 2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

23. This vested right to use and develop the 35 Acres, was confirmed by the City prior to the Landowner's acquisition of the 35 Acres and the Landowner materially relied upon the City's confirmation regarding the Subject Property's vested zoning rights.

24. Based upon information and belief, the City has approved development on approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowner's property interest and vested right to use and develop the 35 Acre Property.

25. Based upon information and belief, the City has never denied an application to develop in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowner's property interest and vested right to use and develop the 35 Acre Property.

26. The City is judicially estopped from now denying the Landowner's property interest and vested right to use and develop the 35 Acre Property residentially.

27. This property interest / vested right to use and develop the 250 Acre Residential Zoned Land, which includes the 35 Acre Property has also been confirmed by two orders issued by the Honorable District Court Judge Douglas E. Smith (the Smith Orders), which have been affirmed by the Nevada Supreme Court.

28. There is a legal finding in the Smith Orders that the Landowner's have the "right to develop" the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

29. There is a legal finding in the Smith Orders that the initial steps to develop, parceling the 250 Acre Residential Zoned Land (which includes the 35 Acre Property), had proceeded properly: "The Developer Defendants [Landowner] properly followed procedures for approval of a parcel map over Defendants' property [250 Acre Residential Zoned Land] pursuant to NRS 278.461(1)(a) because the division involved four or fewer lots. The Developer Defendants [Landowner] parcel map is a legal merger and re-subdividing of land within their own boundaries."

30. The Smith Orders and the Nevada Supreme Court affirmance of the Landowner's property interest, vested right to use and develop, and right to develop the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) are confirmed not only by the above facts, but also by the City's own public maps according to the Nevada Supreme Court.

31. Accordingly, it is settled Nevada law that the Landowner has a property interest in and the vested "right to develop" this specific 35 Acre Property with a residential use.

32. The City is bound by this settled Nevada law as the City was a party in the case wherein the Smith Orders were issued, the City had a full and fair opportunity to address the issues in that matter, and the Smith Orders have become final as they have been affirmed by the Nevada Supreme Court.

33. The Landowner's property interest and vested right to use and develop the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is so widely accepted

that even the Clark County tax Assessor has assessed the property as residential for a value of approximately $88 Million and the current Clark County website identifies the 35 Acre Property "zoned" R-PD7.

34. There have been no other officially and properly adopted plans or maps or other recorded document(s) that nullify, replace, and/or trump the Landowner's property interest and vested right to use and develop the 35 Acre Property.

35. Although certain City of Las Vegas planning documents show a general plan designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre Property, that designation was placed on the Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, any alleged PR-OS on any City planning document is being shown on the 35 Acre Property in error. The City's Attorney confirmed the City cannot determine how the PR-OS designation was placed on the Subject Property.

36. Further the Smith Orders legally confirm that notwithstanding any alleged open space land use designation, the zoning on the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is a residential use - R-PD7.

37. The Smith Orders further legally reject any argument that suggests the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is zoned as open space or otherwise bound by an open space designation.

38. The Smith Orders further legally confirm that the hard, residential zoning of R-PD7 trumps any other alleged open space designation on any other planning documents.

39. Although the 35 Acre Property was used for an interim golf course use, the Landowner has always had the right to close the golf course and not water it.

40. The Smith Orders confirmed that there is no appropriate "open space" designation on the 35 Acre Property and this was affirmed by the Nevada Supreme Court.

41. Nevada Supreme Court precedent provides that the Landowner has a property interest and the vested right to use and develop the 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

CITY ACTIONS TO TAKE THE LANDOWNER'S PROPERTY

42. The City has engaged in numerous systematic and aggressive actions to prevent any and all use of the 35 Acre Property thereby rendering the 35 Acre Property useless and valueless.

43. The City actions and how the actions as a whole impact the 35 Acre Property are set forth herein so that the form, intensity, and the deliberateness of the City actions toward the 35 Acre Property can be examined as all actions by the City in the aggregate, must be analyzed.

44. Generally, and without limitation, there are 11 City actions the City has engaged in to prevent any and all use of the 35 Acre Property thereby rendering the 35 Acre Property useless and valueless.

City Action #1 - City Denial of the 35 Acre Property Applications

45. On or about December 29, 2016, and at the suggestion of the City, the Landowner filed with the City an application for a General Plan Amendment to change the General Plan Designation on the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) ("GPA-68385"). While an application for a General Plan Amendment was filed by the Landowner relating to the 250 Acre Residential Zoned Land (which includes the 35 Acre Property), being application number, GPA-68385; additional applications were filed by the Landowner with the City that related more particularly to the 35 Acre Property. Those zoning applications pertaining to the 35 Acres were application numbers WVR-68480; SDR-68481 and TMP-68482.

46. The proposed General Plan Designation of "L" allows densities less than the corresponding General Plan Designation on the Property prior to the time any alleged PR-OS designation was improperly placed on the Property by the City.

47. To the north of the 35 Acre Property are existing residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

48. In the center of the 35 Acre Property, are existing residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre.

49. To the south of the 35 Acre Property, are existing residences developed on lots generally ranging in size from three quarters (3/4) of an acre to one and one quarter (1¼) acre.

50. On or about January 25, 2017, the Landowner filed with the City an application pertaining to the 35 Acre Property for a waiver to allow 32-foot private streets with a sidewalk on one side within a privately gated community where 47-foot private streets with sidewalks on both sides are required. The application was given number WVR-68480 ("WVR-68480").

51. On or about January 4, 2017, the City required the Landowner to file an application pertaining to the 35 Acre Property for a Site Development Plan Review for a proposed 61-Lot single family residential development. The application was given number SDR-68481 ("SDR-68481").

52. On or about January 4, 2017, the Landowner filed with the City an application pertaining to the 35 Acre Property for a Tentative Map for a proposed 61-Lot single family residential development. The application was given number TMP-68482 ("TMP-68482").

53. The Planning Staff for the City's Planning Department ("Planning Staff") reviewed GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No Recommendation" with regard to GPA-68385; however, in the "Agenda Memo-Planning" relating

to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of GPA-68385 as "Approval."

54. The City Planning Staff thoroughly reviewed the applications, determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified Development Code (Title 19), and appropriately recommended approval.

55. Tom Perrigo, the City Planning Director, stated at the hearing on the Landowner's applications that the proposed development met all City requirements and should be approved.

56. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-68482.

57. After considering Landowner's comments, and those of the public, the Planning Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's conditions.

58. The Planning Commission voted four to two in favor of GPA-68385, however, the vote failed to reach a super-majority (which would have been 5 votes in favor) and the vote was, therefore, tantamount to a denial.

59. On June 21, 2017, the Las Vegas City Council ("City Council") heard WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

60. In conjunction with this City Council public hearing, the Planning Staff, in continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482, noted ***"the adjacent developments are designated ML (Medium Low Density Residential) with a density cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling units per acre...Compared with the densities and General Plan designations of the adjacent***

residential development, the proposed L (Low Density Residential) designation is less dense and therefore appropriate for this area, capped at 5.49 units per acre." (emphasis added).

61. The Planning Staff found the density of the proposed General Plan compatible with the existing adjacent land use designation, found the zoning designations compatible and found that the filed applications conform to other applicable adopted plans and policies that include approved neighborhood plans.

62. At the June 21, 2017, City Council hearing, the Landowner addressed the concerns of the individuals speaking in opposition, and provided substantial evidence, through the introduction of documents and through testimony, of expert witnesses and others, rebutting each and every opposition claim.

63. Included as part of the evidence presented by the Landowner at the June 21, 2017, City Council hearing, the Landowner introduced evidence, among other things, (i) that representatives of the City had specifically noted in both City public hearings and in public neighborhood meetings, that the standard for appropriate development based on the existing R-PD7 zoning on the 35 Acre Property would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acre Property were compatible with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acre Property was *less than the density* of those already existing residences adjoining the 35 Acre Property; and (iv) that both Planning Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and TMP-68482, all of which applications pertain to the proposed development of the 35 Acre Property.

64. Any public statements made in opposition to the various applications were either conjecture or opinions unsupported by facts; all of which public statements were either rebutted

by findings as set forth in the Planning Staff report or through statements made by various City representatives at the time of the City Council public hearing or through evidence submitted by the Landowner at the time of the public hearing.

65. In spite of the Planning Staff recommendation of approval and the recommendation of approval from the Planning Commission, and despite the substantial evidence offered by the Landowner in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385; and in spite of the fact that no substantial evidence was offered in opposition, the City Council denied the WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

66. The City Council's stated reason for the denial was its desire to see, not just the 35 Acre Property, but the entire 250 Acre Residential Zoned Land, developed under one Master Development Agreement ("MDA") which would include all of the following properties:

APN 138-31-201-005, a 34.07 acre property, which is the 35 Acre Property, legally subdivided and separate and apart from the properties identified below;

APN 138-31-702-003, a 76.93 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property;

APN 138-31-601-008, a 22.19 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property;

APN 138-31-702-004, a 33.8 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property;

APN 138-31-801-002, a 11.28 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property;

APN 138-32-301-007, a 47.59 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property and is owned by a different legal entity, Seventy Acres, LLC;

APN 138-32-301-005, a 17.49 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property and is owned by a different legal entity, Seventy Acres, LLC;

APN 138-31-801-003, a 5.44 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property and is owned by a different legal entity, Seventy Acres, LLC;

APN 138-32-202-001, a 2.13 acre property that has its own assessor parcel number and is legally subdivided separate and apart from the 35 Acre Property and is owned by a different legal entity, Fore Stars, LTD;

67. At the City Council hearing considering and ultimately denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385, the City Council advised the Landowner that the only way the City Council would allow development on the 35 Acres was under one MDA for the entirety of the Property (totaling 250 Acre Residential Zoned Land).

68. At the time the City Council was considering WVR-68480, SDR-68481, TMP-68482 and GPA-68385, that would allow the 35 Acre Property to be developed, the City Council stated that the approval of the MDA is very, very close and "we are going to get there [approval of the MDA]." The City Council was referring to the next public hearing wherein the MDA would be voted on by the City Council.

69. The City Attorney stated that "if anybody has a list of things that should be in this agreement [MDA], but are not, I say these words speak now or forever hold your peace, because I will listen to you and we'll talk about it and if it needs to be in that agreement, we'll do our best to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue that they should have come to me with months ago I'm gonna ignore them 'cause that's just not fair

either. We can't continue to whittle away at this agreement by throwing new things at it all the time. There's been two years for people to make their comments. I think we are that close."

70. The City Attorney even stated "There's no doubt about it [approval of the MDA]. If everybody thinks that this can't be resolved, I'm going to look like an idiot in a month and I deserve it. Okay?"

71. The City Council stated at the hearing that the sole basis for denial was the City's alleged desire to see the entire 250 Acre Residential Zoned Land developed under the MDA.

City Action #2 - Denial of the Master Development Agreement (MDA)

72. To comply with the City demand to have one unified development, for over two years (between July, 2015, and August 2, 2017), the Landowner worked with the City on an MDA that would allow development on the 35 Acre Property along with all other parcels that made up the 250 Acre Residential Zoned Land.

73. The amount of work that went in to the MDA was demanding and pervasive.

74. The Landowner complied with each and every City demand, making more concessions than any developer that has ever appeared before this City Council, according to Councilwoman Tarkanian.

75. A non-exhaustive list of the Landowner's concessions, as part of the MDA, include without limitation: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas; 2) building brand new driveways and security gates and gate houses for the existing security entry ways for the Queensridge development; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units, increasing the minimum acreage lot size, and reduced the number and height of towers.

76. The City demanded changes to the MDA that ranged from simple definitions, to the type of light poles, to the number of units and open space required for the overall project.

77. In total, the City required approximately 16 new and revised versions of the MDA, over the two plus year period.

78. In the end, the Landowner was very diligent in meeting all of the City's demands and the MDA met all of the City mandates, the Nevada Revised Statutes and the City's own Code requirements.

79. Even the City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement."

80. Based upon information and belief, the MDA met or exceeded any and all Major Modification procedures and standards that are set forth in the City Code.

81. Notwithstanding that less than two months after the City Council said it was very, very close to approving the MDA, the Landowner's efforts and sweeping concessions, and the City's own Planning Staff recommendation to pass the MDA, and the fact that the MDA met each and every City Code Major Modification procedure and standard, and the City's promise that it would approve the MDA (the sole basis the City gave for denying the 35 Acre Property applications was to allow approval of the MDA), on August 2, 2017, the MDA was presented to the City Council and the City denied the entire MDA altogether.

82. The City did not ask the Landowner to make more concessions, like increasing the setbacks or reducing the units per acre, it just simply and plainly denied the MDA in its entirety.

83. The City's actions in denying Landowner's tentative map (TMP-68482), WVR-68480, SDR-68481, GPA-68385 and MDA foreclosed all development of the 35 Acre Property in

violation of Landowner's property interest and vested right to use and develop the 35 Acre Property.

84. On or about June 28, 2017, Notices of Final Action were issued for WVR-68480, SDR-68481, TMP-68482 and GPA-68385 stating these applications had been denied.

85. As the 35 Acre Property is vacant, this meant that the property would remain vacant.

86. These facts show that the City assertion that it wanted to see the entire 250 Acre Residential Zoned Land developed as one unit was an utter and complete farce. Regardless of whether the Landowner submits individual applications (35 Acres applications) or one omnibus plan for the entire 250 Acre Residential Zoned Land (the MDA), the City unilaterally denied any and all uses of the 35 Acre Property.

87. Based upon information and belief, the denial of the 35 Acre Property individual applications to develop and the MDA denial are in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #3 - Adoption of the Yohan Lowie Bills

88. After denial of the MDA, the City then raced to adopt two new ordinances that solely target the 250 Acre Residential Zoned Land in order to create further barriers to development.

89. The first is Bill No. 2018-5, which Councilwomen Fiore acknowledged "**[t]his bill is for one development and one development only. The bill is only about Badlands Golf Course** [250 Acre Residential Zoned Land]. . . . "**I call it the Yohan Lowie [a principle with the Landowner] Bill.**"

90. Based upon information and belief, the purpose of the Yohan Lowie Bill was to block any possibility of developing the 35 Acre Property by giving veto power to adjoining property owners before any land use application can be submitted regardless of the existing hard zoning and whether the neighbors have any legal interest in the property or not.

91. The second is Bill No. 2018-24, which, based upon information and belief, is also clearly intended to target only the Landowner's 250 Acre Residential Zoned Land (which includes the 35 Acre Property) by making it nearly impossible to develop and then applying unique laws to jail the Landowner for seeking development of his property.

92. On October 15, 2018, a recommending committee considered Bill 2018-24 and it was shown that this Bill targets solely the Landowner's Property.

93. Bill 2018-24 defines the "requirements pertaining to the Development Review and Approval Process, Development Standards, and the Closure Maintenance Plan" for re-purposing "certain" golf courses and open spaces.

94. Bill 2018-24 requires costly and technical application procedures, including: approval of expensive and technical master drainage, traffic, and sewer studies before any applications can be submitted; ecological studies; 3D topographic development models; providing ongoing public access to the private land; and requiring the Landowner to hire security and monitoring details.

95. Bill 2018-24 seeks to make it a misdemeanor subject to a $1,000 a day fine or "imprisonment for a term of not more than six months" or any combination of the two for an owner of a discontinued golf course who fails to maintain the course to a level that existed on the date of discontinuance, regardless of whether the course can be profitably operated at such a level.

96. According to Councilwoman Fiore at the September 4, 2018, Recommending Committee meeting, if adopted, this would be the only ordinance in the City development code which could enforce imprisonment on a landowner.

97. Based upon information and belief, at the September 4, 2018, meeting, the City Staff confirmed that Bill 2018-24 could be applied retroactively. This makes an owner of any failing golf course an indentured servant to neighboring owners whether such neighbors have any legal interest to the property or not.

98. On November 7, 2018, despite the Bill's sole intent to target the Landowner's Property and prevent its development, the City adopted the Bill.

99. This further shows the lengths to which the City has gone to prevent the development of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) – seeking unique laws to jail the Landowner for pursuing development of his own property for which he has the "right to develop."

100. Based upon information and belief, the adoption of these two City Bills is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #4 - Denial of an Over the Counter, Routine Access Request

101. In August 2017, the Landowner filed a request with the City for three access points to streets the 250 Acre Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way.

102. Based upon information and belief, this was a routine over the counter request and is specifically excluded from City Council review.

103. Also, based upon information and belief, the Nevada Supreme Court has held that a landowner cannot be denied access to abutting roadways, because all property that abuts a public highway has a special right of easement to the public road for access purposes and this is a recognized property right in Nevada, even if the owner had not yet developed the access.

104. Contrary to this Nevada law, the City denied the Landowner's access application citing as the sole basis for the denial, "the various public hearings and subsequent debates concerning the development on the subject site."

105. In violation of its own City Code, the City required that the matter be presented to the City Council through a "Major Review."

106. Based upon information and belief, this access denial is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #5 - Denial of an Over the Counter, Routine Fence Request

107. In August, 2017, the Landowner filed with the City a routine request to install chain link fencing to enclose two water features/ponds that are located on the 250 Acre Residential Zoned Land.

108. Based upon information and belief, the City Code expressly states that this application is similar to a building permit review that is granted over the counter and not subject to City Council review.

109. The City denied the application, citing as the sole basis for denial, "the various public hearings and subsequent debates concerning the development on the subject site."

110. In violation of its own Code, the City then required that the matter be presented to the City Council through a "Major Review" pursuant to LVMC 19.16.100(G)(1)(b) which, based

upon information and belief, states that the Director determines that the proposed development could significantly impact the land uses on the site or on surrounding properties.

111. Based upon information and belief, the Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to interested City departments for comments/recommendation/requirements, and publicly noticed Planning Commission and City Council hearings. The City has required this extraordinary standard from the Landowner to install a simple chain link fence to enclose and protect two water features/ponds on his property.

112. Based upon information and belief, this fence denial is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #6 - Denial of a Drainage Study

113. In an attempt to clear the property, replace drainage facilities, etc., the Landowner submitted an application for a Technical Drainage Study, which should have been routine, because the City and the Landowner have an On-Site Drainage Improvements Maintenance Agreement that allows the Landowner to remove and replace the flood control facilities on his property. The City would not accept the Landowners' application for a Technical Drainage Study.

114. Based upon information and belief, the City's Yohan Lowie Bill, referenced above, requires a technical drainage study in order to grant entitlements.

115. Based upon information and belief, the City, in furtherance of its scheme to keep the Landowner's property in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value - is mandating an impossible scenario - that **there can be no drainage study without entitlements while requiring a drainage study in**

order to get entitlements. This is a clear catch-22 intentionally designed by the City to prevent any use of the Landowners' property.

City Action #7 - City Refusal to Even Consider the 133 Acre Property Applications

116. As part of the numerous development applications filed by the Landowner over the past three years to develop all or portions of the 250 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed to develop residential units on the 133 Acre Property consistent with the R-PD7 hard zoning.

117. The City Planning Staff reviewed the applications, determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and recommended approval.

118. Instead of approving the development, the City Council delayed the hearing for several months until May 16, 2018 - the same day it was considering the Yohan Lowie Bill, referenced above.

119. The City put the Yohan Lowie Bill on the morning agenda and the 133 Acre Property applications on the afternoon agenda.

120. The City then approved the Yohan Lowie Bill in the morning session.

121. Thereafter, Councilman Seroka asserted that the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike all of the applications for the 133 Acre Property filed by the Landowner.

122. The other Council members and City staff were taken a back and surprised by this attempt to deny the Landowner even the opportunity to be heard on the 133 Acre Property applications. Scott Adams (City Manager): "I would say we are not aware of the action. … So we're not really in a position to respond technically on the merits of the motion, cause it, it's

something that I was not aware of." Councilwoman Fiore: "none of us had any briefing on what just occurred." Councilman Anthony: 95 percent of what Councilman Seroka said was, I heard it for the first time. So I – don't know what it means. I don't understand it."

123. The City then refused to allow the Landowner to be heard on his applications for the 133 Acre Property and voted to strike the applications.

124. Based upon information and belief, the strategic adoption and application of the Yohan Lowie Bill to strike all of the 133 Acre Property development applications is further evidence of the City's systematic and aggressive actions to deny any and all development on any part of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

125. Based upon information and belief, this City action is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #8 - The City Announced It Will Never Allow Development on the 35 Acre Property, Because the City Wants the Property for a City Park and Wants to Pay Pennies on the Dollar

126. Based upon information and belief, the purpose for the repeated City denials and affirmative actions to create barriers to development is the City wants the Landowner's Property for a City park.

127. In documents obtained from the City pursuant to a Nevada Public Records Request, it was discovered that the City has already allocated $15 million to acquire the Landowner's private property - "$15 Million-Purchase Badlands and operate."

128. Councilman Seroka issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowner's private property into a "fitness park."

129. In an interview with KNPR Seroka stated that he would "turn [the Landowners' private property] over to the City."

130. Councilman Coffin agreed as referenced in an email as follows: "I think your third way is the only quick solution…Sell off the balance to be a golf course with water rights (key). Keep the bulk of Queensridge green."

131. Councilman Coffin and Seroka also exchanged emails wherein they state they will not compromise one inch and that they "need an approach to accomplish the desired outcome," which, based upon information and belief, is to prevent all development on the Landowner's Property so the city can take it for the City's park.

132. The City has announced that it will never allow any development on the 35 Acre Property or any other part of the 250 Acre Residential Zoned Land.

133. Based upon information and belief, Councilman Seroka testified at the Planning Commission (during his campaign) that it would be "**over his dead body**" before the Landowner could use his private property for which he has a vested right to develop.

134. Based upon information and belief, in reference to development on the Landowner's Property, Councilman Coffin stated firmly "I am voting against the whole thing," calls the Landowner's representative a "motherfucker," and expresses his clear resolve to continue voting against any development on the 35 Acre Property.

135. Based upon information and belief, this City action is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #9 - The City has Shown an Unprecedented Level of Aggression to Deny All Use of the 250 Acre Residential Zoned Land

136. The City has gone to unprecedented lengths to interfere with the use and enjoyment of the Landowner's Property.

137. Based upon information and belief, Councilman Coffin sought "intel" against one of the Landowner representatives so that the intel could, presumably, be used to deny any development on the 250 Acre Residential Zoned Land (including the 35 Acre Property).

138. Based upon information and belief, knowing the unconstitutionality of their actions, instructions were then given on how to hide communications regarding the 250 Acre Residential Zoned Land from the Courts.

139. Based upon information and belief, Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the Nevada Public Records Act by instructing how not to trigger any of the search terms being used in the subpoenas.

140. Based upon information and belief, this City action is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #10 - the City has Reversed the Past Approval on the 17 Acre Property

141. The City has tried to claw back a past approval to develop on part of the 250 Acre Residential Zoned Land - the 17 Acre Property approvals.

142. Whereas in approving the 17 Acre Property applications the City agreed the Landowner had the vested right to develop without a Major Modification, now the City is arguing in other documents that: 1) the Landowner has no property rights; and, 2) the approval on the 17 Acre Property was erroneous, because no Major Modification was filed.

143. Based upon information and belief, this City action is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

City Action #11 - The City Has Retained Private Counsel to Push an Invalid Open Space Designation on the 35 Acre Property

144. Based upon information and belief, the City has now retained and authorized private counsel to push an invalid "open space" designation / Major Modification argument in this case to prevent any and all development on the 35 Acre Property.

145. Based upon information and belief, this is the exact opposite position the City and the City's staff has taken for the past 32 years on at least 1,067 development units in the Peccole Concept Plan area.

146. Based upon information and belief, approximately 1,000 units have been developed over the past 32 years in the Peccole Concept Plan area the City has never applied the "open space" / Major Modification argument now advanced by its retained counsel.

147. Based upon information and belief, the City has targeted this one Landowner and this one Property and is treating them differently than it has treated all other owners and developers in the area for the sole purpose of denying the Landowner his constitutional property rights so the Landowner's property will remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

148. Based upon information and belief, the City's actions singularly targets the Landowner and the Landowner's Property; the Property is vacant; and, the City's actions are in bad faith.

EXHAUSTION OF ADMINISTRATIVE REMEDIES / RIPENESS

149. The Landowner's Alternative Verified Claims in Inverse Condemnation have been timely filed and, pursuant to the Court's Order entered on February 1, 2018, are ripe.

150. The Landowner submitted at least one meaningful application to the City to develop the 35 Acre Property and the City denied each and every attempt to develop.

151. The Landowner provided the City the opportunity to approve an allowable use of the 35 Acre Property and the City denied each and every use.

152. The City denied the Landowner's applications to develop the 35 Acre Property as a stand alone parcel, even though the applications met every City Code requirement and the City's own planning staff recommended approval.

153. The Landowner also worked on the MDA with the City for over two years that would have allowed development of the 35 Acre Property with the other parcels included in the 250 Acre Residential Land. The City made over 700 changes to the MDA, sent the Landowner back to the drawing board at least 16 times to redo the MDA, and the Landowner agreed to more concessions than any landowner ever to appear before this City Council. The MDA even included the procedures and standards for a Major Modification and the City still denied the MDA altogether.

154. If a Major Modification is required to exhaust administrative remedies / ripen the Landowner's taking claims, the MDA the Landowner worked on with the City for over two years included and far exceeded all of the procedures and standards for a Major Modification application.

155. The Landowner cannot even get a permit to fence ponds on the 250 Acre Residential Zoned Land or a permit to utilize his legal and constitutionally guaranteed access to the Property.

156. The City adopted two Bills that specifically target and effectively eliminate all use of the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

157. Based upon information and belief, City Councilman Seroka stated that "over his dead body" will development be allowed and City Councilman Coffin put in writing that he will vote against any development on the 35 Acre Property.

158. The City has retained private counsel now to push the "open space" / Major Modification argument which is contrary to the City's own actions for the past 32 years and actions on approximately 1,000 units that have developed in the area.

159. Based upon information and belief, this City action is in furtherance of a City scheme to specifically target the Landowner's Property to have it remain in a vacant condition to be turned over to the City for a park for pennies on the dollar – a value well below its fair market value.

160. Therefore, the Landowner's inverse condemnation claims are clearly ripe for adjudication.

161. It would be futile to submit any further applications to develop the 35 Acre Property to the City.

FIRST ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION
(Categorical Taking)

162. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

163. The City reached a final decision that it will not allow development of Landowner's 35 Acres.

164. Any further requests or applications to the City to develop the 35 Acres would be futile.

165. The City's actions in this case have resulted in a direct appropriation of Landowner's 35 Acre property by entirely prohibiting the Landowner from using the 35 Acres for any purpose and reserving the 35 Acres vacant and undeveloped.

166. As a result of the City's actions, the Landowner has been unable to develop the 35 Acres and any and all value in the 35 Acres has been entirely eliminated.

167. The City's actions have completely deprived the Landowner of all economically beneficial use of the 35 Acres.

168. Open space or golf course use is not an economic use of the 35 Acre Property.

169. The City's actions have resulted in a direct and substantial impact on the Landowner and on the 35 Acres.

170. The City's actions require the Landowner to suffer a permanent physical invasion of his property.

171. The City's actions result in a categorical taking of the Landowner's 35 Acre Property.

172. The City has not paid just compensation to the Landowner for this taking of his 35 Acre Property.

173. The City's failure to pay just compensation to the Landowner for the taking of his 35 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

174. Therefore, the Landowner is compelled to bring this cause of action for the taking of the 35 Acre Property to recover just compensation for property the City is taking without payment of just compensation.

175. The requested compensation is in excess of fifteen thousand dollars ($15,000.00).

SECOND ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION
(Penn Central Regulatory Taking)

176. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

177. The City reached a final decision that it will not allow development of the Landowner's 35 Acres.

178. Any further requests or applications to the City to develop the 35 Acres would be futile.

179. The City already denied an application to develop the 35 Acres, even though: 1) the Landowner's proposed 35 Acre development was in conformance with its zoning density and was comparable and compatible with existing adjacent and nearby residential development; 2) the Planning Commission recommended approval; and 3) the City's own Staff recommended approval.

180. The City affirmatively stated that it will not allow the Landowner to develop the 35 Acres unless it is developed as part of the MDA, referenced above. The Landowner worked on the MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and with the City's direct and active involvement in the drafting and preparing the MDA and the City's statements that it would approve the MDA and despite nearly two years of working on the MDA, on or about August 2, 2017, the City denied the MDA.

181. The City's actions have caused a direct and substantial economic impact on the Landowner, including but not limited to preventing development of the 35 Acres.

182. The City was expressly advised of the economic impact the City's actions were having on Landowner.

183. At all relevant times herein, the Landowner had specific and distinct investment backed expectations to develop the 35 Acres.

184. These investment backed expectations are further supported by the fact that the City, itself, advised the Landowner of its vested rights to develop the 35 Acre Property prior to acquiring the 35 Acres.

185. The City was expressly advised of Landowner's investment backed expectations prior to denying the Landowner the use of the 35 Acres.

186. The City's actions are preserving the 35 Acres as open space for a public use and the public is actively using the 35 Acres.

187. The City's actions have resulted in the loss of the Landowner's investment backed expectations in the 35 Acres.

188. The character of the City action to deny the Landowner's use of the 35 Acres is arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to a physical acquisition than adjusting the benefits and burdens of economic life to promote the common good.

189. The City never stated that the proposed development on the 35 Acres violated any code, regulation, statute, policy, etc. or that the Landowner did not have a vested property right to use/develop the 35 Acres.

190. The City provided only one reason for denying Landowner's request to develop the 35 Acres - that the City would only approve the MDA that included the entirety of the 250 Acre Residential Zoned Land owned by various entities and that the MDA would allow development of the 35 Acres.

191. The City then, on or about August 2, 2017, denied the MDA, thereby preventing the development of the 35 Acres.

192. The City's actions meet all of the elements for a Penn Central regulatory taking.

193. The City has not paid just compensation to the Landowner for this taking of his 35 Acre property.

194. The City's failure to pay just compensation to the Landowner for the taking of his 35 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

195. Therefore, the Landowner is compelled to bring this cause of action for the taking of the 35 Acre Property to recover just compensation for property the City is taking without payment of just compensation.

196. The requested compensation is in excess of fifteen thousand dollars ($15,000.00).

THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION
(Regulatory Per Se Taking)

197. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

198. The City's actions stated above fail to follow the procedures for taking property set forth in Chapters 37 and 342 of the Nevada Revised Statutes, Nevada's statutory provisions on eminent domain, and the United States and Nevada State Constitutions.

199. The City's actions exclude the Landowner from using the 35 Acres and, instead, permanently reserve the 35 Acres for a public use and the public is using the 35 Acres and that use is expected to continue into the future.

200. Based upon information and belief, the City is preserving the 35 Acre Property for a future public use by the City.

201. The City's actions have shown an unconditional and permanent taking of the 35 Acres.

202. The City has not paid just compensation to the Landowner for this taking of his 35 Acre property.

203. The City's failure to pay just compensation to Landowner for the taking of his 35 Acre property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

204. Therefore, Landowner is compelled to bring this cause of action for the taking of the 35 Acre property to recover just compensation for property the City is taking without payment of just compensation.

205. The requested compensation is in excess of fifteen thousand dollars ($15,000.00).

FOURTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION
(Nonregulatory Taking)

206. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

207. The City actions directly and substantially interfere with the Landowner's vested property rights rendering the 35 Acres unusable and/or valueless.

208. The City's actions substantially deprive the Landowner of the use and enjoyment of the 35 Acre Property.

209. The City has taken steps that directly and substantially interfere with the Landowner's property rights to the extent of rendering the 35 Acre Property valueless or unusable.

210. The City actions have rendered the 35 Acre Property unusable on the open market.

211. The City has intentionally delayed approval of development on the 35 Acres and, ultimately, denied any and all development in a bad faith effort to preclude any use of the 35 Acres.

212. The City's actions are oppressive and unreasonable.

213. The City's actions result in a nonregulatory taking of the Landowner's 35 Acres.

214. The City has not paid just compensation to the Landowner for this taking of his 35 Acre Property.

215. The City's failure to pay just compensation to the Landowner for the taking of his 35 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

216. Therefore, the Landowner is compelled to bring this cause of action for the taking of the 35 Acre Property to recover just compensation for property the City is taking without payment of just compensation.

217. The requested compensation is in excess of fifteen thousand dollars ($15,000.00)

FIFTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION
(Temporary Taking)

218. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

219. If there is subsequent City Action or a finding by the Nevada Supreme Court, or otherwise, that the Landowner may develop the 35 Acre Property, then there has been a temporary taking of the Landowner's 35 Acre Property for which just compensation must be paid.

220. The City has not offered to pay just compensation for this temporary taking.

221. The City failure to pay just compensation to the Landowner for the taking of his 35 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

222. Therefore, the Landowner is compelled to bring this cause of action for the taking of the 35 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

223. The requested compensation is in excess of fifteen thousand dollars ($15,000.00).

SIXTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Judicial Taking)

224. The Landowner repeats, re-alleges and incorporates by reference all paragraphs included in this pleading as if set forth in full herein.

225. If this Court elects to follow the Crockett Order (that was decided in the context of a land use case and which entirely ignores the Landowner's hard zoning and vested right to develop) to deny the taking in this case, this will add a judicial taking claim, because the Crockett Order would be applied to recharacterize the Landowner's 35 Acre Property from a hard zoned residential property with the vested "rights to develop" to a public park / open space.

226. The requested compensation for this claim is in excess of fifteen thousand dollars ($15,000.00).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of the Landowner's Property by inverse condemnation,

2. Prejudgment interest commencing from the date the City first froze the use of the 35 Acre Property which is prior to the filing of this Complaint in Inverse Condemnation;

3. A preferential trial setting pursuant to NRS 37.055 on the alternative inverse condemnation claims;

4. Payment for all costs incurred in attempting to develop the 35 Acres;

5. For an award of attorneys' fees and costs incurred in and for this action; and,

//

6. For such further relief as the Court deems just and equitable under the circumstances.

DATED THIS 15th day of ~~March~~ May, 2019.

LAW OFFICES OF KERMITT L. WATERS
BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ. (NBN 2571)
JAMES J. LEAVITT, ESQ. (NBN 6032)
MICHAEL SCHNEIDER, ESQ. (NBN 8887)
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HUTCHISON & STEFFEN
BY: /s/ Mark A. Hutchison
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Robert T. Stewart (13770)

Attorneys for 180 Land Company, LLC

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

Yohan Lowie, on behalf of the Landowner, being first duly sworn, upon oath, deposes and says: that he has read the foregoing **SECOND AMENDMENT and FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his knowledge.

YOHAN LOWIE

SUBSCRIBED and SWORN to before me
This 15 day of May, 2019.

LeeAnn Stewart-Schencke

NOTARY PUBLIC

LEEANN STEWART-SCHENCKE
Notary Public, State of Nevada
Appointment No. 07-4284-1
My Appt. Expires Jul 26, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 15th day of May, 2019, a true and correct copy of the foregoing **SECOND AMENDMENT and FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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/s/ Evelyn Washington
An employee of the Law Offices of
Kermitt L. Waters

Document 2

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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-17-758528-J
DEPT. NO.: XVI

ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME
AND
ORDER RE STATUS CHECK

Date of Hearing: May 14, 2020
Time of Hearing: 9:00am

This matter having come before the Court on May 14, 2020 with oral argument having been held on Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time and a Status Check hearing, Autumn Waters, Esq. and James J. Leavitt, Esq., appearing for and on behalf Plaintiff 180 Land Company, LLC and Fore Stars, Ltd. ("Landowners"), along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III Esq., Seth Floyd, Esq., Andrew W. Schwartz, Esq., and Lauren M. Tarpey, Esq. appearing for and on behalf of Defendant, the City of Las Vegas ("City").

Having reviewed the pleadings and papers on file herein and having heard arguments of counsel in regards to Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time, the **COURT HEREBY ORDERS** as follows:

1. That Seventy Acres, LLC, which is a Nevada Limited Liability Company has no ownership interest in the 35 acres at issue (Reporters Transcript of Motion, May 14, 2020 ("Transc.") 30:5-7);
2. That the Court cannot force standing under these circumstances when Seventy Acres, Ltd. wants to be voluntarily dismissed from this case (Transc., 30:8-10);
3. These are procedural issues and if the other tract should have been a party to this case, we have consolidation motions under Rule 19 and that could have been accomplished a long time ago. But each case appears to the Court to have gone down its own separate tract from a litigation perspective (Transc., 30:10-16);
4. Under the facts of this case, Seventy Acres, LLC was not a real party in interest as it relates to Rule 17 (Transc. 37:13-15); and,
5. Therefore, Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time is **GRANTED.**

In regards to the Status Check, the **COURT HEREBY ORDERS** as follows:

1. Defendant's request to designate this matter a business court matter is **DENIED**, however, Defendant may file the appropriate motion to designate this a business court matter and the Court will give it due consideration (Transc. 42:8-21); and,

2. A Status Check will be set for June 11, 2020, at 9:00 a.m. to discuss discovery dates and the parties are encouraged to do what they can in the interim as far as discovery is concerned (Transc. 49:8-15).

Dated this 15th day of June, 2020.

DISTRICT COURT JUDGE

CG

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
KERMITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
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Attorneys for Plaintiff Landowners

Reviewed for form by:

By: *will submit competing order*
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Document 3

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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; 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

NOTICE OF ENTERY OF ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME AND ORDER RE STATUS CHECK

PLEASE TAKE NOTICE that on the 15th day of June, 2020, an Order Granting Plaintiffs' Motion to Dismiss Seventy Acres LLC on order shortening time and Order re Status Check, was entered in the above-captioned case, a copy of which is attached hereto.

Dated this 15th day of June, 2020.

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 15th day of June, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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/s/ Evelyn Washington
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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-17-758528-J
DEPT. NO.: XVI

ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME
AND
ORDER RE STATUS CHECK

Date of Hearing: May 14, 2020
Time of Hearing: 9:00am

This matter having come before the Court on May 14, 2020 with oral argument having been held on Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time and a Status Check hearing, Autumn Waters, Esq. and James J. Leavitt, Esq., appearing for and on behalf Plaintiff 180 Land Company, LLC and Fore Stars, Ltd. ("Landowners"), along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III Esq., Seth Floyd, Esq., Andrew W. Schwartz, Esq., and Lauren M. Tarpey, Esq. appearing for and on behalf of Defendant, the City of Las Vegas ("City").

Having reviewed the pleadings and papers on file herein and having heard arguments of counsel in regards to Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time, the **COURT HEREBY ORDERS** as follows:

1. That Seventy Acres, LLC, which is a Nevada Limited Liability Company has no ownership interest in the 35 acres at issue (Reporters Transcript of Motion, May 14, 2020 ("Transc.") 30:5-7);
2. That the Court cannot force standing under these circumstances when Seventy Acres, Ltd. wants to be voluntarily dismissed from this case (Transc., 30:8-10);
3. These are procedural issues and if the other tract should have been a party to this case, we have consolidation motions under Rule 19 and that could have been accomplished a long time ago. But each case appears to the Court to have gone down its own separate tract from a litigation perspective (Transc., 30:10-16);
4. Under the facts of this case, Seventy Acres, LLC was not a real party in interest as it relates to Rule 17 (Transc. 37:13-15); and,
5. Therefore, Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time is **GRANTED.**

In regards to the Status Check, the **COURT HEREBY ORDERS** as follows:

1. Defendant's request to designate this matter a business court matter is **DENIED**, however, Defendant may file the appropriate motion to designate this a business court matter and the Court will give it due consideration (Transc. 42:8-21); and,

2. A Status Check will be set for June 11, 2020, at 9:00 a.m. to discuss discovery dates and the parties are encouraged to do what they can in the interim as far as discovery is concerned (Transc. 49:8-15).

Dated this 15th day of June, 2020.

DISTRICT COURT JUDGE

CG

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
KERMITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
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Document 4

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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** Hearing Date: September 17, 2020 Hearing Time: 9:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine Property Interest before the Court on September 17, 2020, with James Jack Leavitt, Esq of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilve III Esq. and Andrew Schwartz, Esq. appearing for and on behalf

of the Defendant, City of Las Vegas (hereinafter the City). Having reviewed all pleadings and attached exhibits filed in this matter and having heard extensive oral arguments on September 17, 2020, in regards to Plaintiff Landowners' Motion to Determine Property Interest, the Court hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff 180 Land Company, LLC is the owner of an approximately 35 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter 35 Acre Property).

2. The Landowners' Motion to Determine Property Interest requests this Court enter an order that: 1) the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2) that the permitted uses by right under the R-PD7 zoning are single-family and multi-family residential.

3. In their submitted briefs, the Landowners and the City presented evidence that the 35 Acre Property has been zoned R-PD7 since at least 1990, including: 1) Z-17-90, Resolution of Intent to Rezone the 35 Acre Property to R-PD7, dated March 8, 1990 (Exhibit H to City's Opposition, Vol. 1:00193); and, Ordinance 5353, passed by the City of Las Vegas City Council in 2001, which hard zoned the 35 Acre Property to R-PD7 and repealed anything in conflict (Exhibit 10 to Landowners' Motion).

4. In response to the Landowners' inquiry regarding zoning prior to purchasing the 35 Acre Property, on December 30, 2014, the City of Las Vegas Planning & Development Department provided the Landowners a Zoning Verification Letter, stating, in part: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 unites per acre);" 2) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 3 to Landowners' Motion.

5. The City stated in its opposition to the Landowners' motion that the R-PD7 zoning on the 35 Acre Property "is not disputed." City's Opposition to Motion to Determine Property Interest, 10:17-18.

6. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter LVMC), Title 19.

7. LVMC 19.10.050 is entitled "R-PD Residential Planned Development District" and is the applicable section of the LVMC used to determine those permitted uses on R-PD7 zoned properties in the City of Las Vegas. Exhibit 5 to Landowners' Motion.

8. LVMC 19.10.050 (C) lists as "Permitted Land Uses" on R-PD zoned properties "[s]ingle-family and multi-family residential." Id.

9. LVMC 19.10.050 (A) also provides that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts." Id. The standard residential districts are listed on the City Land Use Table, LVMC 19.12.010. Exhibit 6 to Landowners' Motion. The R-2 residential district listed on the City Land Use Table is the standard residential district most comparable to the R-PD7 zoning, because R-PD7 allows up to 7 units per acre[1] and R-2 allows 6-12 units per acre.[2] The "permitted" uses under the R-2 zoning on the City Land Use Table include "Single Family, Attached" and "Single-Family, Detached" residential uses. LVMC 19.12.010, Exhibit 6 to Landowners' Motion.

10. Table 1 to the City Land Use Table provides that if a use is "permitted" in a certain zoning district then "the use is permitted as a principle use in that zoning district by right." Id.

11. "Permitted Use" is also defined at LVMC 19.18.020 as "[a]ny use allowed in a zoning district as a matter of right." Exhibit 8 to Landowners' Motion.

12. The Landowners have alleged that the City of Las Vegas has taken the 35 Acre Property by inverse condemnation, asserting five (5) separate inverse condemnation claims for relief, a

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[1] *See* City Zoning Verification Letter, Exhibit 3 to Landowners' Motion and LVMC 19.10.050 (A), Exhibit 5 to Landowners' Motion.

[2] *See* LVMC 19.06.100, Exhibit 7 to Landowners' Motion.

Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking, and a Temporary Taking.

CONCLUSIONS OF LAW

13. The Nevada Supreme Court has held that in an inverse condemnation, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the bundle of sticks owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

14. The Landowners' Motion to Determine Property Interest narrowly addresses this first sub inquiry and, accordingly, this Court will only determine the first sub inquiry.

15. In addressing this first sub inquiry, this Court has previously held that: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims;"[3] and, 2) "[a]ny determination of whether the Landowners have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law."[4]

16. Therefore, the Court bases its property interest decision on eminent domain law.

17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).

18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990.

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[3] Exhibit 18 to Landowners' Reply, App. at 0026 / 23:7-8

[4] Exhibit 18 to Landowners' Reply, App. at 0010 / 7:26-27

19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

DATED this 9th day of October, 2020.

DISTRICT COURT JUDGE ZJ

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James J. Leavitt
Kermitt L. Waters, ESQ., NBN 2571
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Michael A. Schneider. ESQ., NBN 8887
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Submitted to and Reviewed by:

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By: *Declined signing*
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABALITY 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, Defendant.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"**

NOTICE IS HEREBY GIVEN that Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest" was entered in the above-captioned case on October 12, 2020, a copy of which is attached hereto.

DATED this day 12th day of October, 2020.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leav*itt
KERMITT L. WATERS, ESQ.
Nevada Bar No. 2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8917
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Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 12th day of October, 2020, I caused to be served a true and correct copy of the foregoing document(s): **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** via the Court's filing and/or for mailing in the U.S. Mail, postage prepaid and addressed to the following:

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/s/ *Evelyn Washington*
Evelyn Washington, an Employee of the
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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** Hearing Date: September 17, 2020 Hearing Time: 9:00 a.m.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd (hereinafter Landowners), brought Plaintiff Landowners' Motion to Determine Property Interest before the Court on September 17, 2020, with James Jack Leavitt, Esq of the Law Offices of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilve III Esq. and Andrew Schwartz, Esq. appearing for and on behalf

of the Defendant, City of Las Vegas (hereinafter the City). Having reviewed all pleadings and attached exhibits filed in this matter and having heard extensive oral arguments on September 17, 2020, in regards to Plaintiff Landowners' Motion to Determine Property Interest, the Court hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff 180 Land Company, LLC is the owner of an approximately 35 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter 35 Acre Property).

2. The Landowners' Motion to Determine Property Interest requests this Court enter an order that: 1) the 35 Acre Property is hard zoned R-PD7 as of the relevant September 14, 2017, date of valuation; and, 2) that the permitted uses by right under the R-PD7 zoning are single-family and multi-family residential.

3. In their submitted briefs, the Landowners and the City presented evidence that the 35 Acre Property has been zoned R-PD7 since at least 1990, including: 1) Z-17-90, Resolution of Intent to Rezone the 35 Acre Property to R-PD7, dated March 8, 1990 (Exhibit H to City's Opposition, Vol. 1:00193); and, Ordinance 5353, passed by the City of Las Vegas City Council in 2001, which hard zoned the 35 Acre Property to R-PD7 and repealed anything in conflict (Exhibit 10 to Landowners' Motion).

4. In response to the Landowners' inquiry regarding zoning prior to purchasing the 35 Acre Property, on December 30, 2014, the City of Las Vegas Planning & Development Department provided the Landowners a Zoning Verification Letter, stating, in part: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District - 7 unites per acre);" 2) "[t]he density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.); and 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Exhibit 3 to Landowners' Motion.

5. The City stated in its opposition to the Landowners' motion that the R-PD7 zoning on the 35 Acre Property "is not disputed." City's Opposition to Motion to Determine Property Interest, 10:17-18.

6. As stated in the City Zoning Verification Letter provided to the Landowners on December 30, 2014, the legally permitted uses of property zoned R-PD7 are include in the Las Vegas Municipal Code (hereinafter LVMC), Title 19.

7. LVMC 19.10.050 is entitled "R-PD Residential Planned Development District" and is the applicable section of the LVMC used to determine those permitted uses on R-PD7 zoned properties in the City of Las Vegas. Exhibit 5 to Landowners' Motion.

8. LVMC 19.10.050 (C) lists as "Permitted Land Uses" on R-PD zoned properties "[s]ingle-family and multi-family residential." Id.

9. LVMC 19.10.050 (A) also provides that "the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts." Id. The standard residential districts are listed on the City Land Use Table, LVMC 19.12.010. Exhibit 6 to Landowners' Motion. The R-2 residential district listed on the City Land Use Table is the standard residential district most comparable to the R-PD7 zoning, because R-PD7 allows up to 7 units per acre[1] and R-2 allows 6-12 units per acre.[2] The "permitted" uses under the R-2 zoning on the City Land Use Table include "Single Family, Attached" and "Single-Family, Detached" residential uses. LVMC 19.12.010, Exhibit 6 to Landowners' Motion.

10. Table 1 to the City Land Use Table provides that if a use is "permitted" in a certain zoning district then "the use is permitted as a principle use in that zoning district by right." Id.

11. "Permitted Use" is also defined at LVMC 19.18.020 as "[a]ny use allowed in a zoning district as a matter of right." Exhibit 8 to Landowners' Motion.

12. The Landowners have alleged that the City of Las Vegas has taken the 35 Acre Property by inverse condemnation, asserting five (5) separate inverse condemnation claims for relief, a

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[1] *See* City Zoning Verification Letter, Exhibit 3 to Landowners' Motion and LVMC 19.10.050 (A), Exhibit 5 to Landowners' Motion.

[2] *See* LVMC 19.06.100, Exhibit 7 to Landowners' Motion.

Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking, and a Temporary Taking.

CONCLUSIONS OF LAW

13. The Nevada Supreme Court has held that in an inverse condemnation, such as this, the District Court Judge is required to make two distinct sub inquiries, which are mixed questions of fact and law. ASAP Storage, Inc., v. City of Sparks, 123 Nev. 639 (2008); McCarran Int'l Airport v. Sisolak, 122 Nev. 645 (2006). First, the District Court Judge must determine the "property interest" owned by the landowner or, stated another way, the bundle of sticks owned by the landowner prior to any alleged taking actions by the government. *Id.* Second, the District Court Judge must determine whether the government actions alleged by the landowner constitute a taking of the landowners property. *Id.*

14. The Landowners' Motion to Determine Property Interest narrowly addresses this first sub inquiry and, accordingly, this Court will only determine the first sub inquiry.

15. In addressing this first sub inquiry, this Court has previously held that: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims;"[3] and, 2) "[a]ny determination of whether the Landowners have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law."[4]

16. Therefore, the Court bases its property interest decision on eminent domain law.

17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).

18. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990.

---

[3] Exhibit 18 to Landowners' Reply, App. at 0026 / 23:7-8

[4] Exhibit 18 to Landowners' Reply, App. at 0010 / 7:26-27

19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

DATED this 9th day of October, 2020.

DISTRICT COURT JUDGE ZJ

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James J. Leavitt
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Submitted to and Reviewed by:

MCDONALD CARANO LLP

By: *Declined signing*
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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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,

Defendant.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

AND

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

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

Case Number: A-17-758528-J

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

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

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

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

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

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

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

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

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

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

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

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

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

II.

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

A.

THE PROPERTY INTEREST ISSUE

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

///

The Landowners' 35 Acre Property.

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

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

The Landowners presented uncontested evidence of the due diligence conducted prior to acquiring ownership of the 35 Acre Property.

13. In 2001, the Landowners principals were advised by the William Peccole Family, original owners of the 35 Acre Property, that at all times, it was zoned R-PD7, it had rights to develop, the property was intended for residential development, and the Peccole Family did not and would never place a deed restriction on the property. Exhibit 34, p. 000734, paras. 4-5.

14. Also in 2001, the Landowners confirmed that the CC&Rs for the Queensridge Community, the community adjacent to the 35 Acre Property, and the disclosures related to the acquisition of surrounding properties, disclosed that the 35 Acre Property is not a part of the Queensridge Community, there is no requirement that the 35 Acre Property be used as open space or a golf course as an amenity for the Queensridge Community, and the 35 Acre Property is available for "future development." Exhibit 34, 000734, paras. 4-5; Exhibit 38

15. In 2006, the Landowners met with Robert Ginzer, a City Planning official, and confirmed that the 35 Acre Property was zoned R-PD7 and there were no restrictions that could prevent development of the property. Exhibit 34, p. 000734, para. 6.

16. In 2014, the Landowners met with Tom Perrigo and Peter Lowenstein, the highest ranking City Planners at that time, and they agreed to perform a study that took three weeks. At the end of this three week study, the City Planning Department reported that: 1) the 35 Acre Property is zoned for a residential use, R-PD7, and had vested rights to develop up to 7 residential units per acre; 2) the zoning trumps everything; and, 3) the owner of the 35 Acre Property can develop the property. Exhibit 34, p. 000735, para. 8.

17. The City then issued, at the Landowners request, a Zoning Verification Letter, on December 30, 2014, which states, in part, that: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) the "R-PD District is intended to provide for flexibility and innovation in residential development;" 3) the residential density allowed in the R-PD District shall be reflected by a numerical designation for that district, (Example, R-PD4 allows up to four units per gross acre);" and, 4) 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." Exhibit 134.

18. After obtaining the City's Zoning Verification Letter, the Landowners closed on the acquisition of the 35 Acre Property via purchase of the entity Fore Stars, Ltd.. Exhibit 44.

19. The Landowners also presented uncontested evidence of the City's position of the validity and application of the R-PD7 zoning to the 35 Acre Property.

20. During the development application process, veteran City Attorney Brad Jerbic stated, "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Exhibit 163, 10.18.16 Special Planning Commission Meeting, p. 005023:3444-3445.

21. Peter Lowenstein, head City Planner, testified during deposition that "a zone district gives a property owner property rights." Exhibit 160, p. 005002:5-6.

22. The City Planning Department provided a recommendation on the Master Development Agreement ("MDA") application for the development of the entire 250 Acres, discussed below, that further confirmed the residential use of the 35 Acre Property. The MDA application provided for residential development on the 35 Acre Property and the City Planning Department issued a recommendation of approval for the MDA, finding it "conforms to the existing zoning district requirements." Exhibit 77, p. 002671.

23. The City Planning Department provided a recommendation on the 35 Acre Property stand-alone applications, discussed below, that further confirmed the residential use of the 35 Acre Property. The 35 Acre applications provided for a 61-lot residential development on the 35 Acre Property and the City Planning Department issued a recommendation of approval for the applications, as they were "in conformation with all Title 19 [City Zoning Code] and NRS requirements for tentative maps." Exhibit 74, p. 002553.

24. The Clark County Tax Assessor ("Tax Assessor") confirmed the residential use of the 35 Acre Property based on R-PD7 zoning. NRS 361.227(1) requires that the tax assessor, when determining the taxable value of real property, shall appraise the full cash value of vacant land "by considering the uses to which it may lawfully be put" and "any legal restrictions upon those uses." In 2016, the Clark County Tax Assessor (Tax Assessor) applied NRS 361.227(1) to the 35 Acre Property. Exhibit 120, p. 004222. The Tax Assessor determined the "lawful" use of the 250 Acres, including the 35 Acre Property, by relying upon the "Zoning Designation … R-PD7" and identifying the use of the 250 Acres under this "R-PD7" zoning as "RESIDENTIAL." Exhibit 52, p. 001185; Exhibit 51, p. 001182. The Tax Assessor imposed a real estate tax on the 35 Acre Property, based on a residential use, of $205,227.22 per year. Exhibit 50, p. 001180. It was undisputed that the Landowners have dutifully paid these annual real estate taxes. The City

of Las Vegas City Charter states that, "t[]he County Assessor of the County is, ex officio, the City Assessor of the City." Las Vegas City Charter, sections 3.120(1).

The Landowners also presented uncontested evidence that the City has taken the position that the R-PD7 zoning is of the highest order and supersedes any City Master Plan or General Plan land use designations.

25. On February 14, 2017, City Attorney Brad Jerbic stated at a Planning Commission meeting, "the rule is the hard zoning, in my opinion, does trump the General Plan designation." Exhibit 75, 2.14.17 Planning Commission minutes, p. 002629:1787-1789.

26. The City Attorney's Office submitted pleadings to Nevada District Courts, stating the City Master Plan "was a routine planning activity that had no legal effect on the use and development" of properties and "in the hierarchy, the land use designation [on the City Master Plan] is subordinate to the zoning designation." Exhibit 156, p. 004925-4926; Exhibit 42, p. 000992:8-12.

27. Two City Attorneys submitted affidavits to a Nevada District Court, stating "the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan is a planning document only." Exhibits 157 and 158.

28. Tom Perrigo, head City Planner, testified in deposition that "if the land use [Master Plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement." Exhibit 159, p. 004936, 53:1-4.

29. The Landowners further submitted the Declaration of Stephanie Allen, a 17-year land use attorney in the City of Las Vegas, stating, "During by 17 years of work in the area of land use, it has always been the practice that zoning governs the determination of how land may be used. The master plan land use designation has always been considered a general plan document. I do not recall any government agency or employee ever making the argument that a master plan land use designation trumps zoning." Exhibit 195, p. 006088, para 16.

30. Additionally, during discovery, the Landowners requested that the City "[i]dentify and produce a complete copy of every City of Las Vegas Zoning Atlas Map from 1983 to present for the area within which the Subject Property is located or which includes the Subject Property and any drafts thereto, including the entire and complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings, any and all communications, correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to these City of Las Vegas Zoning Atlas Maps from 1983 to present." The City of Las Vegas' Fourth Supplement to its Responses to Requests for Production of Documents, Set One, electronically served, 2.26.20, 11:41 AM, p. 8, Request for Production No. 5.

31. The City did not identify or produce the requested documents on the basis that, "such records are not proportionate to the needs of the case as the City does not dispute that the Subject Property is zoned R-PD7." Id., p. 9.

There is No Basis for This Court to Reconsider its FFCL Re: Property Interest.

32. The City never requested an appropriate EDCR 2.24 motion to reconsider this Court's FFCL Re: Property Interest.

33. Moreover, the facts above confirm this Court's FFCL Re: Property Interest and the City failed to present any evidence during the four days of hearings that would persuade the Court to reconsider its FFCL Re: Property Interest.

34. There are six Nevada Supreme Court cases, three inverse condemnation cases and three direct eminent domain cases, wherein the Nevada Supreme Court made it clear that the R-PD7 zoning must be relied upon to determine the Landowners' property interest in this matter. McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006); Clark County v. Alper, 100 Nev. 382, 390 (1984); City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); County of Clark v. Buckwalter, 974 P.2d 1162 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g

sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813 (Nev. 1968).

35. NRS 278.349(3)(e) further supports the use of the R-PD7 zoning to determine the property interest issue in this matter, providing, "if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence."

36. NRS 40.005 also provides that "[i]n any proceeding involving the disposition of land the court shall consider the lot size and other applicable zoning requirements before ordering a physical division of the land." Although not directly on point, this statute shows the Legislature's intent to rely on zoning when addressing property rights in the State of Nevada.

37. Moreover, in the Sisolak, supra, case, the Nevada Supreme Court held "the first right established in the Nevada Constitution's declaration of rights is the protection of a landowner's inalienable rights to acquire, possess and protect private property," that "the Nevada Constitution contemplates expansive property rights in the context of takings claims through eminent domain," and "our state enjoys a rich history of protecting private property owners against government takings." Sisolak, supra, 669-670. The Court held that "[t]he term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." Id., at 658.

38. And, in the very recent United States Supreme Court inverse condemnation case Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2071 (June 23, 2021), the United States Supreme Court held that "protection of property rights is 'necessary to preserve freedom' and 'empowers persons to shape and to plan their own destiny in a world where governments are eager to do so for them."

39. Finally, the Court rejects the City's defenses that there is a Peccole Ranch Master Plan that governs the 35 Acre Property and a City of Las Vegas Master Plan/ land use designation of PR-OS that affects this Court's property interest determination.

40. Moreover, the City did not present any evidence of deed restrictions or property encumbrances. Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by "secret intentions" and documents not noticed).

B.

THE TAKE ISSUE

41. Having already resolved the property interest issue, the Court will now move to the take issues.

The Surrounding Property Owners.

42. After acquiring the 35 Acre Property, the Landowners began the process to develop the property for single family and multi-family uses.

43. Vickie DeHart, a Landowner representative, provided an uncontested declaration that on or about December 29, 2015, a representative of the surrounding property owners met with her, bragged that his group is "politically connected" and stated that he wanted 180 acres, with water rights, deeded to him for free and only then would his group "allow" the Landowners to develop the 250 Acres. Exhibit 94, p. 002836.

44. Then City Councilman Bob Beers testified in deposition that he was contacted by a representative of the surrounding property owners and asked "to get in the way of the landowners' rights." Exhibit 142, pp. 004586-4587.

45. Yohan Lowie, a Landowner representative, provided an uncontested declaration that within months of acquiring the 250 Acres, a City Councilman contacted him and advised him that a few surrounding homeowners were "demanding that no development occur on the 250 Acre

Land," but if the Landowners handed over 180 acres of their 250 Acres to those homeowners, the City Councilman "would 'allow' me to build 'anything I wanted' on 70 of the 250 acres." Exhibit 35, p. 000741, paras. 5-6.

The City's Actions to Prevent the Landowners from Using the 35 Acre Property.

The Landowners' Development Applications.

46. Immediately after closing on the 250 Acres in early 2015, the Landowners retained veteran land use attorney, Christopher Kaempfer, to assist with making the applications to the City for the development of the 250 Acres, including the 35 Acre Property. Exhibit 48, p. 001160, paras. 6-8. Before Mr. Kaempfer would agree to represent the Landowners on their applications to develop, he confirmed the development rights as he and his wife live in the adjoining Queensridge Community. Id. Mr. Kaempfer's research confirmed the R-PD7 zoning and he was provided a copy of the City's Zoning Verification Letter (Exhibit 134). Mr. Kaempfer then met with Peter Lowenstein of the City of Las Vegas Planning Department "who advised me that the [250 Acres] could be developed in accordance with the R-PD7 zoning." Id, para. 7. Mr. Kaempfer later had a meeting with then City Attorney, Brad Jerbic, and "was informed that the City of Las Vegas would 'honor the zoning letter' provided to the Landowner by the City of Las Vegas." Id. The City did not contest this evidence.

47. The City also did not contest that, while the Landowners had a vision of how to develop the Land, the City directed the type of applications necessary for approval of development. Exhibit 34, p. 000736, para. 11.

48. The Landowners submitted uncontested evidence that the City would accept only one application to develop the 35 Acre Property - a Master Development Agreement that included all parts of the 250 Acres ("MDA"). Exhibit 34, p. 000737, para. 19; Exhibit 48, pp. 001161-1162, para. 11-13.

49. Landowner representative, Yohan Lowie's uncontested declaration provides, "Mayor Goodman informed [the Landowners during a December 16, 2015, meeting] that due to neighbors' concerns the City would not allow 'piecemeal development' of the Land and that one application for the entirety of the 250 Acre Residential Zoned Land was necessary by way of a Master Development Agreement ("MDA")" and that during the MDA process, "the City continued to make it clear to [the Landowners] that it would not allow development of individual parcels, but demanded that development only occur by way of the MDA." Exhibit 34, p. 000538, para. 19, p. 000539, para. 24:25-27.

50. Mr. Kaempfer's uncontested Declaration states: 1) that he had "no less than seventeen (17) meetings with the [City] Planning Department" regarding the "creation of a Development Agreement" which were necessitated by "public and private comments made to me by both elected and non-elected officials that they wanted to see a plan – via a Development Agreement – for the development of the entire Badlands and not just portions of it;" and, 2) the City advised him that "[the Landowners] either get an approved Development Agreement for the entirety of the Badlands or we get nothing." Exhibit 48, pp. 001161-1162, paras. 11-13.

51. The Landowners opposed the City mandated MDA, arguing that it is not required by law or code and would increase the time and cost to develop. Exhibit 34, para. 20.

52. Nevertheless, with the City providing only one avenue to development, the Landowners moved forward with the City's proposed MDA concept, that included development of the 35 Acre Property, along with the 17, 65, and 133 Acre properties. Exhibit 34, p. 000737, para. 20.

53. The MDA process started in or about Spring of 2015 and the uncontested Declaration of Yohan Lowie states that through this process the City told the Landowners how the City wanted the 250 Acres developed, which included how the 35 Acre Property would be

developed, and the information and documents the City wanted as part of the MDA application process. Exhibit 34, pp. 000737-738, paras. 20-21.

54. The uncontested Declaration of Yohan Lowie further states that the MDA was drafted almost entirely by the City of Las Vegas and included all of the requirements the City wanted and required. Exhibit 34, p. 000738, para 22.

55. The City of Las Vegas Mayor stated on the record in a City Council meeting that the City Staff dedicated "an excess of hundreds of hours beyond the full day" working on the MDA. Exhibit 54, 8.2.17 City Council Meeting, p. 001343:697-701.

56. The City also did not contest the Declaration of Yohan Lowie, which states that the City's MDA requirements cost the Landowners more than $1 million over and above the normal costs for a development application of this type. Exhibit 34, p. 000738, para 21:4-6.

57. The uncontested evidence showed that the Landowners agreed to every City requirement in the MDA, spending an additional $1 million in extra costs. Exhibit 34, p. 000737, para. 20:26-27; Exhibit 55, City required MDA concessions signed by Landowners; Exhibit 56, MDA memos and emails regarding MDA changes.

58. The City of Las Vegas Mayor also stated publicly, to the Landowners in a City Council hearing, "you did bend so much. And I know you are a developer, and developers are not in it to donate property. And you have been donating and putting back... And it's costing you money every single day it delays." Exhibit 53, 6.21.17 City Council Meeting, p. 001281:2462-2465. City Councilwoman Tarkanian also commented publicly at that same City Council hearing that she had never seen anybody give as many concessions as the Landowners as part of the MDA stating, "I've never seen that much given before." Exhibit 53, p. 001293:2785-2787; p. 001294:2810-2811.

59. Landowner representative, Yohan Lowie, provided testimony that prior to the MDA being submitted for approval the City required, without limitation, detailed architectural drawings including 3D digital models for topography, elevations, etc., regional traffic studies, complete civil engineering packages, master detailed sewer studies, drainage studies, school district studies. Exhibit 34, p. 000738, para. 21. Mr. Lowie's Declaration further provides, "[i]n all my years of development and experience such costly and timely requirements are never required prior to the application approval because no developer would make such an extraordinary investment prior to entitlements, ie. approval of the application by the City." Id. The City did not contest this Declaration testimony.

60. The Landowners provided further uncontested evidence that additional, non-exhaustive City demands / concessions made of the Landowners, as part of the MDA, included: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas; 2) building brand new driveways and security gates and gate houses for the Queensridge Community; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units, increasing the minimum acreage lot size, and reducing the number and height of the towers. Exhibit 60, pp. 00001836-1837; Exhibit 54, 8.2.17 City Council Meeting, p. 001339, lines 599-601; Exhibit 53, 6.21.17 City Council Meeting, p. 001266:2060-2070; Exhibit 55.

61. Further uncontested evidence showed that, during the MDA process the City required approximately 700 changes and 16 new and revised versions of the MDA.[1]

62. The evidence showed that the Landowners communicated their frustration with how long the MDA process was taking, stating: "[w]e [the Landowners] have done that through many iterations, and those changes were not changes that were requested by the developer. They

[1] Exhibits 58 and 59, final page of exhibits shows the over 700 changes. Exhibit 61, 16 versions of the MDA generated from January, 2016 to July, 2017.

were changes requested by the City and/or through homeowners [surrounding neighbors] to the City." Exhibit 54, 8.2.17 City Council Meeting, p. 001331:378-380. The City Attorney also recognized the "frustration" of the Landowners due to the length of time negotiating the MDA.[2]

63. The uncontested evidence showed the Landowners expressed their concern that the time, resources, and effort it was taking to negotiate the MDA may cause them to lose the property. Exhibit 53, 6.21.17 City Council Meeting, p. 001310:3234-3236.

64. While the MDA was pending resolution, the Landowners approached the City's Planning Department to inquire about developing the 35 Acre Property as a stand-alone development, rather than as part of the MDA, and asked the City's Planning Department to set forth all requirements the City could impose on the Landowners to develop the 35 Acre Property by itself. Exhibit 34, p. 000738, para 23.

65. The uncontested evidence submitted showed that the City's Planning Department worked with the Landowners to prepare the stand-alone residential development applications for the 35 Acre Property and the applications were completed with the City's Planning Department's assistance. Exhibit 34, p. 000738, para 24; Exhibits 62-72, 35 Acre applications.

66. The City Planning Department then issued Staff Reports detailing the City Planning Department's opinion on whether the 35 Acre stand-alone applications met all of the City development code requirements and standards and whether the applications should be approved. Exhibit 74.

[2] "But I do not like the tactics that look like we're working, we're working, we're working and, by the way, here's something you didn't think of I could have been told about six months ago. I understand Mr. Lowie's frustration. There's some of that going on. There really is. And that's unfortunate. I don't consider that good faith, and I don't consider it productive." City Attorney Brad Jerbic. Exhibit 53, 6.21.17 City Council Meeting, p. 001301:2990-2993.

67. The City Planning Department's analysis of the 35 Acre stand-alone applications confirmed that the "[s]ite access from Hualapai Way through a gate meets Uniform Standard Drawing specifications." Exhibit 74, p. 002552.

68. The City Planning Department's analysis of the 35 Acre applications also stated that, "[t]he proposed residential lots throughout the subject site are comparable in size to the existing residential lots directly adjacent to the proposed lots" and "[t]he development standards proposed are compatible with those imposed on the adjacent lots." Exhibit 74, p. 002552.

69. The City Planning Department's analysis of the 35 Acre Applications further stated that, "[t]he submitted Tentative Map is in conformance with all Title 19 and NRS requirements for tentative maps." Exhibit 74, p. 002553.

70. The City Planning Department and the City Planning Commission recommended approval of the 35 Acre applications. Exhibit 74, pg. 02551 and 002557.

71. The 35 Acre Property as a stand-alone development was presented to the City Council for approval on June 21, 2017. Exhibit 53, 6.21.17 City Council Meeting.

72. Tom Perrigo, the City's Planning Director appeared at the hearing on the Landowners' 35 Acre applications and stated that the Landowners' proposed development on the 35 Acres, which the City Planning Department assisted with preparing, met all City requirements and should be approved. Exhibit 53, 6.21.17 City Council Meeting, p. 001211-1212:566-587.

73. One City Council member acknowledged at the hearing that the 35 Acre Property applications met all City requirements, stating the proposed development was "so far inside the existing lines [the Las Vegas Code requirements]." Exhibit 53, 6.21.17 City Council Meeting, p. 001286:2588-2590.

74. The City Council Members, however, stated the City's firm position that the City opposed individual development applications for parts of the 250 Acres, and, again, insisted on one MDA for the entire 250 Acres: 1) "I have to oppose this, because it's piecemeal approach (Councilman Coffin);" 2) "I don't like this piecemeal stuff. I don't think it works (Councilwoman Tarkanian); and, 3) "I made a commitment that I didn't want piecemeal," there is a need to move forward, "but not on a piecemeal level. I said that from the onset," "Out of total respect, I did say that I did not want to move forward piecemeal." (Mayor Goodman). Exhibit 53, 6.21.17 City Council Meeting, pp. 001287:2618; 001293:2781-2782; 001307:3161; 001237:1304-1305; 001281:2460-2461.

75. On June 21, 2017, the City Council, contrary to the City Planning Department's recommendation, and the City Planning Commission's recommendation denied the 35 Acre applications. Exhibit 93; Exhibit 53, 6.21.17 City Council Meeting, p. 001298:2906-2911.

76. The City's official position for denial of the 35 Acre applications was the impact on "surrounding residents" and the City required an MDA for the entire 250 Acres, not "piecemeal" development. Exhibits 53 and 93.

77. The Landowners' representative provided an uncontested Declaration, stating, that after the denial of the 35 Acre Applications, "[t]he City continued to make it clear to [the Landowners] that it would not allow development of individual parcels but demanded that development only occur by way of the MDA." Exhibit 34, p. 000738, para 24:25-27.

78. The uncontested evidence showed that the Landowners then continued to work with the City to obtain approval to develop through the MDA applications process, which the City stated was the only way development may be allowed.

79. The uncontested evidence further showed that the Landowners worked with the City for 2 ½ years on the MDA (between Spring, 2015, and August 2, 2017) and accepted all changes, additions, and conditions requested by the City.

80. The City produced no evidence to contest that the Landowners agreed to every request and condition the City required in the MDA application.

81. The MDA application, along with the MDA and all necessary supporting documents, was presented to the City Council for approval on August 2, 2017, approximately 40 days after the City denied the stand-alone applications to develop the 35 Acre Property on the basis that the City wanted the MDA. Exhibits 54, 8.2.17 City Council Meeting; Exhibits 79-87.

82. The City Planning Department issued a recommendation to the City Council that the MDA applications met all City requirements and that the MDA applications should be approved as follows:

> The proposed Development Agreement conforms to the requirements of NRS 278 regarding the content of development agreements. The proposed density and intensity of development conforms to the existing zoning district requirements for each specified development area. Through additional development and design controls, the proposed development demonstrates sensitivity to and compatibility with the existing single-family uses on the adjacent parcels. Furthermore, the development as proposed would be consistent with goals, objectives and policies of the Las Vegas 2020 Master Plan that call for walkable communities, access to transit options, access to recreational opportunities and dense urban hubs at the intersection of primary roads. Staff therefore recommends approval of the proposed Development Agreement. Exhibit 77, p. 002671.

83. The uncontested evidence showed that, despite the City including all City requirements to develop in the MDA and the City's Planning Department recommending approval as the MDA met all City codes and standards, on August 2, 2017, the City Council denied the MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-4275.

84. The Landowners' representative, Yohan Lowie, provided an uncontested declaration that the City did not ask the Landowners to make more concessions, like increasing

setbacks or reducing units per acre, but rather, the City denied the MDA which denied the development of the entire 250 Acres, including the 35 Acre Property. Exhibit 34, p. 000739, para. 26.

85. The minutes from the hearing on the MDA and the MDA denial letter further confirm that the City did not ask for more concessions, but rather, the City simply denied the MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-4275.

86. Therefore, the City denied an application to develop the 35 Acre Property as a stand-alone property and the MDA to develop the entire 250 Acres. Both of these denials were contrary to the recommendation of the City's Planning Department.

The Landowners' Fence Application.

87. The Landowners presented uncontested evidence of their attempts to secure the 250 Acres and the City's denial of those attempts, contrary to the City Code, disregarding life safety concerns.

88. The Landowners submitted routine over the counter applications for a chain link fence around the perimeter of the 250 Acres, including the 35 Acre Property, and the Landowners submitted routine over the counter applications to fence the large ponds, one of which is located on the 35 Acre Property. Exhibit 91.

89. The Landowners provided argument that the chain link fences were necessary to secure the entire 250 Acres and to enclose the ponds on the property to exclude others from entering onto their privately owned property and to protect the life and safety of others.

90. Las Vegas Unified Development Code 19.16.100 F (2)(a) provides that a "fence" application is subject to a "Minor Review Process" and section 19.16.100 (F) (3) specifically exempts fences from a "Major Review Process." The Major Review Process . . . shall not apply to building permit level reviews described in Paragraph 2(a) of this Subsection (F).

91. It was uncontested that the Major Review Process is significantly more involved than a Minor Review Process. Las Vegas Unified Development Code 19.16.100 (G).

92. On August 24, 2017, the City sent the Landowners a letter of denial for the proposed chain link fences, stating it has "determined that the proximity to adjacent properties has the potential to have a significant impact on the surrounding properties," explained the fence application was "denied" and, in violation of its own City Code, stated a "major review" would be required for the chain link fence application. Exhibit 92.

93. The City's attorney responded at the hearing on September 24, 2021, that perhaps the City succumbed to "political pressure" in denying the fence application.

94. The Landowners presented uncontested evidence of three properties in the City of Las Vegas near the 35 Acre Property that received approval for fencing - New Horizon Academy on West Charleston, the closed Leslie's Pool Supply on West Charleston, and vacant land on West Charleston. They also presented evidence that the vacant lot adjacent to the Nevada Supreme Court building, also in the City of Las Vegas jurisdiction, has an approved fence around it.

95. The Landowners presented an interoffice City email wherein it is stated – "Follow up with CM Seroka regarding the Badlands fence permit. Want to take action on the Monday after find out cm's conversations went over the weekend regarding the permit." CLV06391 – Public Records Request. The email is dated August 21, 2017, three days prior to the City's fence denial letter to the Landowners. Exhibit 92.

The Landowners' Access Application.

96. The Landowners presented uncontested evidence that they also submitted an application to the City to approve access to their 250 Acres, including specific access to the 35 Acre Property and the City denied the access.

97. The Landowners submitted routine over the counter applications to the City to provide access to the 250 Acres from Hualapai Way and Rampart Blvd. Exhibit 88. The 35 Acre

Property abuts Hualapai Way and approval of the access from Hualapai Way would allow direct access to the 35 Acre Property.

98. The Landowners explained in their access application to the City that the access was needed "for the tree and plant cutting, removal of related debris and soil testing equipment." Exhibit 88, 002810.

99. As detailed above, the City Planning Department stated, in its Staff Recommendation on the 35 Acre Property stand-alone applications that, "[s]ite access from Hualapai Way through a gate meets Uniform Standard Drawing specifications." Exhibit 74, p. 002552.

100. During discovery, the City stated that, "[t]he Badlands [250 Acres] had general legal access to public roadways along Hualapai Way, Alta Drive, and Rampart Blvd." City Third Supplement to Interrogatory Answers, electronically served, June 9, 2021, 10:4-5.

101. On August 24, 2017, the City denied the application for access, stating as the reason for denial, "the potential to have significant impact on the surrounding properties." Exhibit 89, 002816.

102. At the summary judgment hearing, the City was unable to provide a reasonable basis for denying the Landowners' access application.

The City's Passage of Bills No. 2018-5 and 2018-24.

103. The evidence established that, after the City denied the stand-alone 35 Acre applications to build, denied the MDA, denied the fence applications, and denied the access application, the City adopted two Bills, Bills No. 2018-5 and 2018-24. Exhibits 107 and 108.

104. The uncontested evidence presented showed the Bills targeted only the Landowners' 250 Acres.

105. City Councilwoman Fiore stated on the record, "[f]or the past two years, the Las Vegas Council has been broiled in controversy over Badlands [250 Acres], and this [Bill 2018-24]

is the latest shot in a salvo against one developer" and "This bill is for one development and one development only. This bill is only about the Badlands Golf Course [250 Acres]" and "I call it the Yohan Lowie Bill." Exhibit 114, 5.16.18 City Council Meeting, p. 003848-3849; Exhibit 115, p. 003868; Exhibit 116, 5.14.18 Recommending Committee Meeting, pp. 003879, 003910. Yohan Lowie is one of the Landowner representatives.

106. Stephanie Allen, the Landowners' land use attorney who represented the Landowners before the City on the development matters, stated that, "we did the analysis … Out of the 292 parcels that the City provided [that the Bills could apply to], two properties remain. One of them is the former Badlands Golf Course [250 Acres], and if I could direct your attention to the overhead, the other is actually, interestingly, in Peccole Ranch. It's this little pink area here. It's a wash." Exhibit 110, p. 003370.

107. The Landowners submitted the analysis performed by Ms. Allen establishing that Bills No. 2018-5 and 2018-24 target only the Landowners' Property. Exhibits 111 and 112.

108. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 target only the Landowners' 250 Acres.

109. The uncontested evidence presented showed the Bills made it impracticable and impossible to develop the 250 Acres.

110. Bills 2018-5 and 2018-24 included the following requirements before an application could be submitted to develop the 250 Acres: a master plan (showing areas proposed to remain open space, recreational amenities, wildlife habitat, areas proposed for residential use, including acreage, density, unit numbers and type, areas proposed for commercial, including acreage, density and type, a density or intensity), a full and complete development agreement, an environmental assessment (showing the project's impact on wildlife, water, drainage, and ecology), a phase I environmental assessment report, a master drainage study, a master traffic

study, a master sanitary sewer study with total land uses proposes, connecting points, identification of all connection points, a 3D model of the project with accurate topography to show visual impacts as well as an edge condition cross section with improvements callouts and maintenance responsibility, analysis and report of alternatives for development, rationale for development, a mitigation report, CC&Rs for the development area, and a closure maintenance plan showing how the property will continue to be maintained as it has in the past (providing security and monitoring). Exhibits 107 and 108, ad passim.

111. The Bills also included vague requirements, such as development review to assure the development complies with "other" City policies and standards, and a requirement for anything else "the [City Planning] Department may determine are necessary." Exhibit 108, p. 003212:12-13.

112. It was uncontested that Bill No. 2018-24 mandated that any development on the Landowners 250 Acres could only occur through a "development agreement" and, at the time Bill Nos. 2018-5 and 2018-24 were passed, the City had already denied a development agreement (the MDA) for the entire 250 Acres. Exhibit 78 (MDA denied on August 2, 2017); Exhibit 108, pp. 003206-003207 (Bill No. 2018-24, passed on November 7, 2018).

113. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 made it impracticable and impossible to develop the 250 Acres.

114. The evidence presented showed the Bills preserved the 250 Acres for use by the public and authorized the public to use the 250 Acres, including the 35 Acre Property.

115. City Councilman Seroka was a vocal opponent to the Landowners building on the 250 Acres.

116. Councilman Seroka presented to the surrounding property owners at a homeowner's association meeting that they had the right to use the Landowners' 250 Acres as recreation and open space.

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

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

117. Bill No. 2018-24 was "Sponsored by: Councilman Steven G. Seroka," the vocal opponent to the Landowners developing the 250 Acres. Exhibit 108, p. 003202.

118. A provision was written into Bill No. 2018-24 which states under section "G. 2. Maintenance Plan Requirements," that "the maintenance plan must, at a minimum and with respect to the property . . . d. Provide documentation regarding ***ongoing public access . . . and plans to ensure that such access is maintained.***" Exhibit 108, pp. 003211-3212. Emphasis added.

119. The section "A. General" to Bill No. 2018-24 states that any proposal to repurpose the 250 Acres from a golf course "is subject to … the requirements pertaining to … the Closure Maintenance Plan set forth in Subsections (E) and (G), inclusive," which is where the requirement to provide "ongoing public" access is mandated in Bill No. 2018-24. Exhibit 108, pp. 003202-3203.

120. The Landowners presented uncontested evidence that the neighbors are using the 250 Acres. Exhibit 150 and pictures attached thereto.

121. Don Richards, the superintendent for the 250 Acres, submitted a declaration that those that entered onto the 35 Acre Property advised him that they were told that "it is our open space." Exhibit 150, p. 004669, paras 6-7.

122. The effect of Bills No. 2018-5 and 2018-24 was to: 1) target only the Landowners' 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the 250 Acres for use by the public and authorize the public to use the 250 Acres.

There is No Evidence that the 250 Acres is the Open Space or Recreation for the Area.

123. It was uncontested that the 250 Acres, including the 35 Acre Property is privately-owned property.

124. Although Councilman Seroka announced the Queensridge Homeowners could use the 250 Acres for their open space and recreation, there was no evidence to support this announcement and contrary evidence showed this authorization was inaccurate. Exhibits 36-39.

125. The CC&Rs for the surrounding Queensridge Community state, "[t]he existing 18-hole golf course commonly known as the "Badlands Golf Course" [250 Acres] is not a part of the Property or the Annexable Property [Queensridge Community] and the Queensridge Community "is not required to[] include … a golf course, parks, recreational areas, open space." Exhibit 36, pp. 000761-762.

126. The Custom Lot Design Guidelines for the Queensridge Community also informed that the interim golf course on the 250 Acres was available for "future development." Exhibit 37, p. 000896.

127. The Queensridge CC&Rs further disclosed to every purchaser of property within the Queensridge Community that the 250 Acres was "not a part" of the Queensridge Community, that purchasers in the community "shall not acquire any rights, privileges, interest, or membership" in the 250 Acres, there are no representations or warranties "concerning the preservation or

permanence of any view," and lists the "Special Benefits Area Amenities" for the surrounding Queensridge Community, which does not include a golf course or open space or any other reference to the 250 Acres. Exhibit 38, ad passim.; Exhibit 39, pp. 000908-909, 911.

128. The Zoning Verification Letter the City provided the Landowners prior to the Landowners acquiring the 250 Acres also makes no mention of any open space or recreation restriction. Exhibit 134.

129. The Court was also presented with two findings of fact and conclusions of law entered in litigation between a Queensridge homeowner and the Landowners wherein the Queensridge homeowner alleged the 250 Acres was "open space" for the Queensridge Community and the District Court rejected this argument and entered findings that the 250 Acres is zoned "R-PD7" and the R-PD7 zoning gives the Landowners the "right to develop." Exhibit 26, 000493; Exhibit 27, p. 000520. The matter was affirmed on appeal. Exhibits 28 and 29.

130. The caption for that litigation shows the City was a party to that action and, therefore, aware of the proceedings, however, counsel represented that the City was dismissed out of the case.

Additional City Communications and Actions.

131. The Landowners also presented evidence of communications and other actions taken by the City showing the City's intent toward the 250 Acres after the Landowners acquired the 250 Acres.

132. The City identified $15 million of potential City funds to purchase the 250 Acres (notwithstanding the Land was not for sale). Exhibit 144.

133. The City identified a "proposal regarding the acquisition and re-zoning of green space land [250 Acres]." Exhibit 128.

134. The City proposed / discussed a Bill to force "Open Space" on the 250 Acres, contrary to its legal zoning. Exhibit 121.

135. The City proposed a solution to "Sell off the balance [of the 250 Acres] to be a golf course with water rights (key). Keep the bulk of Queensridge green." Exhibit 122.

136. The City engaged a golf course architect to "repurpose" the 250 Acres. Exhibit 145.

137. One City Councilman referred to the Landowners' proposal to build large estate homes on the residentially zoned 250 Acres as the same as "Bibi Netanyahu's insertion of the concreted settlements in the West Bank neighborhoods." Exhibit 123.

138. Then-Councilman Seroka testified at the Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could build homes on the 250 Acres (Exhibit 124, 2.14.17 Planning Commission Meeting) and issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowners' private property into a "fitness park," and in an interview with KNPR, he stated that he would "turn [the Landowners' private property] over to the City." Exhibit 125.

139. In reference to development on the 250 Acres, then-Councilman Coffin stated firmly "I am voting against the whole thing," and "a majority is standing in his [Landowners] path [to development] (Exhibits 122 and 126) before the applications were finalized and presented to the City Council,[3] the councilman refers to the Landowners' representative as a "sonofab[…]," "A[…]hole," "scum," "motherf[…]er," "greedy developer," "dirtball," "clown," and Narciss[ist]" with a "mental disorder," (Exhibit 121) and seeks "intel" against the Landowner through a private investigator in case he needs to "get rough" with the Landowners (Exhibit 127).

[3] This statement was made by email on April 6, 2017, and the applications were not presented to the City Council until June 21 and August 2 of 2017.

140. Then-Councilmen Coffin and Seroka also exchanged emails wherein they stated they will not compromise one inch and that they "need an approach to accomplish the desired outcome," - prevent development on the 250 Acres. Exhibit 122.

141. An interoffice City email states, "If any one sees a permit for a grading or clear and grub at the *Badlands* Golf Course [250 Acres], please see Kevin, Rod, or me. Do Not Permit without approval from one of these three." Exhibit 130, June 27, 2017, City email. Italics in original.

142. City Emails were presented that showed City Council members discussing a strategy to not disclose information related to actions toward the 250 Acres, with instruction given, in violation of the Nevada Public Records Act,[4] on how to avoid the search terms being used in the subpoenas: "Also, please pass the word for everyone to not use B…l..nds in title or text of comms. That is how search works." and "I am considering only using the phone but awaiting clarity from court. Please pass word to all your neighbors. In any event tell them to NOT use the city email address but call or write to our personal addresses. For now…PS. Same crap applies to Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his personal stuff being sought. This is no secret so let all your neighbors know." Exhibit 122, p. 004232.

Expert Opinions.

143. The Landowners introduced an appraisal report by Tio DiFederico of the 35 Acre Property. Exhibit 183.

144. Mr. DiFederico has the M.A.I. designation, the highest designation for an appraiser. Exhibit 183, p. 005216.

[4] *See* NRS 239.001(4) (use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services)

145. Mr. DiFederico appraised the "before value" of the 35 Acre Property, which is the value of the 35 Acre Property as if it were available for residential development in compliance with the R-PD7 zoning and the "after value," which is the value of the 35 Acre Property after all of the City actions toward the property. He concluded that the "before value" is $34,135,000.00 and the "after value" is zero. Exhibit 183, p. 005216.

146. Mr. DiFederico concluded, "[d]ue to the effect of the government's actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the 'after value' would be zero." Exhibit 183, p. 005216.

147. Discovery in this matter closed on July 26, 2021.

148. The City did not exchange an initial expert report or a rebuttal expert report to challenge Mr. DiFederico's opinions.

III.

CONCLUSIONS OF LAW REGARDING THE LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF

Standard of Review

149. NRCP 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Further, "summary judgment ... may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." NRCP 56(c). In Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court eliminated the "slightest doubt standard," holding that "[w]hile the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to

do more than simply show that there is some 'metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor" and that "[t]he nonmoving party " 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'"

150. The Nevada Supreme Court has held that this Court decides, as a matter of law, whether a taking has occurred. McCarran Int'l Airport v. Sisolak, 137 P.3d 1110 (2006) ("whether the Government has inversely condemned private property is a question of law that we review de novo." Id., at 1119). *See also,* Moldon v. County of Clark, 124 Nev. 507, 511, 188 P.3d 76, 79 (2008) ("whether a taking has occurred is a question of law…").

151. This Court has already held that, in deciding the take issue in this case, the Court must consider all of the City actions in the aggregate toward the 35 Acre Property:

> In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). See also State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (citing Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).
>
> The City has argued that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered.

Exhibit 8, May 15, 2019 Order Denying City's Motion for Judgment on the Pleadings, pp. 000172-173.

152. The Nevada Supreme Court has also held "there are several invariable rules applicable to specific circumstances" and this Court will address three of those "invariable rules" for a taking in Nevada – a per se categorical taking (Landowners' first claim for relief), a per se regulatory taking (Landowners' Third Claim for Relief), and a non-regulatory / de facto taking (Landowners' Fourth Claim for Relief). State v. Eighth Judicial District Court, 131 Nev. 411, 419 (2015).

153. In addressing the invariable rules that apply to the Landowners' First, Third, and Fourth Claims for Relief, the United States and Nevada Supreme Court have held that a Penn Central analysis, referenced later in this FFCL, does not apply to the Landowners' First, Third, and Fourth Claims for Relief. Sisolak ("the *Penn Central*-type takings analysis does not govern this action [per se regulatory taking]." Id., at 1130); Cedar Point Nursery ("regulations in the first two categories constitute *per se* takings [per se categorical and per se regulatory]" and are not subject to a Penn Central analysis. Id., at 2070); State v. Eighth Judicial District Court (identifying a "Nonregulatory Analysis" separate and apart from a "*Penn Central* analysis" and applying a different standard to find a taking. Id., at 419 and 421).

The Landowners are Entitled to Summary Judgment on Their First Claim For Relief – a Per Se Categorical Taking.

154. The Nevada Supreme Court holds that a per se categorical taking occurs where government action "completely deprives an owner of all economical beneficial use of her property," and, in these circumstances, just compensation is automatically warranted, meaning there is no defense to the taking. Sisolak, supra, at 662. A categorical taking does not require a physical invasion.

155. As detailed above, the City denied 100% of the Landowners' requests to use the 35 Acre Property. The City denied the 35 Acre stand-alone applications, the MDA application, the perimeter fence application, the pond fence application, and the access application.

156. The City then adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

157. The Court finds persuasive the expert appraisal report prepared by M.A.I. appraiser, Tio DiFederico, which concludes, "[d]ue to the effect of the government's actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the 'after value' would be zero." Exhibit 183, p. 005216. As detailed above, the City has not produced an expert report during discovery to challenge Mr. DiFederico's expert opinion.

158. The Court also finds that the Landowners presented substantial evidence that the historical golf course use is not an economical use. Exhibits 45-47. Appraiser, Tio DiFederico also concluded the golf course is not an economical use and the City presented no expert evidence to contest this conclusion. Exhibits 183, p. 005214.

159. The Court finds the City actions have caused the 35 Acre Property to lie vacant and useless to the Landowners and "completely deprive[d] [the Landowners] of all economical beneficial use of [their] property," specifically, the 35 Acre Property.

160. In addition to causing the 35 Acre Property to lie vacant and useless to the Landowners, the tax assessor has imposed, and the Landowners are paying, $205,227.22 per year in real estate taxes based on a residential use. The Court also recognizes that there are other carrying costs for the vacant 35 Acre Property.

161. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' First Claim for Relief – Per Se Categorical Taking.

The Landowners are Entitled to Summary Judgment on Their Third Claim For Relief – a Per Se Regulatory Taking.

162. The Nevada Supreme Court holds that a per se regulatory taking occurs where government action "authorizes" the public to use private property or "preserves" private property for public use. Sisolak, supra. *See also* Tien Fu Hsu v. County of Clark, 123 Nev. 625 (2007). The Sisolak and Hsu Courts held that the adoption of height restriction ordinance 1221 was a taking by inverse condemnation, because it preserved the privately-owned airspace for use by the public and authorized the public to use the privately-owned airspace.

163. The United States Supreme Court adopted the same rule in a very recent case, wherein the Court held that a government authorized invasion of private property is a taking. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (June 23, 2021). The Cedar Point Nursery Court held that a California statute that authorized labor unions to enter onto private farms 120 days a year for up to 3 hours at a time, upon proper notice, is a taking by inverse condemnation.

164. When the government engages in per se regulatory taking actions, just compensation is automatically warranted, meaning there is no defense to the taking.

165. As detailed above, the City adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

166. These Bills, alone, are a per se regulatory taking of the Landowners' 35 Acre Property as they are similar to the actions taken by the County in the Sisolak and the Hsu cases and the actions taken by the State of California in the Cedar Point Nursery case.

167. Moreover, the intent of the Bills was evidenced by the sponsor of the Bills, Councilman Seroka, when he advised the surrounding homeowners that the Landowners' 35 Acre Property was the surrounding property owners' open space and recreation, as detailed above.

168. The City's intent to preserve the 35 Acre Property for use by the surrounding public and to authorize the public to use the 35 Acre Property is further evidenced in the City's fence denial and access denial letters wherein the City states as a basis for the denials, the potential to have significant impact on the "surrounding properties." Exhibit 92, p. 002830; Exhibit 89, p. 002816. The City's 35 Acre application denial letter also states as a basis for the denial, in part, concerns over the impact of the proposed development on "surrounding residents." Exhibit 93, p. 002831.

169. The City's intent to preserve the 35 Acre Property for use by the public was further evidence by the numerous statements by City Councilmembers and other City employees, referenced above, that identified the 35 Acre Property for use by the surrounding property owners.

170. The Court finds unpersuasive the City's argument that statements by City Councilmembers and other City employees cannot be considered. In Sisolak, a per se regulatory taking case, the Court considered statements by Bill Keller, a principal planner with the Clark County Department of Aviation, in regards to the County height restrictions. Sisolak, supra, at 653. Moreover, many of the City statements were made in judicial or quasi-judicial settings, meaning the City is judicially estopped from making contrary representations to this Court. Marcuse v. Del Webb Communities, 123 Nev. 278 (2007).

171. The uncontested Declaration of Christopher Kaempfer, the Landowners' land use attorney, also confirms the City's intent to preserve the 35 Acre Property for use by the surrounding public - "it became clear that despite our best efforts, and despite the merits of our applications(s), no Development Agreement was going to be approved by the City of Las Vegas unless virtually

all of the Badlands neighborhood supported such a Development Agreement; and it was equally clear that this neighborhood support was not going to be achieved because, as the lead of the neighborhood opposition exclaimed to me and other 'I would rather see the golf course a desert than a single home built on it.'" Exhibit 48, p. 001161, para. 12.

172. The uncontested Declaration of Don Richards, supported by photographic evidence, confirms that the public was using the 35 Acre Property in conformance with the direction of the City. Exhibit 150, p. 004669, para. 7.

173. Moreover, "[t]he right to exclude is 'one of the most treasured' rights of property ownership" and "is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property'" and the City denied the Landowners the right to exclude others from the 35 Acre Property by denying the Landowners' fence application, which is a taking in and of itself and further supports a finding of a per se regulatory taking. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2072 (June 23, 2021).

174. Also, under Nevada law an owner of property that abuts a public road "has a special right of easement in a public road for access purposes" and "[t]his is a property right of easement which cannot be damaged or taken from the owner without due compensation" and the City denied the Landowners access to the 35 Acre Property by denying the Landowners' access application which is a taking in and of itself and further supports a finding of a per se regulatory taking. Schwartz v. State, 111 Nev. 998 (1999).

175. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' Third Claim for Relief – a Per Se Regulatory Taking.

The Landowners are Entitled to Summary Judgment on Their Fourth Claim For Relief – a Non-Regulatory / De Facto Taking.

176. The Nevada Supreme Court holds that a non-regulatory / de facto taking occurs where the government has "taken steps that directly and substantially interfere[ ] with [an] owner's

property rights to the extent of rendering the property unusable or valueless to the owner." State v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). The Court relied on Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. 1977), where the Ninth Circuit held that "[t]o constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights."

177. The Nevada Supreme Court has further held in Sloat v. Turner, 93 Nev. 263, 269 (1977), that a taking occurs where there is "some derogation of a right appurtenant to that property which is compensable" or "if some property right which is directly connected to the ownership or use of the property is substantially impaired or extinguished." *See also,* Schwartz v. State, 111 Nev. 998 (1995) (taking where "a property right which is directly connected to the use or ownership of the property is substantially impaired or extinguished." Id., at 942).

178. Nichols on Eminent Domain further describes this non-regulatory / de facto taking claim as follows: "[c]ontrary to prevalent earlier views, it is now clear that a de facto taking does not require a physical invasion or appropriation of property. Rather, a substantial deprivation of a property owner's use and enjoyment of his property may, in appropriate circumstances, be found to constitute a 'taking' of that property or of a compensable interest in the property..." 3A Nichols on Eminent Domain §6.05[2], 6-65 (3rd rev. ed. 2002).

179. Therefore, a Nevada non-regulatory / de facto taking occurs where government action renders property unusable or valueless to the owner or substantially impairs or extinguishes some right directly connected to the property.

180. The Court rejects the City's assertion that a non-regulatory / de facto taking only applies to physical takings and precondemnation damages claims. First, there is nothing in the

case law that restricts non-regulatory / de facto takings to physical takings and Nichols on Eminent Domain, cited above, expressly rejects this argument. Second, in State v. Eighth Judicial District Court case, supra, the Court applies the standard for a non-regulatory / de facto taking and states in footnote 5 that, "[w]e decline to address Ad America's precondemnation damages claim because the district court has not decided the issue," showing the case was not a precondemnation damages case.

181. The Court finds that the aggregate of City actions, set forth above, substantially interfered with the use and enjoyment of the Landowners' 35 Acre Property, rendering the 35 Acre Property unusable or valueless to the Landowners.

182. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' Fourth Claim for Relief – a Non-Regulatory / De Facto Taking.

The Ripeness / Futility Doctrine do not Apply to the Landowners' First, Third, and Fourth Claims for Relief.

183. The Court follows Nevada Supreme Court precedent to not apply the ripeness / futility doctrine to the Landowners' First, Third, and Fourth Claims for Relief.

184. The Nevada Supreme Court has held that a ripeness / futility analysis is inapplicable to the Landowners' Per Se Regulatory and Per Se Categorical taking claims, because a "per se" taking is a taking in and of itself and there is no defense to the taking and no precondition to pass through a ripeness / futility analysis. The Court held in the Sisolak case that "Sisolak was not required to exhaust administrative remedies by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Sisolak, supra, at 664. The Court's ruling was made clear in Justice Maupin's dissent in Sisolak, wherein he stated, "[w]hile I disagree with the majority that a regulatory per se taking has occurred in this instance, I do agree that Loretto and Lucas takings, like per se physical takings, do not require exhaustion of administrative remedies." Sisolak at 684. And, in the Hsu case, the Court held,

"[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Hsu, 173 P.3d at 732 (2007).

185. The ripeness / futility doctrine also does not apply to the Landowners' non-regulatory / de facto taking claim. The Nevada Supreme Court lays out the standard for a non-regulatory / de facto taking in the cases of State v. Eighth Judicial District, Sloat, and Schwartz and the Court does not impose a ripeness / futility requirement.

186. To the extent this is in conflict with federal takings jurisprudence, "…states may expand the individual rights of their citizens under state law beyond those provided under the Federal Constitution. Similarly, the United States Supreme Court has emphasized that a state may place stricter standards on its exercise of the takings power through its state constitution or state eminent domain statutes." Sisolak at 669.

187. Therefore, under the laws of the State of Nevada, which this Court is bound by, an owner is not required to file any application with the land use authority to ripen a per se categorical taking, a per se regulatory taking, or a non-regulatory / de facto taking claim – the Landowners first, third, and fourth claims for relief.

The City's Segmentation Argument Does Not Apply.

188. The City asks this Court to find that, since the City initially approved development on the 17 Acre Property, the City may demand that all remaining 233 acres of the 250 Acre Land, including the 35 Acre Property, be designated open space. The City calls this its "segmentation" argument.

189. The Nevada Supreme Court has held that the 35 Acre Property must be considered as a separate and independent parcel in this inverse condemnation proceeding, not as part of the larger 250 Acres:

> "A question often arises as to how to determine what areas are portions of the parcel being condemned, and what areas constitute separate and independent parcels? Typically, the legal units into which land has been legally divided control the issue. That is, each legal unit (typically a tax parcel) is treated as a separate parcel...." City of North Las Vegas v. Eighth Judicial Dist. Court, 133 Nev. 995, *2, 401 P.3d 211 (table)(May 17, 2017) 2017 WL 2210130 (unpublished disposition), *citing* 4A Julius L. Sackman, *Nichols on Eminent Domain* § 14B.01 (3d ed. 2016).

190. It is undisputed that the 35 Acre Property has its own Clark County Assessor Parcel Number – 138-31-201-005.

191. It is also undisputed that the 35 Acre Property has its own independent legal owner - 180 Land Co., LLC, a Nevada limited liability company.

192. The Court finds that it would be impermissible to conclude that Owner A is not damaged because the government approved a development on an entirely separate parcel owned by Owner B. Yet, that is what the City is arguing, that the alleged approvals on the 17 Acre Property negate damages on the 35 Acre property – a separate taxed and owned parcel.

193. The Court also finds that there is evidence that the City clawed back the 17 Acre approvals, which would negate any possible segmentation argument. As explained above, after the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre Property), denied the 35 Acre applications, denied the fence application (that would have allowed the Landowners to fence the 17 Acre Property) and denied the access application (that would have allowed access to the 17 Acre Property). The City also sent the Landowners an email that explained the 17 Acre approvals were "vacated, set aside and shall be void." Exhibit 189.

194. The Court also finds that NRS 37.039 rejects the City's segmentation argument. NRS 37.039 provides that if the City wants to designate property as open space (as the City is asking this Court to do), the City must pay just compensation for the property identified as open space.

195. Additionally, the facts show that when the Landowners acquired the entity that owned the 250 Acres, it was already divided into five separate parcels. Exhibit 44, Deed.

196. It is undisputed that then-City Planning Section Manager, Peter Lowenstein testified in a deposition that it was the City that requested further subdivision of the Land. "Q. So you wanted the developer here to subdivide the property further, correct? A. As part of the submittal, we were looking for that to be accomplished . . ." Exhibit 160, p. 004962.

197. Therefore, there is no evidence to support the City's claim that the Landowners intentionally segmented their property as a "transparent ploy" to "fabricate a takings claim" as the City argued with no supporting evidence.

198. Accordingly, the Court denies the City's segmentation argument.

The City Cannot Revoke a Taking that Has Already Occurred.

199. This Court also denies the City's request to find that the City revoked the taking actions by sending the Landowners a letter to invite them to re-apply to develop.

200. The United States Supreme Court held in the case of Knick v Township of Scott, Pennsylvania, 139 S.Ct. 2162, 2170 (2019), that "[t]he Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner." The Knick Court further held "once there is a taking compensation *must* be awarded because as soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has *already* suffered a constitutional violation." Id., at 2172. Italics in original. The Knick Court continued, "a property owner acquires an irrevocable right to just compensation immediately upon a taking" and concluded, "[a] bank robber might give the loot back, but he still robbed the bank." Id., at 2172.

Petition for Judicial Review Law.

201. The Court declines the City's repeated attempts to apply Petition for Judicial Review (PJR) law and standards and this Court's orders from the PJR side of this case in this inverse condemnation case.

202. This Court has already ordered several times that PJR law cannot be applied in this inverse condemnation case and provided detailed legal and policy reasons for this conclusion as follows:

> "Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. (internal citation omitted). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. (internal citation omitted). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council." Exhibit 8 at 22:13-27
>
> "[B]oth the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them 'two disparate sets of claims' ..." Exhibit 8 at 21:15-20.
>
> "The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof." Id., 22:1-11.
>
> "A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered." Id., 8:25 – 9:2.

> "For these reasons, it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims." Exhibit 8, 23:7-8. See also Exhibit 7, 11:20-22, May 7, 2019, Order
>
> "This is an inverse condemnation case. It's not a petition for judicial review. There's clearly a difference in distinction there." Exhibit 198, 5.13.21 hearing transcript at 39:7-9.
>
> "And we've had a very rigorous discussion in the past in this case, and I think we have a pretty good record on how I viewed the petition for judicial review and whether or not that rises to a level of issue preclusion or claims preclusion vis-à-vis the inverse case. And I've ruled on that: right?" Exhibit 198, 5.13.21 hearing transcript at 41:6-12.
>
> "But you're not listening to me. I understand all that. I don't see any need to replow this ground." Exhibit 198, 5.13.21 hearing transcript at 43:24-44:1
>
> "Wait. Wait. Wait. Wait…the law as it relates to petitions for judicial review are much different than a civil litigation seeking compensation for inverse condemnation, sir…the standards are different. I mean, for example, they got to meet their burden by a preponderance of the evidence. It's substantial---I mean, it's a totally different – it's an administrative process versus a full-blown jury trial in this case. It's different completely." Exhibit 198, 5.13.21 hearing transcript at 69:20-70:7.

203. Moreover, when the PJR matter was pending before this Court, the City explained the deference the Court must give to the City's decisions and how the Court's hands were tied in the PJR matter. The City argued in pleadings in the PJR matter that "[t]he Court may 'not substitute its judgment for that of a municipal entity;" "[i]t is not the business of courts to decide zoning issues;" and "[a] 'presumption of propriety' attaches to governmental action on land use decisions." City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review, pp. 16-17, filed on June 26, 2018, in the PJR side of this case. And, the City's counsel provided similar arguments at the hearing on the PJR matter as follows:

> [This court] must apply a very simple standard, whether or not the city council abused its discretion in denying these applications. And in making a determination as to whether or not the city council abused its discretion, it's simply a matter of whether or not there's substantial evidence in the record to support the city council's decision.
> This isn't a matter of the standard of proof in a trial. . . . It's not even the standard of proof in a civil trial, a preponderance of the evidence. It doesn't even have to be 50-50 such that there's - - 50 percent of the record supports the approval of the applications and 50 percent of the evidence in the record supports the denial of the applications.

> Its whether or not there's substantial evidence in the record. And substantial evidence has been defined as whether a reasonable mind could accept sufficient to support a conclusion. Reporter's Transcript of Petition for Judicial Review, June 29, 2018, p. 144:4-25, PJR side of this matter.

204. No such deference is required in this inverse condemnation action. Instead, the Court is required to consider all of the City's actions in the aggregate to determine whether those actions amount to a taking.

205. Finally, the Nevada Supreme Court recently confirmed this Court's orders and the reasoning therein, holding "civil actions and judicial review proceedings are fundamentally different" and recognized that PJR and civil actions are "[l]ike water and oil, the two will not mix." City of Henderson v. Eighth Judicial District Court, 137 Nev., Adv. Op. 26 at 2 (Jun. 24, 2021).

206. Therefore, it would be improper to apply PJR law or this Court's orders from the PJR matter to this inverse condemnation case.

Purchase Price.

207. The Court also declines to apply any purchase price when deciding the taking issues.

208. First, there is no case law to support consideration of the purchase price paid for property when determining whether a taking occurred.

209. Second, the Landowners presented a pleading at the hearing that was submitted by the City in the 65 Acre case wherein the City argued, "[t]he Developer's purchase price, however, is not material to the City's *liability* for a regulatory taking." City's Response to Developer's Sur-Reply Brief Entitled "Notice of Status of Related Cases ETC.", filed on September 15, 2021, 3:17 pm, Case No. A-18-780184-C (65 Acre Case). Italics in original.

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IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO THE CITY'S MOTION FOR SUMMARY JUDGMENT ON THE LANDOWNERS' SECOND CLAIM FOR RELIEF – PENN CENTRAL TAKING CLAIM

210. The City moved for summary judgment on the Landowners' Second Claim for Relief – Penn Central Taking Claim.

211. A Penn Central Taking Claim is an inverse condemnation claim separate and distinct from the Per Se Categorical, Per Se Regulatory, and Non-Regulatory / De Facto taking claims and is governed by a different taking standard.

212. The standard for a Penn Central Taking Claim considers, on an ad hoc basis, three guideposts: 1) the regulations impact on the property owner; 2) the regulations interference with investment backed expectations; and, 3) the character of the government action. Sisolak, supra, at 663.

213. The City conceded at the hearing on September 28, 2021, that the Penn Central taking standard is a lower standard than a per se categorical standard and if the per se categorical taking standard has been met, then the Penn Central standard is met.

214. Moreover, as explained above, 1) the impact from the City's actions on the Landowners' 35 Acre Property has been to deny all economic use of the property; 2) the City's actions have interfered with the Landowners attempts to develop residentially, which were the Landowners' investment backed expectations; and, 3) the government provided no justification for denying all economical use of the 35 Acre Property.

215. Insofar as a ripeness / futility analysis applies to a Penn Central claim, the claim is ripe.

216. The Nevada Supreme Court holds that, "a claim that the application of government regulations effects a [Penn Central] taking of a property interest is not ripe until the government

entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. . . . But when exhausting available remedies, including the filing of a land-use application, is futile, a matter is deemed ripe for review." State v. Eighth Judicial Dist., supra, at 419.

217. Here, the Landowners' Penn Central taking claim is ripe, because the City denied all of the applications the Landowners submitted to use the 35 Acre Property and the City adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

218. Therefore, given the City's concession that the Penn Central taking standard is a lower standard than a per se categorical taking standard and the uncontested record in this matter, summary judgment is granted in favor of the Landowners on their second claim for relief – a Penn Central taking.

V.

CONCLUSION

IT IS HEREBY ORDERED THAT Summary Judgment is granted in favor of the Landowners on the Landowners' First Claim for Relief – Per Se Categorical Taking, Second Claim for Relief – Penn Central Taking, Third Claim for Relief – Per Se Regulatory Taking, and Fourth Claim for Relief – Non-Regulatory / De Facto Taking. A jury trial is scheduled for November 1, 2021, to determine the just compensation the Landowners are owed for the taking of the 35 Acre Property.

Dated this 25th day of October, 2021

MH

998 183 8997 1E67
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF:** **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF;** **AND** **DENYING THE CITY OF LAS VEGAS' COUNTERMOTION FOR SUMMARY JUDGMENT ON THE SECOND CLAIM FOR RELIEF**

///

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief; and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief ("FFCL") was entered on the 25th day of October, 2021.

A copy of the FFCL is attached hereto.

DATED this 25th day of October, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters

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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 25th day of October, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFFS LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD AND FOURTH CLAIMS FOR RELIEF; AND DENYING THE CITY OF LAS VEGAS' COUNTERMOTION FOR SUMMARY JUDGMENT ON THE SECOND CLAIM FOR RELIEF** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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,

Defendant.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

AND

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

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

Case Number: A-17-758528-J

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

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

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

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

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

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

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

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

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

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

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

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

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

II.

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

A.

THE PROPERTY INTEREST ISSUE

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

///

The Landowners' 35 Acre Property.

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

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

The Landowners presented uncontested evidence of the due diligence conducted prior to acquiring ownership of the 35 Acre Property.

13. In 2001, the Landowners principals were advised by the William Peccole Family, original owners of the 35 Acre Property, that at all times, it was zoned R-PD7, it had rights to develop, the property was intended for residential development, and the Peccole Family did not and would never place a deed restriction on the property. Exhibit 34, p. 000734, paras. 4-5.

14. Also in 2001, the Landowners confirmed that the CC&Rs for the Queensridge Community, the community adjacent to the 35 Acre Property, and the disclosures related to the acquisition of surrounding properties, disclosed that the 35 Acre Property is not a part of the Queensridge Community, there is no requirement that the 35 Acre Property be used as open space or a golf course as an amenity for the Queensridge Community, and the 35 Acre Property is available for "future development." Exhibit 34, 000734, paras. 4-5; Exhibit 38

15. In 2006, the Landowners met with Robert Ginzer, a City Planning official, and confirmed that the 35 Acre Property was zoned R-PD7 and there were no restrictions that could prevent development of the property. Exhibit 34, p. 000734, para. 6.

16. In 2014, the Landowners met with Tom Perrigo and Peter Lowenstein, the highest ranking City Planners at that time, and they agreed to perform a study that took three weeks. At the end of this three week study, the City Planning Department reported that: 1) the 35 Acre Property is zoned for a residential use, R-PD7, and had vested rights to develop up to 7 residential units per acre; 2) the zoning trumps everything; and, 3) the owner of the 35 Acre Property can develop the property. Exhibit 34, p. 000735, para. 8.

17. The City then issued, at the Landowners request, a Zoning Verification Letter, on December 30, 2014, which states, in part, that: 1) the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) the "R-PD District is intended to provide for flexibility and innovation in residential development;" 3) the residential density allowed in the R-PD District shall be reflected by a numerical designation for that district, (Example, R-PD4 allows up to four units per gross acre);" and, 4) 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." Exhibit 134.

18. After obtaining the City's Zoning Verification Letter, the Landowners closed on the acquisition of the 35 Acre Property via purchase of the entity Fore Stars, Ltd.. Exhibit 44.

19. The Landowners also presented uncontested evidence of the City's position of the validity and application of the R-PD7 zoning to the 35 Acre Property.

20. During the development application process, veteran City Attorney Brad Jerbic stated, "Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in and develop." Exhibit 163, 10.18.16 Special Planning Commission Meeting, p. 005023:3444-3445.

21. Peter Lowenstein, head City Planner, testified during deposition that "a zone district gives a property owner property rights." Exhibit 160, p. 005002:5-6.

22. The City Planning Department provided a recommendation on the Master Development Agreement ("MDA") application for the development of the entire 250 Acres, discussed below, that further confirmed the residential use of the 35 Acre Property. The MDA application provided for residential development on the 35 Acre Property and the City Planning Department issued a recommendation of approval for the MDA, finding it "conforms to the existing zoning district requirements." Exhibit 77, p. 002671.

23. The City Planning Department provided a recommendation on the 35 Acre Property stand-alone applications, discussed below, that further confirmed the residential use of the 35 Acre Property. The 35 Acre applications provided for a 61-lot residential development on the 35 Acre Property and the City Planning Department issued a recommendation of approval for the applications, as they were "in conformation with all Title 19 [City Zoning Code] and NRS requirements for tentative maps." Exhibit 74, p. 002553.

24. The Clark County Tax Assessor ("Tax Assessor") confirmed the residential use of the 35 Acre Property based on R-PD7 zoning. NRS 361.227(1) requires that the tax assessor, when determining the taxable value of real property, shall appraise the full cash value of vacant land "by considering the uses to which it may lawfully be put" and "any legal restrictions upon those uses." In 2016, the Clark County Tax Assessor (Tax Assessor) applied NRS 361.227(1) to the 35 Acre Property. Exhibit 120, p. 004222. The Tax Assessor determined the "lawful" use of the 250 Acres, including the 35 Acre Property, by relying upon the "Zoning Designation … R-PD7" and identifying the use of the 250 Acres under this "R-PD7" zoning as "RESIDENTIAL." Exhibit 52, p. 001185; Exhibit 51, p. 001182. The Tax Assessor imposed a real estate tax on the 35 Acre Property, based on a residential use, of $205,227.22 per year. Exhibit 50, p. 001180. It was undisputed that the Landowners have dutifully paid these annual real estate taxes. The City

of Las Vegas City Charter states that, "t[]he County Assessor of the County is, ex officio, the City Assessor of the City." Las Vegas City Charter, sections 3.120(1).

The Landowners also presented uncontested evidence that the City has taken the position that the R-PD7 zoning is of the highest order and supersedes any City Master Plan or General Plan land use designations.

25. On February 14, 2017, City Attorney Brad Jerbic stated at a Planning Commission meeting, "the rule is the hard zoning, in my opinion, does trump the General Plan designation." Exhibit 75, 2.14.17 Planning Commission minutes, p. 002629:1787-1789.

26. The City Attorney's Office submitted pleadings to Nevada District Courts, stating the City Master Plan "was a routine planning activity that had no legal effect on the use and development" of properties and "in the hierarchy, the land use designation [on the City Master Plan] is subordinate to the zoning designation." Exhibit 156, p. 004925-4926; Exhibit 42, p. 000992:8-12.

27. Two City Attorneys submitted affidavits to a Nevada District Court, stating "the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan is a planning document only." Exhibits 157 and 158.

28. Tom Perrigo, head City Planner, testified in deposition that "if the land use [Master Plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement." Exhibit 159, p. 004936, 53:1-4.

29. The Landowners further submitted the Declaration of Stephanie Allen, a 17-year land use attorney in the City of Las Vegas, stating, "During by 17 years of work in the area of land use, it has always been the practice that zoning governs the determination of how land may be used. The master plan land use designation has always been considered a general plan document. I do not recall any government agency or employee ever making the argument that a master plan land use designation trumps zoning." Exhibit 195, p. 006088, para 16.

30. Additionally, during discovery, the Landowners requested that the City "[i]dentify and produce a complete copy of every City of Las Vegas Zoning Atlas Map from 1983 to present for the area within which the Subject Property is located or which includes the Subject Property and any drafts thereto, including the entire and complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings, any and all communications, correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to these City of Las Vegas Zoning Atlas Maps from 1983 to present." The City of Las Vegas' Fourth Supplement to its Responses to Requests for Production of Documents, Set One, electronically served, 2.26.20, 11:41 AM, p. 8, Request for Production No. 5.

31. The City did not identify or produce the requested documents on the basis that, "such records are not proportionate to the needs of the case as the City does not dispute that the Subject Property is zoned R-PD7." Id., p. 9.

There is No Basis for This Court to Reconsider its FFCL Re: Property Interest.

32. The City never requested an appropriate EDCR 2.24 motion to reconsider this Court's FFCL Re: Property Interest.

33. Moreover, the facts above confirm this Court's FFCL Re: Property Interest and the City failed to present any evidence during the four days of hearings that would persuade the Court to reconsider its FFCL Re: Property Interest.

34. There are six Nevada Supreme Court cases, three inverse condemnation cases and three direct eminent domain cases, wherein the Nevada Supreme Court made it clear that the R-PD7 zoning must be relied upon to determine the Landowners' property interest in this matter. McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006); Clark County v. Alper, 100 Nev. 382, 390 (1984); City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); County of Clark v. Buckwalter, 974 P.2d 1162 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh'g

sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813 (Nev. 1968).

35. NRS 278.349(3)(e) further supports the use of the R-PD7 zoning to determine the property interest issue in this matter, providing, "if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence."

36. NRS 40.005 also provides that "[i]n any proceeding involving the disposition of land the court shall consider the lot size and other applicable zoning requirements before ordering a physical division of the land." Although not directly on point, this statute shows the Legislature's intent to rely on zoning when addressing property rights in the State of Nevada.

37. Moreover, in the Sisolak, supra, case, the Nevada Supreme Court held "the first right established in the Nevada Constitution's declaration of rights is the protection of a landowner's inalienable rights to acquire, possess and protect private property," that "the Nevada Constitution contemplates expansive property rights in the context of takings claims through eminent domain," and "our state enjoys a rich history of protecting private property owners against government takings." Sisolak, supra, 669-670. The Court held that "[t]he term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." Id., at 658.

38. And, in the very recent United States Supreme Court inverse condemnation case Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2071 (June 23, 2021), the United States Supreme Court held that "protection of property rights is 'necessary to preserve freedom' and 'empowers persons to shape and to plan their own destiny in a world where governments are eager to do so for them."

39. Finally, the Court rejects the City's defenses that there is a Peccole Ranch Master Plan that governs the 35 Acre Property and a City of Las Vegas Master Plan/ land use designation of PR-OS that affects this Court's property interest determination.

40. Moreover, the City did not present any evidence of deed restrictions or property encumbrances. Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by "secret intentions" and documents not noticed).

B.

THE TAKE ISSUE

41. Having already resolved the property interest issue, the Court will now move to the take issues.

The Surrounding Property Owners.

42. After acquiring the 35 Acre Property, the Landowners began the process to develop the property for single family and multi-family uses.

43. Vickie DeHart, a Landowner representative, provided an uncontested declaration that on or about December 29, 2015, a representative of the surrounding property owners met with her, bragged that his group is "politically connected" and stated that he wanted 180 acres, with water rights, deeded to him for free and only then would his group "allow" the Landowners to develop the 250 Acres. Exhibit 94, p. 002836.

44. Then City Councilman Bob Beers testified in deposition that he was contacted by a representative of the surrounding property owners and asked "to get in the way of the landowners' rights." Exhibit 142, pp. 004586-4587.

45. Yohan Lowie, a Landowner representative, provided an uncontested declaration that within months of acquiring the 250 Acres, a City Councilman contacted him and advised him that a few surrounding homeowners were "demanding that no development occur on the 250 Acre

Land," but if the Landowners handed over 180 acres of their 250 Acres to those homeowners, the City Councilman "would 'allow' me to build 'anything I wanted' on 70 of the 250 acres." Exhibit 35, p. 000741, paras. 5-6.

The City's Actions to Prevent the Landowners from Using the 35 Acre Property.

The Landowners' Development Applications.

46. Immediately after closing on the 250 Acres in early 2015, the Landowners retained veteran land use attorney, Christopher Kaempfer, to assist with making the applications to the City for the development of the 250 Acres, including the 35 Acre Property. Exhibit 48, p. 001160, paras. 6-8. Before Mr. Kaempfer would agree to represent the Landowners on their applications to develop, he confirmed the development rights as he and his wife live in the adjoining Queensridge Community. Id. Mr. Kaempfer's research confirmed the R-PD7 zoning and he was provided a copy of the City's Zoning Verification Letter (Exhibit 134). Mr. Kaempfer then met with Peter Lowenstein of the City of Las Vegas Planning Department "who advised me that the [250 Acres] could be developed in accordance with the R-PD7 zoning." Id, para. 7. Mr. Kaempfer later had a meeting with then City Attorney, Brad Jerbic, and "was informed that the City of Las Vegas would 'honor the zoning letter' provided to the Landowner by the City of Las Vegas." Id. The City did not contest this evidence.

47. The City also did not contest that, while the Landowners had a vision of how to develop the Land, the City directed the type of applications necessary for approval of development. Exhibit 34, p. 000736, para. 11.

48. The Landowners submitted uncontested evidence that the City would accept only one application to develop the 35 Acre Property - a Master Development Agreement that included all parts of the 250 Acres ("MDA"). Exhibit 34, p. 000737, para. 19; Exhibit 48, pp. 001161-1162, para. 11-13.

49. Landowner representative, Yohan Lowie's uncontested declaration provides, "Mayor Goodman informed [the Landowners during a December 16, 2015, meeting] that due to neighbors' concerns the City would not allow 'piecemeal development' of the Land and that one application for the entirety of the 250 Acre Residential Zoned Land was necessary by way of a Master Development Agreement ("MDA")" and that during the MDA process, "the City continued to make it clear to [the Landowners] that it would not allow development of individual parcels, but demanded that development only occur by way of the MDA." Exhibit 34, p. 000538, para. 19, p. 000539, para. 24:25-27.

50. Mr. Kaempfer's uncontested Declaration states: 1) that he had "no less than seventeen (17) meetings with the [City] Planning Department" regarding the "creation of a Development Agreement" which were necessitated by "public and private comments made to me by both elected and non-elected officials that they wanted to see a plan – via a Development Agreement – for the development of the entire Badlands and not just portions of it;" and, 2) the City advised him that "[the Landowners] either get an approved Development Agreement for the entirety of the Badlands or we get nothing." Exhibit 48, pp. 001161-1162, paras. 11-13.

51. The Landowners opposed the City mandated MDA, arguing that it is not required by law or code and would increase the time and cost to develop. Exhibit 34, para. 20.

52. Nevertheless, with the City providing only one avenue to development, the Landowners moved forward with the City's proposed MDA concept, that included development of the 35 Acre Property, along with the 17, 65, and 133 Acre properties. Exhibit 34, p. 000737, para. 20.

53. The MDA process started in or about Spring of 2015 and the uncontested Declaration of Yohan Lowie states that through this process the City told the Landowners how the City wanted the 250 Acres developed, which included how the 35 Acre Property would be

developed, and the information and documents the City wanted as part of the MDA application process. Exhibit 34, pp. 000737-738, paras. 20-21.

54. The uncontested Declaration of Yohan Lowie further states that the MDA was drafted almost entirely by the City of Las Vegas and included all of the requirements the City wanted and required. Exhibit 34, p. 000738, para 22.

55. The City of Las Vegas Mayor stated on the record in a City Council meeting that the City Staff dedicated "an excess of hundreds of hours beyond the full day" working on the MDA. Exhibit 54, 8.2.17 City Council Meeting, p. 001343:697-701.

56. The City also did not contest the Declaration of Yohan Lowie, which states that the City's MDA requirements cost the Landowners more than $1 million over and above the normal costs for a development application of this type. Exhibit 34, p. 000738, para 21:4-6.

57. The uncontested evidence showed that the Landowners agreed to every City requirement in the MDA, spending an additional $1 million in extra costs. Exhibit 34, p. 000737, para. 20:26-27; Exhibit 55, City required MDA concessions signed by Landowners; Exhibit 56, MDA memos and emails regarding MDA changes.

58. The City of Las Vegas Mayor also stated publicly, to the Landowners in a City Council hearing, "you did bend so much. And I know you are a developer, and developers are not in it to donate property. And you have been donating and putting back... And it's costing you money every single day it delays." Exhibit 53, 6.21.17 City Council Meeting, p. 001281:2462-2465. City Councilwoman Tarkanian also commented publicly at that same City Council hearing that she had never seen anybody give as many concessions as the Landowners as part of the MDA stating, "I've never seen that much given before." Exhibit 53, p. 001293:2785-2787; p. 001294:2810-2811.

59. Landowner representative, Yohan Lowie, provided testimony that prior to the MDA being submitted for approval the City required, without limitation, detailed architectural drawings including 3D digital models for topography, elevations, etc., regional traffic studies, complete civil engineering packages, master detailed sewer studies, drainage studies, school district studies. Exhibit 34, p. 000738, para. 21. Mr. Lowie's Declaration further provides, "[i]n all my years of development and experience such costly and timely requirements are never required prior to the application approval because no developer would make such an extraordinary investment prior to entitlements, ie. approval of the application by the City." Id. The City did not contest this Declaration testimony.

60. The Landowners provided further uncontested evidence that additional, non-exhaustive City demands / concessions made of the Landowners, as part of the MDA, included: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas; 2) building brand new driveways and security gates and gate houses for the Queensridge Community; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units, increasing the minimum acreage lot size, and reducing the number and height of the towers. Exhibit 60, pp. 00001836-1837; Exhibit 54, 8.2.17 City Council Meeting, p. 001339, lines 599-601; Exhibit 53, 6.21.17 City Council Meeting, p. 001266:2060-2070; Exhibit 55.

61. Further uncontested evidence showed that, during the MDA process the City required approximately 700 changes and 16 new and revised versions of the MDA.[1]

62. The evidence showed that the Landowners communicated their frustration with how long the MDA process was taking, stating: "[w]e [the Landowners] have done that through many iterations, and those changes were not changes that were requested by the developer. They

[1] Exhibits 58 and 59, final page of exhibits shows the over 700 changes. Exhibit 61, 16 versions of the MDA generated from January, 2016 to July, 2017.

were changes requested by the City and/or through homeowners [surrounding neighbors] to the City." Exhibit 54, 8.2.17 City Council Meeting, p. 001331:378-380. The City Attorney also recognized the "frustration" of the Landowners due to the length of time negotiating the MDA.[2]

63. The uncontested evidence showed the Landowners expressed their concern that the time, resources, and effort it was taking to negotiate the MDA may cause them to lose the property. Exhibit 53, 6.21.17 City Council Meeting, p. 001310:3234-3236.

64. While the MDA was pending resolution, the Landowners approached the City's Planning Department to inquire about developing the 35 Acre Property as a stand-alone development, rather than as part of the MDA, and asked the City's Planning Department to set forth all requirements the City could impose on the Landowners to develop the 35 Acre Property by itself. Exhibit 34, p. 000738, para 23.

65. The uncontested evidence submitted showed that the City's Planning Department worked with the Landowners to prepare the stand-alone residential development applications for the 35 Acre Property and the applications were completed with the City's Planning Department's assistance. Exhibit 34, p. 000738, para 24; Exhibits 62-72, 35 Acre applications.

66. The City Planning Department then issued Staff Reports detailing the City Planning Department's opinion on whether the 35 Acre stand-alone applications met all of the City development code requirements and standards and whether the applications should be approved. Exhibit 74.

[2] "But I do not like the tactics that look like we're working, we're working, we're working and, by the way, here's something you didn't think of I could have been told about six months ago. I understand Mr. Lowie's frustration. There's some of that going on. There really is. And that's unfortunate. I don't consider that good faith, and I don't consider it productive." City Attorney Brad Jerbic. Exhibit 53, 6.21.17 City Council Meeting, p. 001301:2990-2993.

67. The City Planning Department's analysis of the 35 Acre stand-alone applications confirmed that the "[s]ite access from Hualapai Way through a gate meets Uniform Standard Drawing specifications." Exhibit 74, p. 002552.

68. The City Planning Department's analysis of the 35 Acre applications also stated that, "[t]he proposed residential lots throughout the subject site are comparable in size to the existing residential lots directly adjacent to the proposed lots" and "[t]he development standards proposed are compatible with those imposed on the adjacent lots." Exhibit 74, p. 002552.

69. The City Planning Department's analysis of the 35 Acre Applications further stated that, "[t]he submitted Tentative Map is in conformance with all Title 19 and NRS requirements for tentative maps." Exhibit 74, p. 002553.

70. The City Planning Department and the City Planning Commission recommended approval of the 35 Acre applications. Exhibit 74, pg. 02551 and 002557.

71. The 35 Acre Property as a stand-alone development was presented to the City Council for approval on June 21, 2017. Exhibit 53, 6.21.17 City Council Meeting.

72. Tom Perrigo, the City's Planning Director appeared at the hearing on the Landowners' 35 Acre applications and stated that the Landowners' proposed development on the 35 Acres, which the City Planning Department assisted with preparing, met all City requirements and should be approved. Exhibit 53, 6.21.17 City Council Meeting, p. 001211-1212:566-587.

73. One City Council member acknowledged at the hearing that the 35 Acre Property applications met all City requirements, stating the proposed development was "so far inside the existing lines [the Las Vegas Code requirements]." Exhibit 53, 6.21.17 City Council Meeting, p. 001286:2588-2590.

74. The City Council Members, however, stated the City's firm position that the City opposed individual development applications for parts of the 250 Acres, and, again, insisted on one MDA for the entire 250 Acres: 1) "I have to oppose this, because it's piecemeal approach (Councilman Coffin);" 2) "I don't like this piecemeal stuff. I don't think it works (Councilwoman Tarkanian); and, 3) "I made a commitment that I didn't want piecemeal," there is a need to move forward, "but not on a piecemeal level. I said that from the onset," "Out of total respect, I did say that I did not want to move forward piecemeal." (Mayor Goodman). Exhibit 53, 6.21.17 City Council Meeting, pp. 001287:2618; 001293:2781-2782; 001307:3161; 001237:1304-1305; 001281:2460-2461.

75. On June 21, 2017, the City Council, contrary to the City Planning Department's recommendation, and the City Planning Commission's recommendation denied the 35 Acre applications. Exhibit 93; Exhibit 53, 6.21.17 City Council Meeting, p. 001298:2906-2911.

76. The City's official position for denial of the 35 Acre applications was the impact on "surrounding residents" and the City required an MDA for the entire 250 Acres, not "piecemeal" development. Exhibits 53 and 93.

77. The Landowners' representative provided an uncontested Declaration, stating, that after the denial of the 35 Acre Applications, "[t]he City continued to make it clear to [the Landowners] that it would not allow development of individual parcels but demanded that development only occur by way of the MDA." Exhibit 34, p. 000738, para 24:25-27.

78. The uncontested evidence showed that the Landowners then continued to work with the City to obtain approval to develop through the MDA applications process, which the City stated was the only way development may be allowed.

79. The uncontested evidence further showed that the Landowners worked with the City for 2 ½ years on the MDA (between Spring, 2015, and August 2, 2017) and accepted all changes, additions, and conditions requested by the City.

80. The City produced no evidence to contest that the Landowners agreed to every request and condition the City required in the MDA application.

81. The MDA application, along with the MDA and all necessary supporting documents, was presented to the City Council for approval on August 2, 2017, approximately 40 days after the City denied the stand-alone applications to develop the 35 Acre Property on the basis that the City wanted the MDA. Exhibits 54, 8.2.17 City Council Meeting; Exhibits 79-87.

82. The City Planning Department issued a recommendation to the City Council that the MDA applications met all City requirements and that the MDA applications should be approved as follows:

> The proposed Development Agreement conforms to the requirements of NRS 278 regarding the content of development agreements. The proposed density and intensity of development conforms to the existing zoning district requirements for each specified development area. Through additional development and design controls, the proposed development demonstrates sensitivity to and compatibility with the existing single-family uses on the adjacent parcels. Furthermore, the development as proposed would be consistent with goals, objectives and policies of the Las Vegas 2020 Master Plan that call for walkable communities, access to transit options, access to recreational opportunities and dense urban hubs at the intersection of primary roads. Staff therefore recommends approval of the proposed Development Agreement. Exhibit 77, p. 002671.

83. The uncontested evidence showed that, despite the City including all City requirements to develop in the MDA and the City's Planning Department recommending approval as the MDA met all City codes and standards, on August 2, 2017, the City Council denied the MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-4275.

84. The Landowners' representative, Yohan Lowie, provided an uncontested declaration that the City did not ask the Landowners to make more concessions, like increasing

setbacks or reducing units per acre, but rather, the City denied the MDA which denied the development of the entire 250 Acres, including the 35 Acre Property. Exhibit 34, p. 000739, para. 26.

85. The minutes from the hearing on the MDA and the MDA denial letter further confirm that the City did not ask for more concessions, but rather, the City simply denied the MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-4275.

86. Therefore, the City denied an application to develop the 35 Acre Property as a stand-alone property and the MDA to develop the entire 250 Acres. Both of these denials were contrary to the recommendation of the City's Planning Department.

The Landowners' Fence Application.

87. The Landowners presented uncontested evidence of their attempts to secure the 250 Acres and the City's denial of those attempts, contrary to the City Code, disregarding life safety concerns.

88. The Landowners submitted routine over the counter applications for a chain link fence around the perimeter of the 250 Acres, including the 35 Acre Property, and the Landowners submitted routine over the counter applications to fence the large ponds, one of which is located on the 35 Acre Property. Exhibit 91.

89. The Landowners provided argument that the chain link fences were necessary to secure the entire 250 Acres and to enclose the ponds on the property to exclude others from entering onto their privately owned property and to protect the life and safety of others.

90. Las Vegas Unified Development Code 19.16.100 F (2)(a) provides that a "fence" application is subject to a "Minor Review Process" and section 19.16.100 (F) (3) specifically exempts fences from a "Major Review Process." The Major Review Process . . . shall not apply to building permit level reviews described in Paragraph 2(a) of this Subsection (F).

91. It was uncontested that the Major Review Process is significantly more involved than a Minor Review Process. Las Vegas Unified Development Code 19.16.100 (G).

92. On August 24, 2017, the City sent the Landowners a letter of denial for the proposed chain link fences, stating it has "determined that the proximity to adjacent properties has the potential to have a significant impact on the surrounding properties," explained the fence application was "denied" and, in violation of its own City Code, stated a "major review" would be required for the chain link fence application. Exhibit 92.

93. The City's attorney responded at the hearing on September 24, 2021, that perhaps the City succumbed to "political pressure" in denying the fence application.

94. The Landowners presented uncontested evidence of three properties in the City of Las Vegas near the 35 Acre Property that received approval for fencing - New Horizon Academy on West Charleston, the closed Leslie's Pool Supply on West Charleston, and vacant land on West Charleston. They also presented evidence that the vacant lot adjacent to the Nevada Supreme Court building, also in the City of Las Vegas jurisdiction, has an approved fence around it.

95. The Landowners presented an interoffice City email wherein it is stated – "Follow up with CM Seroka regarding the Badlands fence permit. Want to take action on the Monday after find out cm's conversations went over the weekend regarding the permit." CLV06391 – Public Records Request. The email is dated August 21, 2017, three days prior to the City's fence denial letter to the Landowners. Exhibit 92.

The Landowners' Access Application.

96. The Landowners presented uncontested evidence that they also submitted an application to the City to approve access to their 250 Acres, including specific access to the 35 Acre Property and the City denied the access.

97. The Landowners submitted routine over the counter applications to the City to provide access to the 250 Acres from Hualapai Way and Rampart Blvd. Exhibit 88. The 35 Acre

Property abuts Hualapai Way and approval of the access from Hualapai Way would allow direct access to the 35 Acre Property.

98. The Landowners explained in their access application to the City that the access was needed "for the tree and plant cutting, removal of related debris and soil testing equipment." Exhibit 88, 002810.

99. As detailed above, the City Planning Department stated, in its Staff Recommendation on the 35 Acre Property stand-alone applications that, "[s]ite access from Hualapai Way through a gate meets Uniform Standard Drawing specifications." Exhibit 74, p. 002552.

100. During discovery, the City stated that, "[t]he Badlands [250 Acres] had general legal access to public roadways along Hualapai Way, Alta Drive, and Rampart Blvd." City Third Supplement to Interrogatory Answers, electronically served, June 9, 2021, 10:4-5.

101. On August 24, 2017, the City denied the application for access, stating as the reason for denial, "the potential to have significant impact on the surrounding properties." Exhibit 89, 002816.

102. At the summary judgment hearing, the City was unable to provide a reasonable basis for denying the Landowners' access application.

The City's Passage of Bills No. 2018-5 and 2018-24.

103. The evidence established that, after the City denied the stand-alone 35 Acre applications to build, denied the MDA, denied the fence applications, and denied the access application, the City adopted two Bills, Bills No. 2018-5 and 2018-24. Exhibits 107 and 108.

104. The uncontested evidence presented showed the Bills targeted only the Landowners' 250 Acres.

105. City Councilwoman Fiore stated on the record, "[f]or the past two years, the Las Vegas Council has been broiled in controversy over Badlands [250 Acres], and this [Bill 2018-24]

is the latest shot in a salvo against one developer" and "This bill is for one development and one development only. This bill is only about the Badlands Golf Course [250 Acres]" and "I call it the Yohan Lowie Bill." Exhibit 114, 5.16.18 City Council Meeting, p. 003848-3849; Exhibit 115, p. 003868; Exhibit 116, 5.14.18 Recommending Committee Meeting, pp. 003879, 003910. Yohan Lowie is one of the Landowner representatives.

106. Stephanie Allen, the Landowners' land use attorney who represented the Landowners before the City on the development matters, stated that, "we did the analysis … Out of the 292 parcels that the City provided [that the Bills could apply to], two properties remain. One of them is the former Badlands Golf Course [250 Acres], and if I could direct your attention to the overhead, the other is actually, interestingly, in Peccole Ranch. It's this little pink area here. It's a wash." Exhibit 110, p. 003370.

107. The Landowners submitted the analysis performed by Ms. Allen establishing that Bills No. 2018-5 and 2018-24 target only the Landowners' Property. Exhibits 111 and 112.

108. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 target only the Landowners' 250 Acres.

109. The uncontested evidence presented showed the Bills made it impracticable and impossible to develop the 250 Acres.

110. Bills 2018-5 and 2018-24 included the following requirements before an application could be submitted to develop the 250 Acres: a master plan (showing areas proposed to remain open space, recreational amenities, wildlife habitat, areas proposed for residential use, including acreage, density, unit numbers and type, areas proposed for commercial, including acreage, density and type, a density or intensity), a full and complete development agreement, an environmental assessment (showing the project's impact on wildlife, water, drainage, and ecology), a phase I environmental assessment report, a master drainage study, a master traffic

study, a master sanitary sewer study with total land uses proposes, connecting points, identification of all connection points, a 3D model of the project with accurate topography to show visual impacts as well as an edge condition cross section with improvements callouts and maintenance responsibility, analysis and report of alternatives for development, rationale for development, a mitigation report, CC&Rs for the development area, and a closure maintenance plan showing how the property will continue to be maintained as it has in the past (providing security and monitoring). Exhibits 107 and 108, ad passim.

111. The Bills also included vague requirements, such as development review to assure the development complies with "other" City policies and standards, and a requirement for anything else "the [City Planning] Department may determine are necessary." Exhibit 108, p. 003212:12-13.

112. It was uncontested that Bill No. 2018-24 mandated that any development on the Landowners 250 Acres could only occur through a "development agreement" and, at the time Bill Nos. 2018-5 and 2018-24 were passed, the City had already denied a development agreement (the MDA) for the entire 250 Acres. Exhibit 78 (MDA denied on August 2, 2017); Exhibit 108, pp. 003206-003207 (Bill No. 2018-24, passed on November 7, 2018).

113. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 made it impracticable and impossible to develop the 250 Acres.

114. The evidence presented showed the Bills preserved the 250 Acres for use by the public and authorized the public to use the 250 Acres, including the 35 Acre Property.

115. City Councilman Seroka was a vocal opponent to the Landowners building on the 250 Acres.

116. Councilman Seroka presented to the surrounding property owners at a homeowner's association meeting that they had the right to use the Landowners' 250 Acres as recreation and open space.

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

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

117. Bill No. 2018-24 was "Sponsored by: Councilman Steven G. Seroka," the vocal opponent to the Landowners developing the 250 Acres. Exhibit 108, p. 003202.

118. A provision was written into Bill No. 2018-24 which states under section "G. 2. Maintenance Plan Requirements," that "the maintenance plan must, at a minimum and with respect to the property . . . d. Provide documentation regarding ***ongoing public access . . . and plans to ensure that such access is maintained.***" Exhibit 108, pp. 003211-3212. Emphasis added.

119. The section "A. General" to Bill No. 2018-24 states that any proposal to repurpose the 250 Acres from a golf course "is subject to … the requirements pertaining to … the Closure Maintenance Plan set forth in Subsections (E) and (G), inclusive," which is where the requirement to provide "ongoing public" access is mandated in Bill No. 2018-24. Exhibit 108, pp. 003202-3203.

120. The Landowners presented uncontested evidence that the neighbors are using the 250 Acres. Exhibit 150 and pictures attached thereto.

121. Don Richards, the superintendent for the 250 Acres, submitted a declaration that those that entered onto the 35 Acre Property advised him that they were told that "it is our open space." Exhibit 150, p. 004669, paras 6-7.

122. The effect of Bills No. 2018-5 and 2018-24 was to: 1) target only the Landowners' 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the 250 Acres for use by the public and authorize the public to use the 250 Acres.

There is No Evidence that the 250 Acres is the Open Space or Recreation for the Area.

123. It was uncontested that the 250 Acres, including the 35 Acre Property is privately-owned property.

124. Although Councilman Seroka announced the Queensridge Homeowners could use the 250 Acres for their open space and recreation, there was no evidence to support this announcement and contrary evidence showed this authorization was inaccurate. Exhibits 36-39.

125. The CC&Rs for the surrounding Queensridge Community state, "[t]he existing 18-hole golf course commonly known as the "Badlands Golf Course" [250 Acres] is not a part of the Property or the Annexable Property [Queensridge Community] and the Queensridge Community "is not required to[] include … a golf course, parks, recreational areas, open space." Exhibit 36, pp. 000761-762.

126. The Custom Lot Design Guidelines for the Queensridge Community also informed that the interim golf course on the 250 Acres was available for "future development." Exhibit 37, p. 000896.

127. The Queensridge CC&Rs further disclosed to every purchaser of property within the Queensridge Community that the 250 Acres was "not a part" of the Queensridge Community, that purchasers in the community "shall not acquire any rights, privileges, interest, or membership" in the 250 Acres, there are no representations or warranties "concerning the preservation or

permanence of any view," and lists the "Special Benefits Area Amenities" for the surrounding Queensridge Community, which does not include a golf course or open space or any other reference to the 250 Acres. Exhibit 38, ad passim.; Exhibit 39, pp. 000908-909, 911.

128. The Zoning Verification Letter the City provided the Landowners prior to the Landowners acquiring the 250 Acres also makes no mention of any open space or recreation restriction. Exhibit 134.

129. The Court was also presented with two findings of fact and conclusions of law entered in litigation between a Queensridge homeowner and the Landowners wherein the Queensridge homeowner alleged the 250 Acres was "open space" for the Queensridge Community and the District Court rejected this argument and entered findings that the 250 Acres is zoned "R-PD7" and the R-PD7 zoning gives the Landowners the "right to develop." Exhibit 26, 000493; Exhibit 27, p. 000520. The matter was affirmed on appeal. Exhibits 28 and 29.

130. The caption for that litigation shows the City was a party to that action and, therefore, aware of the proceedings, however, counsel represented that the City was dismissed out of the case.

Additional City Communications and Actions.

131. The Landowners also presented evidence of communications and other actions taken by the City showing the City's intent toward the 250 Acres after the Landowners acquired the 250 Acres.

132. The City identified $15 million of potential City funds to purchase the 250 Acres (notwithstanding the Land was not for sale). Exhibit 144.

133. The City identified a "proposal regarding the acquisition and re-zoning of green space land [250 Acres]." Exhibit 128.

134. The City proposed / discussed a Bill to force "Open Space" on the 250 Acres, contrary to its legal zoning. Exhibit 121.

135. The City proposed a solution to "Sell off the balance [of the 250 Acres] to be a golf course with water rights (key). Keep the bulk of Queensridge green." Exhibit 122.

136. The City engaged a golf course architect to "repurpose" the 250 Acres. Exhibit 145.

137. One City Councilman referred to the Landowners' proposal to build large estate homes on the residentially zoned 250 Acres as the same as "Bibi Netanyahu's insertion of the concreted settlements in the West Bank neighborhoods." Exhibit 123.

138. Then-Councilman Seroka testified at the Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could build homes on the 250 Acres (Exhibit 124, 2.14.17 Planning Commission Meeting) and issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowners' private property into a "fitness park," and in an interview with KNPR, he stated that he would "turn [the Landowners' private property] over to the City." Exhibit 125.

139. In reference to development on the 250 Acres, then-Councilman Coffin stated firmly "I am voting against the whole thing," and "a majority is standing in his [Landowners] path [to development] (Exhibits 122 and 126) before the applications were finalized and presented to the City Council,[3] the councilman refers to the Landowners' representative as a "sonofab[…]," "A[…]hole," "scum," "motherf[…]er," "greedy developer," "dirtball," "clown," and Narciss[ist]" with a "mental disorder," (Exhibit 121) and seeks "intel" against the Landowner through a private investigator in case he needs to "get rough" with the Landowners (Exhibit 127).

[3] This statement was made by email on April 6, 2017, and the applications were not presented to the City Council until June 21 and August 2 of 2017.

140. Then-Councilmen Coffin and Seroka also exchanged emails wherein they stated they will not compromise one inch and that they "need an approach to accomplish the desired outcome," - prevent development on the 250 Acres. Exhibit 122.

141. An interoffice City email states, "If any one sees a permit for a grading or clear and grub at the *Badlands* Golf Course [250 Acres], please see Kevin, Rod, or me. Do Not Permit without approval from one of these three." Exhibit 130, June 27, 2017, City email. Italics in original.

142. City Emails were presented that showed City Council members discussing a strategy to not disclose information related to actions toward the 250 Acres, with instruction given, in violation of the Nevada Public Records Act,[4] on how to avoid the search terms being used in the subpoenas: "Also, please pass the word for everyone to not use B…l..nds in title or text of comms. That is how search works." and "I am considering only using the phone but awaiting clarity from court. Please pass word to all your neighbors. In any event tell them to NOT use the city email address but call or write to our personal addresses. For now…PS. Same crap applies to Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his personal stuff being sought. This is no secret so let all your neighbors know." Exhibit 122, p. 004232.

Expert Opinions.

143. The Landowners introduced an appraisal report by Tio DiFederico of the 35 Acre Property. Exhibit 183.

144. Mr. DiFederico has the M.A.I. designation, the highest designation for an appraiser. Exhibit 183, p. 005216.

[4] *See* NRS 239.001(4) (use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services)

145. Mr. DiFederico appraised the "before value" of the 35 Acre Property, which is the value of the 35 Acre Property as if it were available for residential development in compliance with the R-PD7 zoning and the "after value," which is the value of the 35 Acre Property after all of the City actions toward the property. He concluded that the "before value" is $34,135,000.00 and the "after value" is zero. Exhibit 183, p. 005216.

146. Mr. DiFederico concluded, "[d]ue to the effect of the government's actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the 'after value' would be zero." Exhibit 183, p. 005216.

147. Discovery in this matter closed on July 26, 2021.

148. The City did not exchange an initial expert report or a rebuttal expert report to challenge Mr. DiFederico's opinions.

III.

CONCLUSIONS OF LAW REGARDING THE LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF

Standard of Review

149. NRCP 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Further, "summary judgment ... may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." NRCP 56(c). In Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court eliminated the "slightest doubt standard," holding that "[w]hile the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to

do more than simply show that there is some 'metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor" and that "[t]he nonmoving party " 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'"

150. The Nevada Supreme Court has held that this Court decides, as a matter of law, whether a taking has occurred. McCarran Int'l Airport v. Sisolak, 137 P.3d 1110 (2006) ("whether the Government has inversely condemned private property is a question of law that we review de novo." Id., at 1119). *See also*, Moldon v. County of Clark, 124 Nev. 507, 511, 188 P.3d 76, 79 (2008) ("whether a taking has occurred is a question of law…").

151. This Court has already held that, in deciding the take issue in this case, the Court must consider all of the City actions in the aggregate toward the 35 Acre Property:

> In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). See also State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (citing Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).
>
> The City has argued that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered.

Exhibit 8, May 15, 2019 Order Denying City's Motion for Judgment on the Pleadings, pp. 000172-173.

152. The Nevada Supreme Court has also held "there are several invariable rules applicable to specific circumstances" and this Court will address three of those "invariable rules" for a taking in Nevada – a per se categorical taking (Landowners' first claim for relief), a per se regulatory taking (Landowners' Third Claim for Relief), and a non-regulatory / de facto taking (Landowners' Fourth Claim for Relief). State v. Eighth Judicial District Court, 131 Nev. 411, 419 (2015).

153. In addressing the invariable rules that apply to the Landowners' First, Third, and Fourth Claims for Relief, the United States and Nevada Supreme Court have held that a Penn Central analysis, referenced later in this FFCL, does not apply to the Landowners' First, Third, and Fourth Claims for Relief. Sisolak ("the *Penn Central*-type takings analysis does not govern this action [per se regulatory taking]." Id., at 1130); Cedar Point Nursery ("regulations in the first two categories constitute *per se* takings [per se categorical and per se regulatory]" and are not subject to a Penn Central analysis. Id., at 2070); State v. Eighth Judicial District Court (identifying a "Nonregulatory Analysis" separate and apart from a "*Penn Central* analysis" and applying a different standard to find a taking. Id., at 419 and 421).

The Landowners are Entitled to Summary Judgment on Their First Claim For Relief – a Per Se Categorical Taking.

154. The Nevada Supreme Court holds that a per se categorical taking occurs where government action "completely deprives an owner of all economical beneficial use of her property," and, in these circumstances, just compensation is automatically warranted, meaning there is no defense to the taking. Sisolak, supra, at 662. A categorical taking does not require a physical invasion.

155. As detailed above, the City denied 100% of the Landowners' requests to use the 35 Acre Property. The City denied the 35 Acre stand-alone applications, the MDA application, the perimeter fence application, the pond fence application, and the access application.

156. The City then adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

157. The Court finds persuasive the expert appraisal report prepared by M.A.I. appraiser, Tio DiFederico, which concludes, "[d]ue to the effect of the government's actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government's actions, I concluded that the 'after value' would be zero." Exhibit 183, p. 005216. As detailed above, the City has not produced an expert report during discovery to challenge Mr. DiFederico's expert opinion.

158. The Court also finds that the Landowners presented substantial evidence that the historical golf course use is not an economical use. Exhibits 45-47. Appraiser, Tio DiFederico also concluded the golf course is not an economical use and the City presented no expert evidence to contest this conclusion. Exhibits 183, p. 005214.

159. The Court finds the City actions have caused the 35 Acre Property to lie vacant and useless to the Landowners and "completely deprive[d] [the Landowners] of all economical beneficial use of [their] property," specifically, the 35 Acre Property.

160. In addition to causing the 35 Acre Property to lie vacant and useless to the Landowners, the tax assessor has imposed, and the Landowners are paying, $205,227.22 per year in real estate taxes based on a residential use. The Court also recognizes that there are other carrying costs for the vacant 35 Acre Property.

161. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' First Claim for Relief – Per Se Categorical Taking.

The Landowners are Entitled to Summary Judgment on Their Third Claim For Relief – a Per Se Regulatory Taking.

162. The Nevada Supreme Court holds that a per se regulatory taking occurs where government action "authorizes" the public to use private property or "preserves" private property for public use. Sisolak, supra. *See also* Tien Fu Hsu v. County of Clark, 123 Nev. 625 (2007). The Sisolak and Hsu Courts held that the adoption of height restriction ordinance 1221 was a taking by inverse condemnation, because it preserved the privately-owned airspace for use by the public and authorized the public to use the privately-owned airspace.

163. The United States Supreme Court adopted the same rule in a very recent case, wherein the Court held that a government authorized invasion of private property is a taking. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (June 23, 2021). The Cedar Point Nursery Court held that a California statute that authorized labor unions to enter onto private farms 120 days a year for up to 3 hours at a time, upon proper notice, is a taking by inverse condemnation.

164. When the government engages in per se regulatory taking actions, just compensation is automatically warranted, meaning there is no defense to the taking.

165. As detailed above, the City adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

166. These Bills, alone, are a per se regulatory taking of the Landowners' 35 Acre Property as they are similar to the actions taken by the County in the Sisolak and the Hsu cases and the actions taken by the State of California in the Cedar Point Nursery case.

167. Moreover, the intent of the Bills was evidenced by the sponsor of the Bills, Councilman Seroka, when he advised the surrounding homeowners that the Landowners' 35 Acre Property was the surrounding property owners' open space and recreation, as detailed above.

168. The City's intent to preserve the 35 Acre Property for use by the surrounding public and to authorize the public to use the 35 Acre Property is further evidenced in the City's fence denial and access denial letters wherein the City states as a basis for the denials, the potential to have significant impact on the "surrounding properties." Exhibit 92, p. 002830; Exhibit 89, p. 002816. The City's 35 Acre application denial letter also states as a basis for the denial, in part, concerns over the impact of the proposed development on "surrounding residents." Exhibit 93, p. 002831.

169. The City's intent to preserve the 35 Acre Property for use by the public was further evidence by the numerous statements by City Councilmembers and other City employees, referenced above, that identified the 35 Acre Property for use by the surrounding property owners.

170. The Court finds unpersuasive the City's argument that statements by City Councilmembers and other City employees cannot be considered. In Sisolak, a per se regulatory taking case, the Court considered statements by Bill Keller, a principal planner with the Clark County Department of Aviation, in regards to the County height restrictions. Sisolak, supra, at 653. Moreover, many of the City statements were made in judicial or quasi-judicial settings, meaning the City is judicially estopped from making contrary representations to this Court. Marcuse v. Del Webb Communities, 123 Nev. 278 (2007).

171. The uncontested Declaration of Christopher Kaempfer, the Landowners' land use attorney, also confirms the City's intent to preserve the 35 Acre Property for use by the surrounding public - "it became clear that despite our best efforts, and despite the merits of our applications(s), no Development Agreement was going to be approved by the City of Las Vegas unless virtually

all of the Badlands neighborhood supported such a Development Agreement; and it was equally clear that this neighborhood support was not going to be achieved because, as the lead of the neighborhood opposition exclaimed to me and other 'I would rather see the golf course a desert than a single home built on it.'" Exhibit 48, p. 001161, para. 12.

172. The uncontested Declaration of Don Richards, supported by photographic evidence, confirms that the public was using the 35 Acre Property in conformance with the direction of the City. Exhibit 150, p. 004669, para. 7.

173. Moreover, "[t]he right to exclude is 'one of the most treasured' rights of property ownership" and "is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property'" and the City denied the Landowners the right to exclude others from the 35 Acre Property by denying the Landowners' fence application, which is a taking in and of itself and further supports a finding of a per se regulatory taking. Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2072 (June 23, 2021).

174. Also, under Nevada law an owner of property that abuts a public road "has a special right of easement in a public road for access purposes" and "[t]his is a property right of easement which cannot be damaged or taken from the owner without due compensation" and the City denied the Landowners access to the 35 Acre Property by denying the Landowners' access application which is a taking in and of itself and further supports a finding of a per se regulatory taking. Schwartz v. State, 111 Nev. 998 (1999).

175. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' Third Claim for Relief – a Per Se Regulatory Taking.

The Landowners are Entitled to Summary Judgment on Their Fourth Claim For Relief – a Non-Regulatory / De Facto Taking.

176. The Nevada Supreme Court holds that a non-regulatory / de facto taking occurs where the government has "taken steps that directly and substantially interfere[ ] with [an] owner's

property rights to the extent of rendering the property unusable or valueless to the owner." State v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). The Court relied on Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. 1977), where the Ninth Circuit held that "[t]o constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights."

177. The Nevada Supreme Court has further held in Sloat v. Turner, 93 Nev. 263, 269 (1977), that a taking occurs where there is "some derogation of a right appurtenant to that property which is compensable" or "if some property right which is directly connected to the ownership or use of the property is substantially impaired or extinguished." *See also*, Schwartz v. State, 111 Nev. 998 (1995) (taking where "a property right which is directly connected to the use or ownership of the property is substantially impaired or extinguished." Id., at 942).

178. Nichols on Eminent Domain further describes this non-regulatory / de facto taking claim as follows: "[c]ontrary to prevalent earlier views, it is now clear that a de facto taking does not require a physical invasion or appropriation of property. Rather, a substantial deprivation of a property owner's use and enjoyment of his property may, in appropriate circumstances, be found to constitute a 'taking' of that property or of a compensable interest in the property..." 3A Nichols on Eminent Domain §6.05[2], 6-65 (3rd rev. ed. 2002).

179. Therefore, a Nevada non-regulatory / de facto taking occurs where government action renders property unusable or valueless to the owner or substantially impairs or extinguishes some right directly connected to the property.

180. The Court rejects the City's assertion that a non-regulatory / de facto taking only applies to physical takings and precondemnation damages claims. First, there is nothing in the

case law that restricts non-regulatory / de facto takings to physical takings and Nichols on Eminent Domain, cited above, expressly rejects this argument. Second, in State v. Eighth Judicial District Court case, supra, the Court applies the standard for a non-regulatory / de facto taking and states in footnote 5 that, "[w]e decline to address Ad America's precondemnation damages claim because the district court has not decided the issue," showing the case was not a precondemnation damages case.

181. The Court finds that the aggregate of City actions, set forth above, substantially interfered with the use and enjoyment of the Landowners' 35 Acre Property, rendering the 35 Acre Property unusable or valueless to the Landowners.

182. Therefore, summary judgment is granted in favor of the Landowners on the Landowners' Fourth Claim for Relief – a Non-Regulatory / De Facto Taking.

The Ripeness / Futility Doctrine do not Apply to the Landowners' First, Third, and Fourth Claims for Relief.

183. The Court follows Nevada Supreme Court precedent to not apply the ripeness / futility doctrine to the Landowners' First, Third, and Fourth Claims for Relief.

184. The Nevada Supreme Court has held that a ripeness / futility analysis is inapplicable to the Landowners' Per Se Regulatory and Per Se Categorical taking claims, because a "per se" taking is a taking in and of itself and there is no defense to the taking and no precondition to pass through a ripeness / futility analysis. The Court held in the Sisolak case that "Sisolak was not required to exhaust administrative remedies by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Sisolak, supra, at 664. The Court's ruling was made clear in Justice Maupin's dissent in Sisolak, wherein he stated, "[w]hile I disagree with the majority that a regulatory per se taking has occurred in this instance, I do agree that Loretto and Lucas takings, like per se physical takings, do not require exhaustion of administrative remedies." Sisolak at 684. And, in the Hsu case, the Court held,

"[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Hsu, 173 P.3d at 732 (2007).

185. The ripeness / futility doctrine also does not apply to the Landowners' non-regulatory / de facto taking claim. The Nevada Supreme Court lays out the standard for a non-regulatory / de facto taking in the cases of State v. Eighth Judicial District, Sloat, and Schwartz and the Court does not impose a ripeness / futility requirement.

186. To the extent this is in conflict with federal takings jurisprudence, "…states may expand the individual rights of their citizens under state law beyond those provided under the Federal Constitution. Similarly, the United States Supreme Court has emphasized that a state may place stricter standards on its exercise of the takings power through its state constitution or state eminent domain statutes." Sisolak at 669.

187. Therefore, under the laws of the State of Nevada, which this Court is bound by, an owner is not required to file any application with the land use authority to ripen a per se categorical taking, a per se regulatory taking, or a non-regulatory / de facto taking claim – the Landowners first, third, and fourth claims for relief.

The City's Segmentation Argument Does Not Apply.

188. The City asks this Court to find that, since the City initially approved development on the 17 Acre Property, the City may demand that all remaining 233 acres of the 250 Acre Land, including the 35 Acre Property, be designated open space. The City calls this its "segmentation" argument.

189. The Nevada Supreme Court has held that the 35 Acre Property must be considered as a separate and independent parcel in this inverse condemnation proceeding, not as part of the larger 250 Acres:

> "A question often arises as to how to determine what areas are portions of the parcel being condemned, and what areas constitute separate and independent parcels? Typically, the legal units into which land has been legally divided control the issue. That is, each legal unit (typically a tax parcel) is treated as a separate parcel...." City of North Las Vegas v. Eighth Judicial Dist. Court, 133 Nev. 995, *2, 401 P.3d 211 (table)(May 17, 2017) 2017 WL 2210130 (unpublished disposition), *citing* 4A Julius L. Sackman, *Nichols on Eminent Domain* § 14B.01 (3d ed. 2016).

190. It is undisputed that the 35 Acre Property has its own Clark County Assessor Parcel Number – 138-31-201-005.

191. It is also undisputed that the 35 Acre Property has its own independent legal owner - 180 Land Co., LLC, a Nevada limited liability company.

192. The Court finds that it would be impermissible to conclude that Owner A is not damaged because the government approved a development on an entirely separate parcel owned by Owner B. Yet, that is what the City is arguing, that the alleged approvals on the 17 Acre Property negate damages on the 35 Acre property – a separate taxed and owned parcel.

193. The Court also finds that there is evidence that the City clawed back the 17 Acre approvals, which would negate any possible segmentation argument. As explained above, after the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre Property), denied the 35 Acre applications, denied the fence application (that would have allowed the Landowners to fence the 17 Acre Property) and denied the access application (that would have allowed access to the 17 Acre Property). The City also sent the Landowners an email that explained the 17 Acre approvals were "vacated, set aside and shall be void." Exhibit 189.

194. The Court also finds that NRS 37.039 rejects the City's segmentation argument. NRS 37.039 provides that if the City wants to designate property as open space (as the City is asking this Court to do), the City must pay just compensation for the property identified as open space.

195. Additionally, the facts show that when the Landowners acquired the entity that owned the 250 Acres, it was already divided into five separate parcels. Exhibit 44, Deed.

196. It is undisputed that then-City Planning Section Manager, Peter Lowenstein testified in a deposition that it was the City that requested further subdivision of the Land. "Q. So you wanted the developer here to subdivide the property further, correct? A. As part of the submittal, we were looking for that to be accomplished . . ." Exhibit 160, p. 004962.

197. Therefore, there is no evidence to support the City's claim that the Landowners intentionally segmented their property as a "transparent ploy" to "fabricate a takings claim" as the City argued with no supporting evidence.

198. Accordingly, the Court denies the City's segmentation argument.

The City Cannot Revoke a Taking that Has Already Occurred.

199. This Court also denies the City's request to find that the City revoked the taking actions by sending the Landowners a letter to invite them to re-apply to develop.

200. The United States Supreme Court held in the case of Knick v Township of Scott, Pennsylvania, 139 S.Ct. 2162, 2170 (2019), that "[t]he Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner." The Knick Court further held "once there is a taking compensation *must* be awarded because as soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has *already* suffered a constitutional violation." Id., at 2172. Italics in original. The Knick Court continued, "a property owner acquires an irrevocable right to just compensation immediately upon a taking" and concluded, "[a] bank robber might give the loot back, but he still robbed the bank." Id., at 2172.

Petition for Judicial Review Law.

201. The Court declines the City's repeated attempts to apply Petition for Judicial Review (PJR) law and standards and this Court's orders from the PJR side of this case in this inverse condemnation case.

202. This Court has already ordered several times that PJR law cannot be applied in this inverse condemnation case and provided detailed legal and policy reasons for this conclusion as follows:

> "Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. (internal citation omitted). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. (internal citation omitted). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council." Exhibit 8 at 22:13-27
>
> "[B]oth the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them 'two disparate sets of claims' ..." Exhibit 8 at 21:15-20.
>
> "The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof." Id., 22:1-11.
>
> "A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered." Id., 8:25 – 9:2.

> "For these reasons, it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims." Exhibit 8, 23:7-8. See also Exhibit 7, 11:20-22, May 7, 2019, Order
>
> "This is an inverse condemnation case. It's not a petition for judicial review. There's clearly a difference in distinction there." Exhibit 198, 5.13.21 hearing transcript at 39:7-9.
>
> "And we've had a very rigorous discussion in the past in this case, and I think we have a pretty good record on how I viewed the petition for judicial review and whether or not that rises to a level of issue preclusion or claims preclusion vis-à-vis the inverse case. And I've ruled on that: right?" Exhibit 198, 5.13.21 hearing transcript at 41:6-12.
>
> "But you're not listening to me. I understand all that. I don't see any need to replow this ground." Exhibit 198, 5.13.21 hearing transcript at 43:24-44:1
>
> "Wait. Wait. Wait. Wait…the law as it relates to petitions for judicial review are much different than a civil litigation seeking compensation for inverse condemnation, sir…the standards are different. I mean, for example, they got to meet their burden by a preponderance of the evidence. It's substantial---I mean, it's a totally different – it's an administrative process versus a full-blown jury trial in this case. It's different completely." Exhibit 198, 5.13.21 hearing transcript at 69:20-70:7.

203. Moreover, when the PJR matter was pending before this Court, the City explained the deference the Court must give to the City's decisions and how the Court's hands were tied in the PJR matter. The City argued in pleadings in the PJR matter that "[t]he Court may 'not substitute its judgment for that of a municipal entity;" "[i]t is not the business of courts to decide zoning issues;" and "[a] 'presumption of propriety' attaches to governmental action on land use decisions." City of Las Vegas' Points and Authorities in Response to Second Amended Petition for Judicial Review, pp. 16-17, filed on June 26, 2018, in the PJR side of this case. And, the City's counsel provided similar arguments at the hearing on the PJR matter as follows:

> [This court] must apply a very simple standard, whether or not the city council abused its discretion in denying these applications. And in making a determination as to whether or not the city council abused its discretion, it's simply a matter of whether or not there's substantial evidence in the record to support the city council's decision.
> This isn't a matter of the standard of proof in a trial. . . . It's not even the standard of proof in a civil trial, a preponderance of the evidence. It doesn't even have to be 50-50 such that there's - - 50 percent of the record supports the approval of the applications and 50 percent of the evidence in the record supports the denial of the applications.

> Its whether or not there's substantial evidence in the record. And substantial evidence has been defined as whether a reasonable mind could accept sufficient to support a conclusion. Reporter's Transcript of Petition for Judicial Review, June 29, 2018, p. 144:4-25, PJR side of this matter.

204. No such deference is required in this inverse condemnation action. Instead, the Court is required to consider all of the City's actions in the aggregate to determine whether those actions amount to a taking.

205. Finally, the Nevada Supreme Court recently confirmed this Court's orders and the reasoning therein, holding "civil actions and judicial review proceedings are fundamentally different" and recognized that PJR and civil actions are "[l]ike water and oil, the two will not mix." City of Henderson v. Eighth Judicial District Court, 137 Nev., Adv. Op. 26 at 2 (Jun. 24, 2021).

206. Therefore, it would be improper to apply PJR law or this Court's orders from the PJR matter to this inverse condemnation case.

Purchase Price.

207. The Court also declines to apply any purchase price when deciding the taking issues.

208. First, there is no case law to support consideration of the purchase price paid for property when determining whether a taking occurred.

209. Second, the Landowners presented a pleading at the hearing that was submitted by the City in the 65 Acre case wherein the City argued, "[t]he Developer's purchase price, however, is not material to the City's *liability* for a regulatory taking." City's Response to Developer's Sur-Reply Brief Entitled "Notice of Status of Related Cases ETC.", filed on September 15, 2021, 3:17 pm, Case No. A-18-780184-C (65 Acre Case). Italics in original.

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IV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO THE CITY'S MOTION FOR SUMMARY JUDGMENT ON THE LANDOWNERS' SECOND CLAIM FOR RELIEF – PENN CENTRAL TAKING CLAIM

210. The City moved for summary judgment on the Landowners' Second Claim for Relief – Penn Central Taking Claim.

211. A Penn Central Taking Claim is an inverse condemnation claim separate and distinct from the Per Se Categorical, Per Se Regulatory, and Non-Regulatory / De Facto taking claims and is governed by a different taking standard.

212. The standard for a Penn Central Taking Claim considers, on an ad hoc basis, three guideposts: 1) the regulations impact on the property owner; 2) the regulations interference with investment backed expectations; and, 3) the character of the government action. Sisolak, supra, at 663.

213. The City conceded at the hearing on September 28, 2021, that the Penn Central taking standard is a lower standard than a per se categorical standard and if the per se categorical taking standard has been met, then the Penn Central standard is met.

214. Moreover, as explained above, 1) the impact from the City's actions on the Landowners' 35 Acre Property has been to deny all economic use of the property; 2) the City's actions have interfered with the Landowners attempts to develop residentially, which were the Landowners' investment backed expectations; and, 3) the government provided no justification for denying all economical use of the 35 Acre Property.

215. Insofar as a ripeness / futility analysis applies to a Penn Central claim, the claim is ripe.

216. The Nevada Supreme Court holds that, "a claim that the application of government regulations effects a [Penn Central] taking of a property interest is not ripe until the government

entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. . . . But when exhausting available remedies, including the filing of a land-use application, is futile, a matter is deemed ripe for review." State v. Eighth Judicial Dist., supra, at 419.

217. Here, the Landowners' Penn Central taking claim is ripe, because the City denied all of the applications the Landowners submitted to use the 35 Acre Property and the City adopted Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized "ongoing public access" to the property.

218. Therefore, given the City's concession that the Penn Central taking standard is a lower standard than a per se categorical taking standard and the uncontested record in this matter, summary judgment is granted in favor of the Landowners on their second claim for relief – a Penn Central taking.

V.

CONCLUSION

IT IS HEREBY ORDERED THAT Summary Judgment is granted in favor of the Landowners on the Landowners' First Claim for Relief – Per Se Categorical Taking, Second Claim for Relief – Penn Central Taking, Third Claim for Relief – Per Se Regulatory Taking, and Fourth Claim for Relief – Non-Regulatory / De Facto Taking. A jury trial is scheduled for November 1, 2021, to determine the just compensation the Landowners are owed for the taking of the 35 Acre Property.

Dated this 25th day of October, 2021

Timothy C. Williams

MH

998 183 8997 1E67
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 8

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **ON JUST COMPENSATION** **BENCH TRIAL: October 27, 2021**

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On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' in-house counsel Elizabeth Ghanem Ham, Esq., and with the City of Las Vegas (hereinafter "the City") appearing through its counsel, George F. Ogilvie III, Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City Attorney's Office.

Having reviewed and considered the evidence presented, the file and other matters referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law:

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation claim, the court must undertake two distinct sub-inquiries: "the court must first determine" the property rights "before proceeding to determine whether the governmental action constituted a taking." ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that "whether the Government has inversely condemned private property is a question of law …" Sisolak, at 661. To decide these issues, the Court relies on eminent domain and inverse condemnation cases. *See* County of Clark v. Alper, 100 Nev. 382, 391 (1984) ("[I]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings.").

2. The Court entertained extensive argument on the first sub-inquiry, the property rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law

Regarding Plaintiff Landowners' Motion to Determine "Property Interest," on October 12, 2020 (hereinafter "FFCL Re: Property Interest").

3. In the FFCL Re: Property Interest, the Court held: 1) Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7 at all relevant times; 3) the Las Vegas Municipal Code (chapter 19) lists single-family and multi-family as the legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

4. The Court also entertained extensive argument on the second sub-inquiry, whether the City's actions had resulted in a taking, on September 23, 24, 27, and 28, 2021, and entered Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third, and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief (hereinafter "FFCL Re: Taking").

5. In the FFCL Re: Taking, the Court held that the City engaged in actions that amounted to a taking of the Landowners' 35 Acre Property.

6. Upon deciding the property interest and taking, the only issue remaining in this case is the just compensation to which the Landowners are entitled for the taking of the 35 Acre Property.

7. In preparation for the jury trial on the just compensation, on October 26, 2021, the Court entertained argument on motions in limine and also the parties' cross motions for summary judgment, orders having been entered on those matters.

8. This case was set for a jury trial, with jury selection to be October 27 and 28, 2021, and opening arguments on November 1, 2021.

9. On October 27, 2021, the parties appeared before the Court and agreed to waive the jury trial and, instead, have this matter decided by way of bench trial.

10. An agreement to the procedure for that bench trial was put on the record at the October 27, 2021, appearance.

11. Pursuant to the agreement of the parties, the Court conducted a bench trial on October 27, 2021, on the sole issue of the fair market value of the 35 Acre Property.

II.

FINDINGS OF FACT

The Landowners' 35 Acre Property.

12. The property at issue in this case is a 34.07 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter "35 Acre Property"). As of September 14, 2017 and at the time of the October 27, 2021, bench trial, the 35 Acre Property was and remains vacant.

13. The 35 Acre Property is hard zoned R-PD7 at all relevant times herein, and the legally permitted uses of the property are single-family and multi-family residential. *See* FFCL Re: Property Interest and FFCL Re: Taking.

14. The Court has previously rejected challenges to this legally permissible use, including rejection of the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

/ / /

Evidence Presented at the Bench Trial on Fair Market Value of the 35 Acre Property.

15. Pursuant to the agreement of the parties,[1] the Landowners moved for admission of the appraisal report of Tio DiFederico (DiFederico Report) as the fair market value of the 35 Acre Property and the City did not object to nor contest the admissibility or admission of the DiFederico Report.

16. Appraiser Tio DiFederico is a Certified General Appraiser in the State of Nevada and earned the MAI designation from the Appraisal Institute, which is the highest designation for a real estate appraiser. TDG Rpt 000111-000113. DiFederico has appraised property in Las Vegas for over 35 years and has qualified to testify in Nevada Courts, including Clark County District Courts. Id.

17. The DiFederico Report was marked as Plaintiff Landowners' Trial Exhibit 5, with Bate's numbers TDG Rpt 000001 – 000136.

18. The DiFederico Report conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice Institute. TDG Rpt 000002.

19. The DiFederico Report identifies the property being appraised (the Landowners 34.07 acre property – "35 Acre Property"), reviews the current ownership and sales history, the intended user of the report, provides the proper definition of fair market value under Nevada law, and provides the scope of his work. TDG Rpt 000003-000013.

20. The DiFederico Report also identifies the relevant date of valuation as September 14, 2017, and values the 35 Acre Property as of this date. TDG Rpt 000010.

21. The DiFederico Report includes a Market Area Analysis. TDG Rpt 000014-000032.

[1] The parties agreed that this matter does not involve the taking of, nor valuation of, any water rights the Landowners may or may not own.

22. The DiFederico Report includes a detailed analysis of the 35 Acre Property that analyzes location, size, configuration, topography, soils, drainage, utilities (sewer, water, solid waste, electricity, telephone, and gas), street frontage and access, legal use of the property based on zoning, the surrounding uses, and other legal and regulatory constraints. TDG Rpt 000033-000052. The DiFederico Report property analysis concludes, "[o]verall, the site's R-PD7 zoning and physical characteristics were suitable for residential development that was prevalent in this area and bordered the subject site." Id., 000044.

23. The DiFederico Report provides a detailed analysis of the "highest and best use" of the 35 Acre Property, including the elements of legal permissibility, physical possibility, financial feasibility, and maximally productive. TDG Rpt 000054-000067. The DiFederico Report concludes, based on this highest and best use analysis, that "a residential use best met the four tests of highest and best use [as] of the effective date of value, September 14, 2017." Id., at 000067. This use would be similar to the surrounding uses in the Queensridge and Summerlin Communities. Id.

24. Although the 35 Acre Property had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. Id.

25. Therefore, the DiFederico Report also provides a detailed analysis of the past use of the 35 Acre Property as part of the Badlands golf course. TDG Rpt. 000060-000067. This golf course analysis is based on Mr. DiFederico's research, a report by Global Golf Advisors (GGA), and the past operations on the Badlands golf course. Id.

26. The DiFederico report finds that, according to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. Id. The trend experienced in 2016 was referred to as a "correction" as golf course closures occurring throughout the U.S. indicated there was an oversupply that required

market correction. Id. The local market data reflects that the Badlands wasn't an outlier struggling in a thriving golf course market. Id. Based on what was happening in the national golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of the "correction." On December 1, 2016, the Badlands golf course closed. Id.

27. The Landowner leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses. On December 1, 2016, the CEO of Elite Golf Management sent a letter to the Landowners stating that it could not generate a profit using the property for a golf course, even if Elite Golf were permitted to operate rent free: "it no longer makes sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues to struggle, and Badlands revenues have continued to decrease over the years. This year we will finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate we cannot continue to sustain the property where it makes financial sense to stay. Even with your generosity of the possibility of staying with no rent, we do not see how we can continue forward without losing a substantial sum of money over the next year." Id., 000066.

28. The DiFederico Report includes further detailed analysis of relevant golf course data of the potential for a golf course operation on the 35 Acre Property. TDG Rpt 000060-000066.

29. The DiFederico Report also specifically considered the historical operations of the golf course, which were trending downward rapidly. Id.

30. The DiFederico Report concluded that operating the golf course was not a financially feasible use of the 35 Acre Property as of September 14, 2017.

31. The DiFederico Report golf course conclusion is further supported by the Clark County Tax Assessor analysis on the 250 acre land (of which the 35 Acre Property was included). On September 21, 2017, the Clark County Assessor sent the Landowner a letter that stated since the 35 Acre Property had ceased being used as a golf course on December 1, 2016, the land no

longer met the definition of open space and was "disqualified for open-space assessment." The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes:

> "NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the county assessor is notified or otherwise becomes aware that a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred taxes, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The County assessor shall assess the property pursuant to NRS 361.2276 for the next fiscal year following the date of conversion to a higher use."

32. The Las Vegas City Charter states, "The County Assessor of the County is, ex officio, the City Assessor of the City." LV City Charter, sec. 3.120.

33. The City provided no evidence that a golf course use was financially feasible as of the September 14, 2017, date of value.

34. Once the DiFederico Report identified the highest and best use of the 35 Acre Property as residential, it then considered the three standard valuation methodologies – the cost approach, sales comparison approach, and income capitalization approach. TDG Rpt 000068. The DiFederico Report identifies the sales comparison and income capitalization approaches as appropriate methods to value the 35 Acre Property. Id.

35. Under the sales comparison approach, the DiFederico Report identifies five similar "superpad" properties that sold near in time to the September 14, 2017, date of valuation. Id., 000069-000075. The DiFederico Report defines a superpad site as a larger parcel of property that is sold to home developers for detached single-family residential developments. Id., 000069.

36. The DiFederico Report then makes adjustments to these five sales to compensate for the differences between the five sales and the 35 Acre Property. Id., 000076. These adjustments include time-market conditions, location, physical characteristics, etc. Id., 000076-000083.

37. After considering all five sales and making the appropriate adjustments to the five sales, the DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, under the sales comparison approach is $23.00 per square foot. Id., 000084. The exact square footage of the 35 Acre Property (34.07 acres) is 1,484,089 and applying the DiFederico Report's square foot value to this number arrives at a value of $34,135,000 for the 35 Acre Property as of September 14, 2017, under the sales comparison approach. Id., 000084.

38. As a check to the reasonableness of the $34,135,000 value concluded by the sales comparison approach, the DiFederico Report completed an income approach to value the 35 Acre Property, referred to as the discounted cash flow approach (hereinafter "DCF approach"). TDG Rpt 000085-000094. The DiFederico Report explains the steps under this DCF approach, which are generally to determine the value of finished lots, consider the time it would take to develop the finished lots, subtract out the costs, profit rate, and discount rate, and discount the net cash flow to arrive at a value of the property as of September 14, 2017. Id., 000086. A finished lot is one that has been put in a condition that it is ready to develop a residential unit on it.

39. The DiFederico Report confirms that the DCF approach is used in the real world by developers to determine the value of property. Id., 000086.

40. The DiFederico Report considers three scenarios under this DCF approach – a 61 lot, 16 lot, and 7 lot development. Id., 000085-000094.

41. The DiFederico Report provides detailed data for the value of finished lots on the 35 Acre Property, including sales of finished lots in the area of the 35 Acre Property that sold near the September 14, 2017, date of value. TDG Rp[t 000086-000088. This data showed that the

average value for finished lots selling in the area were $30, $49.28, and $71.84 per square foot., depending upon the area of Summerlin and the Queensridge Community. TDG Rpt 000086-000087. With this data, the DiFederico Report concluded at a value of $40 per square foot for the 61 lot scenario, $35 per square foot for the 16 lot scenario, and $32 per square foot for the 7 lot scenario. TDG Rpt 000087.

42. The DiFederico Report then provides a detailed, factual based, analysis of the time it would take to develop the finished lots, the expenses to develop the finished lots, the profit rate and discount rate, and the appropriate discount to the net cash flow. TDG Rpt 000088-000090.

43. With this factual based data, the DiFederico Report provides a discounted cash flow model for each of the three scenarios to arrive at a value for the 35 Acre Property under each scenario as follows: 1) for the 61 lot scenario, $32,820,000, 2) for the 16 lot scenario, $35,700,000, and, 3) for the 7 lot scenario, $34,400,000. TDG Rpt 000091-000094. The DiFederico Report uses this income approach to confirm the reasonableness of the $34,135,000 value under the sales comparison approach.

44. The DiFederico Report then concludes that, applying all of the facts and data in the Report, the fair market value of the 35 Acre Property as of September 14, 2017, is $34,135,000. TDG Rpt 000095.

45. The DiFederico Report also provides a detailed analysis of the City's actions toward the 35 Acre Property to determine the effect of the City's actions on the 35 Acre Property from a valuation viewpoint. TDG Rpt. 000096-000101. These City actions are the same actions set forth in the Court's FFCL Re: Taking.

46. The DiFederico Report concludes that the City's actions have taken all value from the 35 Acre Property.

47. The DiFederico Report concludes that the City's actions removed the possibility of residential development; however, the landowner is still required to pay property taxes as if the property could be developed with a residential use. TDG Rpt 000100. According to the DiFederico Report, this immediately added an annual expense that was over $205,000 and that amount would be expected to increase over time. Id.

48. The DiFederico Report concludes that, due to the City's actions, there is no market to sell the 35 Acre Property with these development restrictions along with the extraordinarily high annual expenses as the buyer would be paying for a property with no economic benefit that has annual expenses in excess of $205,000. TDG Rpt 000100.

49. The DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, is $34,135,000 and that the City's actions have taken all value from the property, resulting in "catastrophic damages to this property." TDG Rpt 000101.

50. The City did not produce an appraisal report or a review appraisal report during discovery or during the bench trial.

51. The City did not depose Mr. DiFederico.

52. The City represented at the October 27, 2021, bench trial that, based on the rulings entered by the Court rulings in this matter, including the FFCL Re: Property Interest, the FFCL Re: Take, the rulings on the three motions in limine, and the competing motions for summary judgment on October 26, 2021, the City did not have evidence to admit to rebut the DiFederico Report.

///

III.

CONCLUSIONS OF LAW

53. Consistent with the property tax increase, the Landowners attempted to develop the 35 Acre Property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the Landowners to develop the property according to its zoning and residential designation. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant. *See also* FFCL Re: Property Interest and FFCL Re: Taking.

54. The Court has previously rejected challenges to the Landowners' legally permissible residential use. Specifically, the Court has rejected the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan/ land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

55. Given that the Landowners had the legal right to use their 35 Acre Property for residential use and given that the City has taken the 35 Acre Property, the Court, based on the agreement of the parties, must determine the fair market value of the 35 Acre Property.

56. The Nevada Constitution provides that where property is taken it "shall be valued at is highest and best use." Nev. Const. art. 1, sec. 22 (3).

57. The Nevada Constitution further provides that in "all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market." Nev. Const. art. 1, sec. 22 (5).

58. NRS 37.120 provides that the date upon which taken property must be valued is the date of the first service of summons, except that if the action is not tried within two years after the date of the first service of summons, the date of valuation is the date of commencement of trial, if

a motion is brought to change the date of value to the date of trial and certain findings are made by the Court.

59. In the case of County of Clark v. Alper, 100 Nev. 382, 391 (1984), the Nevada Supreme Court held that NRS 37.120 applies to both eminent domain and inverse condemnation proceedings, reasoning, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Id.

60. The date of the first service of summons in this case is September 14, 2017, and neither party sought to change the date of valuation to the date of trial.

61. Therefore, the date of valuation in this inverse condemnation proceeding is the date of the first service of summons, which is September 14, 2017.

62. The Court finds that Mr. DiFederico has the expertise to value the 35 Acre Property.

63. The Court further finds that the valuation methodologies applied in the DiFederico Report are accepted methodologies to appraise property and are relevant and reliable to determine the value of the 35 Acre Property as of September 14, 2017.

64. The Court further finds that the DiFederico Report is based on reliable data, including reliable comparable sales, and is well-reasoned. The conclusions therein are well-supported.

65. The Court finds that the DiFederico Report properly applied and followed Nevada's eminent domain and inverse condemnation laws and that the Report appropriately analyzed and arrived at a proper highest and best use of the 35 Acre Property as residential use. This highest and best use conclusion is also supported by the Court's previous FFCL Re: Property Interest and FFCL Re: Taking.

66. The Court finds that the DiFederico Report properly followed Nevada law in applying the "highest price" standard of fair market value.

67. The Court's final decision is based on a finding that the 35 Acre Property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government's unlawful taking of the 35 Acre Property, the DiFederico Report concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the City's actions, the Court hereby determines that just compensation for the fair market value of the 35 Acre Property due to the City's unlawful taking of the 35 Acre Property is the sum of $34,135,000, exclusive of attorney's fees, costs, interest, and reimbursement of taxes.

68. As a result, the Court hereby finds in favor of the Landowners and against the City in the sum of $34,135,000.

69. The Court will accept post trial briefing on the law and facts to determine attorney's fees, costs, interest, and reimbursement of taxes as Article 1 Section 22(4) provides that "[j]ust compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred." Once the Court determines the compensation for these additional items, if any, the Court will write in the compensation for each of these items, if any, as follows:

The City shall pay to the Landowners attorney fees in the amount of

$ _____.

The City shall pay to the Landowners costs in the amount of $_____.

The City shall pay prejudgment interest in the amount of $_____ for interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest thereafter in the amount of $ _____ until the date the judgment is satisfied. NRS 37.175.

The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in the amount of $_____.

IV.

CONCLUSION

IT IS HEREBY ORDERED THAT, the City is ordered to pay the Landowners the amount of $34,135,000 as the fair market value for the taking of the Landowners 35 Acre Property, with the above items for attorney fees, interest, costs, and reimbursement of taxes reserved for post trial briefing.

Dated this 18th day of November, 2021

MH

B88 955 81A8 4EC7
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

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From: James Leavitt
To: Sandy Guerra
Subject: FW: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order
Date: Wednesday, November 10, 2021 8:44:55 AM

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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From: James Leavitt
Sent: Wednesday, November 10, 2021 8:45 AM
To: 'George F. Ogilvie III' <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>; 'Elizabeth Ham (EHB Companies)' <eham@ehbcompanies.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

Thank you for your edits. Unfortunately, it is clear we will not come to agreement on the language of the FFCL re: Just Compensation.

Therefore, we will be submitting the Landowners' proposed FFCL re: Just Compensation to Judge Williams this morning.

I hope you have a good holiday weekend.

Jim

Jim Leavitt, Esq.
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From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, November 9, 2021 4:17 PM
To: James Leavitt <jim@kermittwaters.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

Attached are the City's edits to the proposed FFCL.

George F. Ogilvie III | Partner
McDONALD CARANO
P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, November 8, 2021 8:58 AM
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Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

The only orders that have been submitted to the Court are:

FFCL on the motions in limine
FFCL on the denial of both summary judgment motions

We have not submitted the FFCL on just compensation (the most recent one I sent you). I intend to send the FFCL on just compensation to the Court Tuesday, end of business.

Jim

Jim Leavitt, Esq.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 9

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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; DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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-17-758528-J
DEPT. NO.: XVI

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

ON JUST COMPENSATION

//

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law on Just Compensation was entered on the 18th day of November, 2021. A copy of the Findings of Fact and Conclusions of Law on Just Compensation is attached hereto

Dated this 24th day of November, 2021.

LAW OFFICES OF KERMITT L. WATERS

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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 24th day of November, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON JUST COMPENSATION** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **ON JUST COMPENSATION** **BENCH TRIAL: October 27, 2021**

///

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' in-house counsel Elizabeth Ghanem Ham, Esq., and with the City of Las Vegas (hereinafter "the City") appearing through its counsel, George F. Ogilvie III, Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City Attorney's Office.

Having reviewed and considered the evidence presented, the file and other matters referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law:

I.

INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE

1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation claim, the court must undertake two distinct sub-inquiries: "the court must first determine" the property rights "before proceeding to determine whether the governmental action constituted a taking." ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that "whether the Government has inversely condemned private property is a question of law …" Sisolak, at 661. To decide these issues, the Court relies on eminent domain and inverse condemnation cases. *See* County of Clark v. Alper, 100 Nev. 382, 391 (1984) ("[I]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings.").

2. The Court entertained extensive argument on the first sub-inquiry, the property rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law

Regarding Plaintiff Landowners' Motion to Determine "Property Interest," on October 12, 2020 (hereinafter "FFCL Re: Property Interest").

3. In the FFCL Re: Property Interest, the Court held: 1) Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7 at all relevant times; 3) the Las Vegas Municipal Code (chapter 19) lists single-family and multi-family as the legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

4. The Court also entertained extensive argument on the second sub-inquiry, whether the City's actions had resulted in a taking, on September 23, 24, 27, and 28, 2021, and entered Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third, and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief (hereinafter "FFCL Re: Taking").

5. In the FFCL Re: Taking, the Court held that the City engaged in actions that amounted to a taking of the Landowners' 35 Acre Property.

6. Upon deciding the property interest and taking, the only issue remaining in this case is the just compensation to which the Landowners are entitled for the taking of the 35 Acre Property.

7. In preparation for the jury trial on the just compensation, on October 26, 2021, the Court entertained argument on motions in limine and also the parties' cross motions for summary judgment, orders having been entered on those matters.

8. This case was set for a jury trial, with jury selection to be October 27 and 28, 2021, and opening arguments on November 1, 2021.

9. On October 27, 2021, the parties appeared before the Court and agreed to waive the jury trial and, instead, have this matter decided by way of bench trial.

10. An agreement to the procedure for that bench trial was put on the record at the October 27, 2021, appearance.

11. Pursuant to the agreement of the parties, the Court conducted a bench trial on October 27, 2021, on the sole issue of the fair market value of the 35 Acre Property.

II.

FINDINGS OF FACT

The Landowners' 35 Acre Property.

12. The property at issue in this case is a 34.07 acre parcel of property generally located near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005 (hereinafter "35 Acre Property"). As of September 14, 2017 and at the time of the October 27, 2021, bench trial, the 35 Acre Property was and remains vacant.

13. The 35 Acre Property is hard zoned R-PD7 at all relevant times herein, and the legally permitted uses of the property are single-family and multi-family residential. *See* FFCL Re: Property Interest and FFCL Re: Taking.

14. The Court has previously rejected challenges to this legally permissible use, including rejection of the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

/ / /

Evidence Presented at the Bench Trial on Fair Market Value of the 35 Acre Property.

15. Pursuant to the agreement of the parties,[1] the Landowners moved for admission of the appraisal report of Tio DiFederico (DiFederico Report) as the fair market value of the 35 Acre Property and the City did not object to nor contest the admissibility or admission of the DiFederico Report.

16. Appraiser Tio DiFederico is a Certified General Appraiser in the State of Nevada and earned the MAI designation from the Appraisal Institute, which is the highest designation for a real estate appraiser. TDG Rpt 000111-000113. DiFederico has appraised property in Las Vegas for over 35 years and has qualified to testify in Nevada Courts, including Clark County District Courts. Id.

17. The DiFederico Report was marked as Plaintiff Landowners' Trial Exhibit 5, with Bate's numbers TDG Rpt 000001 – 000136.

18. The DiFederico Report conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice Institute. TDG Rpt 000002.

19. The DiFederico Report identifies the property being appraised (the Landowners 34.07 acre property – "35 Acre Property"), reviews the current ownership and sales history, the intended user of the report, provides the proper definition of fair market value under Nevada law, and provides the scope of his work. TDG Rpt 000003-000013.

20. The DiFederico Report also identifies the relevant date of valuation as September 14, 2017, and values the 35 Acre Property as of this date. TDG Rpt 000010.

21. The DiFederico Report includes a Market Area Analysis. TDG Rpt 000014-000032.

[1] The parties agreed that this matter does not involve the taking of, nor valuation of, any water rights the Landowners may or may not own.

22. The DiFederico Report includes a detailed analysis of the 35 Acre Property that analyzes location, size, configuration, topography, soils, drainage, utilities (sewer, water, solid waste, electricity, telephone, and gas), street frontage and access, legal use of the property based on zoning, the surrounding uses, and other legal and regulatory constraints. TDG Rpt 000033-000052. The DiFederico Report property analysis concludes, "[o]verall, the site's R-PD7 zoning and physical characteristics were suitable for residential development that was prevalent in this area and bordered the subject site." Id., 000044.

23. The DiFederico Report provides a detailed analysis of the "highest and best use" of the 35 Acre Property, including the elements of legal permissibility, physical possibility, financial feasibility, and maximally productive. TDG Rpt 000054-000067. The DiFederico Report concludes, based on this highest and best use analysis, that "a residential use best met the four tests of highest and best use [as] of the effective date of value, September 14, 2017." Id., at 000067. This use would be similar to the surrounding uses in the Queensridge and Summerlin Communities. Id.

24. Although the 35 Acre Property had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. Id.

25. Therefore, the DiFederico Report also provides a detailed analysis of the past use of the 35 Acre Property as part of the Badlands golf course. TDG Rpt. 000060-000067. This golf course analysis is based on Mr. DiFederico's research, a report by Global Golf Advisors (GGA), and the past operations on the Badlands golf course. Id.

26. The DiFederico report finds that, according to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. Id. The trend experienced in 2016 was referred to as a "correction" as golf course closures occurring throughout the U.S. indicated there was an oversupply that required

market correction. Id. The local market data reflects that the Badlands wasn't an outlier struggling in a thriving golf course market. Id. Based on what was happening in the national golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of the "correction." On December 1, 2016, the Badlands golf course closed. Id.

27. The Landowner leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses. On December 1, 2016, the CEO of Elite Golf Management sent a letter to the Landowners stating that it could not generate a profit using the property for a golf course, even if Elite Golf were permitted to operate rent free: "it no longer makes sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues to struggle, and Badlands revenues have continued to decrease over the years. This year we will finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate we cannot continue to sustain the property where it makes financial sense to stay. Even with your generosity of the possibility of staying with no rent, we do not see how we can continue forward without losing a substantial sum of money over the next year." Id., 000066.

28. The DiFederico Report includes further detailed analysis of relevant golf course data of the potential for a golf course operation on the 35 Acre Property. TDG Rpt 000060-000066.

29. The DiFederico Report also specifically considered the historical operations of the golf course, which were trending downward rapidly. Id.

30. The DiFederico Report concluded that operating the golf course was not a financially feasible use of the 35 Acre Property as of September 14, 2017.

31. The DiFederico Report golf course conclusion is further supported by the Clark County Tax Assessor analysis on the 250 acre land (of which the 35 Acre Property was included). On September 21, 2017, the Clark County Assessor sent the Landowner a letter that stated since the 35 Acre Property had ceased being used as a golf course on December 1, 2016, the land no

longer met the definition of open space and was "disqualified for open-space assessment." The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes:

> "NRS 361A.280 Payment of deferred tax when property converted to a higher use. If the county assessor is notified or otherwise becomes aware that a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred taxes, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The County assessor shall assess the property pursuant to NRS 361.2276 for the next fiscal year following the date of conversion to a higher use."

32. The Las Vegas City Charter states, "The County Assessor of the County is, ex officio, the City Assessor of the City." LV City Charter, sec. 3.120.

33. The City provided no evidence that a golf course use was financially feasible as of the September 14, 2017, date of value.

34. Once the DiFederico Report identified the highest and best use of the 35 Acre Property as residential, it then considered the three standard valuation methodologies – the cost approach, sales comparison approach, and income capitalization approach. TDG Rpt 000068. The DiFederico Report identifies the sales comparison and income capitalization approaches as appropriate methods to value the 35 Acre Property. Id.

35. Under the sales comparison approach, the DiFederico Report identifies five similar "superpad" properties that sold near in time to the September 14, 2017, date of valuation. Id., 000069-000075. The DiFederico Report defines a superpad site as a larger parcel of property that is sold to home developers for detached single-family residential developments. Id., 000069.

36. The DiFederico Report then makes adjustments to these five sales to compensate for the differences between the five sales and the 35 Acre Property. Id., 000076. These adjustments include time-market conditions, location, physical characteristics, etc. Id., 000076-000083.

37. After considering all five sales and making the appropriate adjustments to the five sales, the DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, under the sales comparison approach is $23.00 per square foot. Id., 000084. The exact square footage of the 35 Acre Property (34.07 acres) is 1,484,089 and applying the DiFederico Report's square foot value to this number arrives at a value of $34,135,000 for the 35 Acre Property as of September 14, 2017, under the sales comparison approach. Id., 000084.

38. As a check to the reasonableness of the $34,135,000 value concluded by the sales comparison approach, the DiFederico Report completed an income approach to value the 35 Acre Property, referred to as the discounted cash flow approach (hereinafter "DCF approach"). TDG Rpt 000085-000094. The DiFederico Report explains the steps under this DCF approach, which are generally to determine the value of finished lots, consider the time it would take to develop the finished lots, subtract out the costs, profit rate, and discount rate, and discount the net cash flow to arrive at a value of the property as of September 14, 2017. Id., 000086. A finished lot is one that has been put in a condition that it is ready to develop a residential unit on it.

39. The DiFederico Report confirms that the DCF approach is used in the real world by developers to determine the value of property. Id., 000086.

40. The DiFederico Report considers three scenarios under this DCF approach – a 61 lot, 16 lot, and 7 lot development. Id., 000085-000094.

41. The DiFederico Report provides detailed data for the value of finished lots on the 35 Acre Property, including sales of finished lots in the area of the 35 Acre Property that sold near the September 14, 2017, date of value. TDG Rp[t 000086-000088. This data showed that the

average value for finished lots selling in the area were $30, $49.28, and $71.84 per square foot., depending upon the area of Summerlin and the Queensridge Community. TDG Rpt 000086-000087. With this data, the DiFederico Report concluded at a value of $40 per square foot for the 61 lot scenario, $35 per square foot for the 16 lot scenario, and $32 per square foot for the 7 lot scenario. TDG Rpt 000087.

42. The DiFederico Report then provides a detailed, factual based, analysis of the time it would take to develop the finished lots, the expenses to develop the finished lots, the profit rate and discount rate, and the appropriate discount to the net cash flow. TDG Rpt 000088-000090.

43. With this factual based data, the DiFederico Report provides a discounted cash flow model for each of the three scenarios to arrive at a value for the 35 Acre Property under each scenario as follows: 1) for the 61 lot scenario, $32,820,000, 2) for the 16 lot scenario, $35,700,000, and, 3) for the 7 lot scenario, $34,400,000. TDG Rpt 000091-000094. The DiFederico Report uses this income approach to confirm the reasonableness of the $34,135,000 value under the sales comparison approach.

44. The DiFederico Report then concludes that, applying all of the facts and data in the Report, the fair market value of the 35 Acre Property as of September 14, 2017, is $34,135,000. TDG Rpt 000095.

45. The DiFederico Report also provides a detailed analysis of the City's actions toward the 35 Acre Property to determine the effect of the City's actions on the 35 Acre Property from a valuation viewpoint. TDG Rpt. 000096-000101. These City actions are the same actions set forth in the Court's FFCL Re: Taking.

46. The DiFederico Report concludes that the City's actions have taken all value from the 35 Acre Property.

47. The DiFederico Report concludes that the City's actions removed the possibility of residential development; however, the landowner is still required to pay property taxes as if the property could be developed with a residential use. TDG Rpt 000100. According to the DiFederico Report, this immediately added an annual expense that was over $205,000 and that amount would be expected to increase over time. Id.

48. The DiFederico Report concludes that, due to the City's actions, there is no market to sell the 35 Acre Property with these development restrictions along with the extraordinarily high annual expenses as the buyer would be paying for a property with no economic benefit that has annual expenses in excess of $205,000. TDG Rpt 000100.

49. The DiFederico Report concludes that the value of the 35 Acre Property as of September 14, 2017, is $34,135,000 and that the City's actions have taken all value from the property, resulting in "catastrophic damages to this property." TDG Rpt 000101.

50. The City did not produce an appraisal report or a review appraisal report during discovery or during the bench trial.

51. The City did not depose Mr. DiFederico.

52. The City represented at the October 27, 2021, bench trial that, based on the rulings entered by the Court rulings in this matter, including the FFCL Re: Property Interest, the FFCL Re: Take, the rulings on the three motions in limine, and the competing motions for summary judgment on October 26, 2021, the City did not have evidence to admit to rebut the DiFederico Report.

///

III.

CONCLUSIONS OF LAW

53. Consistent with the property tax increase, the Landowners attempted to develop the 35 Acre Property for residential use. Notwithstanding the taxing and zoning of R-PD7 (residential), the City of Las Vegas prevented the legal use of the property as it would not allow the Landowners to develop the property according to its zoning and residential designation. Consequently, the City of Las Vegas prevented the legally permitted use of the property and required the property to remain vacant. *See also* FFCL Re: Property Interest and FFCL Re: Taking.

54. The Court has previously rejected challenges to the Landowners' legally permissible residential use. Specifically, the Court has rejected the City's arguments that there is a Peccole Ranch Master Plan and a City of Las Vegas Master Plan/ land use designation of PR-OS or open space that govern the use of the 35 Acre Property. *See* FFCL Re: Property Interest and FFCL Re: Taking.

55. Given that the Landowners had the legal right to use their 35 Acre Property for residential use and given that the City has taken the 35 Acre Property, the Court, based on the agreement of the parties, must determine the fair market value of the 35 Acre Property.

56. The Nevada Constitution provides that where property is taken it "shall be valued at is highest and best use." Nev. Const. art. 1, sec. 22 (3).

57. The Nevada Constitution further provides that in "all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market." Nev. Const. art. 1, sec. 22 (5).

58. NRS 37.120 provides that the date upon which taken property must be valued is the date of the first service of summons, except that if the action is not tried within two years after the date of the first service of summons, the date of valuation is the date of commencement of trial, if

a motion is brought to change the date of value to the date of trial and certain findings are made by the Court.

59. In the case of County of Clark v. Alper, 100 Nev. 382, 391 (1984), the Nevada Supreme Court held that NRS 37.120 applies to both eminent domain and inverse condemnation proceedings, reasoning, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Id.

60. The date of the first service of summons in this case is September 14, 2017, and neither party sought to change the date of valuation to the date of trial.

61. Therefore, the date of valuation in this inverse condemnation proceeding is the date of the first service of summons, which is September 14, 2017.

62. The Court finds that Mr. DiFederico has the expertise to value the 35 Acre Property.

63. The Court further finds that the valuation methodologies applied in the DiFederico Report are accepted methodologies to appraise property and are relevant and reliable to determine the value of the 35 Acre Property as of September 14, 2017.

64. The Court further finds that the DiFederico Report is based on reliable data, including reliable comparable sales, and is well-reasoned. The conclusions therein are well-supported.

65. The Court finds that the DiFederico Report properly applied and followed Nevada's eminent domain and inverse condemnation laws and that the Report appropriately analyzed and arrived at a proper highest and best use of the 35 Acre Property as residential use. This highest and best use conclusion is also supported by the Court's previous FFCL Re: Property Interest and FFCL Re: Taking.

66. The Court finds that the DiFederico Report properly followed Nevada law in applying the "highest price" standard of fair market value.

67. The Court's final decision is based on a finding that the 35 Acre Property could be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. Due to the effect of the government's unlawful taking of the 35 Acre Property, the DiFederico Report concluded there was no market to sell this property with the substantial tax burden and no potential use or income to offset the tax expense. Based on the City's actions, the Court hereby determines that just compensation for the fair market value of the 35 Acre Property due to the City's unlawful taking of the 35 Acre Property is the sum of $34,135,000, exclusive of attorney's fees, costs, interest, and reimbursement of taxes.

68. As a result, the Court hereby finds in favor of the Landowners and against the City in the sum of $34,135,000.

69. The Court will accept post trial briefing on the law and facts to determine attorney's fees, costs, interest, and reimbursement of taxes as Article 1 Section 22(4) provides that "[j]ust compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred." Once the Court determines the compensation for these additional items, if any, the Court will write in the compensation for each of these items, if any, as follows:

The City shall pay to the Landowners attorney fees in the amount of

$ _____.

The City shall pay to the Landowners costs in the amount of $_____.

The City shall pay prejudgment interest in the amount of $_____ for interest up to the date of judgment (October 27, 2021) and a daily prejudgment interest thereafter in the amount of $ _____ until the date the judgment is satisfied. NRS 37.175.

The City shall reimburse the Landowners real estate taxes paid on the 35 Acre Property in the amount of $_____.

IV.

CONCLUSION

IT IS HEREBY ORDERED THAT, the City is ordered to pay the Landowners the amount of $34,135,000 as the fair market value for the taking of the Landowners 35 Acre Property, with the above items for attorney fees, interest, costs, and reimbursement of taxes reserved for post trial briefing.

Dated this 18th day of November, 2021

MH

B88 955 81A8 4EC7
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

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From: James Leavitt
To: Sandy Guerra
Subject: FW: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order
Date: Wednesday, November 10, 2021 8:44:55 AM

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From: James Leavitt
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Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

Thank you for your edits. Unfortunately, it is clear we will not come to agreement on the language of the FFCL re: Just Compensation.

Therefore, we will be submitting the Landowners' proposed FFCL re: Just Compensation to Judge Williams this morning.

I hope you have a good holiday weekend.

Jim

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From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, November 9, 2021 4:17 PM
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Cc: Autumn Waters <autumn@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

Attached are the City's edits to the proposed FFCL.

George F. Ogilvie III | Partner
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From: James Leavitt <jim@kermittwaters.com>
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Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: RE: 180 Land Company, LLC v. City of Las Vegas, Case No. A-17-758528-J- Proposed Order

George:

The only orders that have been submitted to the Court are:

FFCL on the motions in limine
FFCL on the denial of both summary judgment motions

We have not submitted the FFCL on just compensation (the most recent one I sent you). I intend to send the FFCL on just compensation to the Court Tuesday, end of business.

Jim

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 10

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Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD, SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No. A-17-758528-J Dept. No. XVI **CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** **(HEARING REQUESTED)**

Pursuant to Rules 59(e), 60(b) and 62(b) of the Nevada Rules of Civil Procedure, the City of Las Vegas ("City") respectfully moves for an amendment of the Findings of Fact and Conclusions of Law on Just Compensation of this Court awarding Plaintiffs $34,135,000 in damages and requiring further briefing on the Developer's request for interest on the damage award, costs, attorneys' fees, and property taxes ("Judgment"). The Court entered notice of the Judgment on November 24, 2021. This motion is supported by the existing record in this action, the memorandum of points and authorities, and any oral argument that the Court may allow at the time of the hearing on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

On November 18, 2021, after conducting a 1-day bench trial, the Court filed the Judgment, notice of which was entered on November 24, 2021, awarding the Developer damages of $34,135,000 for the City's alleged taking of the 35-Acre Property, despite the fact that the Developer purchased the entire 250-acre Badlands for less than $4.5 million only two years before the alleged taking (the Court excluded all evidence of the $4.5 million purchase price). While the Judgment requires the City to pay the Developer $34,135,000 for the "taking" of the 35-Acre Property, the Judgment fails to provide that if the City pays the Judgment, the Developer shall be required to convey fee simple title to the 35-Acre Property to the City. It would be contrary to law and unjust for the City to pay the Developer for "taking" the property yet allow the Developer to retain possession and title to the property.

Legal Standard

The Court may grant a motion to amend a judgment under NRCP 59(e) to correct manifest errors of law or to prevent manifest injustice. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). The court has additional authority under NRCP 60(b) to grant relief from a judgment or order for "any . . . reason that justifies relief."

Argument

I. The Court should amend the Judgment to require that, if the City pays the Judgment, the Developer shall convey fee simple title to the 35-Acre Property to the City

The Judgment erred in not requiring the Developer to convey its fee simple interest in the 35-Acre Property to the City if the City pays the damage award to the Developer. A deed conveying fee simple interest to the government is required upon payment of just compensation for the alleged taking. *See Milens of California v. Richmond Redevelopment Agency*, 665 F.2d 906, 910 (9th Cir. 1982); *Richmond Elks Hall Ass'n v. Richmond Redevelopment Agency*, 561 F.2d 1327, 1332 (9th Cir. 1977). Although the Judgment requires the City to pay the alleged market value of the 35-Acre Property—approximately $34 million—it provides no mechanism or procedure for the City to take title to the Property, nor any requirement that the Developer convey title. Unless the Judgment is

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amended to add this requirement, the City faces the manifest injustice of paying for "taking" the property without actually receiving title. To avoid manifest injustice to the City—and a further unwarranted windfall to the Developer—the Court must amend the Judgment to provide such a procedure and requirement.

Without waiving its rights to challenge the Judgment, the City suggests that an additional paragraph should be added to provide that if the City deposits the just compensation and any other amounts that the Court determines are owed to the Developer with the Clerk of the District Court, the Developer shall deposit a deed conveying fee simple title to the 35-Acre Property to the City, whereupon the Clerk shall transfer the deed to the City and the money deposited by the City to the Developer.[1]

II. Because eminent domain law does not apply to this inverse condemnation action, the Court should not impose obligations on the City under NRS Chapter 37

The Developer may contend that the Court should apply NRS 37.140 to this case. That eminent domain statute requires that a public agency taking property by eminent domain must pay the just compensation within 30 days after final judgment and also pay certain prejudgment interest, respectively. These statutory provisions do not apply to this inverse condemnation case.

NRS Chapter 37, the state's eminent domain law, applies only where a public agency has exercised its power of eminent domain. NRS 37.0095; *see also Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 9, 106 P.3d 1198, 1199 (2005) ("NRS Chapter 37 . . . contains the statutory scheme governing Nevada eminent domain proceedings"); *Gold Ridge Partners v. Sierra Pacific Power Co.*, 128 Nev. 495, 499, 285 P.3d 1059, 1062 (2012) ("NRS Chapter 37 governs the power of a public agency to take property through eminent domain proceedings"). As Judge Herndon correctly found,

[1] The City would not be required to deposit the just compensation with the Clerk until the Judgment becomes final after appellate review. Because the City intends to appeal the Judgment and move for a stay, which should be granted as a matter of law, the Judgment would not become final until and unless the Nevada Supreme Court affirms the Judgment and issues a remittitur. *See Clark Cty. Off. of Coroner/Med. Exam'r v. Las Vegas Rev.-J.*, 134 Nev. 174, 177, 415 P.3d 16, 19 (2018) ("[u]pon motion, as a secured party, the state or local government is generally entitled to a stay of a money judgment under NRCP 62(d) without posting a supersedeas bond or other security."). The City is separately filing a motion to stay the Judgment.

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eminent domain and inverse condemnation "have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken." *See* City's Appendix of Exhibits Vol. 8 filed 8/25/21, Ex. CCCC at 1499 fn. 4. By contrast, in inverse condemnation, "the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation." *Id.*

Despite the clear differences between the two doctrines, the Developer has consistently conflated them, relying primarily on language in *Clark County v. Alper*, 100 Nev. 382, 685 P.2d 943 (1984). But *Alper* does not support the proposition that the State's eminent domain law applies wholesale to inverse condemnation cases. In *Alper*, the county physically condemned property for a road-widening project but failed to initiate formal eminent domain proceedings under NRS Chapter 37. 100 Nev. at 391, 685 P.2d at 949. Only then did the property owner file an inverse condemnation action, at which point the parties stipulated to the county's liability. *Id.* The trial court valued the property as of the time of trial rather than the time of the taking when the City physically took possession of the property. In doing so, the court relied on NRS 37.120(1)(b), which allows valuation to be made as of the time of trial where the government does not bring a formal eminent domain proceeding to trial within two years after taking property. *Id.*[2]

The county argued that because the property owner's case was technically brought in inverse condemnation, NRS 37.120(1)(b) was inapplicable. *Id.* The Supreme Court upheld the trial court's date of valuation, holding that "the county [could not] delay formal eminent domain proceedings on the expectation that the landowner [would] file an action for inverse condemnation and thereby avoid its obligation to bring the matter to trial within two years." *Id.* The Court further noted that the eminent domain law "places the burden on the government to move the case to trial within two years after the action is commenced. If it does not, and the delay is not primarily caused by the actions of the

[2] NRS 37.120 has since been amended and no longer includes a subsection (1)(b). However, the substance of the law is essentially unchanged, and still provides that property is valued as of the date of trial if the government fails to bring an eminent domain action to trial within two years of the taking. NRS 37.120.

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landowner, the government must account for the increased value of the property." *Id.* Therefore, to the extent *Alper* holds that eminent domain and inverse condemnation proceedings may be governed by the same rules, that holding is limited to the narrow issue of the date of valuation if the agency that has physically taken the property does not file an eminent domain action and bring it to trial within two years after the date of physical possession. *Id*.

Alper's reasoning was based on the fact that the County physically took property but failed to initiate and timely bring to trial a formal eminent domain proceeding. *Id.* In other words, the County could not take advantage of inverse condemnation law—which would have valued the property at the time of the taking—by failing to meet its obligations under the eminent domain law. Therefore, *Alper* applies narrowly to the small subset of cases where the government physically takes property but fails to initiate eminent domain proceedings, thereby forcing the property owner to file an inverse condemnation action.

No such circumstances exist here. This is a regulatory taking action. The City has not exercised its eminent domain powers under NRS Chapter 37. The Developer does not claim that the City took physical possession of the property, nor does the Developer claim any damages for the alleged public trespass on its property. In sharp contrast to *Alper*, the Developer claims that the City prevented the Developer's *development* of the property for its desired use. This is not a case where the City took physical possession of the property to build a public facility yet failed to file an eminent domain action. Unlike eminent domain actions where the public agency requires title and possession to build a public project, such as a road or a wastewater treatment plant, and in many cases has already taken possession of the property and started the project (*see* NRS 37.100 providing for condemning agency's possession of property prior to judgment to avoid delay in implementing public project), here the City does not need or want the 35-Acre Property for a public facility. Accordingly, it would be a manifest error of law to require the City to pay the assessed compensation within 30 days after

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the Judgment under NRS 37.140, which has no application to this case. In amending the Judgment, therefore, the Court should not rely on the provisions of NRS Chapter 37, including NRS 37.140.[3]

Conclusion

The City respectfully requests that the Court grant its motion and alter and/or amend the Judgment accordingly. In addition, under Rule 62(b)(3) of the Nevada Rules of Civil Procedure, the City requests that the Court stay any execution of the Judgment pending the disposition of this Motion.[4]

DATED this 21st day of December 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Christopher Molina (NV Bar No. 14092)
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Attorneys for City of Las Vegas

[3] Even if the Court finds that NRS Chapter 37 applies, the City would not be required to pay the Judgment within 30 days. NRS 37.140 requires payment of just compensation only after entry of a "final judgment." "'Final judgment' means a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment." NRS 37.009(2). The Judgment here can be directly attacked by all three procedures and is not final for purposes of NRS 37.140. Accordingly, even assuming *arguendo* NRS 37.140 applies, the City is not required to pay the Judgment unless and until the Nevada Supreme Court affirms it and issues a remittitur.

[4] The City also intends to file a Motion to Stay execution of the Judgment under NRCP 62(d) and 62(e) and NRAP 8 pending the disposition of the instant Motion, which has tolled the time by which the City may file a notice of appeal of the Judgment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of December, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** 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

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Document 11

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER DENYING CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** Date of Hearing: February 11, 2022 Time of Hearing: 1:15 p.m.

The City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution, having come before the Court on February 11, 2022, James J. Leavitt, Esq. of the Law

Offices of Kermitt L Waters and Plaintiff Landowners' in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. and Christopher Molina, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").

The Court having reviewed the papers and pleadings on file, heard argument of counsel, and for good cause appearing hereby finds and orders as follows:

The Nevada Supreme Court has held that "Inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." County of Clark v. Alper, 100 Nev 382, 391 (1984) (emphasis added). This has been the law in Nevada since 1984 and the Nevada Supreme Court has reaffirmed this law numerous times since then.

Therefore, this Court will follow the statutory mandate as provided in Nevada's eminent domain statutes, NRS Chapter 37, to resolve the pending matter in this inverse condemnation case.

This Court has previously entered findings of fact and conclusions of law that the City took by inverse condemnation the Landowners' 35 Acre Property and must, accordingly, pay just compensation.

NRS 37.160 provides the procedure for passing title to the City of Las Vegas through a final order of condemnation once the sums assessed against the City are paid to the Landowners. Therefore, once the City pays the sums assessed in this matter to the Landowners, this Court will enter a final order of condemnation as provided in NRS 37.160.

This Court further finds that the Landowners have reversionary rights to the 35 Acre Property as set forth in NRS 37.270 and article 1, section 22 (1) and (6) of the Nevada State Constitution. These reversionary rights shall be set forth in the final order of condemnation.

The Court has previously denied the City's motion to stay execution and the City has provided no facts or law to revisit or reconsider that prior ruling.

Based on the foregoing, **IT IS HEREBY ORDERED THAT** the City of Las Vegas Motion to Amend Judgement (Rules 59(e) and 60(b)) and Stay of Execution is **DENIED** and, once the City pays the sums assessed in this matter to the Landowners, the Court will enter a final order of condemnation as provided herein.

Dated this 25th day of February, 2022

MH

338 491 34BF 1C81
Timothy C. Williams
District Court Judge

Submitted By:

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By: */s/ James J. Leavitt, Esq.*
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From: James Leavitt
To: George F. Ogilvie III; Christopher Molina
Cc: Autumn Waters; Sandy Guerra
Subject: Proposed Order - Friday Hearing on City Motion to Amend
Date: Saturday, February 12, 2022 8:27:34 AM
Attachments: Order Denying CLV Motion to Amend Judgment.docx

George:

Attached hereto is the proposed order from the hearing on the City's motion to amend.

Please review and let me know of any changes. We intend to send to the Court Wednesday morning.

Thank you and have a good weekend,
Jim

Jim Leavitt, Esq.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 12

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF:** **ORDER DENYING CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** **Hearing Date: February 11, 2022** **Hearing Time: 1:15 p.m.**

PLEASE TAKE NOTICE that the Order Denying City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution ("Order") was entered on the 25th day of February, 2022.

///

A copy of the Order is attached hereto.

DATED this 28th day of February, 2022.

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/s/Autumn L. Waters
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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 28th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: ORDER DENYING CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER DENYING CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** Date of Hearing: February 11, 2022 Time of Hearing: 1:15 p.m.

The City of Las Vegas' Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution, having come before the Court on February 11, 2022, James J. Leavitt, Esq. of the Law

Offices of Kermitt L Waters and Plaintiff Landowners' in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff Landowners 180 Land Co and Fore Stars. ("Landowners"), George F. Ogilvie III, Esq. and Christopher Molina, Esq. of McDonald Carano LLP and Andrew W. Schwartz, Esq. of Shute Mihaly and Weinberger LLP appearing on behalf of the City of Las Vegas ("City").

The Court having reviewed the papers and pleadings on file, heard argument of counsel, and for good cause appearing hereby finds and orders as follows:

The Nevada Supreme Court has held that "Inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." County of Clark v. Alper, 100 Nev 382, 391 (1984) (emphasis added). This has been the law in Nevada since 1984 and the Nevada Supreme Court has reaffirmed this law numerous times since then.

Therefore, this Court will follow the statutory mandate as provided in Nevada's eminent domain statutes, NRS Chapter 37, to resolve the pending matter in this inverse condemnation case.

This Court has previously entered findings of fact and conclusions of law that the City took by inverse condemnation the Landowners' 35 Acre Property and must, accordingly, pay just compensation.

NRS 37.160 provides the procedure for passing title to the City of Las Vegas through a final order of condemnation once the sums assessed against the City are paid to the Landowners. Therefore, once the City pays the sums assessed in this matter to the Landowners, this Court will enter a final order of condemnation as provided in NRS 37.160.

This Court further finds that the Landowners have reversionary rights to the 35 Acre Property as set forth in NRS 37.270 and article 1, section 22 (1) and (6) of the Nevada State Constitution. These reversionary rights shall be set forth in the final order of condemnation.

The Court has previously denied the City's motion to stay execution and the City has provided no facts or law to revisit or reconsider that prior ruling.

Based on the foregoing, **IT IS HEREBY ORDERED THAT** the City of Las Vegas Motion to Amend Judgement (Rules 59(e) and 60(b)) and Stay of Execution is **DENIED** and, once the City pays the sums assessed in this matter to the Landowners, the Court will enter a final order of condemnation as provided herein.

Dated this 25th day of February, 2022

MH

338 491 34BF 1C81
Timothy C. Williams
District Court Judge

Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: */s/ James J. Leavitt, Esq.*
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From: James Leavitt
To: George F. Ogilvie III; Christopher Molina
Cc: Autumn Waters; Sandy Guerra
Subject: Proposed Order - Friday Hearing on City Motion to Amend
Date: Saturday, February 12, 2022 8:27:34 AM
Attachments: Order Denying CLV Motion to Amend Judgment.docx

George:

Attached hereto is the proposed order from the hearing on the City's motion to amend.

Please review and let me know of any changes. We intend to send to the Court Wednesday morning.

Thank you and have a good weekend,
Jim

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

. . .

The Motion came before the Court for hearing on February 3, 2022 at 1:40 p.m. James Jack Leavitt, Autumn Waters, and Elizabeth Ghanem Ham appeared for Plaintiffs. George F. Ogilvie III, Christopher Molina, and Andrew Schwartz appeared for the City. Having considered the points and authorities on file with the Court and oral argument of counsel, the Court makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. In its November 18, 2021 Findings of Fact and Conclusions of Law on Just Compensation, the Court awarded Plaintiffs $34,135,000 for the City's taking of the 35-Acre Property ("Judgment").

2. In its Motion to Determine Prejudgment Interest filed on December 9, 2021 ("Motion"), Plaintiffs contended that it is entitled to prejudgment interest on the $34,135,000 Judgment under NRS 37.175 from the date of the City's taking, which Plaintiffs contend was August 2, 2017, to February 2, 2022, the date Plaintiffs anticipated this Court would enter an order granting prejudgment interest.

3. Plaintiffs further argued in its Motion that prejudgment interest could not be less than the prime rate plus two percent, as provided in NRS 37.175(4)(b) and (c).

4. Plaintiffs further contended in the Motion that for Plaintiffs to be made whole; i.e., put in the same position monetarily as it would have been in had the City not taken the 35-Acre Property, Plaintiffs should be awarded prejudgment interest on the Judgment at a rate equivalent to the return that Plaintiffs would have achieved had Plaintiffs invested the Judgment in an unidentified real estate venture in Las Vegas on the date of the alleged taking. Based on evidence of appreciation in real estate values in Las Vegas from August 2017 through February 2022, Plaintiffs claimed that it would have earned $52,515,866.90 on its investment, plus $46,687.19 per day after February 2, 2022 until the Judgment is satisfied.

5. The City contended in its opposition that the rate of prejudgment interest should be the statutory rate set forth in NRS 37.175, which is prime plus two percent.

. . .

. . .

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CONCLUSIONS OF LAW

A. Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) 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.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

> 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.

2. Accordingly, 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 only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

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that prejudgment interest should not be the prime rate plus two percent as indicated by the statute, but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to put Plaintiffs in the same position as before the City's alleged taking. Neither *Barsy* nor the evidence supports this rate of interest.

5. 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 . . . . 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*.

6. In addition to awarding Barsy just compensation based on the fair market value of Barsy's property, 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.[1] 100 Nev. at 178-19, 941 P.2d at 975-76. 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. Because the award of just compensation was insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

[1] 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.

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7. Through the payment of prime plus two percent, Plaintiffs will be made whole. Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs, and the Court rejects Plaintiffs' reliance on that case.

B. No authority permits the award of profit that allegedly would have been earned from a speculative real estate investment under the guise of prejudgment "interest"

8. The Court finds that Plaintiffs request an award not of "interest" as defined in Nevada law, but rather "profit" from a hypothetical, and speculative, real estate investment. No authority supports this claim.

9. The Court rejects Plaintiffs' request to base prejudgment interest on the expert reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other real estate during the relevant period. The Court finds that the payment of prime plus two percent is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property not been taken.

10. "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 Plaintiffs 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 Plaintiffs could earn if it invested the money in a real estate venture. In that case, the investment would "produce" something of value that Plaintiffs 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.

11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

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in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the claim was not pure speculation, the return Plaintiffs claims it would have earned is not "interest." Rather, it is "profit." If this Court were to conflate "interest" with "profit" in the manner proposed by Plaintiffs, 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 lacks 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.

C. No Nevada court has awarded prejudgment interest in a taking case at a rate higher than prime plus two percent

12. 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.

13. 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

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interest could be the profit the condemnee could make by investing the award of just compensation during the litigation.

14. 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.

15. 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 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 finds that that rate is consistent with all Nevada authority.

D. Prejudgment interest must be compounded annually

16. NRS 37.175 indicates that the Court has discretion to order annual compounding of prejudgment interest.

17. However, the Nevada Constitution, article 1, section 22 (4), states "Just Compensation shall include … compounded interest."

18. Accordingly, the award of interest shall be compounded annually.

ORDER

Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is hereby GRANTED, IN PART.

2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate prescribed by NRS 37.175 of prime rate plus 2 percent.

3. Accordingly, the prejudgment interest on the judgment of $34,135,000 at a rate of prime plus two percent and compounded annually from August 2, 2017 through November 18, 2021, is $ $10,258,953.30. *See* attached spreadsheet.

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4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the $34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this __ day of _____, 2022.

Dated this 1st day of April, 2022

DISTRICT COURT JUDGE MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

McDONALD CARANO LLP

/s/ George F. Ogilvie III
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Christopher Molina, Esq. Bar No. 14092
2300 W. Sahara Avenue, Suite 1200
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Attorneys for City of Las Vegas

Reviewed and Approved as to form and content By:

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From: James Leavitt <jim@kermittwaters.com>
Sent: Friday, April 1, 2022 8:57 AM
To: Christopher Molina; George F. Ogilvie III; Jelena Jovanovic
Cc: Autumn Waters; Michael Schneider; Elizabeth Ham (EHB Companies); Jennifer Knighton (EHB Companies)
Subject: FW: FFCL Re: Prejudgment Interest
Attachments: City's Proposed FFCL re Motion for Pre-Judgment Interest, 3-17-22 - version 5.docx

Chris:

Good morning.

With the revisions made, you may affix my signature to the FFCL.

Thank you, and have a great weekend.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964

From: Christopher Molina <cmolina@mcdonaldcarano.com>
Sent: Thursday, March 31, 2022 8:06 AM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Good morning Jim,

We have no objection to changing "Developer" to Plaintiffs, which I have done in the attached version. We don't believe it's necessary to include additional findings regarding the evidence Plaintiffs presented to the court as it's already in the record and there's already a description of that evidence in conclusion of law #11.

I've now incorporated four rounds of revisions into this FFCL and it is long overdue. We will submit to chambers prior to our hearing this afternoon in the 133-acre case. Please let me know if I have permission to affix your signature.

Chris Molina | Attorney

P: 702.873.4100 | **E:** cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Wednesday, March 30, 2022 2:22 PM
To: Christopher Molina <cmolina@mcdonaldcarano.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Chris:

Attached is a redline with our clients edits. Two main changes:

1. The City wants to call our client "Developer" our client wants to be called "Landowners" - we changed this to "Plaintiffs".
2. Paragraph 4 – we more clearly identified the evidence that the Plaintiff Landowners presented to the Court – the two expert reports by DiFederico and Lenhart. This simply states the fact that these two reports were presented and in two sentences summarizes what was in both reports.

Let me know if this is good to go.

Jim

Jim Leavitt, Esq.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 14

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest was entered in the above-referenced case on the 1st day of April, 2022, a copy of which is attached hereto.

. . .

. . .

. . .

DATED this 1st day of April, 2022.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 1st day of April, 2022, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST** 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

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST

Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, "Plaintiffs") filed its Motion to Determine Pre-Judgment Interest (the "Motion") on December 9, 2021. The City of Las Vegas ("City") filed an opposition to the Motion on December 23, 2021. Plaintiffs filed a reply in support of the Motion on January 24, 2022.

. . .

The Motion came before the Court for hearing on February 3, 2022 at 1:40 p.m. James Jack Leavitt, Autumn Waters, and Elizabeth Ghanem Ham appeared for Plaintiffs. George F. Ogilvie III, Christopher Molina, and Andrew Schwartz appeared for the City. Having considered the points and authorities on file with the Court and oral argument of counsel, the Court makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. In its November 18, 2021 Findings of Fact and Conclusions of Law on Just Compensation, the Court awarded Plaintiffs $34,135,000 for the City's taking of the 35-Acre Property ("Judgment").

2. In its Motion to Determine Prejudgment Interest filed on December 9, 2021 ("Motion"), Plaintiffs contended that it is entitled to prejudgment interest on the $34,135,000 Judgment under NRS 37.175 from the date of the City's taking, which Plaintiffs contend was August 2, 2017, to February 2, 2022, the date Plaintiffs anticipated this Court would enter an order granting prejudgment interest.

3. Plaintiffs further argued in its Motion that prejudgment interest could not be less than the prime rate plus two percent, as provided in NRS 37.175(4)(b) and (c).

4. Plaintiffs further contended in the Motion that for Plaintiffs to be made whole; i.e., put in the same position monetarily as it would have been in had the City not taken the 35-Acre Property, Plaintiffs should be awarded prejudgment interest on the Judgment at a rate equivalent to the return that Plaintiffs would have achieved had Plaintiffs invested the Judgment in an unidentified real estate venture in Las Vegas on the date of the alleged taking. Based on evidence of appreciation in real estate values in Las Vegas from August 2017 through February 2022, Plaintiffs claimed that it would have earned $52,515,866.90 on its investment, plus $46,687.19 per day after February 2, 2022 until the Judgment is satisfied.

5. The City contended in its opposition that the rate of prejudgment interest should be the statutory rate set forth in NRS 37.175, which is prime plus two percent.

. . .

. . .

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CONCLUSIONS OF LAW

A. Interest on the Judgment at a rate higher than Prime plus 2 percent is not necessary to put Plaintiffs in the same monetary position as before the taking

1. Prejudgment interest on a money judgment for a regulatory taking may be awarded under Nevada Constitution Article 1, Section 22(4) and NRS 37.175. Nevada Constitution Article 1, Section 22(4) 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.

NRS 37.175, which implements Nevada Constitution Article 1, Section 22(4) provides in relevant part that:

> 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:
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> (c) Whether the interest will be compounded annually.

2. Accordingly, 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 only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking.

3. Here, Plaintiffs have not shown that an award of interest at a rate higher than the prime rate plus two percent is necessary to put Plaintiffs in as good a position monetarily as if the property had not been taken.

4. The Court rejects Plaintiffs' reliance on *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 712, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition

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that prejudgment interest should not be the prime rate plus two percent as indicated by the statute, but rather 23 percent, to make Plaintiffs whole. An interest rate of 23 percent is not necessary to put Plaintiffs in the same position as before the City's alleged taking. Neither *Barsy* nor the evidence supports this rate of interest.

5. 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 . . . . 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*.

6. In addition to awarding Barsy just compensation based on the fair market value of Barsy's property, 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.[1] 100 Nev. at 178-19, 941 P.2d at 975-76. 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. Because the award of just compensation was insufficient to make Barsy whole, the higher interest rate was necessary to put Barsy in the same position monetarily as he would have been had his property not been taken. *See* NRS 37.175(4).

[1] 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.

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7. Through the payment of prime plus two percent, Plaintiffs will be made whole. Prejudgment interest at a rate higher than prime plus two percent is not necessary to put Plaintiffs in the same monetary position but for the taking. *Barsy*, therefore, provides no support to Plaintiffs, and the Court rejects Plaintiffs' reliance on that case.

B. No authority permits the award of profit that allegedly would have been earned from a speculative real estate investment under the guise of prejudgment "interest"

8. The Court finds that Plaintiffs request an award not of "interest" as defined in Nevada law, but rather "profit" from a hypothetical, and speculative, real estate investment. No authority supports this claim.

9. The Court rejects Plaintiffs' request to base prejudgment interest on the expert reports Plaintiffs presented as to the rate of return Plaintiffs could have earned investing in other real estate during the relevant period. The Court finds that the payment of prime plus two percent is sufficient to put Plaintiffs in the same position monetarily as it would have been had its property not been taken.

10. "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 Plaintiffs 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 Plaintiffs could earn if it invested the money in a real estate venture. In that case, the investment would "produce" something of value that Plaintiffs 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.

11. Here, Plaintiffs rely on market data obtained by its consultants to argue that had Plaintiffs invested the Judgment in an unidentified and hypothetical real estate investment project

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in 2017, it would have made it a profit of 23 percent per year for more than four years. Even if the claim was not pure speculation, the return Plaintiffs claims it would have earned is not "interest." Rather, it is "profit." If this Court were to conflate "interest" with "profit" in the manner proposed by Plaintiffs, 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 lacks 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.

C. No Nevada court has awarded prejudgment interest in a taking case at a rate higher than prime plus two percent

12. 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.

13. 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

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interest could be the profit the condemnee could make by investing the award of just compensation during the litigation.

14. 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.

15. 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 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 finds that that rate is consistent with all Nevada authority.

D. Prejudgment interest must be compounded annually

16. NRS 37.175 indicates that the Court has discretion to order annual compounding of prejudgment interest.

17. However, the Nevada Constitution, article 1, section 22 (4), states "Just Compensation shall include … compounded interest."

18. Accordingly, the award of interest shall be compounded annually.

ORDER

Accordingly, IT IS HERBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is hereby GRANTED, IN PART.

2. Plaintiffs are entitled to prejudgment interest calculated at the statutory rate prescribed by NRS 37.175 of prime rate plus 2 percent.

3. Accordingly, the prejudgment interest on the judgment of $34,135,000 at a rate of prime plus two percent and compounded annually from August 2, 2017 through November 18, 2021, is $ $10,258,953.30. *See* attached spreadsheet.

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4. The City shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the $34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with the findings of fact and conclusions of law set forth herein.

DATED: this __ day of _____, 2022.

Dated this 1st day of April, 2022

DISTRICT COURT JUDGE MH

8F8 150 A597 9932
Timothy C. Williams
District Court Judge

Submitted By:

McDONALD CARANO LLP

/s/ George F. Ogilvie III
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Attorneys for City of Las Vegas

Reviewed and Approved as to form and content By:

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Attorney for 180 Land Co LLC and Fore Stars Ltd.

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From: James Leavitt <jim@kermittwaters.com>
Sent: Friday, April 1, 2022 8:57 AM
To: Christopher Molina; George F. Ogilvie III; Jelena Jovanovic
Cc: Autumn Waters; Michael Schneider; Elizabeth Ham (EHB Companies); Jennifer Knighton (EHB Companies)
Subject: FW: FFCL Re: Prejudgment Interest
Attachments: City's Proposed FFCL re Motion for Pre-Judgment Interest, 3-17-22 - version 5.docx

Chris:

Good morning.

With the revisions made, you may affix my signature to the FFCL.

Thank you, and have a great weekend.

Jim

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From: Christopher Molina <cmolina@mcdonaldcarano.com>
Sent: Thursday, March 31, 2022 8:06 AM
To: James Leavitt <jim@kermittwaters.com>; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: RE: FFCL Re: Prejudgment Interest

Good morning Jim,

We have no objection to changing "Developer" to Plaintiffs, which I have done in the attached version. We don't believe it's necessary to include additional findings regarding the evidence Plaintiffs presented to the court as it's already in the record and there's already a description of that evidence in conclusion of law #11.

I've now incorporated four rounds of revisions into this FFCL and it is long overdue. We will submit to chambers prior to our hearing this afternoon in the 133-acre case. Please let me know if I have permission to affix your signature.

Chris Molina | Attorney

P: 702.873.4100 | **E:** cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Wednesday, March 30, 2022 2:22 PM
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Subject: RE: FFCL Re: Prejudgment Interest

Chris:

Attached is a redline with our clients edits. Two main changes:

1. The City wants to call our client "Developer" our client wants to be called "Landowners" - we changed this to "Plaintiffs".
2. Paragraph 4 – we more clearly identified the evidence that the Plaintiff Landowners presented to the Court – the two expert reports by DiFederico and Lenhart. This simply states the fact that these two reports were presented and in two sentences summarizes what was in both reports.

Let me know if this is good to go.

Jim

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 15

JGMT
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a 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-17-758528-J DEPT. NO.: XVI

FINAL JUDGMENT IN INVERSE CONDEMNATION

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' corporate counsel Elizabeth Ghanem, Esq., and with the City

of Las Vegas (hereinafter "the City") appearing through its counsel, George F. Ogilvie III, Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City Attorney's Office and thereafter this Court entered Findings of Fact and Conclusions of Law on Just Compensation, notice of entry occurring on November 24, 2021. Thereafter, the Court entertained briefing and oral argument on all relevant post trial issues and entered the following Orders: 1) Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting Plaintiff Landowners' Motion for Reimbursement of Property Taxes, notice of entry occurring on February 17, 2022; 3) Order Granting Plaintiff Landowners' Motion for Attorney Fees in Part and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest, notice of entry occurring on April 1, 2022.

Based on the referenced orders and findings of fact and conclusions of law having been entered, pursuant to NRCP Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of the Landowners and against the City of Las Vegas as follows:

The City shall pay to the Landowners for the taking of the 35 Acre Property **$34,135,000**.

The City shall pay to the Landowners' attorney fees in the amount of **$2,468,751.50**.

The City shall pay to the Landowners' costs in the amount of **$274,445.16**.

The City shall reimburse the Landowners' real estate taxes paid on the 35 Acre Property in the amount of **$976,889.38**.

The City shall pay prejudgment interest in the amount of **$10,258,953.30** for interest up to November 18, 2021, and shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the $34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest, notice of entry occurring on April 1, 2022.

These sums assessed against the City and in favor of the Landowners shall be paid within 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of entry occurring on February 10, 2022.

Interest will continue to accrue on the final judgment until satisfied.

The Landowners shall serve all parties written notice of entry of final judgment.

Dated this _____ day of April, 2022.

Dated this 18th day of April, 2022

MH

93A 140 093E 36D8
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

*/s/ James J. Leavitt*_____
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Attorneys for City of Las Vegas

From: James Leavitt
To: Sandy Guerra
Subject: FW: Final Judgment In Inverse Condemnation
Date: Wednesday, April 6, 2022 11:28:10 AM
Attachments: Final Judgment 4.4.22 egh.docx

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From: James Leavitt
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To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: Final Judgment In Inverse Condemnation

George:

Attached is the Final Judgment in Inverse Condemnation. Please review and let me know if we have your permission to affix your signature.

We intend to submit to Judge Williams Wednesday, April 6, at 10:00 am.

Jim

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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Document 16

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE 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, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF:** **FINAL JUDGMENT IN INVERSE CONDEMNATION**

PLEASE TAKE NOTICE that the Final Judgment in Inverse Condemnation ("Judgment") in the above referenced matter was entered on the 18th day of April, 2022.

///

A copy of the Judgment is attached hereto.

DATED this 18th day of April, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
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James J. Leavitt, Esq. (NSB 6032)
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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 18th day of April, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF: FINAL JUDGMENT IN INVERSE CONDEMNATION** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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/s/ Sandy Guerra
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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a 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-17-758528-J DEPT. NO.: XVI

FINAL JUDGMENT IN INVERSE CONDEMNATION

On October 27, 2021, the Court conducted a bench trial, with Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter "Landowners") appearing through their counsel, Autumn L. Waters, Esq. and James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with the Landowners' corporate counsel Elizabeth Ghanem, Esq., and with the City

of Las Vegas (hereinafter "the City") appearing through its counsel, George F. Ogilvie III, Esq. of McDonald Carrano, LLP and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq., of the City Attorney's Office and thereafter this Court entered Findings of Fact and Conclusions of Law on Just Compensation, notice of entry occurring on November 24, 2021. Thereafter, the Court entertained briefing and oral argument on all relevant post trial issues and entered the following Orders: 1) Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs, notice of entry occurring on February 17, 2022; 2) Order Granting Plaintiff Landowners' Motion for Reimbursement of Property Taxes, notice of entry occurring on February 17, 2022; 3) Order Granting Plaintiff Landowners' Motion for Attorney Fees in Part and Denying in Part, notice of entry occurring on February 22, 2022; and, 4) Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest, notice of entry occurring on April 1, 2022.

Based on the referenced orders and findings of fact and conclusions of law having been entered, pursuant to NRCP Rules 52(a)(1), 54(a), and 58, judgment is hereby entered in favor of the Landowners and against the City of Las Vegas as follows:

The City shall pay to the Landowners for the taking of the 35 Acre Property **$34,135,000**.

The City shall pay to the Landowners' attorney fees in the amount of **$2,468,751.50**.

The City shall pay to the Landowners' costs in the amount of **$274,445.16**.

The City shall reimburse the Landowners' real estate taxes paid on the 35 Acre Property in the amount of **$976,889.38**.

The City shall pay prejudgment interest in the amount of **$10,258,953.30** for interest up to November 18, 2021, and shall pay interest on the judgment for any periods after November 18, 2021, up until the time the City satisfies the $34,135,000 judgment, as provided in NRS 37.175(1), which shall be calculated and determined consistent with Findings of Fact and Conclusions of Law and Order Granting Plaintiff's Motion for Pre-Judgment Interest, notice of entry occurring on April 1, 2022.

These sums assessed against the City and in favor of the Landowners shall be paid within 30 days and as a condition to appeal as provided in the Courts Findings of Fact and Conclusions of Law and order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the City to Pay the Just Compensation, notice of entry occurring on February 10, 2022.

Interest will continue to accrue on the final judgment until satisfied.

The Landowners shall serve all parties written notice of entry of final judgment.

Dated this _____ day of April, 2022.

Dated this 18th day of April, 2022

MH

93A 140 093E 36D8
Timothy C. Williams
District Court Judge

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

*/s/ James J. Leavitt*_____
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From: James Leavitt
To: Sandy Guerra
Subject: FW: Final Judgment In Inverse Condemnation
Date: Wednesday, April 6, 2022 11:28:10 AM
Attachments: Final Judgment 4.4.22 egh.docx

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Law Offices of Kermitt L. Waters
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From: James Leavitt
Sent: Monday, April 4, 2022 1:58 PM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>
Subject: Final Judgment In Inverse Condemnation

George:

Attached is the Final Judgment in Inverse Condemnation. Please review and let me know if we have your permission to affix your signature.

We intend to submit to Judge Williams Wednesday, April 6, at 10:00 am.

Jim

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/18/2022

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