

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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Aug 21 2022 09:34 p.m.  
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Clerk of Supreme Court

No. 84640

**JOINT APPENDIX,  
VOLUME NO. 6**

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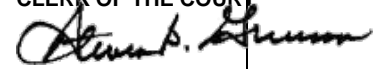
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, a Nevada limited  
liability company, DOE INDIVIDUALS I  
through X, DOE CORPORATIONS I through X,  
and DOE LIMITED LIABILITY COMPANIES I  
through X,

Plaintiffs,

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

Defendants.

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

) **SUPPLEMENTAL APPENDIX OF**  
) **EXHIBITS IN SUPPORT OF**  
) **PLAINTIFF LANDOWNERS'**  
) **OPPOSITION TO CITY'S**  
) **MOTION FOR JUDGMENT ON**  
) **THE PLEADINGS ON**  
) **DEVELOPERS'S INVERSE**  
) **CONDEMNATION CLAIMS**  
) **AND**  
) **COUNTERMOTION FOR**  
) **JUDICIAL DETERMINATION OF**  
) **LIABILITY ON THE**  
) **LANDOWNERS' INVERSE**  
) **CONDEMNATION CLAIMS**  
) **AND**  
) **COUNTERMOTION TO**  
) **SUPPLEMENT/AMEND THE**

**PLEADINGS REQUIRED**

Plaintiff Landowners hereby submit these Supplemental Appendix Exhibits in Support of Plaintiff Landowners' Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings Required.

Exhibit No.	Exhibit Description	Vol. No.	Bates No.
99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884
100	2019.01.07 Robert Summerfield Email	16	LO 00003885
101	2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891
102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
106	2020 Master Plan - Southwest Sector Zoning	16	LO 00003940
107	35 Acre in Relation to Peccole Plan	16	LO 00003941

DATED this 4<sup>th</sup> day of March, 2019

**LAW OFFICES OF KERMIT L. WATERS**

By: /s/ James J. Leavitt

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*Attorneys for Plaintiff Landowners*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and  
3 that on the 4<sup>th</sup> day of March, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct  
4 copy of the foregoing document(s): **Supplemental Exhibits in Support of Plaintiff Landowners’**  
5 **Opposition to City’s Motion for Judgment on the Pleadings on Developer’s Inverse**  
6 **Condemnation Claims and Countermotion for Judicial Determination of Liability on the**  
7 **Landowners’ Inverse Condemnation Claims and Countermotion to Supplement/Amend the**  
8 **Pleadings Required** was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be  
9 electronically served through the Eighth Judicial District Court’s electronic filing system, with the  
10 date and time of the electronic service substituted for the date and place of deposit in the mail and  
11 addressed to each of the following:

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*/s/ Evelyn Washington*  
Evelyn Washington, an employee of the  
Law Offices of Kermitt L. Waters

# **Exhibit 99**

**Deposition of Greg Steven Goorjian**

**LO 00003833-00003884**

**Deposition of:**

Greg Steven Goorjian

**Case:**

Fore Stars, Ltd., et al. v. Robert N. and Nancy Peccole  
A-17-751960-C

**Date:**

12/20/2018



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**LO 00003833**

Page 1										Page 3									
DISTRICT COURT CLARK COUNTY, NEVADA										I N D E X									
FORE STARS, LTD., a Nevada limited liability company; 180 Land Co LLC, a Nevada limited liability company; Seventy Acres LLC, a Nevada limited liability company; EHB Companies LLC, a Nevada limited liability company, Plaintiffs, vs. CASE NO. A-17-751960-C ROBERT N. and NANCY PECCOLE, individuals, and as Trustees of the ROBERT N. and NANCY PECCOLE TRUST, DOES 1 THROUGH 21, Defendants.										WITNESS PAGE GREG STEVEN GOORJIAN Examination by Mr. Jimmerson 7 Examination by Mr. Peccole 97 Examination By Mr. Jimmerson 161 Examination By Mr. Peccole 189 Examination By Mr. Jimmerson 195 Examination By Mr. Peccole 196 Examination By Mr. Jimmerson 197									
DEPOSITION OF GREG STEVEN GOORJIAN Taken on Thursday, December 20, 2018 By a Certified Court Reporter 9:24 a.m. At 415 South Sixth Street, Suite 100 Las Vegas, Nevada Reported by: Judith Payne Kelly, RMR, CCR-539 Job No. 30440																			
Page 2										Page 4									
APPEARANCES: For the Plaintiffs: JAMES J. JIMMERSON, ESQ. The Jimmerson Law Firm, P.C. 415 South Sixth Street Suite 100 Las Vegas, Nevada 89101 702.388.7171 ks@jimmersonlawfirm.com For the Defendants: ROBERT N. PECCOLE, ESQ. Peccole & Peccole, Ltd. 8689 West Charleston Boulevard Suite 109 Las Vegas, Nevada 89117 702.366.9140 bob@peccole.lvcoxmail.com Also Present: SHAHANA M. POLSELLI YOHAN LOWIE  * * * * *										E X H I B I T S PLAINTIFFS' NUMBER DESCRIPTION MARKED Exhibit 1 (Intentionally omitted.) Exhibit 2 Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge, FORE000001 through 150 30 Exhibit 3 Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge, FORE000151 through 280 32 Exhibit 4 Custom Lots at Queensridge North, Purchase Agreement, Earnest Money Receipt and Escrow Instructions, FORE000281 through 289 37 Exhibit 5 Addendum "1" to Purchase Agreement, Earnest Money Receipt and Escrow Instructions, FORE000290 through 298 39 Exhibit 6 Attachment "C", Disclosure Statement Relating to Zoning Classifications and Master Plan Designations of Adjoining Property 67 Exhibit 7 Grant, Bargain and Sale Deed (Queensridge North Parcel 19 Custom Lot), FORE000299 through 302 68 Exhibit 8 (Intentionally omitted.) Exhibit 9 (Intentionally omitted.) Exhibit 10 Nevada Title Company report dated 4-12-2000, FORE000315 through 329 69 Exhibit 11 (Intentionally omitted.) Exhibit 12 Grant, Bargain and Sale Deed, FORE000350 through 353 73									
702-476-4500										LO 00003834									
OASIS REPORTING SERVICES, LLC										Page: 1 (1 - 4)									



Page 5			Page 7		
1	E X H I B I T S		1	P R O C E E D I N G S	
2	PLAINTIFFS'		2	(Mr. Lowie was not present at the	
3	NUMBER DESCRIPTION MARKED		3	commencement of the deposition.)	
4	Exhibit 13 Map, Queensridge: Annexed Property, 75		4	(Counsel stipulated to waive	
5	FORE000354		5	the reporter requirements	
6	Exhibit 14 Public Offering Statement for 76		6	under Rule 30(b)(4).)	
7	Queensridge North (Custom Lots)		7		
8	Exhibit 15 Declaration of Annexation for 78		8	GREG STEVEN GOORJIAN,	
9	Queensridge Parcel 19 (Queensridge		9	having been first duly sworn, was	
10	North Custom Lots)		10	examined and testified as follows:	
11	Exhibit 16 Complaint, Case No. A287495, Triple 26		11	EXAMINATION	
12	Five v. William Peccole, FORE001774		12	BY MR. JIMMERSON:	
13	through 1868		13	Q. Good morning, Mr. Goorjian. How are you,	
14	Exhibit 17 Complaint, Case No. A546847, BGC 85		14	sir?	
15	Holdings LLC v. Fore Stars, Ltd.,		15	A. Just fine, thank you.	
16	FORE001979 through 1990		16	Q. My name is Jim Jimmerson. I have the	
17	Exhibit 18 Peccole Ranch Certificate of 21		17	privilege of representing Fore Stars, Ltd., in this	
18	Amendment of CC&Rs, FORE001591		18	lawsuit that exists against Mr. and Mrs. Robert	
19	through 1773		19	Peccole.	
20	Exhibit 19 Custom Home Estate Design Guidelines 79		20	Present is myself, of course; our paralegal,	
21	Exhibit 20 Front and back copy of Queensridge 81		21	Shahana Polselli; the court reporter; and Mr. Peccole	
22	Custom Home Estates binder given to		22	is also present.	
23	homeowners		23	MR. JIMMERSON: Bob, would you introduce	
24	Exhibit 21 Restrictive Covenant dated 88		24	yourself?	
25	2-29-2008, FORE000489 and 490		25	Bob, do you want to introduce yourself?	
	Exhibit 22 Settlement Agreement between BGC 89				
	Holdings LLC and Fore Stars, Ltd.,				
	FORE000733 and 734				
	Exhibit 23 Articles of Organization of Fore 91				
	Stars, Ltd., A Limited Liability				
	Company, FORE000473 through 478				
	Exhibit 24 Bill No. Z-2001-1, Ordinance No. 92				
	5353, FORE000102 through 108				

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<p>1 because if a judge were to -- or a jury -- were to look  2 at your question and answer, they're going to presume  3 you understood my question and then you chose to give  4 the answer that you gave. Okay?</p> <p>5 A. Yes.</p> <p>6 Q. So because that would be the natural  7 assumption or presumption that a judge or jury would  8 have, do make sure that you understand my questions or  9 opposing counsel's questions before you answer; and if  10 you don't or you're not certain, just ask me to  11 rephrase it and I'm happy to do that. This is not a  12 contest of iron will.</p> <p>13 A. Yes.</p> <p>14 Q. It's just a matter of trying to learn about  15 the facts and circumstances that you might bring to  16 this testimony in this case, and I'll explain to you  17 why there are issues here that you would have some  18 answers to. Okay? At least I think they're relevant.</p> <p>19 A. Okay.</p> <p>20 Q. And -- as we go along. And so make sure you  21 understand the question.</p> <p>22 A. Yes.</p> <p>23 Q. Also, you're doing great. Just let me finish  24 my question or opposing counsel finish his question and  25 then answer. Let's don't speak over each other,</p>	<p>1 financial, are not at issue in this case; and this is a  2 dispute between Fore Stars and the other company -- the  3 other plaintiffs, and Mr. Peccole and his wife. Do you  4 understand that?</p> <p>5 A. The other plaintiffs, can you be clear on who  6 they are?</p> <p>7 Q. The land companies of my clients. So  8 Fore Stars, Ltd., 180 Land Co and Seventy Acres LLC.</p> <p>9 A. Okay. And they're all under the --</p> <p>10 Q. They own different aspects -- different  11 property of the overall, formerly known as, Badlands  12 Golf Course.</p> <p>13 A. Got it. Understood.</p> <p>14 Q. The 250 acres are owned by those three  15 companies.</p> <p>16 A. Yes.</p> <p>17 Q. Originally owned by Fore Stars, and then  18 Fore Stars transferred property to the two other  19 properties, kind of matching their names. Transferred  20 about 180 acres to 180 Land Co and about 70 acres to  21 Seventy Acres LLC, retaining to itself the PD-zoned  22 land of the club and the property adjoining the  23 Queensridge Towers, the high towers. That area.  24 Right?</p> <p>25 A. The members in those LLCs, are they</p>
Page 10	Page 12
<p>1 because the court reporter cannot take down -- things  2 down in stereo. Okay?</p> <p>3 A. Yes.</p> <p>4 Q. So just wait, one at a time. This is --  5 again, this is -- I'm trying to be as easy as I can for  6 you. I think I have about an hour, hour and a half's  7 worth of questions. You can take a break whenever you  8 want. Because you don't have a lawyer representing  9 you, you're your own lawyer, if you will. So if you  10 feel uncomfortable, you want to use the restroom, you  11 want to stretch your legs, just let us know and we'll  12 be happy to accommodate you. Okay?</p> <p>13 A. Thank you.</p> <p>14 Q. All right. And if you have any questions  15 along the way, because you don't have a lawyer  16 representing you today, ask the questions and we're  17 happy to answer them the best that we can. We're  18 officers of the court. We're obliged to be truthful  19 and responsive to your needs and to your questions. So  20 I certainly will do, for my part -- try to treat you  21 with respect and also candor in terms of hopefully  22 answering any questions that you might have along the  23 way.</p> <p>24 You're not a party to this litigation, so  25 your interests, you know, both the personal as well as</p>	<p>1 different?</p> <p>2 Q. They are. I believe individual trusts of the  3 Dehart family and the Lowie family.</p> <p>4 MR. PECCOLE: I'd like just for the record to  5 read into the record who the plaintiffs are. It's  6 Fore Stars, Ltd. --</p> <p>7 MR. JIMMERSON: Absolutely.</p> <p>8 MR. PECCOLE: -- 180 Land Co, LLC, Seventy  9 Acres LLC, and EHB Companies LLC. I believe you know  10 EHB.</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q. (By Mr. Jimmerson) EHB is the manager, the  13 limited liability company manager of the LLCs, or the  14 land owners. Okay. All right.</p> <p>15 And then -- and then the owners of these  16 companies indirectly are the trusts, family trusts or  17 other estate vehicles for these individual families,  18 two families, the Dehart family and the Lowie family.  19 Okay?</p> <p>20 All right. And if there's anything that  21 comes along, just ask, and we're happy to begin.</p> <p>22 And again, I have a series of questions that  23 I want to go through with you and then have you help us  24 respond.</p> <p>25 My understanding is that you have been, both</p>

Page 13	Page 15
<p>1 through a marriage and through employment, connected to</p> <p>2 the Peccole family as they owned property in what I</p> <p>3 call the general area of what -- Rampart or Fort Apache</p> <p>4 and West Charleston. Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So in your own words, would you tell</p> <p>7 us what your historical relationship has been to the</p> <p>8 Peccole family and if you had a job title or duties and</p> <p>9 responsibilities, like, for example, playing a role in</p> <p>10 the sale of estate lots, which I understand you were</p> <p>11 involved with. Just kind of give us an outline,</p> <p>12 overview of that.</p> <p>13 A. Was married to the youngest daughter, and</p> <p>14 entered the family in 1983, '82, '83.</p> <p>15 Q. The daughter's name was what, please?</p> <p>16 A. Leann.</p> <p>17 Q. Okay. Thank you.</p> <p>18 A. Worked directly with the Peccole family from</p> <p>19 about the summer of '83 to -- it must have been right</p> <p>20 around '8 -- '90, '89, '90, planning the property,</p> <p>21 assisting in planning the property, assisting in zoning</p> <p>22 the property. Assisted in some of the start-up</p> <p>23 development as a marketing and sales director, would</p> <p>24 have been my -- my title once we started developing,</p> <p>25 which the first was the corner of Sahara and Durango.</p>	<p>1 Q. All right. And at some point there had been</p> <p>2 a joint venture between Peccole and Triple Five. Is</p> <p>3 that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And in a general term, what property</p> <p>6 did they have during the period of joint ventureship</p> <p>7 before they had litigation and separated their -- their</p> <p>8 own properties? What property did they have a general</p> <p>9 joint ventureship with?</p> <p>10 A. They had -- my understanding would be that</p> <p>11 their partnership was everything but Canyon Gate, what</p> <p>12 was Canyon Gate at the time. So that would have been</p> <p>13 everything that was west of Hualapai -- I mean west of</p> <p>14 Rampart and Fort Apache, same street, and everything</p> <p>15 north from -- north Charleston to south Alta.</p> <p>16 Q. Got it. Okay. Now, following up your</p> <p>17 narrative and your answer, I have some questions. One</p> <p>18 of the tasks that you had, you've indicated, was</p> <p>19 helping the family develop the property; and part of</p> <p>20 that initial work would be obtaining zoning. Is that</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. And there are three classifications of</p> <p>24 zoning, the largest one being R-PD7, but there's some</p> <p>25 other, commercial and others, multifamily.</p>
Page 14	Page 16
<p>1 And then the family divorced and separated in</p> <p>2 late '89 or '89. Left and went to work for another</p> <p>3 company, not in the development business. Came back to</p> <p>4 the Peccole family in -- gosh, I want to say '94, and</p> <p>5 got very much involved in what was then going to be</p> <p>6 Queensridge and then became Queensridge North as</p> <p>7 well -- so the two, Queensridge and Queensridge North</p> <p>8 as well -- as VP of marketing of sales and/or marketing</p> <p>9 director, whatever they felt like calling me that day.</p> <p>10 Q. Okay. And who were the owners or who were</p> <p>11 your employers within the meaning of that last answer?</p> <p>12 A. My employers would have been Peccole-Nevada</p> <p>13 Corporation and the trusts, which was the -- I think it</p> <p>14 was the 1986 Trust and there was a limited liability</p> <p>15 company as well that was involved in that.</p> <p>16 Q. All right.</p> <p>17 A. And Peccole-Nevada Corporation was the</p> <p>18 manager, I believe; and that's who I directly worked</p> <p>19 for.</p> <p>20 Q. There was one entity that I've seen some</p> <p>21 papers and names. I'll refer to it as Legacy. Are you</p> <p>22 familiar with that?</p> <p>23 A. I'd have to be refreshed.</p> <p>24 Q. Okay. Fair enough.</p> <p>25 A. But I am familiar with it.</p>	<p>1 Was that part of the role that you had, was</p> <p>2 working and obtaining the R-PD7 zoning?</p> <p>3 A. It wasn't my direct responsibility. We had</p> <p>4 engineers and planners. They represented us when it</p> <p>5 came time to get zoning. We, as a family, were all</p> <p>6 involved in planning and engineering and reviewing and</p> <p>7 looking at, you know, how it was going to be further</p> <p>8 developed.</p> <p>9 At that point in time, now, was much more</p> <p>10 involved in zoning issues prior to 1990. Okay?</p> <p>11 Q. The zoning that was placed on that</p> <p>12 property -- I call it the golf course -- was in 1990.</p> <p>13 It was the R-PD7, along with the other two types of</p> <p>14 zoning. Do you recall that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. And the -- I thought one of the more</p> <p>17 unique things about this property was it was zoned</p> <p>18 R-PD7 as a basic zoning. Even though in later years it</p> <p>19 was going to be used as a golf course, it still</p> <p>20 retained its zoning classification from 1990 right</p> <p>21 through the present date.</p> <p>22 MR. PECCOLE: I would like to object on the</p> <p>23 form of the question.</p> <p>24 Q. (By Mr. Jimmerson) And he -- just so you</p> <p>25 understand it, Mr. Peccole can object to any question I</p>

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<p>1 have. Then after he does so, you're obliged to still 2 respond, okay, if you could. 3 A. Okay. 4 Q. But he can object to maybe the way I ask a 5 question or the substance, whatever. So appreciate 6 that. Okay. 7 So I'll go back to the question. Was -- what 8 was the purpose for the companies zoning the property 9 R-PD7 or the other two zoning classifications, 10 commercial and multifamily? 11 A. That's a -- the purpose -- okay. Now 12 we're -- I'm semi-speculating and also have some 13 background to it. I would say that it would have 14 been -- it would have been there as a fallback 15 position, call it. 16 Q. And you mean in case they didn't always 17 maintain the property as a golf course, they had the 18 ability to develop it? 19 A. Mr. Peccole had tremendous foresight, and 20 always, believe it or not, planned for the worst. 21 Q. And so in that regard, he planned for the 22 fact that the property may not always be a golf course 23 and it could be developed? Is that right? 24 A. That there might be circumstances that it 25 would no longer be able to be a golf course, whether it</p>	<p>1 before we would have had any golf course deal. 2 We master-planned that property and -- boy, 3 back in the '80s, we master-planned that whole 4 property; and Bill had master-planned or had a plan on 5 it prior to that plan. Okay? 6 So there was always -- that was always 7 residential land. 8 Q. Got it. 9 MR. PECCOLE: I would like to object to the 10 question as being speculative. 11 MR. JIMMERSON: All right. Thank you. 12 Q. (By Mr. Jimmerson) Now, there's two 13 different projects, as this turns out. The way we look 14 at it now, we have the benefit of hindsight. There is 15 the Peccole Ranch plan to the south of Charleston 16 Avenue, West Charleston Avenue. Right? 17 A. Correct. 18 Q. And then there is, as we see, the Queensridge 19 master plan homes that are on the -- I call it the 20 north of West Charleston. Is that true? 21 A. Correct. 22 Q. All right. And there were two different 23 plans and two different projects? Is that right? 24 A. Correct. 25 Q. And separated by years of time?</p>
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<p>1 was financially, water. He always brought up issues 2 like war. He always was very cautious, conservative 3 person. 4 Q. And that's why he laid down the zoning of 5 R-PD7 and the others as the first level before he got 6 into the use of the golf course? 7 MR. PECCOLE: I object to the form of the 8 question. 9 Q. (By Mr. Jimmerson) Is that right? 10 A. I couldn't speak to why he did -- directly 11 why he did it. It was there as a fallback. Because of 12 the timing of everything, I can't recall whether the 13 zoning came before we even had a golf course deal. 14 Okay? So I do recall that there was -- you know, 15 wasn't always going to be a golf course automatically, 16 because you had to find somebody that would do it, 17 somebody who would develop it and be responsible for 18 it, something that the family never really wanted to 19 do. 20 Q. And the zoning predated the finding of the 21 golf course operator? 22 A. See, now this, I can't -- that's -- the two 23 happening, I don't -- can't remember which happened 24 first; but I would, you know, to the best of my 25 knowledge, think that we would have had the zoning</p>	<p>1 A. Correct. 2 Q. With the Peccole plan south of Charleston 3 being the first to be developed in the '80s and early 4 '90s; is that right? 5 A. Yes. 6 Q. Okay. And then the Queensridge master plan 7 was begun in roughly the middle of 1990s, going forward 8 after that? Is that right? 9 A. Yes. 10 Q. Okay. Now, your roles, you wore many hats 11 in -- I guess as needed, as family would need you to do 12 during those different years; is that right? 13 A. Yes. 14 Q. Okay. And did you have any involvement in 15 the creation through Karen Dennison and Lance Earl of 16 the CC&amp;Rs for each of the projects? In other words, 17 for the Queensridge -- I'm sorry -- for the Peccole 18 plan to the south of West Charleston and later the 19 Queensridge CC&amp;Rs to the north of West Charleston? 20 A. Less involvement. Queensridge. Less on the 21 Peccole Ranch side. 22 Q. All right. 23 MR. JIMMERSON: Can I see the Queensridge -- 24 I'm sorry, the Peccole Ranch. I want to do it 25 chronologically.</p>

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<p>1 THE WITNESS: I can't even remember if I was</p> <p>2 involved, to be honest with you, on the Peccole Ranch</p> <p>3 side when we were in partnership with Triple Five.</p> <p>4 Prior to Triple Five, yes. After Triple Five, not as</p> <p>5 much; and then with Queensridge, very much.</p> <p>6 Q. (By Mr. Jimmerson) And to help you, because</p> <p>7 it has been some time, I'm trying to do things in</p> <p>8 chronological order, at least as I understand the</p> <p>9 chronology.</p> <p>10 A. Yes.</p> <p>11 Q. If I get it wrong, you'll let me know. If I</p> <p>12 have something out of sequence and you remember it's</p> <p>13 out of sequence, please tell us, tell us both.</p> <p>14 A. Yeah.</p> <p>15 MR. JIMMERSON: We'll mark this first exhibit</p> <p>16 as -- what did you mark this one?</p> <p>17 MS. POLSELLI: 18.</p> <p>18 MR. JIMMERSON: Number 8?</p> <p>19 MS. POLSELLI: 18.</p> <p>20 MR. JIMMERSON: 18? All right. Thank you.</p> <p>21 (Exhibit 18 marked.)</p> <p>22 Q. (By Mr. Jimmerson) We've marked as</p> <p>23 Exhibit 18 -- we have a list of exhibits. I don't know</p> <p>24 that we'll get to all of them, so the fact that we</p> <p>25 start with 18, it doesn't mean anything. It's just the</p>	<p>1 Q. And assuming that that packet is those CC&amp;Rs,</p> <p>2 the purposes for the developer was to have rules and</p> <p>3 restrictions that would govern that property; is that</p> <p>4 right?</p> <p>5 A. Yes. Yes, sir.</p> <p>6 Q. And it would reserve rights to the developer</p> <p>7 and would also tell the homeowners who eventually</p> <p>8 bought in that area what their rights and</p> <p>9 responsibilities were?</p> <p>10 MR. PECCOLE: I object on the grounds as</p> <p>11 leading the witness and it's form of the question.</p> <p>12 Q. (By Mr. Jimmerson) You may answer the</p> <p>13 question, sir.</p> <p>14 A. Yes. I mean, they're covenants, codes and</p> <p>15 restrictions. They're part of every -- most</p> <p>16 master-planned communities, if not all master-planned</p> <p>17 communities, for the purpose of putting into place</p> <p>18 certain codes and restrictions that make it -- some</p> <p>19 might consider it a developer's preserving value.</p> <p>20 Q. And these on the first -- on the face of</p> <p>21 them, is -- appear to be prepared by the law firm of</p> <p>22 McDonald, Carano, Wilson, McCune, Bergin, Frankovich &amp;</p> <p>23 Hicks.</p> <p>24 Are you generally familiar with that law firm</p> <p>25 in that time period?</p>
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<p>1 way we've marked it before. I'm not certain that we'll</p> <p>2 go 1 through 18.</p> <p>3 A. Okay.</p> <p>4 Q. So don't get frightened about that, but</p> <p>5 that's how I've marked it. And these are also having</p> <p>6 to do with other exhibits in other depositions, so</p> <p>7 trying to mark that the same documents.</p> <p>8 So I'm showing you what's been marked as</p> <p>9 Exhibit 18. This document by its face is the</p> <p>10 Peccole --</p> <p>11 MR. PECCOLE: I'd like to pose an objection</p> <p>12 to this document as being totally irrelevant.</p> <p>13 Q. (By Mr. Jimmerson) -- to the Peccole Ranch</p> <p>14 master declaration. And I believe this applies to the</p> <p>15 property largely to the south of West Charleston.</p> <p>16 A. Uh-huh.</p> <p>17 Q. And have you seen that document before --</p> <p>18 A. I don't believe I have.</p> <p>19 Q. -- today? Okay. Now, you are familiar, of</p> <p>20 course, that the Peccole Ranch property to the south of</p> <p>21 West Charleston was governed by CC&amp;Rs --</p> <p>22 A. Yes.</p> <p>23 Q. -- covenants, conditions and restrictions.</p> <p>24 Is that right?</p> <p>25 A. Yes.</p>	<p>1 A. Generally. Just basically Sean McGowan.</p> <p>2 Q. Got it. Okay.</p> <p>3 A. I didn't hear. Was that part of the</p> <p>4 McDonald, Carano?</p> <p>5 Q. Yes, it was.</p> <p>6 A. Yes, I do recall that.</p> <p>7 Q. And that is the firm, McDonald, Carano.</p> <p>8 A. Yeah.</p> <p>9 Q. And the Peccole Ranch plan to the south of</p> <p>10 West Charleston is a different project than the later</p> <p>11 developed Queensridge master plan; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Both in terms of physical geography as well</p> <p>14 as in time and years?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. I believe they were separated by a lawsuit as</p> <p>18 well.</p> <p>19 Q. Okay. Now, tell us about that lawsuit, what</p> <p>20 you generally recall about it.</p> <p>21 A. There was a partnership that we were involved</p> <p>22 in prior -- it happened prior to my divorce, so it</p> <p>23 would have been in the late '80s -- that we got into</p> <p>24 with Triple Five; and then I left and then that part --</p> <p>25 that partnership had a problem, had issues between the</p>

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<p>1 two partners and ended up in a settlement --</p> <p>2 Q. Okay.</p> <p>3 A. -- to avoid a lawsuit.</p> <p>4 Q. All right.</p> <p>5 A. And the settlement was, I believe -- gave</p> <p>6 Triple Five all the Peccole land, which was the --</p> <p>7 under Peccole -- what was then Peccole Ranch, which was</p> <p>8 Hualapai to -- or not all of Hualapai, actually. We</p> <p>9 retained part of Hualapai. But it was most -- it was</p> <p>10 what at the time was being developed as Peccole Ranch</p> <p>11 south of Charleston.</p> <p>12 Q. Got it.</p> <p>13 A. And then they retained a commercial piece</p> <p>14 that we had that was on the northeast corner of Rampart</p> <p>15 and Charleston.</p> <p>16 Q. Which is now known as Boca Park?</p> <p>17 A. Is now known as Boca Park.</p> <p>18 Q. Got it. Okay. So as part of the resolution</p> <p>19 or settlement in the dispute between Peccole and</p> <p>20 Triple Five, just to summarize, the property south of</p> <p>21 West Charleston became under the ownership of</p> <p>22 Triple Five?</p> <p>23 A. And I have that wrong. I have that wrong.</p> <p>24 Q. Okay.</p> <p>25 A. It was just everything south. Triple Five</p>	<p>1 A. Right.</p> <p>2 Q. Right. So I just want to show you the</p> <p>3 exhibit, number 16, just to help you with the timing.</p> <p>4 MR. PECCOLE: What is this exhibit?</p> <p>5 MR. JIMMERSON: This is 16, number 16.</p> <p>6 MR. PECCOLE: 16.</p> <p>7 MR. JIMMERSON: One six, yes, sir.</p> <p>8 Q. (By Mr. Jimmerson) This is the lawsuit that</p> <p>9 Triple Five Development Group Central --</p> <p>10 MR. PECCOLE: I'd like to pose an objection</p> <p>11 as being totally irrelevant to our case. Our case</p> <p>12 deals with Queensridge. It deals with -- nothing with</p> <p>13 regard to Triple Five.</p> <p>14 MR. JIMMERSON: Your objection has been</p> <p>15 noted. Thank you, sir.</p> <p>16 Q. (By Mr. Jimmerson) And versus William</p> <p>17 Peccole, individually and trustee of the Peccole</p> <p>18 1982 Trust and THE PECCOLE 1982 TRUST. Do you see</p> <p>19 that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. And just again for purposes of the date, it's</p> <p>22 August of 2000 -- of 1990. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And as you've indicated, this</p> <p>25 litigation resulted in a settlement and essentially an</p>
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<p>1 ended up with that property -- they backed into that</p> <p>2 property a different way years later.</p> <p>3 Q. The Boca Park?</p> <p>4 A. The Boca Park. They did not get it in the</p> <p>5 settlement.</p> <p>6 Q. Got it. Okay. And Peccole retained the</p> <p>7 property --</p> <p>8 A. Everything north.</p> <p>9 Q. -- north of West Charleston?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. So let me show you what we'll mark as</p> <p>12 Exhibit 16.</p> <p>13 (Exhibit 16 marked.)</p> <p>14 Q. (By Mr. Jimmerson) Again, this is just to</p> <p>15 help define the chronology.</p> <p>16 A. Yeah. And again, to add, it wasn't</p> <p>17 everything, because there were properties that were</p> <p>18 south -- I mean, excuse me, east of --</p> <p>19 Q. Rampart?</p> <p>20 A. -- Fort Apache and south of Charleston that</p> <p>21 the Peccoles did retain.</p> <p>22 Q. Got it.</p> <p>23 A. They were commercial pieces. And -- but that</p> <p>24 goes back to was it east of -- it was east of Rampart.</p> <p>25 Q. Got it. Or Fort Apache?</p>	<p>1 unwinding of the partnership and an allocation of</p> <p>2 properties, or some property under Triple Five's</p> <p>3 control, some property under the Peccole family</p> <p>4 control; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Along the lines generally, geographically, as</p> <p>7 you just now described?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Very good. All right.</p> <p>10 And do you recall when that settlement</p> <p>11 occurred? In other words, the lawsuit begins in August</p> <p>12 of 1990. Is the settlement in '92 or '93 time period,</p> <p>13 or -- if you remember?</p> <p>14 A. I can't recall.</p> <p>15 Q. Okay.</p> <p>16 A. I do know that it was -- had to have been</p> <p>17 settled before I went back to work there.</p> <p>18 Q. Okay.</p> <p>19 A. So --</p> <p>20 Q. And you came back to work in 1994, according</p> <p>21 to your best recollection?</p> <p>22 A. Yes, correct.</p> <p>23 Q. What you earlier said. Okay.</p> <p>24 Now, do you know the defendant Robert</p> <p>25 Peccole, who is here in the deposition room and who is</p>

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<p>1 a named defendant in the litigation?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And how or why do you know Robert</p> <p>4 Peccole?</p> <p>5 A. Family and through -- through -- through</p> <p>6 marriage and family and Nevadan.</p> <p>7 Q. Okay. So when -- if you remember generally,</p> <p>8 when was the first occasion when you met Mr. Peccole?</p> <p>9 A. It would have been around '83.</p> <p>10 Q. And you've known him from then to the present</p> <p>11 date?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Now, how -- what has your relationship</p> <p>14 been with him? I understand family, but are you</p> <p>15 someone who will have Christmas dinner with him next</p> <p>16 week? are you somebody who sees him once or twice a</p> <p>17 year? How would you describe the nature of the</p> <p>18 relationship?</p> <p>19 A. Cordial and treated like family, but we don't</p> <p>20 spend time. We don't socialize together, but very</p> <p>21 warm.</p> <p>22 Q. Okay. And have you had any conversations</p> <p>23 with him with regard to the litigation that you are</p> <p>24 asked to come to the deposition for today of Fore Stars</p> <p>25 and the other companies versus Robert Peccole?</p>	<p>1 MR. JIMMERSON: Two.</p> <p>2 Q. (By Mr. Jimmerson) All right. I'm showing</p> <p>3 you what's No. 2. This document is called Master</p> <p>4 Declaration of Covenants, Conditions, Restrictions and</p> <p>5 Easements for Queensridge. Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. And you can look at the document. It</p> <p>8 looks to me in the next page that it is recorded in</p> <p>9 1996.</p> <p>10 A. Yes.</p> <p>11 Q. Is that generally consistent with your</p> <p>12 recollection, Mr. Goorjian?</p> <p>13 A. Yes, it is.</p> <p>14 Q. All right. Now, we've talked about the</p> <p>15 Peccole master plan development to the south of West</p> <p>16 Charleston in the 1980s. We've talked about the</p> <p>17 litigation. Now we've talked about the Queensridge.</p> <p>18 So tell us what is Queensridge and why it's different</p> <p>19 from the Peccole Ranch.</p> <p>20 A. Okay. Well, it was intended to be completely</p> <p>21 different. It was driven by the Peccole family</p> <p>22 completely, without a partner, so they could do more</p> <p>23 things that they really wanted to do.</p> <p>24 So we had consultants involved. Came up with</p> <p>25 the name, all the way from naming the project to -- to</p>
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<p>1 A. No.</p> <p>2 Q. Okay. Now, if we could take the chronology</p> <p>3 now forward a little bit. We know that there was the</p> <p>4 development of Peccole Ranch to the south of West</p> <p>5 Charleston in the 1980s. We know of the litigation in</p> <p>6 1990 that gets resolved some time after 1990 that we've</p> <p>7 just discussed between Triple Five and Peccole. Is</p> <p>8 that right?</p> <p>9 A. Correct.</p> <p>10 Q. All right. And then something happens after</p> <p>11 that, and that is the development of the Queensridge</p> <p>12 master development. Is that right?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And I have suggested in my earlier</p> <p>15 questioning that that was in the mid-1990s, like 1995</p> <p>16 time period, 1996. Do you have a general recollection</p> <p>17 of that?</p> <p>18 A. Right around that time, a little earlier, I</p> <p>19 believe, because we were up there planning off of</p> <p>20 Charleston.</p> <p>21 Q. Okay. And I'm going to confirm your</p> <p>22 excellent memory by showing you some documents now. So</p> <p>23 if can I show you Exhibit No. 2, please.</p> <p>24 (Exhibit 2 marked.)</p> <p>25 MR. PECCOLE: What number?</p>	<p>1 moving forward in the project. And the family wanted</p> <p>2 to leave a legacy and wanted to do something different,</p> <p>3 so it needed to be and look and feel completely</p> <p>4 different from everything that's in Southern Nevada.</p> <p>5 It was meant to be kept separate -- separated.</p> <p>6 So by -- the ways to do that was basically</p> <p>7 the guidelines and the -- the building guidelines for</p> <p>8 the developers that came in there. So we wanted to</p> <p>9 see -- we had more restrictions in regards to wanting</p> <p>10 to see stone on the front of the homes, didn't want to</p> <p>11 see a lot of clay, barrel-tiled roofs. Wanted to have</p> <p>12 more of a European feel, with pine trees instead of</p> <p>13 palm trees and -- just have the whole development feel</p> <p>14 a little bit different than -- than what we see in all</p> <p>15 of the southwest, which every -- everywhere looks like</p> <p>16 a Taco Bell stand. So we tried to avoid that through</p> <p>17 planning and zoning.</p> <p>18 Q. All right. And there was an amendment, I'm</p> <p>19 advised in the documents, Exhibit 3 to these</p> <p>20 declarations, dated in 2000. I'd like to show you</p> <p>21 that.</p> <p>22 (Exhibit 3 marked.)</p> <p>23 Q. (By Mr. Jimmerson) And are you familiar with</p> <p>24 this document? It's called Amended and Restated Master</p> <p>25 Declaration of Covenants, Conditions, Restrictions and</p>

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<p>1 Easements for Queensridge.</p> <p>2 A. I am. Yeah, I am.</p> <p>3 Q. Okay. Who is Larry Miller? He's shown on</p> <p>4 the front page. Larry Miller, Peccole-Nevada</p> <p>5 Corporation.</p> <p>6 A. Larry Miller is -- we'll start with him as my</p> <p>7 ex-brother-in-law, and then he would have been -- I</p> <p>8 don't know what his name was in title, but he act -- he</p> <p>9 was our guy. He ran -- he was the face of</p> <p>10 Peccole-Nevada.</p> <p>11 Q. Okay.</p> <p>12 A. I believe he managed Peccole-Nevada</p> <p>13 Corporation as well.</p> <p>14 Q. All right. Now, was the declaration, master</p> <p>15 declaration, and later the amended and restated master</p> <p>16 declaration -- were they recorded with the Clark County</p> <p>17 Recorder's office?</p> <p>18 A. To the best of my knowledge.</p> <p>19 Q. And again, they contained the, I call them,</p> <p>20 CC&amp;Rs, covenants, conditions and restrictions --</p> <p>21 A. Yes.</p> <p>22 Q. -- for the development of master -- of the</p> <p>23 Queensridge master plan?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Now, the Queensridge master plan is a smaller</p>	<p>1 a part of -- not a part of -- I can't remember if it</p> <p>2 all fell under that.</p> <p>3 Q. Well, the golf course was not a part of --</p> <p>4 A. That's what I mean.</p> <p>5 Q. -- Queensridge, right?</p> <p>6 A. Correct.</p> <p>7 MR. PECCOLE: I'm going to object to the form</p> <p>8 of the questioning that's going back and forth.</p> <p>9 Q. (By Mr. Jimmerson) Okay.</p> <p>10 A. I'm just trying to clarify that I don't think</p> <p>11 that that -- these covered, blanket, everything.</p> <p>12 Q. Correct.</p> <p>13 A. Okay?</p> <p>14 Q. They covered the --</p> <p>15 A. There were properties that were not a part</p> <p>16 of.</p> <p>17 Q. And indeed, in order to cover it under the</p> <p>18 CC&amp;Rs, they had to be annexed into the master plan;</p> <p>19 isn't that right?</p> <p>20 A. Yes.</p> <p>21 MR. PECCOLE: I object to that question as</p> <p>22 including facts that are not proven or before</p> <p>23 Mr. Goorjian.</p> <p>24 MR. JIMMERSON: Okay. Thank you, sir.</p> <p>25 Q. (By Mr. Jimmerson) And in fact, reading the</p>
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<p>1 area than the Peccole Ranch master plan and it's on the</p> <p>2 north side of West Charleston; is that right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 A. Meant to be separate.</p> <p>6 Q. Got it. And it also had the zoning of R-PD7,</p> <p>7 if you recall, in part? I mean, it had other zonings</p> <p>8 too.</p> <p>9 A. I need to be refreshed, but I assume again it</p> <p>10 fell under the same umbrella of all the properties.</p> <p>11 Q. And it allowed residential development?</p> <p>12 A. Correct.</p> <p>13 Q. And as we look at the property today as we</p> <p>14 drive by, we would see homes and multifamily homes and</p> <p>15 townhouses and different types of homes in that area;</p> <p>16 is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And they were governed by these</p> <p>19 CC&amp;Rs --</p> <p>20 A. Yes.</p> <p>21 Q. -- that we've talked about, Exhibits 2 and 3?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Now --</p> <p>24 A. There were -- well -- well, I don't know. I</p> <p>25 believe there were parts of the property that were not</p>	<p>1 documents would confirm that it started out with a</p> <p>2 small piece of property; and then as they were annexing</p> <p>3 property, it became part of the Queensridge master</p> <p>4 plan?</p> <p>5 A. Yes.</p> <p>6 Q. And the golf course was never annexed into</p> <p>7 the Queensridge master plan?</p> <p>8 A. Yes, correct.</p> <p>9 Q. Okay. And I will just tell you that the</p> <p>10 district court judges and Supreme Court so found that</p> <p>11 to be the case.</p> <p>12 MR. PECCOLE: I object to the form of the</p> <p>13 question --</p> <p>14 MR. JIMMERSON: That's okay.</p> <p>15 MR. PECCOLE: -- and also the answer.</p> <p>16 MR. JIMMERSON: All right.</p> <p>17 Q. (By Mr. Jimmerson) Now, as the property that</p> <p>18 is within the Queensridge master plan which was annexed</p> <p>19 over the years, between 1996 and the years thereafter,</p> <p>20 did -- you had a role with the development of those</p> <p>21 lots --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- and the sale of those lots; is that right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. And let me show you -- there were a</p>



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<p>1 series of documents that the Peccoles put together that 2 were utilized for the development of the property and 3 for the sale of the property. 4 A. Yes. 5 Q. Like purchase agreements and things like 6 that. So I'm going to show those to you now, okay? 7 And just to refresh your recollection. 8 We'll start with Exhibit 4. 9 (Exhibit 4 marked.) 10 Q. (By Mr. Jimmerson) Exhibit 4 is called 11 Custom Lots at Queensridge North, Purchase Agreement 12 and Earnest Money Receipt and Escrow Instructions. 13 A. Yes. 14 Q. Are you familiar with that document? 15 A. Yes, I am. 16 Q. Okay. And what is that -- other than the 17 title, what was the purpose for the use of this Custom 18 Lot at Queensridge North purchase agreement? 19 A. To convey the property to the client. 20 Q. All right. 21 A. Potential buyer. 22 Q. Now, this one in particular because it bears 23 some relationship to Mr. Peccole. Do you see that? 24 A. Yes. 25 Q. All right. And Robert N. and Nancy Peccole.</p>	<p>1 Q. And Peek is Steve Peek? 2 A. Yes. 3 Q. Karen Dennison is Karen Dennison? 4 A. Yes. 5 Q. And as the firm has evolved, it's now known 6 as Holland &amp; Hart, I think. I think. 7 A. That's what I understand. 8 Q. Yeah. 9 A. Where Karen -- 10 Q. Not the same people, you know -- 11 A. Right. 12 Q. Different lawyers, but I think that's where 13 Ms. Dennison is still at, you know. I think so. 14 All right. And we can look just by the basic 15 document. The purchase price for this lot was 16 \$243,000, and the proposed closing date was May 2 of 17 2000. Do you see that? 18 A. Yes. 19 Q. Okay. All right. Now, let me just kind of 20 go through the rest of the document. 21 That was Exhibit No. 4. So Exhibit No. 5 is 22 called Addendum "I" to the Peccole purchase agreement. 23 (Exhibit 5 marked.) 24 Q. (By Mr. Jimmerson) And this document is 25 called Addendum "I" to purchase agreement.</p>
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<p>1 This is the contract that they signed to buy their lot 2 in the Queensridge master plan area; is that right? 3 A. Yes. 4 Q. Okay. And I presume that this would be a 5 standard agreement that all homeowners would generally 6 use if they're going to buy an estate lot in this area. 7 Is that right? 8 A. Yes. 9 Q. Okay. And these documents were prepared by 10 law firms that your family hired to do expressly that? 11 Is that the idea? 12 A. Hale Lane Peek Dennison, I believe. 13 Q. And Karen Dennison in particular? 14 A. Yes. 15 MR. PECCOLE: I'd like to interrupt. I 16 didn't hear your answer. 17 THE WITNESS: Hale Lane Peek Dennison were 18 the law firm that put together all of our regime of 19 documents. 20 MR. PECCOLE: Could you spell that, the name? 21 THE WITNESS: H-a-l-e. 22 MR. PECCOLE: Hale? 23 Q. (By Mr. Jimmerson) And Lane is Steve Lane, 24 L-a-n-e? 25 A. Yeah.</p>	<p>1 A. Yup. 2 Q. And what was the purpose of this document? 3 A. This was a disclosure document, I believe. 4 Q. Okay. 5 A. Let's see. 6 MR. PECCOLE: I object. The document speaks 7 for itself. 8 Q. (By Mr. Jimmerson) I do think Mr. Peccole is 9 right. It does speak for itself. 10 A. Yes. 11 Q. And there are -- 12 A. It's stating that he received all these 13 documents. 14 Q. Okay. And those documents would show what 15 the zoning was, what the use was, the different 16 disclosures; is that right? 17 A. Yes. 18 Q. And in some regards, I think the purpose of 19 these documents would be to protect you or the family 20 in terms of making sure that the buyers know what their 21 rights, responsibilities were? Is that a fair 22 statement? 23 MR. PECCOLE: I object to the form of this 24 question. 25 A. Yes. Not me, but the family and, you know,</p>

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1 the developer and the -- the parties that were owners  
 2 of the property are liable for the property.  
 3 Q. (By Mr. Jimmerson) And as an example, to  
 4 make sure that they knew that there were CC&Rs, to make  
 5 sure that they knew there were bylaws and that the  
 6 property was subject to -- going to be subject to a  
 7 homeowners association?  
 8 A. Standard procedure in selling property.  
 9 Q. Right. Okay. And you have the buyers  
 10 initial each of the disclosures --  
 11 A. Yes.  
 12 Q. -- so that they can never say they didn't get  
 13 what they received, right?  
 14 A. Yes, sir.  
 15 Q. Okay.  
 16 A. CYA.  
 17 Q. Okay. Within these documents, there is an  
 18 Exhibit B, which is called Affirmation Form. Do you  
 19 see that? Signed by the Peccoles?  
 20 A. No. I'm look -- Exhibit B?  
 21 Q. B. It's Bates stamp number 296. It's part  
 22 of the same exhibit I gave you, Exhibit 5.  
 23 A. Help me here.  
 24 Q. Yes. Bates stamp number 296. Just look at  
 25 the bottom right-hand corner. You'll see it.

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1 A. Okay.  
 2 Q. 296.  
 3 A. I've got it. Seven, six.  
 4 MR. PECCOLE: I would like to pose an  
 5 objection on the ground --  
 6 THE WITNESS: What's the question?  
 7 MR. PECCOLE: -- that the document is not  
 8 filled in. It's all blank.  
 9 MR. JIMMERSON: I think what -- I think  
 10 that's a misstatement, and I'm sure it's inadvertent.  
 11 There are blanks in the printed form, but there is a  
 12 signature of Mr. and Mrs. Peccole below that.  
 13 Q. (By Mr. Jimmerson) Do you see that,  
 14 Mr. Goorjian?  
 15 A. Yes, I do.  
 16 Q. And you can read the language. It basically  
 17 is a -- it is a representation being made by Mr. and  
 18 Mrs. Peccole that they've been on their property and  
 19 have literally walked the property. Isn't that right?  
 20 A. Yes.  
 21 Q. Now --  
 22 MR. PECCOLE: Here again I pose that same  
 23 objection, that that is blank in the areas where  
 24 Mr. Jimmerson is referring to.  
 25 Q. (By Mr. Jimmerson) The language that is not

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1 blank reads -- and I'll read the whole thing so we have  
 2 a good record -- is "The undersigned, by his or her  
 3 signature, hereby acknowledges that he or she has made  
 4 a personal on-the-lot inspection of the" -- "of Lot"  
 5 blank --  
 6 MR. PECCOLE: We don't know.  
 7 Q. (By Mr. Jimmerson) -- "of Lot" blank "of  
 8 Peccole West - Parcel" blank "(now known as  
 9 Queensridge) developed by Nevada Legacy 14, LLC, a  
 10 Nevada limited liability company, which is the Lot upon  
 11 which the undersigned plans to erect a" -- "to" -- I  
 12 can't read -- "execute a contract of sale or lease."  
 13 Do you remember that?  
 14 A. Yes.  
 15 MR. PECCOLE: I object on the grounds that  
 16 those blanks were not filled in because there was no  
 17 lot picked yet.  
 18 MR. JIMMERSON: Okay.  
 19 Q. (By Mr. Jimmerson) And did the Peccoles pick  
 20 a lot?  
 21 A. Yes, they did.  
 22 Q. And did they buy a lot?  
 23 A. Yes, they did.  
 24 Q. Did they close escrow on a lot?  
 25 A. Yes, they did.

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1 Q. Did they do so in 2000, to the best of your  
 2 recollection?  
 3 A. Yes, they did.  
 4 Q. All right. One of the reasons for having you  
 5 come down here today is to respond to some testimony  
 6 that Mr. Peccole has given in his deposition some  
 7 months ago. All right?  
 8 He says that he met with you on the property  
 9 when he was -- prior to purchase in 2000. Do you  
 10 recall meeting with him on the lot in 2000?  
 11 A. Never physically on the lot, no, I don't  
 12 recall.  
 13 Q. All right. Do you recall having met with him  
 14 with regard to the lot?  
 15 A. Yes.  
 16 Q. Okay. Now, from other testimony, we've -- I  
 17 had this question to ask you. I'm not going to lead  
 18 you. I'm going to ask you. But from other testimony,  
 19 I have reason to ask this question.  
 20 Did Mr. Peccole ask you for a restrictive  
 21 deed or some writing that would preclude development of  
 22 the golf course in future years, or the property behind  
 23 his property or in front of his lot?  
 24 A. He asked for written assurance that the golf  
 25 course would always remain a golf course.

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<p>1 Q. And when did he ask for that assurance?</p> <p>2 A. Prior to purchasing his lot.</p> <p>3 Q. And who was present to hear that</p> <p>4 conversation?</p> <p>5 A. Myself, he and -- I can't remember if Nancy</p> <p>6 was there or not.</p> <p>7 Q. All right. And you know Nancy Peccole?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Is that his wife?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And do you remember where the meeting took</p> <p>12 place?</p> <p>13 A. It was in a trailer that I was occupying.</p> <p>14 Q. Was the trailer somewhere near the property</p> <p>15 being developed?</p> <p>16 A. Yes. Yes, it was.</p> <p>17 Q. Okay. But the conversation itself didn't</p> <p>18 take place right on the lot itself --</p> <p>19 A. No, it did not.</p> <p>20 Q. -- to the best of your recollection?</p> <p>21 A. No, it did not.</p> <p>22 Q. Okay. And so what was said, and by whom,</p> <p>23 between the two of you or three of you?</p> <p>24 A. To the best of my recollection, he wanted</p> <p>25 assurances that it would remain a golf course; and</p>	<p>1 A. Not to my knowledge.</p> <p>2 Q. And in fact, you knew the property could be</p> <p>3 developed in the future; isn't that right?</p> <p>4 A. It's all disclosed.</p> <p>5 Q. The answer is yes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Now, I need to read you some</p> <p>8 testimony. I'm sorry to do this, but . . .</p> <p>9 I need to get my glasses. I'm sorry.</p> <p>10 (Pause in proceedings.)</p> <p>11 Q. (By Mr. Jimmerson) I'm now reading to you</p> <p>12 from the deposition of Nancy Peccole taken on</p> <p>13 August 10th of 2018, this past August. And I'm reading</p> <p>14 from Page 97 of her deposition. Okay?</p> <p>15 A. Yes.</p> <p>16 Q. And this is what the -- I'm asking the</p> <p>17 questions and Nancy Peccole is responding to the</p> <p>18 questions. Her husband is present in the deposition</p> <p>19 room. Actually it was in this room here, so</p> <p>20 Mr. Peccole was here.</p> <p>21 So I'll begin by reading at Page 97, line 4.</p> <p>22 And I'll read a little bit into Page 98. So it's not</p> <p>23 very long.</p> <p>24 Question by Mr. Jimmerson: "Did you ask" --</p> <p>25 and speaking to Nancy Peccole.</p>
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<p>1 that's something that I couldn't give him, which I</p> <p>2 explained to him; and he had mentioned that he would go</p> <p>3 speak to the family about it.</p> <p>4 Q. Okay. And at that time he was a member of</p> <p>5 the family?</p> <p>6 A. He always is, yeah.</p> <p>7 Q. Okay. All right. And so when he said the</p> <p>8 words about go speak to the members of the family, who</p> <p>9 did you understand him meaning to speak to?</p> <p>10 A. I would have thought it would have been Wanda</p> <p>11 and Larry.</p> <p>12 Q. Okay. And Wanda is Wanda Peccole?</p> <p>13 A. Yes.</p> <p>14 Q. And Larry Miller is Wanda's --</p> <p>15 A. Son-in-law.</p> <p>16 Q. Son-in-law of Wanda?</p> <p>17 A. And president of Peccole-Nevada Corporation.</p> <p>18 Q. Very good. Do you know whether or not he</p> <p>19 ever had such a conversation with Wanda or Larry</p> <p>20 Miller?</p> <p>21 A. Don't recall. Don't know.</p> <p>22 Q. Was any written assurance or writing ever</p> <p>23 given to Mr. Peccole to guarantee him that the golf</p> <p>24 course property would not be developed later, in the</p> <p>25 future?</p>	<p>1 "Did you ask anybody whether or not the golf</p> <p>2 course could be built upon, could be developed, when</p> <p>3 you bought the home in 2000?</p> <p>4 "Answer: No.</p> <p>5 "Question: Do you know if your husband asked</p> <p>6 anybody if a golf course could be developed when you</p> <p>7 bought the home in 2000, and prior to buying it?</p> <p>8 "Answer: May I make a statement?</p> <p>9 "The Witness: I didn't ask because I was</p> <p>10 told."</p> <p>11 By Mr. Jimmerson: "Okay."</p> <p>12 MR. PECCOLE: Speak up so I can hear you.</p> <p>13 MR. JIMMERSON: I will, certainly. I think I</p> <p>14 am speaking up loudly, but I will raise my voice even</p> <p>15 louder.</p> <p>16 "I didn't ask because I was told." That was</p> <p>17 Ms. Peccole.</p> <p>18 By Mr. Jimmerson: "Okay. So who told you</p> <p>19 anything about this?</p> <p>20 "Answer: Greg Goorjian.</p> <p>21 "Question: And what did Greg Goorjian tell</p> <p>22 you?</p> <p>23 "Answer: He told me, and my husband, as we</p> <p>24 stood on the lot, 'There will never be anything built</p> <p>25 behind your property. It will always be open space.'</p>

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<p>1 "Question: Okay. And you remember that?</p> <p>2 "Answer: I certainly do.</p> <p>3 "Question: All right. And when did</p> <p>4 Mr. Goorjian purportedly tell you that?</p> <p>5 "Answer: Before --"</p> <p>6 Then there's an objection.</p> <p>7 "The Witness: Before we purchased the</p> <p>8 property.</p> <p>9 "Okay. And who was present, please?</p> <p>10 "Robert Peccole, myself, and Greg Goorjian.</p> <p>11 "All right. And have you had any</p> <p>12 conversations with Greg Goorjian since 2000 --</p> <p>13 "Answer: No.</p> <p>14 "-- since prior to your buying the home,</p> <p>15 about that subject matter?</p> <p>16 "Answer: No.</p> <p>17 "Is there any reason why you chose not to sue</p> <p>18 Greg Goorjian in this lawsuit that you brought two</p> <p>19 years ago?</p> <p>20 "Answer" -- question -- objection.</p> <p>21 I asked the question: "Why didn't you sue</p> <p>22 him if he made that statement?</p> <p>23 "You may answer the question, ma'am.</p> <p>24 "Answer: I don't know.</p> <p>25 "Is there any kind of a writing that you've</p>	<p>1 course" -- "the golf course from being able to be</p> <p>2 developed?</p> <p>3 "Answer: No.</p> <p>4 "Did you ever inquire as to what the golf</p> <p>5 course was zoned?</p> <p>6 "Answer: No.</p> <p>7 "Did you know that your home was zoned</p> <p>8 residential?</p> <p>9 "Yes.</p> <p>10 "You didn't know how the adjoining piece of</p> <p>11 property at the golf course was zoned?</p> <p>12 "Answer: No."</p> <p>13 So I've read now from Page 97, lines 4,</p> <p>14 through 98, through 99, and ending at line 22 of</p> <p>15 Page 100.</p> <p>16 Is Mrs. Peccole's recollection accurate?</p> <p>17 A. It's not for me to say. There are certain</p> <p>18 things that are inaccurate.</p> <p>19 Q. Okay.</p> <p>20 A. But I -- as far as I'm concerned, there are</p> <p>21 certain things that are inaccurate there.</p> <p>22 Q. Well, let's cover it. Number one is that you</p> <p>23 know that Mr. Peccole asked you for a deed</p> <p>24 restriction --</p> <p>25 A. Correct.</p>
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<p>1 seen that would memorialize the statement that you</p> <p>2 claim Mr. Goorjian made to you and your husband?</p> <p>3 "Answer: Not to my knowledge.</p> <p>4 "Did you follow up with an email or a letter?</p> <p>5 "No.</p> <p>6 "Did you attempt to memorialize it in any</p> <p>7 way" -- excuse me -- "any fashion?</p> <p>8 "No.</p> <p>9 "Did you attempt to memorialize it in any</p> <p>10 fashion?</p> <p>11 "No.</p> <p>12 "Did you or your husband ever ask for a deed</p> <p>13 restriction on the house?</p> <p>14 "Not to my knowledge.</p> <p>15 "Did you ever ask of anyone from the family</p> <p>16 that they place any sort of restriction on the deed and</p> <p>17 would assure that there would no" -- "be no development</p> <p>18 of the golf course?</p> <p>19 "Answer: Not to my knowledge.</p> <p>20 "Did you have, or do you have, or your</p> <p>21 husband, as far as you know, have any conversation with</p> <p>22 anyone relative to requesting a deed restriction on</p> <p>23 your lot --</p> <p>24 "Not to my knowledge.</p> <p>25 "-- with the intent of precluding a golf</p>	<p>1 Q. -- or some written assurance that there would</p> <p>2 not be development on the golf course?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And he did not receive that from you; and as</p> <p>5 far as you know, he did not receive that from</p> <p>6 Peccole-Nevada or Legacy 14?</p> <p>7 A. I don't know that, but as far as I'm --</p> <p>8 Q. You know you didn't give it to him?</p> <p>9 A. I know I didn't and couldn't.</p> <p>10 Q. Okay. And why couldn't you?</p> <p>11 A. I'm not -- I don't have that power. I'm just</p> <p>12 a broker.</p> <p>13 Q. And you also knew the property could be</p> <p>14 developed?</p> <p>15 A. Yes. He wouldn't be asking me for the letter</p> <p>16 if he didn't know.</p> <p>17 Q. Okay. That it could be developed?</p> <p>18 A. Yeah.</p> <p>19 Q. All right. And the disclosures, as you</p> <p>20 pointed out, as we've gone over, clearly tell you that</p> <p>21 the adjoining property can be developed?</p> <p>22 A. That's how he would have known, and plus we</p> <p>23 talked -- we discussed it.</p> <p>24 Q. All right. Next. It's inaccurate in quoting</p> <p>25 you as stating that, quote --</p>

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<p>1 MR. PECCOLE: Wait. I'd like to pose an</p> <p>2 objection to that last question and answer as total</p> <p>3 speculation.</p> <p>4 Q. (By Mr. Jimmerson) And you -- and you also</p> <p>5 find inaccurate Mrs. Peccole's statement, quote --</p> <p>6 quoting you -- quote, There will never be anything</p> <p>7 built behind your property. It will always be open</p> <p>8 space, end of quote.</p> <p>9 Is that right?</p> <p>10 A. Yeah, I can't make that assurance.</p> <p>11 Q. And you did not make that assurance, right?</p> <p>12 A. I did not.</p> <p>13 Q. And indeed, the term "open space," had you</p> <p>14 ever heard of those words in 2000, in that time period?</p> <p>15 A. Yes.</p> <p>16 Q. And what did it mean, open space?</p> <p>17 A. Open space meant to me that there wasn't</p> <p>18 something directly in your backyard.</p> <p>19 Q. But open space, as that word was used within</p> <p>20 the CC&amp;Rs, would be on your own property, correct?</p> <p>21 A. Restate that question.</p> <p>22 Q. The term "open space" could only apply to</p> <p>23 your own property, correct? In other words, the CC&amp;Rs</p> <p>24 aren't in a position to guarantee open space to</p> <p>25 somebody else's property. That's what I'm saying.</p>	<p>1 Q. In your conversation with Mrs. Peccole -- and</p> <p>2 I know it's been a long time -- do you know whether or</p> <p>3 not you used the words "open space"?</p> <p>4 A. Don't recall.</p> <p>5 Q. Okay. And the master plan that was in play</p> <p>6 in 2000 was the Queensridge master plan, correct?</p> <p>7 A. 2000? Yes. It would have been -- yes.</p> <p>8 Q. Okay. In other words, you weren't talking</p> <p>9 about the Queensridge -- the Peccole Ranch master plan?</p> <p>10 A. No.</p> <p>11 Q. It had been superseded by the Queensridge</p> <p>12 master plan?</p> <p>13 A. Correct. Gone, yup. Two different --</p> <p>14 Q. Two different things?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Now -- I'm sorry. I need to quote</p> <p>17 this deposition a little further.</p> <p>18 Now I'm reading from the deposition of Nancy</p> <p>19 Peccole at Page 101, line 6, and ending at Page 104,</p> <p>20 line 22 -- 21.</p> <p>21 "Question" -- and again I'm asking the</p> <p>22 questions again.</p> <p>23 "So Mr. Goorjian used the words 'open space'?</p> <p>24 "Answer: Yes, he did.</p> <p>25 "And so he used the word 'open space' as</p>
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<p>1 MR. PECCOLE: I object to the leading</p> <p>2 question. He's proposing the answer.</p> <p>3 MR. JIMMERSON: I'll meet the objection this</p> <p>4 way.</p> <p>5 MR. PECCOLE: Form of the question.</p> <p>6 Q. (By Mr. Jimmerson) If there are words, if</p> <p>7 there are words "open space" within the CC&amp;Rs of the</p> <p>8 Queensridge master plan, it would only apply to the</p> <p>9 property governed by the Queensridge CC&amp;Rs?</p> <p>10 A. Yes.</p> <p>11 Q. They couldn't possibly be referring to</p> <p>12 somebody else's property --</p> <p>13 A. Yes, right.</p> <p>14 Q. -- or property not governed by the</p> <p>15 Queensridge master CC&amp;Rs?</p> <p>16 A. Yes.</p> <p>17 Q. Now -- and the zoning, as you indicated, was</p> <p>18 disclosed within Exhibits 4 -- 5 and 6; isn't that</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I think I --</p> <p>22 A. I'm not sure which exhibits they were, but</p> <p>23 there were exhibits disclosing.</p> <p>24 Q. All right.</p> <p>25 A. And maps as well.</p>	<p>1 opposed to using the words 'golf course'; is that</p> <p>2 right?</p> <p>3 "Answer: Yes.</p> <p>4 "Okay. And he said that it was always going</p> <p>5 to be open space?</p> <p>6 "Answer: Yes.</p> <p>7 "Do you remember, to the best of your</p> <p>8 knowledge" --</p> <p>9 And there's a bunch of objections, so I'll</p> <p>10 skip that, resuming at line 7, Page 102.</p> <p>11 "Question: Now, to the best of your</p> <p>12 recollection, ma'am, tell me everything that you</p> <p>13 said" -- "that was said in that conversation between</p> <p>14 yourself and your husband and Greg Goorjian standing on</p> <p>15 the lot that you bought prior to your buying it.</p> <p>16 "Answer: He said, 'This will always be open</p> <p>17 space.' There will never be anything built behind us.</p> <p>18 And that is the reason I chose that lot.</p> <p>19 "Have you now told me all that Mr. Goorjian</p> <p>20 said?</p> <p>21 "Did what?</p> <p>22 "Have you now told me everything that you can</p> <p>23 remember that Mr. Goorjian said to you and your husband</p> <p>24 on that occasion?</p> <p>25 "Answer: Well, he went on and on about how</p>

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<p>1 beautiful the area was and stuff like that, of course.</p> <p>2 "Well, I'm asking you what he said. I'm</p> <p>3 asking you everything the man said --</p> <p>4 "Everything he said?" she asked.</p> <p>5 Answer --</p> <p>6 "-- that you can recall as you sit here,</p> <p>7 ma'am.</p> <p>8 "And he also said --</p> <p>9 "You've had a lot of time to think about</p> <p>10 this, so please tell us now what this man said.</p> <p>11 "Answer: He also said that as a bonus, there</p> <p>12 will never be anything built in front of our home</p> <p>13 either, because it was a golf course and open space.</p> <p>14 "Okay. That" -- "What is the distinction --</p> <p>15 what did you understand Mr. Goorjian to mean when he</p> <p>16 said 'open space' and the words 'golf course' and 'open</p> <p>17 space'? What do you mean" -- "What do the words 'open</p> <p>18 space' mean to you as you understand it?</p> <p>19 "Answer: That there would never be anything</p> <p>20 built on the property.</p> <p>21 "No, no, but what do the words 'open space'</p> <p>22 mean as opposed to 'golf course'?</p> <p>23 "So 'golf course' means golf course; right?</p> <p>24 "Answer" --</p> <p>25 "And it was a golf course at the time?</p>	<p>1 A. My best recollection was that we met a few</p> <p>2 times -- I can't recall if I went to the property with</p> <p>3 them. First was negotiating price, of course, and, you</p> <p>4 know, I couldn't do that; so he worked that out with</p> <p>5 the Peccole family and I was told what to price the lot</p> <p>6 at.</p> <p>7 And then I just -- the other thing I recall</p> <p>8 was -- was him asking, you know -- knowing that there</p> <p>9 potentially could be something else built there and not</p> <p>10 liking it, and asking me if we could make assurances</p> <p>11 that that wouldn't happen. And that's all I recall.</p> <p>12 And I couldn't give him those assurances, so</p> <p>13 I -- can't get it from me. So he said he would talk to</p> <p>14 the family.</p> <p>15 That's about the extent. I don't feel like I</p> <p>16 really had to sell them on the property. They wanted</p> <p>17 the -- they wanted to live in there. They wanted to</p> <p>18 buy the lot.</p> <p>19 Q. And it was being developed by the family?</p> <p>20 A. Yeah. It wasn't like a hard sell.</p> <p>21 Q. All right. Now I'd like to read from you --</p> <p>22 from the deposition of Robert Peccole. Mr. Robert</p> <p>23 Peccole's testimony occurred on August 13, 2018, in</p> <p>24 these offices. And I'd like to read beginning at</p> <p>25 Page 177, line 17 through 178, and ending at Page 180,</p>
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<p>1 "Answer: Yes.</p> <p>2 "So it was sort of a duplicative statement?</p> <p>3 In other words, 'golf course' means about the same</p> <p>4 thing as 'open space'?"</p> <p>5 Then there's objections.</p> <p>6 So I'm asking her what you understand was the</p> <p>7 words "open space" --</p> <p>8 "What did you understand he was communicating</p> <p>9 to you, ma'am?</p> <p>10 "Answer: That there would never be anything</p> <p>11 built behind our home.</p> <p>12 "And do you recall that he used both the</p> <p>13 terms 'golf course' and 'open space'?</p> <p>14 "Answer: Yes.</p> <p>15 "Now, did he use them with regard to the back</p> <p>16 of the property or just the front of the house?</p> <p>17 "Answer: To both.</p> <p>18 "To both. So he said there was going to be a</p> <p>19 golf course, an open space to the property in front of</p> <p>20 your home and to the golf course behind the home?</p> <p>21 "Answer: Yes." End quote.</p> <p>22 Do you recall saying those words to Nancy</p> <p>23 Peccole?</p> <p>24 A. No.</p> <p>25 Q. What is your best recollection, Mr. Goorjian?</p>	<p>1 line 4.</p> <p>2 So this is the testimony:</p> <p>3 "All right. Did" -- speaking now to Robert</p> <p>4 Peccole, and I'm asking the questions. Jim Jimmerson</p> <p>5 is asking the questions.</p> <p>6 "Did you have any conversation with Larry</p> <p>7 Miller with regard to your request that he make a</p> <p>8 writing or a restrictive covenant to preclude the</p> <p>9 property behind you or in front of you from ever being</p> <p>10 developed?</p> <p>11 "Answer: No, because Larry had always told</p> <p>12 me there wouldn't be anything built there."</p> <p>13 Answer --</p> <p>14 "So he told you that, too?</p> <p>15 "Answer: Yes.</p> <p>16 "So Greg Goorjian told you that nothing would</p> <p>17 be developed?</p> <p>18 "That's exactly right.</p> <p>19 "Question: What did Greg Goorjian tell you</p> <p>20 then, in that conversation?</p> <p>21 "Greg Goorjian said to me and my wife, 'There</p> <p>22 will be nothing built behind you or in front of you.'</p> <p>23 That it's open space. That it will always be a golf</p> <p>24 course.</p> <p>25 "And then he says to me, 'Bob,' he says, 'the</p>

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<p>1 Peccole family has a lifetime membership. Any time you 2 want to play, just give me a call.'</p> <p>3 "Question: Have you now told me everything 4 you remember of Mr. Goorjian's conversation with you?</p> <p>5 "Answer: Most of it, but I talked with Greg 6 off and on so I can't remember it all.</p> <p>7 "Anything else on the subject matter about 8 there being" -- "that there will never be anything 9 built behind you or in front of you? Have you now told 10 me all the subject matter that you can recall with 11 Mr. Goorjian?</p> <p>12 "Answer: I think I have. Something more may 13 come to me" -- "mind later.</p> <p>14 "What do you or your wife say in response" -- 15 "What did you or your wife say in response to 16 Mr. Goorjian's words as you allege them to be?</p> <p>17 "We took his word. 18 "So you didn't say anything? 19 "We took his word. 20 "So you don't remember using any words in 21 response to what he said?</p> <p>22 "I didn't have to. I already made the 23 comment" -- "He already made the comment and we said 24 fine, that's what we expect. 25 "Okay.</p>	<p>1 conversation with any of the relatives, any of the 2 Peccole defendants that you have sued, that had you 3 known that the property was going to be sold like it 4 was sold, the membership interest in Fore Stars was 5 sold, that you would have been interested in buying it 6 or words to that effect?</p> <p>7 "That's speculative because I was never told 8 that it was sold."</p> <p>9 So just returning to the part about the 10 conversations with you, Mr. Goorjian, did you tell 11 Robert Peccole in the presence of Nancy Peccole that 12 the golf course would never be developed?</p> <p>13 A. Absolutely not. 14 Q. Did you tell them that the golf course would 15 always remain open space? 16 A. No. 17 Just to add, I couldn't make those -- I 18 couldn't make those -- 19 Q. Statements or representations? 20 A. -- representations. 21 Q. And why is that, sir? 22 A. Because I was no longer a family member. I 23 was just a broker. 24 MR. PECCOLE: I'd like to pose an objection. 25 Mr. Jimmerson is leading the witness and telling him</p>
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<p>1 "You know, that's what we were buying here. 2 "Why didn't you buy the" -- excuse me. 3 "Why didn't you buy the Badlands Golf 4 Course?"</p> <p>5 It really doesn't have anything to do here 6 with the question, but I'll continue to read. 7 "Jeez, I wasn't interested in it. That's 8 why. 9 "Did you ever express any interest to buy the 10 property in the past? 11 "No. And if I had known it was up for sale, 12 maybe I would have gone and found some buyers. 13 "So you never asked anybody about the land or 14 about your buying the land? 15 "As long as we're speculating, no. 16 "Did you" -- "Did you not know it was being 17 sold in March of 2015? 18 "I did not know. 19 "Did you have any conversation with any of 20 the Peccole representatives that you had known" -- 21 "representatives that had you known you would have 22 liked to buy the property? 23 "Answer: I'm not understanding the 24 question." 25 And the question is, "Did you ever have a</p>	<p>1 what to say. 2 MR. JIMMERSON: I have to respond to that. I 3 made no such comments or words. I certainly have no 4 power or ability to tell this witness what to say. 5 So I just want to note my response to that 6 objection as being improper. 7 Q. (By Mr. Jimmerson) Did you have -- excuse 8 me. Did you know that Robert Peccole sued several 9 members of the Peccole family two years ago? 10 A. I was aware, yes. 11 Q. Okay. He sued Larry Miller, he sued the 12 family trust, he sued the individuals, entities. Were 13 you aware of that? 14 A. Yes. 15 Q. Okay. Did you know that he later on 16 dismissed the claims against his relatives? 17 A. Yes. 18 Q. Did you have any involvement in those 19 discussions that led to his dismissing the claims he 20 had against his relatives, family? 21 A. No. 22 MR. PECCOLE: I'd like to take a men's room 23 break. 24 MR. JIMMERSON: Absolutely, sir. No problem. 25 We'll take a five-minute break at</p>

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<p>1 Mr. Peccole's request. No problem at all.  2 (A recess was taken.)  3 Q. (By Mr. Jimmerson) All right. After a  4 comfort break for everyone, I will just resume. I have  5 just another few questions.  6 Mr. Goorjian, you had -- you had a role,  7 maybe as marketing director, the position you had,  8 where you actually was the individual who dealt with  9 the Peccoles and sold them the lot in 2000; is that  10 right?  11 A. Yes.  12 Q. And I think the documents indicate that they  13 bought it in April or May of 2000. Is that right?  14 A. Yes.  15 Q. And they bought -- their home is located at  16 9470 Verlaine Court? Is that --  17 A. I know where their home is, but I don't know  18 the address.  19 Q. Okay. All right. Do you remember having a  20 conversation with Mr. Peccole where you discussed the  21 fact that the family was developing or investing tens  22 of millions of dollars to construct the golf course and  23 to put in the infrastructure for the residential  24 development?  25 A. Yes.</p>	<p>1 MR. JIMMERSON: Would you mark this  2 Exhibit 6, please.  3 (Exhibit 6 marked.)  4 MR. JIMMERSON: Mr. Peccole, this is  5 Exhibit 6. We had marked it as Exhibit 5 in another  6 depo, so I crossed out the five. You'll see it. It's  7 right here.  8 MR. PECCOLE: This is?  9 MR. JIMMERSON: Six. We had marked it as  10 Exhibit 5 in another, so I just crossed out the five so  11 she can mark it as six. That's all I'm saying.  12 Q. (By Mr. Jimmerson) Can you identify,  13 Mr. Goorjian, what Exhibit 6 is, called Attachment "C,"  14 Disclosure Statement Relating to Zoning Classifications  15 and Master Plan Designations of Adjoining Property?  16 A. I can't read it here without my --  17 But this is a disclosure stating what --  18 what's in the plan.  19 Q. Okay. All right.  20 A. What he'll be party to.  21 Q. And this was an attachment that every  22 homeowner was given; is that right?  23 A. Yes.  24 Q. And it referenced what the zoning  25 designations were that existed at the time of</p>
Page 66	Page 68
<p>1 Q. Okay. And did you inform him that there were  2 no guarantees that could be made to him that the golf  3 course would not ever not be developed?  4 A. I made no guarantees, so the answer to that  5 is yes, but could you say the question again?  6 Q. Yeah. It had a double negative, so I agree  7 with you.  8 Did you inform him that no guarantees could  9 be made that the golf course would always remain a golf  10 course property?  11 A. No guarantees.  12 Q. And, indeed, the property was zoned -- zoned  13 to be developed residential; isn't that right?  14 MR. PECCOLE: I object to that question on  15 the grounds it's assuming facts that are not in  16 evidence.  17 A. Okay, now, just my response to it is, it's  18 all documented. It's all in the documents.  19 Q. (By Mr. Jimmerson) Okay. All right.  20 A. That's all my answer.  21 Q. Okay.  22 A. Maps and everything.  23 Q. Okay. Now I'd just like to show you a few  24 more exhibits that have to do with the purchase of the  25 property. The next would be Exhibit 6.</p>	<p>1 purchasing the home; isn't that right?  2 A. Yes.  3 Q. And it showed that through Exhibit C-2; is  4 that right?  5 A. Yes.  6 MR. JIMMERSON: All right. The next exhibit  7 is Exhibit 7.  8 (Exhibit 7 marked.)  9 Q. (By Mr. Jimmerson) And 7 is grant, bargain  10 and sale deed, Queensridge North, Parcel 19, custom  11 lot.  12 A. Yes.  13 Q. And do you recognize this document?  14 A. Yes, I do.  15 Q. All right. And is this the deed that was  16 issued by Nevada Legacy to Robert N. and Nancy Peccole?  17 A. Yes, it is.  18 Q. For their purchase of their lot?  19 A. Yes.  20 Q. Okay. And the date is May 1 of 2000? Do you  21 see that?  22 A. Yes.  23 Q. And Larry Miller signed it as CEO of Nevada  24 Legacy 14 LLC?  25 A. Yes.</p>



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<p>1 Q. And the legal description is attached</p> <p>2 thereto?</p> <p>3 A. Yes.</p> <p>4 MR. JIMMERSON: Okay. All right. I'll not</p> <p>5 be referring to Exhibit 8 with this witness, or</p> <p>6 Exhibit 9. The omission is intentional.</p> <p>7 Let me show you Exhibit No. 10, please.</p> <p>8 (Exhibit 10 marked.)</p> <p>9 Q. (By Mr. Jimmerson) Now, Exhibit 10 is not a</p> <p>10 document that you prepared. It is the title insurance</p> <p>11 policy for Mr. Peccole's home for his purchase in 2000.</p> <p>12 And -- but the purpose for my asking you about it is,</p> <p>13 families, purchasers of homes, would typically get</p> <p>14 title insurance for their purchase, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And title insurance, the purpose of title</p> <p>17 insurance, as you well know, is to delineate what</p> <p>18 conditions or restrictions attach to the property; is</p> <p>19 that right?</p> <p>20 A. Yes.</p> <p>21 Q. And whether or not you have clear title or</p> <p>22 not, whether there's a mortgage or not, whether there's</p> <p>23 CC&amp;Rs or not, that kind of thing, right?</p> <p>24 A. Yes.</p> <p>25 Q. And so it gives notice to the property owner</p>	<p>1 irrelevant, immaterial.</p> <p>2 Q. (By Mr. Jimmerson) And why is that --</p> <p>3 MR. PECCOLE: Has nothing to do with</p> <p>4 Queensridge.</p> <p>5 Q. (By Mr. Jimmerson) And why -- and I do agree</p> <p>6 with Mr. Peccole. One, it has nothing to do with</p> <p>7 Queensridge; but why would the Peccole Ranch never be</p> <p>8 reflected upon or have anything to do with the</p> <p>9 Queensridge master plan?</p> <p>10 A. Meant to be completely separate, with family</p> <p>11 only involved in the development, and -- and completely</p> <p>12 different feel and look.</p> <p>13 Q. And by virtue of the litigation that occurred</p> <p>14 between Triple Five and the Peccole family, the</p> <p>15 previously conceptualized master plan of Peccole Ranch</p> <p>16 was abandoned; is that right?</p> <p>17 MR. PECCOLE: I'm going to object to the</p> <p>18 leading question.</p> <p>19 MR. JIMMERSON: I'm asking the question.</p> <p>20 MR. PECCOLE: He's telling him what he wants</p> <p>21 to hear.</p> <p>22 Q. (By Mr. Jimmerson) You may answer the</p> <p>23 question, sir.</p> <p>24 A. Could you re-ask it?</p> <p>25 MR. JIMMERSON: Would you restate the</p>
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<p>1 as to what he takes the property subject to. Is that a</p> <p>2 fair statement?</p> <p>3 A. Yes.</p> <p>4 Q. And is that what you are aware of as you did</p> <p>5 your job for the Peccole family in the 1990s and 2000s?</p> <p>6 A. Yes.</p> <p>7 Q. All right. And so it would not be surprising</p> <p>8 to you to note that the title insurance would reflect</p> <p>9 the CC&amp;Rs of the Queensridge master plan, correct?</p> <p>10 A. They would be recorded against the property,</p> <p>11 yes.</p> <p>12 Q. And the earlier and unrelated Peccole Ranch</p> <p>13 master plan would not be reflected on their deed?</p> <p>14 A. Correct. It's not a part of.</p> <p>15 Q. It's not a part of. And whatever conditions,</p> <p>16 restrictions, like, for example, if there's a mortgage,</p> <p>17 that would be reflected here, correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Thank you.</p> <p>20 Now, the Peccole Ranch master plan was never</p> <p>21 recorded against the real property known as the</p> <p>22 Queensridge master plan; isn't that right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 MR. PECCOLE: I object to that question as</p>	<p>1 question, please.</p> <p>2 (Page 71, Lines 13 through 16 read by</p> <p>3 the reporter.)</p> <p>4 THE WITNESS: This is correct.</p> <p>5 Q. (By Mr. Jimmerson) And why was it abandoned?</p> <p>6 Why was the Peccole Ranch master plan</p> <p>7 abandoned?</p> <p>8 A. There was a settlement with Triple Five where</p> <p>9 they ended up with -- with Peccole Ranch, basically;</p> <p>10 and -- and so the family took the rest and created</p> <p>11 Queensridge.</p> <p>12 Q. A question I may have asked you before. If I</p> <p>13 did, I'm not trying to duplicate it. I apologize.</p> <p>14 In your conversations -- conversation with</p> <p>15 Mr. Peccole and/or Mr. Peccole and Mrs. Peccole, do you</p> <p>16 remember whether or not you used the words "open</p> <p>17 space," as Mrs. Peccole quotes you as using?</p> <p>18 A. Do not recall, but it is a term I use.</p> <p>19 Q. Okay. All right. And what were the</p> <p>20 purpose -- what was the purpose for you, or other men</p> <p>21 or women selling property at Peccole Ranch in the 1990s</p> <p>22 and 2000s, for having purchasers like Mr. and</p> <p>23 Mrs. Peccole sign these special instructions and</p> <p>24 disclosures that I've shown you?</p> <p>25 A. Again, so they could be aware of what they're</p>

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1 purchasing.

2 Q. All right. Do you recall -- and this may not

3 be within your memory because of your employment. My

4 recollection from your earlier testimony was that you

5 ceased working for the Peccole family in about 2004.

6 Is that right? Do you remember?

7 A. No.

8 Q. Okay. Tell me when you left.

9 A. I -- I worked with the family from '82 to

10 '89, '90. Came back to work for them '94, and stayed

11 with them to perpetuity.

12 Q. Okay. So well after 2004, then?

13 A. Correct.

14 Q. All right. Then I can ask you this question.

15 Take a look at Exhibit No. 12, please.

16 (Exhibit 12 marked.)

17 Q. (By Mr. Jimmerson) By our looking at the --

18 you know, the recorder's records, it appears as if the

19 Peccole family transferred the golf course into the

20 company known as Fore Stars, Ltd. --

21 MR. PECCOLE: I object on the grounds the

22 document speaks for itself.

23 MR. JIMMERSON: Okay.

24 Q. (By Mr. Jimmerson) So my question is,

25 showing you Exhibit 12, which is the grant, bargain and

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1 sale deed, which, as Mr. Peccole says, speaks for

2 itself, and says that, "For valuable consideration,

3 receipt of which is hereby acknowledged, the Peccole

4 1982 Trust, dated February 15th, 1982, as to an

5 undivided Forty Five percent interest and William Peter

6 and Wanda Ruth Peccole Family Limited Partnership, as

7 to an undivided Fifty Five percent interest" -- and it

8 goes on... makes this transfer.

9 Do you recall in 2004 these two trusts

10 conveyed over to Fore Stars, Ltd., the golf course

11 property described in Exhibit 12, the grant, bargain

12 and sale deed of two thousand --

13 A. I do recall.

14 Q. -- five? All right. And the signatory of

15 the trust at this time was Larry Miller; is that right?

16 A. Yes.

17 Q. For both trusts; is that right?

18 A. Yes.

19 Q. Do you remember the reason why the company

20 consolidated the golf course property into the entity

21 called Fore Stars, Ltd., and transferred it from the

22 two trusts to Fore Stars, Ltd., in 2005?

23 A. My recollection is I believe it was to -- in

24 concert with the development of the towers, and it had

25 something to do with the towers as well.

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1 Q. Okay.

2 A. Easements that were needed and items like

3 that. And -- but I don't really know if that was the

4 reason why it was consolidated.

5 Q. Okay. And by -- would you look at Exhibit

6 No. 12 to satisfy yourself that as it relates to the

7 golf course property that's shown in, you know, the

8 grant, bargain and sale deed, you'll see that there's

9 no reference to the Queensridge master plan CC&Rs as

10 somehow being subject to this property.

11 A. It wouldn't have been.

12 Q. Okay. And that's because the Queensridge

13 master CC&Rs had nothing to do with the golf course

14 property?

15 A. It had not been annexed, yeah.

16 Q. And so therefore it wasn't something -- the

17 golf course property wasn't subject to the Queensridge

18 CC&Rs?

19 A. Correct.

20 Q. Thank you.

21 (Exhibit 13 marked.)

22 Q. (By Mr. Jimmerson) I'm showing you

23 Exhibit 13. This is a map that I think you may have

24 seen before. I don't know. I'll ask you if you have.

25 As you've testified earlier, the Queensridge

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1 master plan started out with a small piece of property;

2 and then as the Queensridge master plan was developed,

3 they would annex additional property. Is that right?

4 A. Yes.

5 Q. Looking at Exhibit 13, this is what my

6 understanding is: This is a map that references what

7 property was annexed into the Queensridge master plan.

8 Have you seen this map before?

9 A. Yes, I have.

10 Q. And have I accurately represented what it is?

11 A. Yes, you have.

12 Q. Okay. And the golf course property, which

13 was not annexed, is the white --

14 A. Correct.

15 Q. -- in this map. And the property that was

16 part of Queensridge master plan is the brown. Is that

17 right?

18 A. Yes.

19 Q. All right. Thank you.

20 Let me show you Exhibit No. 14. I just have

21 one or two questions about it.

22 (Exhibit 14 marked.)

23 Q. (By Mr. Jimmerson) Just completing these

24 documents, do you recognize Exhibit 14, which is known

25 as a Public Offering Statement for Queensridge North --

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<p>1 A. Yes.</p> <p>2 Q. -- Custom Lots?</p> <p>3 A. Yes.</p> <p>4 Q. And was this yet another document that</p> <p>5 surrounded the -- I call it papering -- the</p> <p>6 documentation relating to the sale of custom lots?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And remember that we looked at --</p> <p>9 earlier at a set of exhibits -- I think it was</p> <p>10 Exhibit 6 -- that had these attachments, B and C?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And Mr. Peccole made an objection</p> <p>13 that there were blanks?</p> <p>14 A. Yes.</p> <p>15 Q. All right. But it had his signature and his</p> <p>16 wife's signature? Do you remember that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. These were exhibits to the public offering</p> <p>19 that's shown here in Exhibit No. 14; isn't that right?</p> <p>20 A. Yes.</p> <p>21 Q. All right. All right. Thank you.</p> <p>22 And just as it relates to the Peccole</p> <p>23 house -- that's the only reason I'm raising it -- is</p> <p>24 the way that the -- the process in which a piece of</p> <p>25 property would be annexed into the Queensridge master</p>	<p>1 annexation of Parcel No. 19; is that right, sir?</p> <p>2 A. Correct.</p> <p>3 Q. And to the extent that Mr. Peccole's home was</p> <p>4 one of several homes that made up Parcel 19, it then</p> <p>5 became, when it was recorded, part of the Queensridge</p> <p>6 master plan?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Thank you. That's all I have on</p> <p>9 that one.</p> <p>10 I'm going to skip for a moment Exhibit 17, go</p> <p>11 to Exhibit No. 19.</p> <p>12 In a further effort to distinguish the</p> <p>13 Queensridge master plan with the additional stone and</p> <p>14 the look and the like, the family developed custom home</p> <p>15 estate design guidelines; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. All right. I'd like to just show those</p> <p>18 briefly to you.</p> <p>19 A. We had consulting. We didn't do it on our</p> <p>20 own.</p> <p>21 Q. Got it.</p> <p>22 (Exhibit 19 marked.)</p> <p>23 Q. (By Mr. Jimmerson) And what you mean within</p> <p>24 your last answer is that you had professionals help you</p> <p>25 in terms of developing these guidelines?</p>
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<p>1 plan would call for a deed or a declaration of</p> <p>2 annexation, and the annexation would be recorded with</p> <p>3 the Clark County Recorder's office, right?</p> <p>4 A. Correct.</p> <p>5 Q. And as annexed properties were added,</p> <p>6 Queensridge would grow in size, right?</p> <p>7 A. Correct.</p> <p>8 Q. And then when the development ended,</p> <p>9 annexation ended, and that became the totality of</p> <p>10 Queensridge master plan? Right?</p> <p>11 A. Correct.</p> <p>12 Q. All right. I just wanted to show you the</p> <p>13 annexation as relates to Mr. Peccole's property, which</p> <p>14 we've marked as Exhibit 15.</p> <p>15 (Exhibit 15 marked.)</p> <p>16 Q. (By Mr. Jimmerson) Exhibit 15 is called,</p> <p>17 quote, Declaration of Annexation for Queensridge</p> <p>18 Parcel 19 (Queensridge North Custom Lots), end of</p> <p>19 quote. Do you see that, sir?</p> <p>20 A. Yes.</p> <p>21 Q. And this, as you see, is a document that's</p> <p>22 prepared for recordation with the Clark County</p> <p>23 Recorder's office, right?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. And so this particular annexation is the</p>	<p>1 A. Yes, sir.</p> <p>2 Q. So that custom homeowners like Mr. Peccole</p> <p>3 and his wife, Nancy, would know what they could build</p> <p>4 and not build, what would be acceptable and not</p> <p>5 acceptable?</p> <p>6 A. Correct. And what their neighbors would be</p> <p>7 doing the same.</p> <p>8 Q. And that there would be some consistency in</p> <p>9 the neighborhood; and obviously the intent is to have</p> <p>10 an upscale neighborhood, right?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recognize these guidelines as</p> <p>13 being those that applied to the Queensridge master</p> <p>14 plan?</p> <p>15 A. Yes.</p> <p>16 Q. As relates to the custom home estate lots?</p> <p>17 A. Yes.</p> <p>18 Q. Thank you. That's all I have on that.</p> <p>19 Because of the massive size, I'm not</p> <p>20 introducing it, but there was a huge blue binder --</p> <p>21 A. Yes.</p> <p>22 Q. -- that three-ring binder that was given to</p> <p>23 every homeowner; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And it was maybe 6 inches thick?</p>

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<p>1 A. Yes.</p> <p>2 Q. By estimate? And it had covers on the front</p> <p>3 and back, right?</p> <p>4 A. Yes.</p> <p>5 Q. I just want to show you Exhibit 20, which is</p> <p>6 the xerox of the front and back of the binder.</p> <p>7 A. It was a gift to the buyer after they</p> <p>8 purchased the home.</p> <p>9 Q. It was a gift to the buyer; is that right?</p> <p>10 A. After they purchased.</p> <p>11 Q. Okay.</p> <p>12 A. All their documents, including their deed.</p> <p>13 (Exhibit 20 marked.)</p> <p>14 Q. (By Mr. Jimmerson) Just showing you</p> <p>15 Exhibit 20, does this refresh your recollection this is</p> <p>16 a xeroxed copy of the binder?</p> <p>17 A. Yes.</p> <p>18 Q. Copy of the binder? Thank you.</p> <p>19 All right. I just have a few more fill-in</p> <p>20 questions on Exhibit No. 5. Can I ask you to find 5 in</p> <p>21 here. I'll show you what it looks like.</p> <p>22 I forgot to ask the questions when I did.</p> <p>23 Right here. It looks like this.</p> <p>24 A. Okay. I've got that one. Here it is. Yup.</p> <p>25 Q. Okay. Now, as you've already told us, this</p>	<p>1 A. Yes.</p> <p>2 Q. "The Lot may have a view or location</p> <p>3 advantage at the present time. The view may at present</p> <p>4 or in the future include, without limitation, adjacent</p> <p>5 or nearby single-family homes, multiple-family</p> <p>6 residential structures, commercial structures, utility</p> <p>7 facilities, landscaping, and other items. The</p> <p>8 Applicable Declarations may or may not regulate future</p> <p>9 construction of improvements and landscaping in the</p> <p>10 Planned Community Declarations" -- I'm sorry --</p> <p>11 "Planned Community that could affect the views or other</p> <p>12 property owners.</p> <p>13 "Moreover, depending on the location of the</p> <p>14 Lot, adjacent or nearby residential dwellings or other</p> <p>15 structures, whether within the Planned Community or</p> <p>16 outside the Planned Community, could potentially be</p> <p>17 constructed or modified in a manner that could block or</p> <p>18 impair all or part of the views from the Lot and/or</p> <p>19 diminish the location advantages of the Lot," if any.</p> <p>20 Have I read that accurately?</p> <p>21 A. Yes, you have.</p> <p>22 Q. What was the purpose of notifying the buyer</p> <p>23 that the adjacent development of the property could</p> <p>24 affect their views or block their views?</p> <p>25 A. Disclosures so I wouldn't be here today.</p>
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<p>1 was an addendum that made certain disclosures and</p> <p>2 committed the buyer to acknowledging the disclosures,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And again, part of it, as you indicated, was</p> <p>6 to make sure that the buyer knew exactly what he was</p> <p>7 getting to, what rights he could count on and what --</p> <p>8 what he couldn't count on as well, right?</p> <p>9 So let me ask you to look at, please,</p> <p>10 Paragraph 4 of Page 2 of Exhibit 5, Exhibit 5 being</p> <p>11 called Addendum "1" to the Purchase Agreement, Earnest</p> <p>12 Money Receipt and Escrow Instructions.</p> <p>13 A. Where?</p> <p>14 Q. Paragraph 4, Page 2. It's called "No Golf</p> <p>15 Course or Membership Privileges." Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. "Purchasers shall not acquire any</p> <p>18 rights, privileges, interest, or membership in the</p> <p>19 Badlands Golf Course or any other golf course, public</p> <p>20 or private, or any country club membership by virtue of</p> <p>21 purchasing the lot." End of quote.</p> <p>22 A. Yes.</p> <p>23 Q. All right. Next, would you look at</p> <p>24 Paragraph 7 in the same document, please, called</p> <p>25 "Views/Location advantages." Do you see that?</p>	<p>1 That's why we did all this.</p> <p>2 Q. You mean here to give a deposition?</p> <p>3 A. Correct.</p> <p>4 Q. All right.</p> <p>5 MR. PECCOLE: What was that exhibit?</p> <p>6 MR. JIMMERSON: That was -- we're talking</p> <p>7 about Exhibit No. 5, Mr. Peccole.</p> <p>8 Q. (By Mr. Jimmerson) All right. Now I want to</p> <p>9 kind of change, paragraph, something a little</p> <p>10 different, a new subject matter.</p> <p>11 The Peccole family knew that the property of</p> <p>12 the golf course -- not Queensridge master plan, but the</p> <p>13 golf course -- could be developed; isn't that right?</p> <p>14 A. Yes.</p> <p>15 Q. And there was a lawsuit between BCG Holdings,</p> <p>16 LLC, and Fore Stars arising from the desire to develop</p> <p>17 the golf course property; is that right?</p> <p>18 A. BCG?</p> <p>19 Q. Yes.</p> <p>20 A. Is?</p> <p>21 Q. BGC. It's a company that Mr. Lowie had an</p> <p>22 interest in.</p> <p>23 A. Okay. Ask me the question again.</p> <p>24 Q. Okay. So just remember that the golf course</p> <p>25 property the Peccoles have transferred into Fore Stars,</p>

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<p>1 Ltd. --</p> <p>2 A. Yes.</p> <p>3 Q. -- I showed you the deed -- in 2005.</p> <p>4 A. Correct.</p> <p>5 Q. Now I'll show you a lawsuit that came two</p> <p>6 years later, in August of 2007, between BGC Holdings,</p> <p>7 LLC, and Fore Stars, Ltd.</p> <p>8 A. Okay.</p> <p>9 Q. Let me just show you that. It's a lot of</p> <p>10 years ago, I know.</p> <p>11 MR. JIMMERSON: I'm marking this as Exhibit</p> <p>12 No. 17.</p> <p>13 (Exhibit 17 marked.)</p> <p>14 Q. (By Mr. Jimmerson) And if I could help you,</p> <p>15 just look at Page 2 and 3. You'll see -- it will</p> <p>16 refresh your recollection about the lawsuit.</p> <p>17 A. I don't know what -- okay. I've read those</p> <p>18 two paragraphs.</p> <p>19 Q. Can you read Paragraph 7 just below.</p> <p>20 A. (Witness examined document.) Okay.</p> <p>21 Q. Okay. Do you recall that the family knew</p> <p>22 that the golf course could be developed and that they</p> <p>23 sold -- they sold BGC Holdings --</p> <p>24 A. Yes.</p> <p>25 Q. -- EHB Associated, a related entity, rights</p>	<p>1 for it to maximize the tower site. And so it was in</p> <p>2 concert. They were partners on the towers, so --</p> <p>3 Q. Okay. And the tower site property is</p> <p>4 adjoining or attaching to the golf course, right?</p> <p>5 A. Correct. Yes, sir.</p> <p>6 Q. Okay. And it's part of -- I would call it</p> <p>7 the country club building is part of that property,</p> <p>8 right?</p> <p>9 A. Yes. Correct.</p> <p>10 Q. Okay. And then it was sold off so that</p> <p>11 there's three tower sites?</p> <p>12 A. Yes.</p> <p>13 Q. Two of which have been developed, one of</p> <p>14 which is not yet developed?</p> <p>15 A. Yes.</p> <p>16 Q. That is owned by a different entity?</p> <p>17 A. Now.</p> <p>18 Q. Now. I guess it's IDB or someone else. Is</p> <p>19 that right?</p> <p>20 A. Yes. Yes.</p> <p>21 Q. But in those years, in the mid-2000s and</p> <p>22 later 2000s, it was all owned by the Peccole family; is</p> <p>23 that right?</p> <p>24 A. Correct.</p> <p>25 Q. Subject to a sale contract with BGC,</p>
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<p>1 to develop that property in the mid-2000s, in this case</p> <p>2 2007?</p> <p>3 A. Okay.</p> <p>4 Q. All right. And then there was a lawsuit,</p> <p>5 which is this Exhibit No. 17, that was brought forward</p> <p>6 for what BGC Holdings believed was a breach of contract</p> <p>7 by the Peccoles --</p> <p>8 A. Okay.</p> <p>9 Q. -- by Fore Stars in not selling it the</p> <p>10 property. Do you recall that?</p> <p>11 A. No.</p> <p>12 Q. Okay. All right. You were, then, not</p> <p>13 directly involved with that litigation?</p> <p>14 A. I was not.</p> <p>15 Q. Okay. Fair enough.</p> <p>16 Do you know whether or not, maybe just to</p> <p>17 refresh your recollection, that a resolution was</p> <p>18 reached which led to a restrictive covenant, being</p> <p>19 limited, having to do with the towers?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What's your recollection about that?</p> <p>22 A. Just the recollection was that there were a</p> <p>23 series of easements that needed to be -- that we needed</p> <p>24 in order to develop the towers and there was some</p> <p>25 rerouting of a couple of holes that needed to be done</p>	<p>1 Mr. Lowie and his interests; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Fair enough. And I would like to show</p> <p>4 you the restrictive covenant, Exhibit 21.</p> <p>5 (Exhibit 21 marked.)</p> <p>6 THE WITNESS: I'm starting to remember some</p> <p>7 of that as well. It had to do with the clubhouse as</p> <p>8 well.</p> <p>9 Q. (By Mr. Jimmerson) That's correct.</p> <p>10 I'm showing you what's been marked as</p> <p>11 Exhibit 21, called Restrictive Covenant, recording on</p> <p>12 or about March 14, 2008. Are you familiar with this</p> <p>13 document?</p> <p>14 A. No.</p> <p>15 Q. Okay. Are you familiar with the idea that</p> <p>16 there was a restrictive covenant that came as a result</p> <p>17 of some negotiations between the parties?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And it had to do in part with the</p> <p>20 existing golf clubhouse; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And the adjoining property?</p> <p>23 A. Yes.</p> <p>24 Q. The document speaks for itself. I just put</p> <p>25 it in sequence. Thank you very much.</p>

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<p>1 Now showing you what's been marked as</p> <p>2 Exhibit 22.</p> <p>3 (Exhibit 22 marked.)</p> <p>4 Q. (By Mr. Jimmerson) Consistent with your</p> <p>5 recollection, Mr. Goorjian, there was a settlement</p> <p>6 reached between BGC Holdings and Fore Stars, Fore Stars</p> <p>7 being the Peccole family's company, in this time period</p> <p>8 of 2007.</p> <p>9 And this document has been disclosed in this</p> <p>10 form to Mr. Peccole. We went to court and there was a</p> <p>11 court order on this, so this was the form in which the</p> <p>12 document was disclosed to Mr. Peccole, so that's why it</p> <p>13 is the way it is.</p> <p>14 A. Okay.</p> <p>15 Q. It has nothing to do with you, but I'm just</p> <p>16 telling you that's why the whole document is not here,</p> <p>17 is what I'm trying to say.</p> <p>18 A. Redacted.</p> <p>19 Q. And it's also only two pages and not the full</p> <p>20 document.</p> <p>21 A. Right.</p> <p>22 Q. All right. My only question to you is, do</p> <p>23 you have a recollection of this document?</p> <p>24 A. I don't.</p> <p>25 Q. Okay. Fair enough. But do you see that this</p>	<p>1 MR. PECCOLE: Can I take another break?</p> <p>2 MR. JIMMERSON: Yes, sir, you certainly can.</p> <p>3 Absolutely.</p> <p>4 (A recess was taken.)</p> <p>5 MR. JIMMERSON: So the next document is</p> <p>6 Exhibit 23.</p> <p>7 (Exhibit 23 marked.)</p> <p>8 Q. (By Mr. Jimmerson) Again, I'm just telling</p> <p>9 you things that are really not serious issues of</p> <p>10 inquiry, but I just want to show you that Fore Stars</p> <p>11 was created by the Peccoles to hold the golf course</p> <p>12 property; and this is the articles of incorporation of</p> <p>13 Fore Stars with the Secretary of State in or about</p> <p>14 December 5, 1995. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recognize the signatures at Page 3</p> <p>17 of this --</p> <p>18 A. Sure do.</p> <p>19 Q. -- articles of organization?</p> <p>20 A. Yes.</p> <p>21 Q. From Wanda Peccole to Lawrence Bayne and Lisa</p> <p>22 Miller?</p> <p>23 A. Yes. That would be Loretta.</p> <p>24 Q. Got it. All right. Thank you.</p> <p>25 No questions on that, to that.</p>
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<p>1 does bear connection between the lawsuit that is</p> <p>2 brought in 2007 and then a settlement between these</p> <p>3 parties?</p> <p>4 A. Yes.</p> <p>5 Q. All right.</p> <p>6 A. And I'm recalling that as we speak more and</p> <p>7 more.</p> <p>8 Q. All right. And would you look at the bottom</p> <p>9 of the page.</p> <p>10 A. Yup.</p> <p>11 Q. The page 1. You'll see, "The foregoing</p> <p>12 notwithstanding, the Restrictive Covenant shall expire</p> <p>13 ten years after its" -- it has a different wording</p> <p>14 there -- "after its delivery."</p> <p>15 Do you see the word "delivery" there</p> <p>16 handwritten in?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And the restrictive covenant is the</p> <p>19 document I just showed you, Exhibit No. 21. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. All right. So that's -- I'm just trying to</p> <p>23 lay it together so you can see they're all tied</p> <p>24 together. That's all.</p> <p>25 That's all I have for that. Appreciate it.</p>	<p>1 I'm showing you what's been marked as</p> <p>2 Exhibit 24.</p> <p>3 (Exhibit 24 marked.)</p> <p>4 Q. (By Mr. Jimmerson) Exhibit 24 is Bill No.</p> <p>5 Z-2001-1, Ordinance No. 5353; but it is, in 2001, the</p> <p>6 City of Las Vegas's ordinance that takes all of the</p> <p>7 property that's shown in the attachments and codifies</p> <p>8 it as R-PD7 zoning.</p> <p>9 And I wanted to just ask you if you've seen</p> <p>10 this city ordinance before today. I'm sure you've</p> <p>11 maybe seen it at the time, but I don't remember if you</p> <p>12 remember it or not.</p> <p>13 A. I do not.</p> <p>14 Q. Okay. You can see, though, that the</p> <p>15 ordinance attaches parcel numbers?</p> <p>16 A. Yes.</p> <p>17 Q. APN --</p> <p>18 MR. PECCOLE: I'm going to object to the</p> <p>19 exhibit. It's irrelevant, immaterial to this case.</p> <p>20 Q. (By Mr. Jimmerson) So anyway, you'll see</p> <p>21 that there are APN numbers attached to this ordinance.</p> <p>22 Is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Fair enough. Thank you, sir.</p> <p>25 Now, the Peccole family retained different</p>

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<p>1 professionals to help them with zoning matters, 2 development matters and the like; is that right? 3 A. Yes. 4 Q. Okay. Do you remember the name A. Wayne 5 Smith &amp; Associates as a planner -- 6 A. Yes. 7 Q. -- in the mid-'80s? 8 A. Yes, I do. 9 Q. Okay. And how do you remember them? 10 A. He was the -- not the original, but he did 11 the master plan for what was at the time about 12 2300 acres of Peccole lands from Durango to Hualapai 13 and Charleston to Alta. 14 Q. All right. I'm showing you number -- I want 15 to show you an exhibit, then, Exhibit No. 25. 16 (Exhibit 25 marked.) 17 Q. (By Mr. Jimmerson) This is a letter that 18 bears the date March 26, 1986. Do you see that? 19 A. Yes. 20 Q. And I just wanted to confirm your own 21 testimony earlier today about, in the third paragraph, 22 the zoning approvals -- 23 MR. PECCOLE: I would interpose an objection 24 on the grounds that anything that has to do with the 25 initial Venetian Foothills has no relevancy with regard</p>	<p>1 MR. PECCOLE: And in response, I just say to 2 Mr. Jimmerson it's irrelevant and immaterial to the 3 lawsuit that he has filed against my wife and I. 4 MR. JIMMERSON: And so that begs the question 5 of why you would make reference to the Peccole Ranch 6 master plan in your motion for summary judgment in this 7 lawsuit, Mr. Peccole. 8 Q. (By Mr. Jimmerson) Would you also look at 9 this exhibit, Mr. Smith's exhibit. I just want to call 10 one document -- one sentence to your attention. 11 Does this letter, who was the representative 12 of the Peccole family, Jackie Guthrie of Wayne Smith &amp; 13 Associates, state in the third paragraph, last 14 sentence, quote, The R-PD category is requested, at the 15 direction of the planning staff, as it allows the 16 developer flexibility and the City design control, end 17 of quote? 18 A. Yes. 19 Q. All right. Let me just show you -- I'm 20 omitting Exhibit 25, and the omission is intentional. 21 MS. POLSELLI: 26. That would be 26. 22 MR. JIMMERSON: I'm sorry. 26. I misspoke. 23 No -- 26, that's right. I'm omitting Exhibit 26, and 24 the omission is intentional. And I'm also omitting 25 Exhibit No. 27 as an intentional omission.</p>
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<p>1 to this lawsuit or Queensridge South -- or North. 2 Excuse me. 3 Q. (By Mr. Jimmerson) All right. And I was 4 interrupted in the middle of my question. Let me 5 finish the question, and then I'd like to respond to 6 the objection. 7 So it refers to zoning C-1 for the commercial 8 sites, P-R for the office sites, C-V for a 5-acre 9 community center parcel, and the R-PD for residential. 10 Do you see that? 11 A. Yes, I do. 12 Q. And these are different zoning designations, 13 depending upon the intended use? 14 A. Correct. 15 Q. All right. Thank you. 16 MR. JIMMERSON: Now just to respond to the 17 objection. Mr. Peccole has raised these issues in a 18 motion for summary judgment; and while I may agree that 19 they have nothing to do with the instant litigation, 20 because he has made these express references to these 21 different -- different plans and the Peccole Ranch 22 master plan to the south of West Charleston, I feel 23 that I'm obliged to at least respond to those in this 24 record. But I do agree that the whole issue of Peccole 25 Ranch is irrelevant to the instant lawsuit.</p>	<p>1 I'll show you Exhibit No. 28. 2 (Exhibit 28 marked.) 3 Q. (By Mr. Jimmerson) Relative to No. 28, this 4 is a letter from the City of Las Vegas, City Clerk, 5 Kathleen Tighe, to the William Peccole 1982 Trust, 6 dated May 1, 1990, with regard to zoning that was 7 approved by the city council, specifically the R-PD7 8 and R -- you know, R-PD7 zoning that's referenced here. 9 My question to you is, do you know whether or 10 not you've seen this letter before, sir? 11 A. I have not. 12 Q. Fair enough. Thank you. 13 And this 1990 time period was before 14 Queensridge was ever created, right? Do you see the 15 letter I showed you? 16 A. Yes, it is. 17 Q. So the Queensridge came to be known six years 18 later, 1996? 19 A. Correct. 20 Q. And then the years thereafter? 21 A. Correct. 22 Q. After which the old plan of Peccole Ranch was 23 abandoned and then you started with Queensridge six 24 years later? 25 A. Correct.</p>

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<p>1 Q. All right.</p> <p>2 MR. JIMMERSON: To my best recollection,</p> <p>3 that's all the questions I have; and I thank you very</p> <p>4 much for your time, sir.</p> <p>5 Mr. Peccole may have some questions, and he</p> <p>6 has the right to ask you that.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. JIMMERSON: So please be responsive to</p> <p>9 his questions. Thank you, sir. Thank you for your</p> <p>10 time.</p> <p>11 MR. PECCOLE: My turn?</p> <p>12 MR. JIMMERSON: No further questions. Thank</p> <p>13 you.</p> <p>14 EXAMINATION</p> <p>15 BY MR. PECCOLE:</p> <p>16 Q. Is it okay if I call you Greg?</p> <p>17 A. Please, Bob.</p> <p>18 Q. When did you last talk to Yohan Lowie?</p> <p>19 A. Oh, it would have been yesterday, maybe, or</p> <p>20 the day before.</p> <p>21 Q. Did you talk about this case?</p> <p>22 A. No, sir.</p> <p>23 Q. Have you talked to him about this case at any</p> <p>24 time?</p> <p>25 A. Yes.</p>	<p>1 A. I'd say I worked from him -- for him, oh,</p> <p>2 maybe three -- two to three years, two-and-a-half to</p> <p>3 three years.</p> <p>4 Q. And that would have been in the --</p> <p>5 A. That would have been to about 2009 or '8.</p> <p>6 '9.</p> <p>7 Q. Now, a little while ago, almost to the end of</p> <p>8 your deposition, Mr. Jimmerson asked you questions</p> <p>9 about experts that were working in --</p> <p>10 A. Correct.</p> <p>11 Q. -- in the field dealing with both the north</p> <p>12 side and the south side.</p> <p>13 MR. JIMMERSON: Let me just object. I never</p> <p>14 used the word "experts." But go ahead.</p> <p>15 A. There were consultants involved in the</p> <p>16 project. We had several that would come and go. So --</p> <p>17 and they were different in Peccole Ranch -- they</p> <p>18 weren't the same consultants in both, although some may</p> <p>19 have overlapped.</p> <p>20 But we had landscape designers, we had</p> <p>21 architects, we had engineers, you know, all the</p> <p>22 disciplines. Attorneys. All the disciplines were</p> <p>23 covered with a consultant.</p> <p>24 Q. (By Mr. Peccole) Does the name Clyde Spitzze</p> <p>25 ring a bell?</p>
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<p>1 Q. How long ago?</p> <p>2 A. Oh, only the fact that -- oh, I'd say off and</p> <p>3 on of while this has been happening. Only -- not about</p> <p>4 the case; just the fact that there is a case.</p> <p>5 Q. Did -- was he your employer at one time?</p> <p>6 A. Yes, he was.</p> <p>7 Q. And tell me a little bit about that.</p> <p>8 A. That was during the high-rises. I worked for</p> <p>9 the company there as -- well, actually, it was</p> <p>10 during -- it would have been 2006, '5 or '6, when we</p> <p>11 were doing the high-rises and preselling the</p> <p>12 high-rises. I worked for him.</p> <p>13 Q. Now, when you worked for him, how were you</p> <p>14 being paid?</p> <p>15 A. I started as an employee with receiving draws</p> <p>16 against my future commissions.</p> <p>17 Q. And when you say you were working for</p> <p>18 Mr. Lowie at that time, was it one of his entities?</p> <p>19 A. I would have been EHB, I believe, employee</p> <p>20 or -- I can't remember if I was an employee of the</p> <p>21 project. I really can't recall who paid me. I know</p> <p>22 that my job was to put the marketing materials together</p> <p>23 and to presell the towers.</p> <p>24 Q. And how long would you say you worked for</p> <p>25 him?</p>	<p>1 A. Yes, it does. Clyde was our engineer.</p> <p>2 Q. He was what?</p> <p>3 A. Our engineer.</p> <p>4 Q. For the overall master plan, entire thing?</p> <p>5 A. Well, we had G.C. Wallace was involved at one</p> <p>6 time. VTN was involved. So there were several</p> <p>7 engineers involved. But I would say the crux of it,</p> <p>8 when it came to Queensridge, we were pretty much using,</p> <p>9 if I recall, Clyde.</p> <p>10 Q. Now, when -- when Bill started the</p> <p>11 development, he started with his original LLC over in</p> <p>12 the south side, which would be Foothills something or</p> <p>13 other at that time?</p> <p>14 A. We never did anything under Venetian</p> <p>15 Foothills. That was the original plan that Bill may</p> <p>16 have done, gosh, sometime maybe in the '70s. We met</p> <p>17 with A. Wayne Smith in the '80s sometime -- I can't</p> <p>18 recall when -- and came up with a Peccole Ranch master</p> <p>19 plan.</p> <p>20 Q. Now, in --</p> <p>21 A. Let me --</p> <p>22 Q. I'm sorry.</p> <p>23 A. Conceptual plan.</p> <p>24 Q. 1986, there was filed an application with a</p> <p>25 master plan map. Is that correct?</p>



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<p>1 A. Yes.</p> <p>2 Q. And that master plan eventually became</p> <p>3 Phase One and Phase Two?</p> <p>4 A. Don't recall. I know that it covered all of</p> <p>5 his property.</p> <p>6 Q. And Phase One started off on the south side</p> <p>7 of Charleston?</p> <p>8 A. We started -- again, I don't know what we</p> <p>9 called -- we started with Canyon Gate.</p> <p>10 Q. Canyon Gate. Yeah.</p> <p>11 A. Which was a development with a partnership</p> <p>12 that went sour as well.</p> <p>13 Q. And after that, you shifted to Phase Two,</p> <p>14 which was --</p> <p>15 A. I don't know if we --</p> <p>16 Q. -- was part of the master plan?</p> <p>17 A. I don't know if we phased it or what we</p> <p>18 called it, but, yeah, we went to -- our partnership</p> <p>19 with Triple Five we got into, and started -- and that's</p> <p>20 when I left the family, when they started that. I</p> <p>21 split off and divorced and went to work for Nevada</p> <p>22 Title.</p> <p>23 MR. PECCOLE: Okay. I'd like to introduce</p> <p>24 this as Exhibit A.</p> <p>25 (Exhibit A marked.)</p>	<p>1 Q. So what this was is an application for</p> <p>2 rezoning, and that would be the Queensridge side. We'd</p> <p>3 be going to the north of Charleston. Correct?</p> <p>4 MR. JIMMERSON: I'm just going to object to</p> <p>5 the question because the witness cannot identify the</p> <p>6 document, as so stated. So asking him questions about</p> <p>7 this now would be speculative on the part of the</p> <p>8 witness and unfair to the witness.</p> <p>9 Q. (By Mr. Peccole) Is that correct? The</p> <p>10 Peccole Ranch overall master plan, Phase Two, which is</p> <p>11 the Queensridge side of Charleston?</p> <p>12 A. I can't answer that question because --</p> <p>13 that's what this -- this document says that this is the</p> <p>14 Peccole Ranch partnership, okay, which I -- I can't</p> <p>15 recall. But I believe this was all the property that</p> <p>16 Triple Five was involved in in our partnership at the</p> <p>17 time. Okay? And that's really what this is</p> <p>18 identifying. But this is -- this was done with the</p> <p>19 Peccoles and Triple Five.</p> <p>20 MR. JIMMERSON: You can see that because the</p> <p>21 front page says it's a partnership. You're a hundred</p> <p>22 percent right, Mr. Goorjian.</p> <p>23 Q. (By Mr. Peccole) On Page 1, does it say</p> <p>24 introduction to the Peccole Ranch overall master plan?</p> <p>25 A. That's what it says, yes.</p>
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<p>1 Q. (By Mr. Peccole) Did you ever talk to Bill</p> <p>2 Peccole about what his intention was as far as the golf</p> <p>3 course remaining a golf course?</p> <p>4 A. Don't recall.</p> <p>5 Q. He never told -- I mean, anybody or any of</p> <p>6 the family discuss it with you? How about Wanda?</p> <p>7 A. Rephrase your question, Bob. I don't know</p> <p>8 what you --</p> <p>9 Q. Did you ever hear either Bill or Wanda say</p> <p>10 that the golf course is subject to going away?</p> <p>11 A. No.</p> <p>12 Q. In fact, Bill himself often said, "It will be</p> <p>13 a golf course and open space, and that's what I'm</p> <p>14 selling."</p> <p>15 A. That I don't recall.</p> <p>16 Q. Take a look at Exhibit A.</p> <p>17 A. Yes.</p> <p>18 Q. And just as kind of a little background, this</p> <p>19 is the Phase Two, as you'll see on the front page, "A</p> <p>20 Master Plan Amendment and Phase Two Rezoning</p> <p>21 Application." Do you see that at the very top?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And that's the Peccole Ranch master plan,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p>1 Q. And it uses the term, "Peccole Ranch Overall</p> <p>2 Conceptual Master Plan." You used that term a little</p> <p>3 while ago.</p> <p>4 A. Conceptual.</p> <p>5 Q. Yes.</p> <p>6 A. Correct.</p> <p>7 Q. If you look at Page -- right after Page 1 --</p> <p>8 A. Yes.</p> <p>9 Q. -- you'll see that the map now shows you --</p> <p>10 A. What the partnership --</p> <p>11 Q. -- where he's going.</p> <p>12 A. Yeah.</p> <p>13 Q. And it shows the whole thing, correct?</p> <p>14 A. It shows all of what is still Mr. Peccole's</p> <p>15 land.</p> <p>16 Q. Yes. And it eliminates Canyon Gate Golf</p> <p>17 Course, as you said earlier?</p> <p>18 A. Yup.</p> <p>19 Q. And it eliminates the McGah-Bailey on the</p> <p>20 south side of Charleston?</p> <p>21 A. There's one mistake here, is that -- this --</p> <p>22 because he didn't own -- there's a piece there that I</p> <p>23 don't think he did own that's shaded here. It belonged</p> <p>24 to your father.</p> <p>25 Q. To who?</p>

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<p>1 A. Your dad, I believe.</p> <p>2 Q. That's correct. So it was -- it's eliminated</p> <p>3 from the map. Correct? You can see it's dark, is</p> <p>4 what --</p> <p>5 A. Everything that's dark is what's represented</p> <p>6 in this partnership, but I believe some of what is dark</p> <p>7 here belonged to Bob and Lena, if I'm correct.</p> <p>8 Q. No. No, that's not correct.</p> <p>9 A. Okay. So where is Charleston? Okay. You're</p> <p>10 right. It's -- here is -- it says Bailey-McGah. And</p> <p>11 that did not belong to Bailey-McGah, right?</p> <p>12 Q. That's correct.</p> <p>13 A. Okay. I got that correct. That's right.</p> <p>14 Q. And I was -- if you go along --</p> <p>15 A. That's correct. I got confused.</p> <p>16 Q. If you go a couple of pages further in, you</p> <p>17 will come to the overall development of the entire</p> <p>18 partnership, correct?</p> <p>19 MR. JIMMERSON: I'm just going to object.</p> <p>20 The document speaks for itself, and --</p> <p>21 A. Yes.</p> <p>22 MR. JIMMERSON: -- as Mr. Peccole's</p> <p>23 indicated, this is all irrelevant to the instant</p> <p>24 dispute.</p> <p>25 THE WITNESS: Yes.</p>	<p>1 A. I don't know what he's asking for. Well,</p> <p>2 this is what the document says, yes. If it's --</p> <p>3 whatever this document is stating, that's what</p> <p>4 Mr. Peccole was attempting to do.</p> <p>5 Q. Now, when you look at the map of the overall</p> <p>6 master plan -- and that shows you the zoning that</p> <p>7 happens to be designated different parcels; is that</p> <p>8 correct?</p> <p>9 A. For those parcels shown in white? Yes.</p> <p>10 Q. So if you're looking at the portion that</p> <p>11 starts with the -- going north from Charleston over</p> <p>12 towards the Angel Park Golf Course --</p> <p>13 A. Correct.</p> <p>14 Q. -- those were the zonings in each of those</p> <p>15 white parcels that he was asking for, is that correct,</p> <p>16 for Phase Two?</p> <p>17 A. For Queensridge master -- or for Queensridge.</p> <p>18 These were the zonings he was asking for.</p> <p>19 Q. And actually Phase One has already been</p> <p>20 almost completed by then, 1990?</p> <p>21 A. Correct. Which was -- which they were no</p> <p>22 longer involved in.</p> <p>23 Q. So he was already moving on the north side of</p> <p>24 Charleston, and that's what this application is about?</p> <p>25 A. Because he was no longer involved in the</p>
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<p>1 Q. (By Mr. Peccole) And it does show from</p> <p>2 Charleston, going north, towards Angel Park -- it shows</p> <p>3 the development that Bill was presenting at that time</p> <p>4 for zoning; is that correct?</p> <p>5 A. I'm not -- I can't answer that.</p> <p>6 Q. Doesn't it say this is a zoning application?</p> <p>7 MR. JIMMERSON: I just object --</p> <p>8 A. I'm not sure if this is what he used.</p> <p>9 Q. (By Mr. Peccole) And Phase Two rezoning</p> <p>10 application?</p> <p>11 MR. JIMMERSON: I'm just going to object.</p> <p>12 The witness has testified that this was abandoned in</p> <p>13 favor of Queensridge years later, and he's not familiar</p> <p>14 with the document.</p> <p>15 I can't instruct the witness not to answer</p> <p>16 the question, but it's unfair to the witness. So</p> <p>17 that's my objection.</p> <p>18 THE WITNESS: Ask the question again, Bob.</p> <p>19 Q. (By Mr. Peccole) Is this an application, for</p> <p>20 Phase Two rezoning application? Directing your</p> <p>21 attention to the first page.</p> <p>22 A. That's what it -- that's what it states,</p> <p>23 correct.</p> <p>24 Q. And so in this application he's -- Bill was</p> <p>25 asking for rezoning? Is that correct?</p>	<p>1 south side.</p> <p>2 Q. Okay.</p> <p>3 A. If my mind -- if my brain here serves me</p> <p>4 correctly, he was already -- I can't recall if he was</p> <p>5 already in -- 1990, if he was already in litigation</p> <p>6 with Triple Five, but I can't recall.</p> <p>7 Q. If you look at Page 8 of this application,</p> <p>8 Exhibit A.</p> <p>9 A. Yup.</p> <p>10 Q. Beginning -- it talks about Phase Two?</p> <p>11 A. Where does it say anything about Phase Two?</p> <p>12 Q. Could you see what it says? It's saying --</p> <p>13 A. Am I looking at this?</p> <p>14 Q. No. You should be at Page 8.</p> <p>15 A. Eight. Mine are not paginated, so let me see</p> <p>16 here. Okay. There we go. Eight. I'm there.</p> <p>17 Q. It's saying Phase Two, Peccole Ranch</p> <p>18 comprises approximately 996.4-acre.</p> <p>19 A. Okay.</p> <p>20 MR. JIMMERSON: I'm just going to object to</p> <p>21 the question. The document speaks for itself.</p> <p>22 Q. (By Mr. Peccole) And that's bounded by Angel</p> <p>23 Park Golf Course on the north, Durango on the east,</p> <p>24 small sections of Sahara Avenue, Charleston Boulevard</p> <p>25 and Alta Road on the south and Hualapai on the west.</p>

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<p>1 Now, that's Phase Two. Right? And that's</p> <p>2 what this application is about?</p> <p>3 MR. JIMMERSON: Would you just mark this, by</p> <p>4 the way, so I can find it later.</p> <p>5 A. Okay.</p> <p>6 Q. (By Mr. Peccole) Was that part of -- in</p> <p>7 other words, this application is about Phase Two; and</p> <p>8 it's saying exactly what land it covers and how much</p> <p>9 land there is?</p> <p>10 MR. JIMMERSON: I'm just going to object to</p> <p>11 the question because this predates the lawsuit between</p> <p>12 Triple Five and Peccole.</p> <p>13 THE WITNESS: And it also predates me coming</p> <p>14 back to work for them.</p> <p>15 So I didn't come back till '94. I don't --</p> <p>16 this stuff is all foreign to me.</p> <p>17 Q. (By Mr. Peccole) Well, this application was</p> <p>18 submitted February 6, 1990, and it definitely was</p> <p>19 Phase Two.</p> <p>20 A. I was working for --</p> <p>21 Q. So you weren't --</p> <p>22 A. I'm not part of the family. I'm not -- I</p> <p>23 don't -- I'm not familiar with this document. I'm</p> <p>24 sorry.</p> <p>25 Q. So you were gone?</p>	<p>1 A. No.</p> <p>2 Q. Well, let's take a look at Page 10.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see the designation "Open Space and</p> <p>5 Drainage"?</p> <p>6 A. Yes.</p> <p>7 Q. You knew that existed, correct, as a</p> <p>8 salesman?</p> <p>9 A. No.</p> <p>10 MR. JIMMERSON: Objection. It's two</p> <p>11 different plans.</p> <p>12 THE WITNESS: I'm going to answer his</p> <p>13 question, is no, I'm not.</p> <p>14 Q. (By Mr. Peccole) You weren't aware of it?</p> <p>15 A. Not when I was selling in -- not in 1990. I</p> <p>16 wasn't selling anything, so --</p> <p>17 Q. How about after 1990?</p> <p>18 A. There was a different plan. That wasn't the</p> <p>19 same plan.</p> <p>20 Q. Well, we'll have to talk about that.</p> <p>21 A. All right.</p> <p>22 Q. But this does say "Open Space and Drainage,"</p> <p>23 correct?</p> <p>24 MR. JIMMERSON: I'm just going to object.</p> <p>25 The document speaks for itself and has nothing to do</p>
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<p>1 A. Yeah.</p> <p>2 Q. This is -- if you do look at eight and that</p> <p>3 first paragraph, it says "Phase Two are R-PD7, R-3 and</p> <p>4 C-1, as described in the following land use</p> <p>5 descriptions. Overall density of Phase Two is 4.5</p> <p>6 DU/AC."</p> <p>7 Now, if you go back to the first map we</p> <p>8 looked at after Phase Two --</p> <p>9 A. Yup.</p> <p>10 Q. -- those zonings are all set out in those</p> <p>11 white areas that are north of West Charleston.</p> <p>12 A. Okay.</p> <p>13 Q. And so they total exactly what he was</p> <p>14 requesting, and the exact zoning he was asking for.</p> <p>15 A. For all of the properties that were a part of</p> <p>16 this site.</p> <p>17 Q. Well, for the Phase Two.</p> <p>18 A. For all the properties that were a part of</p> <p>19 Phase Two.</p> <p>20 Q. Yes.</p> <p>21 A. That were -- again, yeah, I know where you're</p> <p>22 going. Okay.</p> <p>23 Q. Now, you became a salesman in the Queensridge</p> <p>24 area, so you were selling properties subject to this</p> <p>25 document?</p>	<p>1 with Queensridge.</p> <p>2 A. Yeah. Okay. That's what it says. It says</p> <p>3 "Open Space and Drainage," yes, it does.</p> <p>4 Q. (By Mr. Peccole) And this is Queensridge.</p> <p>5 MR. JIMMERSON: Absolutely it does not say</p> <p>6 the word "Queensridge" on this document.</p> <p>7 THE WITNESS: It says Peccole Ranch.</p> <p>8 MR. PECCOLE: Okay. Let's read this, then.</p> <p>9 MR. JIMMERSON: Let's agree not to step on</p> <p>10 each other's words. Allow me to make an objection,</p> <p>11 Mr. Peccole, and then you can certainly respond.</p> <p>12 Q. (By Mr. Peccole) "A focal point of Peccole</p> <p>13 Ranch Phase Two is the 199.8-acre golf course and open</p> <p>14 space drainageway system which traverses the site along</p> <p>15 the natural wash system. All residential parcels</p> <p>16 within Phase Two, except one, have exposure to the golf</p> <p>17 course and open space areas.</p> <p>18 "The single family parcel which is not</p> <p>19 adjacent to the open space system borders Angel Park</p> <p>20 Golf Course on its northern boundary. Passive and</p> <p>21 active recreational areas will be provided, and</p> <p>22 residents will have an opportunity to utilize</p> <p>23 alternative modes of transportation throughout with the</p> <p>24 bike paths and pedestrian" -- and it shows another map</p> <p>25 that they were showing -- "walkways (see Exhibits E and</p>

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<p>1 F on pages 13 and 14). The surrounding community as  2 well as project residents may use the open space system  3 to travel to neighboring areas including Angel Park."  4 In other words, it was offered to the city at  5 that time by Bill Peccole that there was going to be  6 all this open space --  7 MR. JIMMERSON: Objection.  8 Q. (By Mr. Peccole) -- and I would assume that  9 a salesperson would be aware of that.  10 MR. JIMMERSON: I'm just going to object on  11 the grounds -- there are several objections. Number  12 one is the witness is not familiar with this document,  13 and was not an employee of the Peccole family when this  14 document was being prepared, number one.  15 Number two, this document reflects a plan  16 that was later abandoned by the family in favor of a  17 new plan and a different area called Queensridge. And  18 number three, the document speaks for itself.  19 THE WITNESS: And I'd like to comment that  20 that's -- that's kind of how I see it. This document  21 is superseded by another document, another plan,  22 so . . .  23 Q. (By Mr. Peccole) Well, let me just put it  24 this way: This was the initial adopted plan. And just  25 to, you know, make a point, take a look at Exhibit 28</p>	<p>1 and R-PD18, R-MHP, P-R, C-1, C-2 to R-PD3 (residential  2 planned development), R-PD7 (residential planned  3 development) and C1, (limited commercial). Okay.  4 Q. Okay.  5 A. But I'm not aware if there's something that  6 came after this.  7 MR. JIMMERSON: Also object there's no  8 question pending.  9 Q. (By Mr. Peccole) When you were involved in  10 the actual -- the south side --  11 A. Yes.  12 Q. -- Phase One, there was -- this full map was  13 in effect of the overall master plan. How did they  14 carry that? Were those carried as resolutions of  15 intent?  16 MR. JIMMERSON: Object to the form of the  17 question.  18 A. Don't know. Don't have that answer to that.  19 Bob, I wasn't -- I was not around, again,  20 from 1989 till 1994.  21 Q. (By Mr. Peccole) I'm talking about 1986 to  22 1990.  23 A. Okay. We -- and all we did was focus on --  24 we had a lot of things that -- we did an overall  25 conceptual plan for the property. Okay?</p>
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<p>1 that Mr. Jimmerson just offered.  2 A. Which --  3 Q. He's got 28 over there somewhere.  4 A. Okay. Again, I'm not around, so I don't --  5 I'm not familiar with this.  6 Q. Okay. But this is a response to this  7 application that you say was somehow changed later,  8 which we'll have to see about that.  9 A. Well, I don't know, yeah. I know that the  10 name changed.  11 Q. Yeah. Now we're looking at what the city  12 finally said. Take a look at that letter.  13 MR. JIMMERSON: I'm just going to object.  14 When I asked the question, "Have you ever seen this  15 document before?" Mr. Goorjian answered no. That ended  16 my examination of the document.  17 It's unfair to ask the witness something he  18 does not know or recognize.  19 Q. (By Mr. Peccole) That first paragraph, can  20 you read that.  21 A. "The City Council at a regular meeting held  22 April 4th, 1990 approved the request for  23 reclassification of property located on the east side  24 of Angel Park and Sahara Avenue for N-U."  25 Resolution of intent, R-1, R-2, R-3, R-PD7</p>	<p>1 Q. I agreed with you.  2 A. All right. Which, you know, we had several.  3 We had Venetian Foothills, we had Peccole Ranch and  4 then we had Queensridge. Okay? So there's three  5 different -- there's been three different plans for  6 that property.  7 Q. And the overall map is the one that's in --  8 you've just been looking at.  9 A. I don't --  10 MR. JIMMERSON: Objection.  11 A. I don't know.  12 Q. (By Mr. Peccole) That's Phase One and Two.  13 MR. JIMMERSON: Objection. That misstates  14 his testimony.  15 Q. (By Mr. Peccole) Well, it says that.  16 A. Okay. Well, there's a lot of things that are  17 said.  18 Q. Okay. But I thought that you didn't know  19 much about it.  20 A. I did not. I just told you.  21 Q. Okay. So --  22 A. 1990 -- from 1989 till 1994, I didn't know  23 much about it. That happened in 1990. So I was  24 involved in planning, but I was not involved in any  25 submittals or anything.</p>

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<p>1 Q. This map is the overall map that was 2 presented in 1986. 3 A. To who? 4 Q. To you. 5 A. Presented to who, though? 6 Q. It was the design. It was -- 7 A. Concept, yes. I've seen that concept. 8 Q. Okay. That's what I'm trying to say. 9 A. Of course, I've seen this concept, yes. 10 Q. Okay. Now, the only question I've got -- 11 A. I don't know -- 12 Q. -- is you had started on the Phase One, which 13 was south of Charleston. 14 A. I did not. 15 Q. Well, you were there. 16 A. No. 17 Q. During later on? What time did you -- 18 A. I left -- we did Canyon Gate. We started 19 that in 1986. 20 Q. Okay. 21 A. Okay? I left in '89. 22 Q. This parcel map was available at that time. 23 MR. JIMMERSON: I'm going to object. The 24 witness is testifying to something that isn't borne out 25 by the document.</p>	<p>1 the -- when you looked at this map, this conceptual 2 drawing, and it's got the zonings, and you -- 3 I'm asking you, when we talk about the north 4 side of West Charleston, since it wasn't there yet, 5 were those carried as ROIs, resolution of intent? 6 A. Don't know. Don't even -- don't know. 7 Q. You wouldn't know. Okay. 8 Because the only reason, taking you back to 9 28, which is Mr. Jimmerson's exhibit, at the time those 10 zonings were granted, if you look at Page 2, No. 8 and 11 No. 7, especially 7, "The existing Resolution of Intent 12 on this property is expunged upon approval of this 13 application." 14 So it would have eliminated everything else 15 but what was granted, correct? 16 A. I don't know. 17 MR. JIMMERSON: I'm just going to object, out 18 of fairness to this witness, who has answered that he 19 does not know the document, does not recognize the 20 document, wasn't employed by the family at the time. 21 A. But I will say, just looking at the document, 22 and looking -- it didn't get built this way. 23 Q. (By Mr. Peccole) Well, all I can say is they 24 expunged everything else in the ROIs, and that -- 25 that's the city council.</p>
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<p>1 I'm sorry. Not the witness. The questioner, 2 the lawyer, is testifying about something that's not 3 borne out by the document. 4 Q. (By Mr. Peccole) This is the overall 5 master -- 6 A. This overall master plan was -- was -- this 7 is 1990. I'm gone. 8 Q. This is -- this overall -- 9 A. This concept was drawn. 10 Q. That's the concept. 11 A. Okay. This -- I've -- then let's -- show me 12 the A. Wayne Smith conceptual. That's what -- 13 Q. This was part of the entire -- 14 A. Okay. 15 Q. -- operation, Phase One and Phase Two. 16 A. That's what you say. 17 Q. Well, it says it right on it. 18 A. No. It says it's an application. 19 Q. All I'm asking -- 20 MR. JIMMERSON: Just note my objection that 21 the lawyer is testifying. He's not asking the witness 22 questions. He's badgering the witness. 23 Please. 24 Q. (By Mr. Peccole) Anyway, the only question I 25 was trying to ask you is if you had any idea were</p>	<p>1 I ask you to take a look at Page 18 of this 2 application. Are you there? 3 A. Yeah. 4 Q. Do you see Golf Course Drainage, 211.6 acres? 5 A. I do. 6 Q. Do you see any net density there? 7 A. I do not. 8 Q. That's the golf course and the drainage 9 system. 10 MR. JIMMERSON: I'm going to object. The 11 witness -- 12 Q. (By Mr. Peccole) Do you see any net units 13 there? 14 MR. JIMMERSON: Excuse me. When I make an 15 objection, can everyone agree to allow me to make an 16 objection and then you can continue, and don't just 17 keep talking. 18 My objection is the document speaks for 19 itself, number one. Number two, the document shows 20 hyphens; it doesn't show a number. 21 Number three, the -- there's no -- the 22 examiner, Mr. Peccole, is testifying. He's not asking 23 questions. 24 MR. PECCOLE: I'm asking him to read the 25 document.</p>

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<p>1 Q. (By Mr. Peccole) Does it say Golf Course 2 Drainage? Then it drops over to net density, zero? 3 A. No, it does not say zero. Again, it says a 4 dash. 5 Q. Well, it's zero. 6 A. It's a dash. 7 Q. And the other applications have numbers in 8 them. 9 MR. JIMMERSON: I'm just going to object to 10 the question. The witness is being asked -- he's not 11 being asked a question. The questioner, the lawyer, 12 Mr. Peccole, is testifying that dash equals zero or it 13 says zero; and it doesn't say that. It says dash. 14 MR. PECCOLE: Okay. 15 Q. (By Mr. Peccole) And then if you take a look 16 at net units for Golf Course Drainage, that also is a 17 dash. Right? 18 A. Yes. 19 Q. All right. If you add up the net units, they 20 add up to 4,247, and that covers single family and 21 multifamily. So aren't those dashes zero? 22 MR. JIMMERSON: Object that the document 23 speaks for itself. It's a document that the witness 24 had not seen, and was not employed by the family at the 25 time. Completely unfair to this witness.</p>	<p>1 A. Yes. 2 Q. Yes. 3 A. Yup. 4 Q. So you would be subject to both the requested 5 approvals and the actual approvals if you're the 6 salesperson? 7 A. I'm not subject to -- 8 MR. JIMMERSON: I'm just going to object. 9 We're talking a decade later, guys. 10 THE WITNESS: Okay. But wait a second. I'm 11 not subject to them. 12 Q. (By Mr. Peccole) Why not? Explain that to 13 me. 14 A. The owner of the property is subject to them. 15 Q. Oh. 16 A. Okay? And I'm the representative, and I just 17 represent what I'm -- what I'm given and what I know. 18 Okay? 19 Q. And whatever -- and whatever you want. 20 A. No, not whatever I want. That would be -- 21 MR. JIMMERSON: I just object to the nature 22 of the question as being terribly argumentative and 23 offensive to the witness. 24 MR. PECCOLE: Are you the attorney for him? 25 I'm sorry. Were you instructing him?</p>
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<p>1 Q. (By Mr. Peccole) The same thing -- 2 A. But I can add, and it adds to that. This 3 document adds to four -- those two numbers equal 4,247. 4 Q. And your -- 5 A. I can do the math. 6 Q. And you do realize that the dashes are zeros? 7 A. They're uncounted. 8 Q. Oh, okay. I'll just -- how do you count a 9 dash? 10 A. Huh? Because it's a dash. It's not a 11 number. 12 Q. Okay. 13 A. They didn't know the number. 14 Q. Now, we do know that Bill got what he asked 15 for in this letter that has been marked as 16 Mr. Jimmerson's 28. And you, as a salesman -- I don't 17 remember if you came over and sold in Queensridge, but 18 I know you did, because you sold to me. 19 A. Pardon me? 20 Q. You were selling homes in Phase Two, correct? 21 A. 1998. '6. 22 Q. You were selling homes in Queensridge South, 23 correct -- or North? Excuse me. 24 A. Lots. Estate lots. 25 Q. Lots?</p>	<p>1 MR. JIMMERSON: No. No. I made an objection 2 as to the offensive nature of the question, but I'm not 3 his lawyer. Of course not. 4 MR. PECCOLE: Okay. 5 MR. JIMMERSON: That's very clear on the 6 record, Mr. Peccole. 7 MR. PECCOLE: All right. 8 MR. JIMMERSON: Why would you ask that 9 question? 10 Q. (By Mr. Peccole) Would you take a look at 11 Exhibit 2. I direct your attention to Page 1. 12 A. Okay. 13 Q. Mr. Jimmerson focused your attention on what 14 he called annexed property. Correct? 15 A. Correct. 16 Q. And your interpretation of annexed property 17 was what? 18 A. Annexed properties were properties that were 19 part of the plan. 20 Q. Okay. And if you -- 21 A. Queensridge. 22 Q. Oh, I'm sorry. 23 A. Were part of the Queensridge plan. Whether 24 they were builder parcels or they were custom lots. 25 Q. Now, if you'd look at Paragraph A under</p>

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<p>1 Recitals, it says the "Declarant is the owner of 2 certain real property in the City of Las Vegas, County 3 of Clark, State of Nevada, more particularly described 4 in Exhibit 'A' attached hereto and incorporated herein. 5 Declarant and Persons affiliated with Declarant are the 6 owners of additional land more particularly described 7 in Exhibit 'B' attached hereto," in parentheses, 8 "Annexable Property." 9 Does that make sense? 10 A. Yes. 11 Q. Talking about the land, aren't they? 12 A. Yes. 13 Q. Now, let's take a look at B, about midway 14 down, where it says "Chapter 116." 15 A. Uh-huh. 16 Q. Do you see "The Property may, but is not 17 required to, include single-family residential 18 subdivisions, attached multi-family dwellings," 19 et cetera, et cetera, and then it says "golf course," 20 "open spaces"? 21 The point I'm making here is you have another 22 type of property. It's called a use, and use of the 23 land. 24 MR. JIMMERSON: I'm going to object. That 25 completely misstates the words of Paragraph B.</p>	<p>1 MR. JIMMERSON: I'm going to object. That 2 completely misstates the words of Paragraph B. 3 Q. (By Mr. Peccole) How are you going to have a 4 use if it's not completed? 5 MR. JIMMERSON: The property has to be 6 annexed, Mr. Peccole, by the very terms of the 7 recitals. 8 Q. (By Mr. Peccole) I'm asking you that as a 9 question. 10 A. I can't answer that. Is there -- is there a 11 question? 12 Q. Now, you were a salesman in Queensridge, 13 right? And these CC&amp;Rs apply to Queensridge? 14 A. Correct. 15 Q. And you hand them out to everybody, and me 16 and my wife. 17 A. Absolutely. 18 Q. Have you ever read them? 19 A. Yes. 20 Q. Well -- and you don't know what -- the 21 property may be a use and it doesn't have to be land? 22 MR. JIMMERSON: I'm going to object to the 23 argumentative nature of the question. 24 A. It is land. It's all land. I don't get 25 where you're going, Bob.</p>
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<p>1 Q. (By Mr. Peccole) Is that correct? 2 A. I don't know where -- I don't -- 3 Q. You can't see that, can you? And you were 4 selling land under -- handing these documents to 5 people. This is the CC&amp;Rs. 6 A. When you say "use of the land" -- 7 MR. JIMMERSON: I'm just going to object to 8 the question. 9 A. -- I don't -- ask your -- 10 MR. JIMMERSON: There's no question being 11 asked. 12 A. Ask your question again. You didn't ask me a 13 question. 14 Q. (By Mr. Peccole) I did. 15 A. Okay. Ask it, please. 16 Q. Okay. Do you see the term "The Property," 17 with a capital P, right after -- 18 A. Yes. Okay. Yes. 19 Q. -- "may" -- 20 A. Okay. 21 Q. -- "but is not required to include," and then 22 it comes down to "golf course," "open spaces." 23 A. So is it saying that it may or may not 24 include those? 25 Q. Yes. And if they're built, it includes them.</p>	<p>1 Q. (By Mr. Peccole) It says it's a use. The 2 property may be. 3 A. May be. It could have various uses. 4 Q. That's what I'm saying. It's a golf course 5 that's got drainage as a use. 6 A. Yes. 7 Q. It's got a golf course as a use. 8 A. Yes. 9 Q. And it's got open space as a use. 10 A. And it has underlying zoning of R-PD7. 11 Q. We don't know that because the application 12 said it was zero -- oh, excuse me. Dash. 13 A. No, but my disclosures that I had you sign 14 and the maps that I showed you -- 15 Q. Yes. 16 A. -- stated that it could be. Okay? And in 17 these CC&amp;Rs, it states what it could be some day. 18 Okay? I believe -- if I read them correctly. 19 Q. Wouldn't you be saying to me, "Well, Bob, 20 I've read the CC&amp;Rs and property could be a use," which 21 would be the golf course, which would be drainage, and 22 which would be open space? 23 MR. JIMMERSON: I object to the form of the 24 question. 25 A. When did I say that to you? Now?</p>

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<p>1 MR. JIMMERSON: Excuse me. Mr. Goorjian --</p> <p>2 Q. (By Mr. Peccole) When you're selling it to</p> <p>3 me.</p> <p>4 MR. JIMMERSON: -- let me just make my</p> <p>5 objection. Then, please, you can answer.</p> <p>6 Object because it misstates the testimony.</p> <p>7 The property is not the property until it is formally</p> <p>8 annexed and recorded, pursuant to specific terms of the</p> <p>9 provision of the contract.</p> <p>10 It says specifically, quote, Paragraph A, in</p> <p>11 no event shall the property include annexable property</p> <p>12 unless it has been properly recorded.</p> <p>13 So the questions that are being asked by</p> <p>14 opposing counsel are completely misrepresenting the</p> <p>15 words.</p> <p>16 A. Now I'll answer your question, Bob.</p> <p>17 Yes, we discussed this. Yes, I discussed</p> <p>18 this with you. We discussed this document, and you</p> <p>19 wanted to go talk to the family about the property</p> <p>20 because you didn't like what you read.</p> <p>21 Q. (By Mr. Peccole) You used the term "open</p> <p>22 space," and you said a little while ago you didn't.</p> <p>23 A. No, I stated that I have used "open space."</p> <p>24 I don't know if I used it in reference with you. I</p> <p>25 used it all the time. It's right there.</p>	<p>1 A. No, but then again -- but I gave you these</p> <p>2 documents to read or have an attorney present to read</p> <p>3 them. I would not have gone over every single article</p> <p>4 of the CC&amp;Rs unless you had requested me to.</p> <p>5 MR. JIMMERSON: I may also --</p> <p>6 Q. (By Mr. Peccole) Appreciate it. It says,</p> <p>7 "There shall be no violation of the drainage</p> <p>8 requirements of the City, County, U.S. Army Corps of</p> <p>9 Engineers, or State of Nevada Division of Environmental</p> <p>10 Protection, notwithstanding any such approval of</p> <p>11 Declarant or the Design Review Committee."</p> <p>12 MR. JIMMERSON: Again I object to the</p> <p>13 question. There's no question pending, number one; and</p> <p>14 number two --</p> <p>15 Q. (By Mr. Peccole) Was the drainage --</p> <p>16 MR. JIMMERSON: Mr. Peccole, when I make an</p> <p>17 objection, would you be courteous enough to be quiet --</p> <p>18 MR. PECCOLE: Would you let me finish with my</p> <p>19 question, Mr. Jimmerson?</p> <p>20 MR. JIMMERSON: You had finished, sir.</p> <p>21 MR. PECCOLE: I haven't finished it.</p> <p>22 MR. JIMMERSON: Continue --</p> <p>23 MR. PECCOLE: I read that and I was going to</p> <p>24 ask my question.</p> <p>25 MR. JIMMERSON: All right, sir. Why don't</p>
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<p>1 Q. Let's look at Page 38 of Exhibit 2, which is</p> <p>2 Mr. Jimmerson's exhibit.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see Paragraph 5.2.4?</p> <p>5 A. Yes.</p> <p>6 Q. "Drainage: Storm Drainage System"?</p> <p>7 A. Yes.</p> <p>8 Q. So the drainage -- the storm drainage system</p> <p>9 was included in the CC&amp;Rs; is that correct?</p> <p>10 A. It's stated here, yes.</p> <p>11 Q. And you as a salesman, you were fully</p> <p>12 familiar with the CC&amp;Rs?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ever tell me the drainage couldn't go</p> <p>15 away?</p> <p>16 MR. JIMMERSON: I would object to the form of</p> <p>17 the question.</p> <p>18 A. Excuse me. Did I ever tell you if the</p> <p>19 drainage could go away?</p> <p>20 That's assuming that the golf course is all</p> <p>21 drainage.</p> <p>22 Q. (By Mr. Peccole) Okay. Let's assume that.</p> <p>23 How about an 84 --</p> <p>24 A. No, I never told you that it could go away.</p> <p>25 Q. No, you didn't.</p>	<p>1 you restate it so you have a better record, sir.</p> <p>2 MR. PECCOLE: Is it okay if I continue,</p> <p>3 Mr. Jimmerson?</p> <p>4 MR. JIMMERSON: I said why don't you restate</p> <p>5 the question so we have a better record. Yes, sir.</p> <p>6 And then after you've finished, I'd like to interpose</p> <p>7 an objection.</p> <p>8 Q. (By Mr. Peccole) To your knowledge, was the</p> <p>9 golf course drainage, flood drainage system, engineered</p> <p>10 and adopted by these agencies?</p> <p>11 MR. JIMMERSON: Let me object. Note my</p> <p>12 objection.</p> <p>13 5.2.4 of Exhibit 2 is called "Drainage:</p> <p>14 Storm Drain System," and speaks to what drainage there</p> <p>15 may be on the, quote, capital P, Property, a defined</p> <p>16 term.</p> <p>17 This provision has no application to the golf</p> <p>18 course, which is not a part of the property, capital P,</p> <p>19 nor was the golf course annexed, as determined by Judge</p> <p>20 Smith and affirmed by the Nevada Supreme Court on</p> <p>21 multiple occasions --</p> <p>22 MR. PECCOLE: Judge Smith isn't in this</p> <p>23 litigation.</p> <p>24 MR. JIMMERSON: -- and the question,</p> <p>25 therefore, is improper.</p>



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<p>1 The provisions of 5.2.4 have to do only with</p> <p>2 the, capital P, property, not with property that is not</p> <p>3 defined within this agreement. That's my objection.</p> <p>4 Therefore, it is an intentional misstatement</p> <p>5 by the questioner, and it's unfair to this witness in</p> <p>6 light of that fact.</p> <p>7 You may answer the question, Mr. Goorjian,</p> <p>8 after I've made my objection.</p> <p>9 Q. (By Mr. Peccole) Was the -- in your</p> <p>10 knowledge, was the golf course, both the 18-hole and</p> <p>11 the 9-hole courses -- were they part of the flood</p> <p>12 drainage system?</p> <p>13 A. Portions of, not all of. And if I -- this</p> <p>14 is -- I'm just recalling to the best of my</p> <p>15 recollection.</p> <p>16 That most of the -- you know, portions of the</p> <p>17 golf course was in Barranca area, which was natural</p> <p>18 drainage, okay. So there is some of it that was and</p> <p>19 then there was some that was not. So it's not all.</p> <p>20 And there's other forms of drainage other</p> <p>21 than just that piece of property as well. So</p> <p>22 drainage -- drainage and storms and these things cover</p> <p>23 the whole property, and there's -- there's portions</p> <p>24 that, yes; and there's portions, no.</p> <p>25 MR. JIMMERSON: Let me also note my objection</p>	<p>1 engage in insults, you would have difficulty speaking</p> <p>2 the English language.</p> <p>3 Q. (By Mr. Peccole) I'll ask you this question.</p> <p>4 A. Okay.</p> <p>5 Q. If I tell you there is an 80-foot-wide</p> <p>6 easement that goes all the way through the 18 holes,</p> <p>7 what would your answer be under this paragraph, 5.2.4?</p> <p>8 A. An 80-foot easement that goes through the</p> <p>9 whole property?</p> <p>10 Q. Through the whole 18 holes.</p> <p>11 A. I don't know what it is. I may have at one</p> <p>12 time, but I don't recall it now. I know that -- I do</p> <p>13 know that we -- I do recall helping water get to</p> <p>14 Summerlin somehow, but I don't know if that's the</p> <p>15 80-foot easement. It wouldn't be that wide, so . . .</p> <p>16 Q. How about -- how about the nine holes being</p> <p>17 entirely dedicated flood drainage easement?</p> <p>18 A. Are we talking about the last nine holes?</p> <p>19 Q. Yes.</p> <p>20 A. Absolutely not.</p> <p>21 Q. You're saying it's not -- I'm just saying to</p> <p>22 you --</p> <p>23 A. I'm saying it's not all drainage, no.</p> <p>24 There's a good portion of that property that's not</p> <p>25 drainage.</p>
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<p>1 that the last sentence of Paragraph B of Page 1 and 2</p> <p>2 of the recital states, quote, The existing 18-hole golf</p> <p>3 course, commonly known as the Badlands Golf Course, is</p> <p>4 not a part of the, capital P, property or a part of,</p> <p>5 quote, annexable property, end of quote.</p> <p>6 THE WITNESS: And then became 27 holes.</p> <p>7 Q. See, he's trying to, you know, give you a</p> <p>8 hint here.</p> <p>9 (Mr. Lowie joined the deposition.)</p> <p>10 MR. JIMMERSON: Object.</p> <p>11 Q. (By Mr. Peccole) But it doesn't work that</p> <p>12 way.</p> <p>13 A. No, that's fine. Go ahead.</p> <p>14 MR. JIMMERSON: Let me just object -- let me</p> <p>15 just --</p> <p>16 Q. (By Mr. Peccole) The language --</p> <p>17 MR. JIMMERSON: -- object to the improper</p> <p>18 assertion by Mr. Peccole about, quote, giving a hint,</p> <p>19 end of quote.</p> <p>20 I'm suggesting that Mr. Peccole is either</p> <p>21 negligently or intentionally misrepresenting the words</p> <p>22 of this document, Exhibit 2, as part of his questions.</p> <p>23 MR. PECCOLE: I do not misrepresent like some</p> <p>24 people, like you do.</p> <p>25 MR. JIMMERSON: Mr. Peccole, if you couldn't</p>	<p>1 Q. I'm just saying, too, you never said anything</p> <p>2 about drainage that -- to prospective buyers of the</p> <p>3 lots?</p> <p>4 MR. JIMMERSON: I'm going to object to the</p> <p>5 question --</p> <p>6 A. No.</p> <p>7 MR. JIMMERSON: -- as it misstates -- there's</p> <p>8 no question pending, and it misstates the facts.</p> <p>9 A. I don't know why I would talk about drainage,</p> <p>10 no. I mean, it's in the document that's supposed to be</p> <p>11 reviewed and read by the buyer.</p> <p>12 I don't go over -- I go over the purchase of</p> <p>13 contracts, but you don't go over the CC&amp;Rs, each</p> <p>14 sentence, with a buyer. They take these documents and</p> <p>15 have -- I believe it's five days or so to review them,</p> <p>16 to take them to their attorneys and review them.</p> <p>17 Q. (By Mr. Peccole) Will you take a look at</p> <p>18 Page 103.</p> <p>19 A. Okay.</p> <p>20 Q. Down in the very bottom, Paragraph 13.2.4.</p> <p>21 A. Okay.</p> <p>22 Q. "Form of Amendments."</p> <p>23 A. Uh-huh.</p> <p>24 Q. It reads, "All amendments to this Master</p> <p>25 Declaration or any Declaration of Annexation or</p>

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<p>1 Supplemental Declaration must be" -- and then you carry</p> <p>2 over to the next page -- "in writing, and executed,</p> <p>3 Recorded and" -- "and certified on behalf of the</p> <p>4 Association by the President and the Secretary of the</p> <p>5 Association."</p> <p>6 Now, having that in mind, would you take a</p> <p>7 look at Mr. Jimmerson's Exhibit 3.</p> <p>8 MR. JIMMERSON: I just object to the</p> <p>9 characterization of Mr. Jimmerson's Exhibit 3. It's</p> <p>10 Exhibit 3 to Mr. Goorjian's deposition. It is a</p> <p>11 recorded document with the Clark County Recorder's</p> <p>12 office.</p> <p>13 MR. PECCOLE: I'll refer to them as that.</p> <p>14 Q. (By Mr. Peccole) But have you got it?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay.</p> <p>17 A. What page?</p> <p>18 Q. Can you look at the signature page at the</p> <p>19 end?</p> <p>20 A. What page? Oh, at the very end?</p> <p>21 Q. Yes.</p> <p>22 A. Okay.</p> <p>23 Q. Do you see Larry Miller's signature?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Do you see any signature of a homeowners</p>	<p>1 the -- where we bought our lot?</p> <p>2 A. I remember meeting with you guys. I don't</p> <p>3 remember exactly where we met. My recollection always</p> <p>4 with you guys was in the trailer, but we may -- very</p> <p>5 may well have been on the property. I don't recall.</p> <p>6 Q. Is it -- so you can't say that -- what Nancy</p> <p>7 testified to, that you met with us on the property?</p> <p>8 A. I cannot with certainty --</p> <p>9 Q. You can't say that?</p> <p>10 A. Not with certainty, I cannot.</p> <p>11 Q. You just don't remember?</p> <p>12 A. I don't remember that. I do remember in the</p> <p>13 trailer and I do remember questions you've asked me, so</p> <p>14 I'm surprised that I don't remember being on the</p> <p>15 property. So that must mean that I wasn't, but --</p> <p>16 Q. I'm not surprised you remember what you want.</p> <p>17 A. Right.</p> <p>18 MR. JIMMERSON: Gentlemen, please.</p> <p>19 Mr. Peccole, you should -- please, keep the</p> <p>20 decorum of counsel, and not engage in these kinds of</p> <p>21 personal attacks.</p> <p>22 MR. PECCOLE: Are you finished?</p> <p>23 MR. JIMMERSON: I am, sir.</p> <p>24 Q. (By Mr. Peccole) Do you recall a discussion</p> <p>25 that we had that involved Larry Miller?</p>
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<p>1 association president or a homeowner association</p> <p>2 secretary?</p> <p>3 A. I do not see it here, no.</p> <p>4 Q. So it doesn't meet the requirements of the</p> <p>5 amendment, does it?</p> <p>6 MR. JIMMERSON: I'm going to object.</p> <p>7 A. I don't know. That's not my -- I don't -- I</p> <p>8 don't determine what meets the requirements of an</p> <p>9 amendment, and I don't know if there's another document</p> <p>10 that might have taken care of that.</p> <p>11 MR. JIMMERSON: Let me also note that these</p> <p>12 arguments Mr. Peccole has asked you about --</p> <p>13 Q. (By Mr. Peccole) In other words, you have no</p> <p>14 knowledge?</p> <p>15 MR. JIMMERSON: -- Mr. Goorjian, was made by</p> <p>16 Mr. Peccole and rejected by the trial court and the</p> <p>17 Nevada Supreme Court.</p> <p>18 So just note my continuing objection.</p> <p>19 THE WITNESS: I can see why.</p> <p>20 Q. (By Mr. Peccole) Let's take you back to when</p> <p>21 my wife and I were in the market for buying a lot in</p> <p>22 Queensridge. Do you remember how it came about that</p> <p>23 you met with Nancy and I?</p> <p>24 A. No.</p> <p>25 Q. Do you recall meeting with us in that area of</p>	<p>1 A. Not with me present, no.</p> <p>2 Q. Do you recall me telling you what Larry had</p> <p>3 told me?</p> <p>4 A. I do not. I just recall that you wanted to</p> <p>5 go meet with the family and then you came back and</p> <p>6 bought the lot. That's all that I recall.</p> <p>7 Q. Would it refresh your memory if I were to say</p> <p>8 that I told you that Larry Miller had met with my son</p> <p>9 Rob and I on your ex-wife's lot, one of the huge ones,</p> <p>10 Leann's lot; and Larry said, "You should be interested</p> <p>11 in buying this"? Do you remember me telling you that?</p> <p>12 A. No. No. Absolutely not.</p> <p>13 Q. And do you remember me telling you that Larry</p> <p>14 said, "Well, if you don't want this, take a look at the</p> <p>15 Verlaine, because he says that's just coming up"?</p> <p>16 A. No. All I recall is you being interested in</p> <p>17 Verlaine. I don't recall anything else.</p> <p>18 Q. Do you recall that Larry brought us to you?</p> <p>19 When I say "us," my wife and I.</p> <p>20 A. You mean physically?</p> <p>21 Q. He brought us physically.</p> <p>22 A. No, I don't recall that. It wouldn't have</p> <p>23 mattered, because we were family. So I don't know why</p> <p>24 Larry would have delivered you.</p> <p>25 But yes, if he would have brought me -- I</p>

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<p>1 don't recall that he brought you in. I recall me and  2 you only and some Nancy. I don't recall Larry ever  3 being involved other than the fact that you didn't like  4 what I had to say, so you -- you wanted to go get it --  5 get it from Larry. You wanted something from Larry  6 that I could not give you.  7 Q. If you'll recall, did you and I, with Nancy  8 standing there, have the conversation, "Is there any  9 chance of getting a break on the price?"  10 A. Absolutely.  11 Q. And then did you --  12 A. I don't know if Nancy was there, but I do  13 recall you and I having that.  14 Q. And you did say you've got to talk to Larry?  15 A. Yes, I do.  16 Q. And then after that, we called Larry on the  17 phone, you and I and Nancy?  18 A. Don't recall that.  19 Q. And Larry says, "I'll give you a break."  20 A. I know that we wanted to give you -- we  21 wanted to make you happy. I do know that. I know that  22 we wanted to sell you the home at a price that was  23 happy for everybody. I do recall that, and I do recall  24 that you wanted to negotiate it, and I know that I  25 can't negotiate it.</p>	<p>1 Q. Isn't it --  2 A. I do recall that we would have liked to have  3 had you play some golf, if you chose to play; and if we  4 could help you get on there for free, we would have  5 loved to have done so.  6 I can't make those guarantees, so . . .  7 I didn't lease the golf course; I didn't  8 operate the club.  9 Q. Okay. So do you -- do you recall using the  10 words that "This open space will be here forever"?  11 A. Never.  12 Q. Did you ever use the words "open space" to  13 Nancy and I?  14 A. I may have used that term. I've used "open  15 space." I may have used it. Okay? But I remember you  16 wanting assurances -- after you had seen the documents,  17 you came back. You wanted assurances that it could  18 remain a golf course forever, and I could not give you  19 that. And you said you would go talk to the family,  20 and that's -- and then you came back and bought the  21 lot. So I don't know what happened.  22 Q. So you don't know what happened?  23 A. Right.  24 Q. You know, when Mr. Jimmerson was talking to  25 you about the Boca Park, and you started to say it was</p>
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<p>1 Q. Yes.  2 A. But I don't recall it taking place on the  3 phone, no. And I don't recall me picking up the phone  4 and calling.  5 Q. And do you recall Larry being there with all  6 of us --  7 A. No, I do not.  8 Q. -- you, me and Nancy, and trying to talk me  9 into taking the end piece of land because they were  10 just now vacating the perimeter of that lot, which  11 would give it an extra 10, 15 feet?  12 A. I don't -- no.  13 Q. You don't remember any of that?  14 A. That wasn't -- no, I don't. That was -- to  15 me that sounds like you had a conversation with Larry  16 that I was not involved in. That's what that sounds  17 like.  18 Q. Do you recall saying to me, "Bob, you know,  19 we've got a lifetime membership here and you can play  20 this course any time. Just call me"?  21 A. Might have been something said like that,  22 that the family had privileges to use senior tour  23 players golf course whenever we wanted, and that if you  24 would like to golf, we could probably get you on the  25 course to play. Yes.</p>	<p>1 part of a settlement with Triple Five --  2 A. I was incorrect.  3 MR. JIMMERSON: He corrected himself,  4 Counsel.  5 Q. (By Mr. Peccole) -- and you said you were  6 incorrect?  7 MR. JIMMERSON: Counsel, he corrected  8 himself.  9 MR. PECCOLE: Right.  10 Q. (By Mr. Peccole) And then you made the  11 comment about Triple Five backing into it.  12 A. Yes.  13 Q. Tell me that -- tell me about that.  14 A. Well, there were plans for the Peccoles to  15 develop that property. We had a partner that we were  16 working with, Donahue Schriber, to do a -- we wanted to  17 do a regional mall. We wanted to do a shop -- a mall  18 there.  19 We were for years trying to get three  20 tenants, secure three tenants to do the deal. And then  21 I cannot -- because I left and was not there for all of  22 it, but I know that there was somehow -- there was -- I  23 believe we had agreed, because we couldn't get the  24 tenants, if I recall correctly -- that we agreed to  25 sell the property maybe to Donahue Schriber and --</p>

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<p>1 And I just can't recall how it happened, but</p> <p>2 somehow Donahue Schriber brought -- somehow Triple Five</p> <p>3 came in there after Donahue Schriber and they ended up</p> <p>4 with the property.</p> <p>5 Q. It was a subterfuge, wasn't it?</p> <p>6 A. Yes. I can't remember how it all happened,</p> <p>7 but I do remember we weren't too happy that they ended</p> <p>8 up with the property.</p> <p>9 Q. Well, the intent was that you were going</p> <p>10 around Wanda so she wouldn't find out that you were</p> <p>11 selling to Triple Five.</p> <p>12 A. No.</p> <p>13 MR. JIMMERSON: I'm going to object to that</p> <p>14 question.</p> <p>15 A. Absolutely not.</p> <p>16 Q. (By Mr. Peccole) Have you ever heard Larry</p> <p>17 say that?</p> <p>18 A. No. No. I remember it as a bank note that</p> <p>19 was going bad, and Triple Five came in and saved the</p> <p>20 day for the other party or something. I can't recall</p> <p>21 how it did, but I know that the Peccole family, Larry</p> <p>22 included, would not have sold that property to</p> <p>23 Triple Five.</p> <p>24 Q. Do you, or have you ever heard that in the</p> <p>25 public meetings before the city council, there have</p>	<p>1 Larry Miller were in a lawsuit, and Bruce was claiming</p> <p>2 the rights to the golf course because he obtained them</p> <p>3 from the senior citizen tour company?</p> <p>4 A. On his own? No, I'm not aware of any of</p> <p>5 that.</p> <p>6 Q. Oh, okay. Just wondering.</p> <p>7 A. Bob, did you just -- I'm just curious. Did</p> <p>8 you say Bruce sued the Peccoles? Bruce Bayne? Is that</p> <p>9 what you just said?</p> <p>10 Q. What I said to you was that Bruce sued Larry.</p> <p>11 A. I never -- no, not aware of that.</p> <p>12 Q. Would you take a look at Plaintiffs' 14.</p> <p>13 A. I don't think I've got that one.</p> <p>14 MR. JIMMERSON: I can help you. That's the</p> <p>15 public offering. Public offering statement.</p> <p>16 THE WITNESS: Okay. Yeah. Here it is.</p> <p>17 Q. (By Mr. Peccole) Got it?</p> <p>18 A. Not yet. Hold on. I've got it.</p> <p>19 Q. Page 5.</p> <p>20 A. Okay.</p> <p>21 Q. Now, you said that you were familiar with</p> <p>22 this document, public offering statement for</p> <p>23 Queensridge North.</p> <p>24 A. Okay.</p> <p>25 Q. Page 5.</p>
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<p>1 been people that got up and said that "Greg Goorjian</p> <p>2 told me that the golf course wasn't going to go away</p> <p>3 and it's open space"?</p> <p>4 MR. JIMMERSON: Objection. Assumes facts not</p> <p>5 in evidence.</p> <p>6 A. I have never heard that. I have not been to</p> <p>7 city council meetings to hear such, and shame on them.</p> <p>8 Tell those people to read their documents. I think</p> <p>9 Page 1 says don't believe a word I say. I'm joking.</p> <p>10 Q. (By Mr. Peccole) You were asked about BGC.</p> <p>11 A. Yes.</p> <p>12 Q. And you didn't know who that is?</p> <p>13 A. Don't know who that was. Don't remember that</p> <p>14 entity.</p> <p>15 Q. Do you know Bruce Bayne?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Who's Bruce?</p> <p>18 A. My ex-brother-in-law.</p> <p>19 Q. And who is he married to?</p> <p>20 A. Loretta Bayne. Loretta Peccole.</p> <p>21 Q. Would you surprise -- be surprised if BGC was</p> <p>22 Bruce Bayne?</p> <p>23 A. Yeah, I would be. Very surprised. It only</p> <p>24 has one initial in it that's his.</p> <p>25 Q. Would you be surprised if Bruce Bayne and</p>	<p>1 A. I'm here.</p> <p>2 Q. No. 12.</p> <p>3 A. Okay.</p> <p>4 Q. Maximum number of units.</p> <p>5 A. Yeah, mine's highlighted. I can't read it.</p> <p>6 Is there a number there?</p> <p>7 Q. Can you read the writing?</p> <p>8 A. Yes. "Including both residential and</p> <p>9 commercial units."</p> <p>10 Q. Can you read the 3,000?</p> <p>11 A. No.</p> <p>12 Q. It says 3,000.</p> <p>13 A. Okay.</p> <p>14 Q. In writing. In writing.</p> <p>15 A. Where?</p> <p>16 Q. Right before the --</p> <p>17 A. Oh. Yes, I do. I do. I've got it, Bob.</p> <p>18 Q. Was that your understanding?</p> <p>19 A. The developer has reserved the right in the</p> <p>20 master plan to create up to 3,000 units.</p> <p>21 Yeah. I can't recall, though, because I</p> <p>22 believe there was a time it either grew or shrank. I</p> <p>23 can't remember.</p> <p>24 Q. But these are representations you were making</p> <p>25 to the buyers.</p>

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<p>1 A. No, these are representations that the owner 2 was making to the buyer. 3 Q. Well, you were a salesman. 4 A. I'm a salesman. 5 Q. You were the conduit. 6 A. Pardon me? 7 Q. You're the conduit. You're representing the 8 owner. 9 A. Correct. 10 Q. And so you were handing these to the buyers. 11 A. Correct. 12 Q. And you were making a representation they 13 could only build 3,000 units. 14 A. Again, I'm not. I'm giving them a document 15 that makes the representation that only 3,000 -- 16 Q. So if I say to you -- 17 A. I didn't create the document. 18 Q. -- well, Greg Goorjian never told me that 19 they could only build three units, but he handed me a 20 piece of paper that said that -- 21 MR. JIMMERSON: Just misstates the record. 22 Object to the form of the question. 23 A. I guess -- I guess what you're saying is that 24 I was supposed to read every word of this document to 25 you before you bought it?</p>	<p>1 A. On Verlaine Court, yes, I did. 2 Q. How about over in the -- the southern part of 3 Queensridge? 4 A. No, I did not. 5 Q. And you have knowledge that he built big 6 homes over there? 7 A. Oh, yes. 8 Q. For substantial money? 9 A. Yes. 10 Q. And that they were located on the golf 11 course? 12 A. Yes. 13 Q. Did you sell any of those homes for him? 14 A. No. I sold him the lot. 15 Q. Did you sell any of the lots to Mr. Lowie on 16 Verlaine? 17 A. Yes, I did. 18 Q. Was that the lower Verlaine? 19 A. Yes. 20 Q. And were you -- you owned a lot on -- you 21 actually owned a home on Verlaine? 22 A. Yes, I did. 23 Q. And what was the address of that? 24 A. I don't recall. 25 MR. JIMMERSON: Just note my continuing</p>
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<p>1 Q. (By Mr. Peccole) No. You gave it to me as a 2 representation. 3 A. Correct. Got it. Yeah. And agree with you 4 there. 5 MR. JIMMERSON: Just note my objection to the 6 entire line of questioning as misstating the record. 7 Q. (By Mr. Peccole) How many residents -- 8 residents did you sell -- how many lots did you sell in 9 Queensridge North? 10 A. I don't -- I don't recall. 11 MR. JIMMERSON: I'm going to object to the 12 line of questioning as completely outside the scope of 13 this litigation. 14 Q. (By Mr. Peccole) Did you ever -- 15 MR. JIMMERSON: Also outside the scope of 16 direct examination. 17 Q. (By Mr. Peccole) Did you ever make a 18 representation you probably sold 80 homes? 19 MR. JIMMERSON: Object to the line of 20 questioning. 21 A. Did I ever make that representation? 22 Q. (By Mr. Peccole) Yeah. 23 A. No. 24 Q. Did you ever sell any of the homes that 25 Mr. Lowie developed on those lots?</p>	<p>1 objection as outside the scope of direct. 2 Q. (By Mr. Peccole) You didn't get it from -- 3 MR. JIMMERSON: Mr. Peccole, please let me 4 finish my objection. I don't know why you continually 5 interrupt. 6 Just note my objection to this line of 7 questioning as outside the scope of direct, also 8 irrelevant to the litigation, is badgering the witness, 9 and there is also a complete wholesale failure on the 10 part of the lawyer to make any kind of correct 11 denomination. Mr. Lowie didn't own any of these 12 properties. Entities that he had may have purchased 13 some lots. 14 Mr. Lowie, other than his own personal 15 residence, would never have bought that piece of 16 property in his own name. So the questions are just 17 wrong to begin with. 18 You may answer the question, Mr. -- 19 MR. PECCOLE: I would like to reply to you, 20 Mr. Jimmerson. You had the gall in the deposition of 21 my wife to present a federal law that deals with 22 telephonic money laundering, and I found that very 23 offensive. And if you think I'm offensive, you'd 24 better take a look in the mirror. 25 MR. JIMMERSON: I don't know what the heck</p>

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<p>1 you're referring to, Mr. Peccole. I'm just making an 2 objection to the line of questioning here. 3 MR. PECCOLE: Don't worry. It's going to 4 come up. 5 MR. JIMMERSON: Again, you just threaten and 6 threaten, Mr. Peccole. Please try to stay on focus. 7 Q. (By Mr. Peccole) I was on the luxury loan -- 8 luxury lots on Verlaine. You say you sold some of 9 those to Mr. Lowie? 10 A. No. 11 MR. JIMMERSON: Objection. Misstates the 12 testimony. 13 Q. (By Mr. Peccole) You didn't? 14 A. No. Companies -- companies that he may 15 have -- or limited liability companies that he may have 16 been a partner to, yes. Not him personally, no. 17 Q. No? But you knew that he was building the 18 homes? 19 A. Yes. 20 Q. Actually, he was buying or one of his 21 entities was buying the lots on Verlaine? 22 A. Yes, sir. 23 Q. From who? 24 A. From the Peccole family. 25 Q. Would that have been Legacy 14?</p>	<p>1 A. Yes, I did, sir. 2 Q. Were the values on those lots enhanced by the 3 golf course and open space? 4 MR. JIMMERSON: I'm going to object to the 5 term "open space." It can only apply to the property 6 owned by Queensridge master plan. It's a defined term. 7 Q. (By Mr. Peccole) You can answer that. 8 A. If you can ask me it again, please. 9 Q. Were the values of the lots on Orient Express 10 enhanced by the golf course and open space? 11 A. Enhanced. I don't know. I don't know how to 12 answer that question, enhanced by. 13 Q. Made -- made more expensive? 14 MR. JIMMERSON: I object to the form of the 15 question as outside the scope of direct. It has no 16 bearing upon the litigation and it's harassing this 17 witness. 18 A. Yes. 19 Q. (By Mr. Peccole) Were you at the dedication 20 of the new Queensridge, in the beginning, when they 21 came over in 1990, 1996? 22 MR. JIMMERSON: Same objection. Outside the 23 scope of direct. Completely -- 24 A. I don't know what you're asking. 25 MR. JIMMERSON: -- irrelevant to this.</p>
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<p>1 A. I don't know who was the -- I'd have to be 2 referenced or referred back to who actually was -- what 3 entity was conveying the property. 4 Q. Do you know what the prices were? 5 A. I did. Do I know now? No. 6 Q. Were they over a million dollars? 7 A. For what? 8 Q. Well, actually let's go back -- 9 A. For a lot, the answer is no. 10 Q. It probably would have been somewhere in the 11 vicinity of 200,000? 12 A. Somewhere in there. 13 Q. And the homes, when you sold them, were over 14 a million? 15 A. Somewhere in there, right around a million 16 dollar homes. 17 Q. Now, your home was located right along the 18 same lots, right? 19 A. Correct. 20 Q. And who did you buy your home from? 21 A. I bought my lots from the Peccole family. 22 Q. And that's Legacy 14? 23 A. I can't recall. 24 Q. Did you sell any luxury lots on Orient 25 Express?</p>	<p>1 A. Was I at the grand opening? 2 Q. (By Mr. Peccole) Yes. 3 A. Would that have been the one that would later 4 be the Badlands clubhouse? 5 Q. No. 6 A. Okay. Then I wasn't at it. It was at -- it 7 was at Sir Williams Court, where Sir Williams Court was 8 to be some day. 9 Q. Let me just ask you, do you recall -- 10 MR. JIMMERSON: Objection. No foundation. 11 Q. (By Mr. Peccole) Do you recall going to a 12 dedication -- it would be on West Charleston, going 13 north, as you come in the entranceway that's there now, 14 but it was all dirt and Bill had big tents set up all 15 over? Did you ever go to that? 16 A. Was that the one where the lipi- -- the 17 stallions were there and -- yes, I was there. 18 Q. Now, after that occurred -- do you recall 19 approximately what that -- what date that was, what 20 year? 21 A. I don't, but I do -- I don't believe that it 22 had anything to do with what ended up being the north 23 portion of Queensridge developed. It was only in 24 regards to our first builders. That was Christopher 25 Homes and --</p>

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<p>1 It was a grand opening for the overall, the</p> <p>2 whole development. So we had -- it would have been</p> <p>3 Christopher Homes, it would have been Capital Pacific</p> <p>4 Homes, it would have been Pulte Homes and it would have</p> <p>5 been Trophy Homes.</p> <p>6 MR. JIMMERSON: Note my continuing objection.</p> <p>7 This is outside the scope of direct, irrelevant to the</p> <p>8 case.</p> <p>9 A. I recall that.</p> <p>10 MR. JIMMERSON: Harassing to the witness.</p> <p>11 Q. (By Mr. Peccole) After that, the question I</p> <p>12 would ask is, did you ever walk any part of the</p> <p>13 property with Bill?</p> <p>14 A. Yes.</p> <p>15 Q. So that was a common thing for him to do,</p> <p>16 wasn't it?</p> <p>17 MR. JIMMERSON: Object. Same objection,</p> <p>18 incorporated by reference.</p> <p>19 A. Not at that time. Prior -- years prior.</p> <p>20 He's not doing too well at this time we're talking</p> <p>21 about.</p> <p>22 Q. (By Mr. Peccole) Well, when he had the</p> <p>23 dedication.</p> <p>24 A. Yeah. Yeah. No, he wasn't doing a lot of</p> <p>25 walking around the properties.</p>	<p>1 Q. (By Mr. Peccole) After the dedication --</p> <p>2 MR. JIMMERSON: -- to consider sanctions</p> <p>3 against you for asking the line of questions that has</p> <p>4 nothing to do with this case and refusing to provide</p> <p>5 any foundation with regard to the line of questioning.</p> <p>6 It's completely irrelevant.</p> <p>7 Q. (By Mr. Peccole) After the dedication, did</p> <p>8 you have any conversations with Bill Peccole as to what</p> <p>9 he was going to do with the ravines?</p> <p>10 A. Do not recall, no.</p> <p>11 Q. Did you already know what he was going to do</p> <p>12 with the ravines?</p> <p>13 A. Yes.</p> <p>14 MR. JIMMERSON: Same objections, same line of</p> <p>15 objections. Incorporate my objections by reference.</p> <p>16 Q. (By Mr. Peccole) And what was that?</p> <p>17 A. We were going to develop a golf course. Not</p> <p>18 us, but we have someone else that was going to do it.</p> <p>19 Q. Did he ever say to you that "I will be</p> <p>20 selling lots along there and I'm going to make it a</p> <p>21 golf course, open space and drainage and I'm going to</p> <p>22 get more money for those lots"?</p> <p>23 A. No.</p> <p>24 MR. JIMMERSON: Same objection. Incorporate</p> <p>25 by reference.</p>
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<p>1 MR. JIMMERSON: I'm also going to object --</p> <p>2 Q. (By Mr. Peccole) Would it --</p> <p>3 MR. JIMMERSON: Excuse me, Counsel.</p> <p>4 I have no date. There's been no foundation,</p> <p>5 no year. None of this has been established.</p> <p>6 Q. (By Mr. Peccole) Would it surprise you if I</p> <p>7 walked portions of the property with him after the</p> <p>8 major dedication?</p> <p>9 MR. JIMMERSON: Object to the form.</p> <p>10 A. Would it surprise me?</p> <p>11 MR. JIMMERSON: Object to the question.</p> <p>12 A. I don't know. I can't answer that.</p> <p>13 That's . . .</p> <p>14 Q. (By Mr. Peccole) You didn't walk the</p> <p>15 property with him after the dedication?</p> <p>16 A. No. No.</p> <p>17 Q. Did Bill ever say to you --</p> <p>18 MR. JIMMERSON: Mr. Peccole, can you give</p> <p>19 us -- can you give us, and the court reporter, any</p> <p>20 suggestion as to what year you're referring to? The</p> <p>21 witness doesn't know it. You said you don't know.</p> <p>22 MR. PECCOLE: What was that?</p> <p>23 MR. JIMMERSON: I want to have some</p> <p>24 foundation for this line of questioning so I can ask</p> <p>25 Judge Bulla --</p>	<p>1 A. Just know that the plan was already in place,</p> <p>2 so when -- when those -- when those tents were there,</p> <p>3 we already knew what was going to go there. So did all</p> <p>4 the builders, and so did -- so did everybody. So I</p> <p>5 don't get where you --</p> <p>6 Q. (By Mr. Peccole) Well, those -- I'm not</p> <p>7 going to argue with you.</p> <p>8 A. No.</p> <p>9 Q. Did you have an actual price list at that</p> <p>10 time?</p> <p>11 MR. JIMMERSON: Same objection. Incorporate</p> <p>12 by reference.</p> <p>13 A. No. Not on the estate lots. No. I don't</p> <p>14 recall. Might have. I don't recall, Bob.</p> <p>15 Q. (By Mr. Peccole) When you were selling the</p> <p>16 lots in the Queensridge North, did you always follow</p> <p>17 the same procedure in your representations?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did Larry Miller ever say to you that there</p> <p>20 was a 50-year lease on the golf course, with four</p> <p>21 ten-year options?</p> <p>22 A. Did not know the terms of the lease, no.</p> <p>23 Q. He never mentioned that?</p> <p>24 A. No.</p> <p>25 MR. PECCOLE: I have no further questions.</p>

<p style="text-align: right;">Page 161</p> <p>1 MR. JIMMERSON: I'd like to take a comfort 2 break. We've been going for about an hour and 3 twenty-five minutes, hour and twenty minutes. 4 THE WITNESS: Are we done? 5 MR. JIMMERSON: No. I just want to take a 6 break. 7 (A recess was taken.) 8 MR. JIMMERSON: Back on the record. All 9 right. We're back on the record after taking a comfort 10 break. 11 FURTHER EXAMINATION 12 BY MR. JIMMERSON: 13 Q. Mr. Goorjian, opposing counsel, Mr. Peccole, 14 asked you a long series of questions for an hour 15 twenty-five minutes, something like that, but I 16 thought -- I thought you had misstated something in the 17 record. I'll ask you about it. 18 And so I want to have the court reporter read 19 the questions and the answers that Mr. Peccole was 20 asking you -- 21 A. Okay. 22 Q. -- and your answer. I think you may have 23 misstated. If not, you'll tell me, but -- 24 A. Yup. 25 Q. -- I do want to give you a chance to make</p>	<p style="text-align: right;">Page 163</p> <p>1 "Answer: For those parcels shown in white? 2 Yes. 3 "Question: So if you're looking at the 4 portion that starts with the -- going north from 5 Charleston over towards the Angel Park Golf Course -- 6 "Answer: Correct. 7 "Question: -- those were the zonings in each 8 of those white parcels that he was asking for, is that 9 correct, for Phase Two? 10 "Answer: For Queensridge master -- or for 11 Queensridge. These were the zonings he was asking 12 for.") 13 Q. (By Mr. Jimmerson) I believe you were 14 referring to the Queensridge master plan, not 15 Queensridge, because you were shown a document, which 16 is Exhibit A, which is a 1990 document, not a 1996 17 event. Right? 18 A. Correct. 19 Q. So the Peccole master plan was abandoned, as 20 you said, in favor of the Queensridge master plan six 21 years later. Is that right? 22 A. Yes. 23 Q. Okay. And so to the extent you referred to 24 Queensridge, that was a misstatement by you? 25 A. Yes.</p>
<p style="text-align: right;">Page 162</p> <p>1 that correction if I am understanding that you did make 2 that error. 3 MR. JIMMERSON: So would you just read those 4 questions and answers, Madam Court Reporter. 5 Q. (By Mr. Jimmerson) He's asking you questions 6 about the Peccole master plan document -- 7 A. Correct. I remember. 8 Q. -- from 1989-1990 time period, a document you 9 had not been familiar with because you were not 10 currently employed. That didn't stop him from asking 11 many, many more questions about that. So just listen 12 to the questions and answers and see if there was not a 13 mistake being made by you. 14 MR. JIMMERSON: Go ahead. 15 (Record read by the reporter as follows: 16 "Question: And so in this application 17 he's -- Bill was asking for rezoning? Is that correct? 18 "Answer: I don't know what he's asking for. 19 Well, this is what the document says, yes. If it's -- 20 whatever this document is stating, that's what 21 Mr. Peccole was attempting to do. 22 "Question: Now, when you look at the map of 23 the overall master plan -- and that shows you the 24 zoning that happens to be designated different parcels. 25 Is that correct?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Okay. Now, do you remember, when looking at 2 Exhibit A that Mr. Peccole asked you -- which again, 3 I'm not certain why it's relevant, but you were asked 4 several questions about this document, right? 5 A. Yes. 6 Q. And this had to do with a conceptual plan 7 that existed in 1989 or 1990 time period. 8 A. Yes. 9 Q. A time when you were not employed by the 10 company. Right? 11 A. Yes, sir. 12 Q. Okay. All right. But later on, we know that 13 the Queensridge master plan was developed by the 14 Peccole family in 1996 through the master declaration 15 we recorded -- discussed in Exhibits 2 and 3, right? 16 A. Yes, sir. 17 Q. All right. Now, going back to this Peccole 18 master plan, again, Mr. Peccole kept trying to say that 19 zeros were here and you said, no, they're dashes. 20 Right? 21 A. Yes. 22 Q. Okay. So here's my point: This has actually 23 been developed with the Queensridge master plan, but 24 the Peccole Ranch having been abandoned and the 25 Queensridge being developed. There has been, in</p>



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<p>1 effect, commercial and office developed in the years 2 later, hasn't there? 3 A. Yes, there has, sir. 4 Q. So whether there's dashes here, we know 5 there's physical construction of commercial locations 6 there, right? 7 A. Correct. 8 Q. We also know there's something called the 9 Suncoast Resort, resort-casino, that's developed now 10 that was a dash then, right? 11 A. Yes. 12 Q. So we know that this plan was abandoned in 13 favor of other development and other plans; is that 14 right? 15 A. Yes, sir. 16 Q. Including the Queensridge master plan we've 17 already discussed? 18 A. Yes. 19 Q. All right. 20 Now, taking a look, if you would, at 21 Exhibit 1. That was the original Peccole master plan. 22 I just want to spend -- 23 Two. Excuse me. Exhibit 2. 24 I just ask the following question: When you 25 talk about commercial, office and there's a dash, it</p>	<p>1 MS. POLSELLI: I'll get it right. I'll get 2 it right. 3 THE WITNESS: Page what? 4 Q. (By Mr. Jimmerson) It's Paragraph 7. I'll 5 get to the page in one second. I think it's Page -- 6 it's Page 7. I believe it to be Page 7. 7 Yeah. It's the definition under 1.1 -- 1.16, 8 Common Area and Common Areas. 9 A. Okay. 10 Q. Do you see that? 11 A. Yes. 12 Q. All right. Does that language state as 13 follows: "'Common Area and Common Areas' shall mean 14 (a) all Association Land and the improvements thereon; 15 (b) all land within Peccole Ranch which the Declarant, 16 or its successors or assigns, by this Declaration or 17 other recorded instrument, makes available for use by 18 Members of the Association and evidences its intent to 19 convey to the Association at a later date; 20 "(c) all land within Peccole Ranch which the 21 Declarant, or its successors or assigns, indicates on a 22 recorded subdivision plat or Tract Declaration is to be 23 used for landscaping, water retainage, drainage and/or 24 flood control for the benefit of Peccole Ranch and/or 25 the general public;</p>
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<p>1 doesn't tell you how many units of commercial can be 2 developed, correct? 3 A. Yes. 4 Q. Under the Peccole conceptual master plan of 5 1990? 6 A. Yes. 7 Q. Okay. But we know many units, many square 8 foot was developed in the years that followed; is that 9 right? 10 A. Yes. 11 Q. Okay. And so this plan obviously went away 12 and new plans were developed; is that right? 13 A. Yes. 14 Q. All right. 15 Now, I just want to show you some provisions 16 in this Peccole Ranch plan that related largely to the 17 south of West Charleston, but I just want to show you 18 some language. 19 Would you look at Page 7 of Exhibit 2. 20 (Discussion off the record.) 21 Q. (By Mr. Jimmerson) It's 16. 22 A. 16? 23 Q. Yeah. Sorry. 24 MS. POLSELLI: 16 or 18? 25 MR. JIMMERSON: 18.</p>	<p>1 "(d) areas on a Lot, Parcel or golf course 2 within easements granted to the Association or its 3 Members for location, construction, maintenance, repair 4 and replacement of a well, fence, sidewalk, 5 landscaping, utility, utility easement and access, and 6 general access or other uses, which easements may be 7 granted or created on a recorded subdivision plat or 8 Tract Declaration or by a Deed or other conveyance 9 accepted by the association; 10 "Or (e)" -- "and (e) all land within Peccole 11 Ranch which is owned privately or by a governmental 12 agency for which the Association has accepted 13 responsibility for maintenance, and/or for which the 14 Association benefits by limited use, full use, or 15 aesthetic consistency for the benefit of the 16 numbers" -- "of the members." End of quote. 17 Have I read that accurately? 18 A. Yes. 19 Q. Okay. So it is -- common area is the land 20 that the declarant dedicates, through annexation, land 21 that will be so used for the commonality of its 22 membership; is that right? 23 A. Yes. 24 Q. And therefore, if there's going to be a 25 common area, it has to be land that has been dedicated</p>

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<p>1 for that purpose by the declarant; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, would you look at the</p> <p>4 provision -- Page -- Page 11, four pages later,</p> <p>5 Paragraph 1.31. And master plan, which is for the</p> <p>6 Peccole Ranch master plan, is defined as, quote, shall</p> <p>7 mean the Peccole Ranch Master Plan approved by the City</p> <p>8 of Las Vegas, and described on Exhibit "A", as the same</p> <p>9 may be from time to time amended in Declarant's sole</p> <p>10 discretion, a copy of which shall be on file at all</p> <p>11 times in the office of the Association. End of quote.</p> <p>12 Have I accurately read that?</p> <p>13 A. Yes.</p> <p>14 Q. And so the declarant, the Peccole family,</p> <p>15 reserved to itself the right to amend from time to time</p> <p>16 its -- in its sole discretion, the design of the plan;</p> <p>17 is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And indeed, as we know, it was amended</p> <p>20 by essentially abandonment, in favor six years later of</p> <p>21 the Queensridge master plan to the north of West</p> <p>22 Charleston?</p> <p>23 A. Yes.</p> <p>24 Q. And this is land that applied largely to the</p> <p>25 south of West Charleston; is that right? Exhibit 18?</p>	<p>1 the actual dimensions of what was actually built there.</p> <p>2 A. Okay.</p> <p>3 Q. Now, you're familiar by virtue of your</p> <p>4 lengthy work there of what was actually constructed</p> <p>5 over the years?</p> <p>6 A. Yes.</p> <p>7 Q. And we see that, in terms of acreage, there</p> <p>8 was 430 acres of single family; 47 acres of</p> <p>9 multifamily; there's 138 acres of commercial/office;</p> <p>10 there's 52 acres for resort-casino, which is the</p> <p>11 Suncoast Hotel; you see the golf course property,</p> <p>12 265 acres.</p> <p>13 A. Yes.</p> <p>14 Q. Right-of-way of 61 acres. And I guess no</p> <p>15 elementary school was ever developed there?</p> <p>16 A. Correct.</p> <p>17 Q. So you can see what was actually developed</p> <p>18 under the Queensridge master plan in the years that</p> <p>19 followed; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So does that provide additional proof</p> <p>22 to you that the Peccole Ranch master plan of 1990 was</p> <p>23 abandoned in favor of later plans by the family?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Thank you.</p>
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<p>1 A. Yes.</p> <p>2 Q. All right. Thank you.</p> <p>3 A. Not a hundred percent sure, but I believe</p> <p>4 Triple Five is part of the declarancy [sic].</p> <p>5 Q. Correct. I think that's right. At least --</p> <p>6 that's exactly right.</p> <p>7 A. Yeah.</p> <p>8 Q. All right.</p> <p>9 MR. JIMMERSON: Now, do you have the map of</p> <p>10 how it was actually built?</p> <p>11 (Discussion off the record.)</p> <p>12 MR. JIMMERSON: Let me mark this as</p> <p>13 Exhibit 30 -- mark it as Exhibit 32. Next in order.</p> <p>14 Mark it as 32, two pages.</p> <p>15 (Exhibit 32 marked.)</p> <p>16 Q. (By Mr. Jimmerson) Mr. Goorjian, if you look</p> <p>17 at Exhibit 32 --</p> <p>18 A. Yes.</p> <p>19 Q. -- there is what I -- you and I would call an</p> <p>20 as-built; in other words, as history has combined, now</p> <p>21 sitting here in 2018, we see what's actually built to</p> <p>22 the north of West Charleston. Do you see that under</p> <p>23 Queensridge?</p> <p>24 A. Yes.</p> <p>25 Q. All right. And the sheet behind it gives you</p>	<p>1 A. Can I add something?</p> <p>2 Q. Please.</p> <p>3 A. That they were -- you know, there's clear</p> <p>4 definition based on how things were maintained as well</p> <p>5 and how things were -- you know, what associations were</p> <p>6 building and -- you know. I mean, the way that</p> <p>7 Charleston was treated was it had to be split. The</p> <p>8 medians had to be split between who maintained what</p> <p>9 medians, based on Peccole Ranch had responsibility to</p> <p>10 every other median --</p> <p>11 Q. Well, that's interesting.</p> <p>12 A. -- and Queensridge had responsibility to</p> <p>13 every other median.</p> <p>14 Q. I see.</p> <p>15 A. Okay? I lived in Queensridge. I never paid</p> <p>16 a fee to Peccole Ranch ever.</p> <p>17 Q. Got it.</p> <p>18 A. I never had a document that referred to</p> <p>19 Peccole Ranch.</p> <p>20 Q. And, of course, you never paid a fee to</p> <p>21 maintain a golf course either, did you?</p> <p>22 A. No.</p> <p>23 Q. And indeed, I think, if my memory serves me,</p> <p>24 that there had been a golf course intended on the south</p> <p>25 side --</p>

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<p>1 A. Yes, there was.</p> <p>2 Q. -- of Charleston, later vacated or</p> <p>3 abandoned --</p> <p>4 A. Correct.</p> <p>5 Q. -- in favor of some arroyo system or</p> <p>6 something.</p> <p>7 A. Correct. Yeah, walkways, open space.</p> <p>8 Q. All right. Now I'd like to have you look at</p> <p>9 the Queensridge master plan, which is Exhibits 2 and 3.</p> <p>10 Two is the original declaration. Three is the</p> <p>11 amendment.</p> <p>12 A. Exhibit 3 I'm looking at?</p> <p>13 Q. Two right now.</p> <p>14 A. Okay.</p> <p>15 Q. Two is the original declarations.</p> <p>16 A. Got it.</p> <p>17 Q. Now, opposing counsel asked you some</p> <p>18 questions about the recitals, which I think was at</p> <p>19 Page 1.</p> <p>20 A. Yup.</p> <p>21 Q. Now, Paragraph A defines the term "property."</p> <p>22 Correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And "property" in 1996 was one piece</p> <p>25 of property. Isn't that right?</p>	<p>1 this morning --</p> <p>2 A. No.</p> <p>3 Q. -- to go over your testimony?</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 A. You know, there's strategies why you do the</p> <p>7 annexations too.</p> <p>8 Q. And what is that?</p> <p>9 A. Taxes and values. Once you annex them in.</p> <p>10 Q. You have to pay?</p> <p>11 A. There's -- things go up, costs go up.</p> <p>12 Q. So the idea --</p> <p>13 A. The idea is not to annex them until you need</p> <p>14 them.</p> <p>15 Q. Right. Got it.</p> <p>16 And so -- and then you were asked by opposing</p> <p>17 counsel about Paragraph B. Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And the Paragraph B gave the land</p> <p>20 owner, the declarant, if you will, a great deal of</p> <p>21 discretion, correct?</p> <p>22 A. Correct.</p> <p>23 Q. So that for the "property," which is the</p> <p>24 capital P, which is both the original starting</p> <p>25 property, together with whatever's annexed over the</p>
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<p>1 A. Yes.</p> <p>2 Q. And then it would be added to -- in other</p> <p>3 words, property would be expanded as property was</p> <p>4 annexed? Isn't that right?</p> <p>5 Is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And as we went through earlier -- and</p> <p>8 I'm not going to repeat this -- annexations occurred</p> <p>9 multiple times over the years as the Queensridge</p> <p>10 property was added to. Correct?</p> <p>11 A. Correct.</p> <p>12 Q. And once it was annexed and recorded, then it</p> <p>13 became part of Queensridge?</p> <p>14 A. Correct.</p> <p>15 MR. PECCOLE: I'm going to pose an objection</p> <p>16 here as asked and answered and leading and just</p> <p>17 actually putting words in the witness's mouth.</p> <p>18 MR. JIMMERSON: Thank you very -- I'm not</p> <p>19 putting any words in his mouth.</p> <p>20 By the way, I just meet that objection</p> <p>21 directly.</p> <p>22 Q. (By Mr. Jimmerson) Have I put any words in</p> <p>23 your mouth?</p> <p>24 A. No.</p> <p>25 Q. Did I meet with you before this deposition</p>	<p>1 years, can -- and there's "may," but is not required to</p> <p>2 be any number of different things. Correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So it could or not could. Shopping</p> <p>5 centers or time-share developments or commercial and</p> <p>6 the like, right?</p> <p>7 A. Yes.</p> <p>8 Q. But it's not mandated. It's just discretion</p> <p>9 left to the developer. Is that right?</p> <p>10 A. Flexibility, yes.</p> <p>11 Q. All right. Now, do you know how many -- when</p> <p>12 I talk about as-builts, do you know how many homes were</p> <p>13 actually built in Queensridge?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. If I suggested about a thousand, would</p> <p>16 that be consistent with your recollection?</p> <p>17 MR. PECCOLE: Asked and answered.</p> <p>18 Not putting words in his mouth, are you?</p> <p>19 A. No, but I can do the calculation in my head</p> <p>20 because I know how many homes. Christopher Homes built</p> <p>21 around 80; Pulte built about 120; Capital Pacific built</p> <p>22 about another hundred; Trophy Homes built close to 150.</p> <p>23 Yeah. We're -- we're getting there. About a</p> <p>24 thousand -- a little over a thousand. There would be</p> <p>25 over a thousand homes.</p>

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<p>1 Q. (By Mr. Jimmerson) It's certainly a heck of 2 a lot less than the 4,247 that were shown in that plan 3 from 1990?</p> <p>4 A. Yes. Correct.</p> <p>5 Q. So there would still be about 3,000 to be 6 left to be built?</p> <p>7 A. Correct.</p> <p>8 Q. And would you look at the bottom of Paragraph 9 B, where it says, the last line -- opposing counsel 10 asked you this question.</p> <p>11 "The Maximum Number of Units (defined in 12 Section 1.57 herein) which Declarant reserves the right 13 to create within the," capital P, "Property and the," 14 capital A, "Annexable," capital P, "Property is three 15 thousand."</p> <p>16 Do you remember opposing counsel asked that 17 question?</p> <p>18 A. Yes.</p> <p>19 MR. PECCOLE: Objection. Asked and answered.</p> <p>20 Q. (By Mr. Jimmerson) All right. And so if a 21 thousand has been built through 2018, there's at least 22 2,000 to be built presently; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Thank you. And also the next 25 sentence indicates that the golf course was not a part</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And such other projects as may be 3 designated.</p> <p>4 Is there any reference in those categories to 5 the term "open space"?</p> <p>6 A. No.</p> <p>7 Q. Is there any reference to the term 8 "drainage"?</p> <p>9 A. No.</p> <p>10 Q. Is there any reference to the term "golf 11 course"?</p> <p>12 A. No.</p> <p>13 Q. All right. And is it clear that in each of 14 those categories, about such other, that there has to 15 be a declaration of annexation?</p> <p>16 A. Yes.</p> <p>17 Q. And the use of the land is anything that's 18 consistent with the zoning, right?</p> <p>19 A. Yes.</p> <p>20 Q. And that's what it says there? All right. 21 Page 18. All right. Thank you.</p> <p>22 Now, opposing counsel asked you a line of 23 questioning on cross-examination along the lines that 24 made reference, for example, to drainage. Do you 25 remember that?</p>
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<p>1 of the Badlands -- was not part of the, capital P, 2 property or the, capital A, annexable property, 3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Would you turn to Article II, please, which 6 is at Page 17. And this is called "General Intent," 7 2.1.</p> <p>8 Would you just read that quietly to yourself, 9 please.</p> <p>10 A. (Witness examined document.) Okay.</p> <p>11 Q. Now, this is the general intent without being 12 too specific? Agreed?</p> <p>13 A. Yes.</p> <p>14 Q. Now, the project types are then defined 15 immediately below. Correct? 2.2?</p> <p>16 A. Yes.</p> <p>17 Q. And you see custom lots, luxury lots, 18 executive lots, upgraded lots, such other residential 19 products that may be designated, multiple-dwelling 20 projects, residential condominiums, executive 21 condominiums, upgrade condominiums, move-up 22 condominiums, such other residential products that may 23 be designated. Then commercial/office projects, 24 shopping center projects, and hotel time-share.</p> <p>25 Do you see that?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And the -- and to the term "open 3 space." Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. But the drainage or the open space is that 6 which is on the, capital P, property or the, capital, 7 annexation property, right?</p> <p>8 A. Yes.</p> <p>9 Q. He's not referring to property -- or drainage 10 or golf courses on somebody else's property? Correct?</p> <p>11 A. I don't know what he was referring to, to be 12 honest with you.</p> <p>13 Q. Okay. But the document --</p> <p>14 A. Right.</p> <p>15 Q. -- only speaks to the property as defined 16 within the agreement? Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. It's not controlling or attempting to 19 control somebody else's property?</p> <p>20 A. No.</p> <p>21 Q. Okay. And the -- there's no way that the 22 Queensridge master plan could control, for example, the 23 city's definition of drainage or the city's regulation 24 over drainage?</p> <p>25 A. No.</p>

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<p>1 Q. Or the federal government's, FEMA's, control 2 over drainage, correct? 3 A. Correct. 4 Q. And there was no effort by the Peccole family 5 in Queensridge to do -- to control those areas; isn't 6 that right? 7 A. No effort. 8 Q. And no effort to control the property not 9 governed by this CC&amp;R, correct? 10 A. Correct. 11 Q. Now, the lawyers who prepared the Peccole 12 Ranch master plan to the south of West Charleston and 13 the lawyers who prepared the Queensridge master plan to 14 the north of Charleston was essentially the same firm, 15 correct? Was it Karen Dennison in each case? 16 A. No. 17 Q. Was it -- 18 A. Okay. Now I'm a little foggy here, but I 19 thought -- wait a second. 20 Let's restate it. Everything south of 21 Charleston, I thought there was somebody else did the 22 documents. 23 Q. No. I think you're right. 24 A. I think it was McGladrey -- McGladrey -- 25 Q. No. It was Sean McGowan of McDonald Carano.</p>	<p>1 Q. Okay. And was it able to be developed? 2 A. No. 3 Q. Okay. And tell us why. 4 A. It has a water line running through it. 5 Q. Okay. And what did that -- what did that -- 6 so that caused a practical limitation on the ability to 7 develop that property? 8 A. Correct. 9 Q. And was that lot part of the golf course? 10 A. I don't recall. 11 Q. Okay. In other words, as distinguished from 12 being -- 13 A. It was not -- let's put it this way: It 14 was -- 15 Q. It was not part of Queensridge? 16 A. -- not part of the Orient Express lots at the 17 time. 18 Q. Got it. 19 A. So I . . . 20 Q. Was it -- that's what I'm asking. My 21 client's whispering to me. 22 Was it a part of the golf course because it 23 wasn't part of Orient Express -- 24 MR. PECCOLE: Asked and answered. 25 Q. (By Mr. Jimmerson) -- Street, Orient</p>
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<p>1 A. Carano, correct. 2 Q. Exactly right. 3 And then you think it was Karen Dennison to 4 the north? 5 A. Positive, because I worked with her daily. 6 Q. Got it. Okay. All right. That's my error. 7 Thank you for the correction. 8 A. And it was. It was McDonald Carano, Sean 9 McGowan. 10 Q. Do you recall there was an issue -- when I 11 say "issue," I don't want to be too vague -- that there 12 became some -- some issues of concern regarding the 13 development of Michael McDonald's lot? 14 A. Is that what we want to refer to it as, his 15 lot? 16 Q. I don't know. 17 A. He never owned it, but yeah. 18 Q. Okay. 19 A. Something that he was -- some day would 20 potentially want to purchase and develop, yes. 21 Q. Okay. And who was looking to develop that 22 lot? 23 A. Michael McDonald. 24 Q. Okay. And where was that lot located? 25 A. That was on Orient Express.</p>	<p>1 Express? 2 A. My answer to that is yes, by deduction. 3 Q. What do you mean, "by deduction"? 4 A. If it wasn't part of Queensridge and we 5 didn't make it a lot and it wasn't on Orient Express -- 6 and I believe now that we were storing things there for 7 the golf course, some trees and plants and things 8 there. 9 I know that it wasn't at the time in 10 Queensridge, or we would have been selling it as a lot. 11 Q. Got it. And if your conclusion by deduction 12 is correct, then that is further evidence of the 13 Peccoles' knowledge that the golf course could be 14 developed, correct? 15 A. Yes. 16 Q. All right. Did they get into a fight with 17 anybody over that lot? Do you remember that? 18 Specifically with Mr. Lowie or the EHB company? 19 A. Gosh, I don't recall. I know that a lot of 20 people did not want to see it happen. 21 Q. See what happen? The development? 22 A. See that turn into a lot. 23 Q. On the golf course? 24 A. On the golf course. And the thing was, too, 25 that it was all for naught because it couldn't be.</p>

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<p>1 Q. Got it. Because of the pipe?</p> <p>2 A. Because there's a pipe underground.</p> <p>3 Q. All right.</p> <p>4 Do you recall that Peccole -- before the</p> <p>5 effort ended, there had been a grading of the property</p> <p>6 and building it up?</p> <p>7 A. Yes.</p> <p>8 Q. And then it was discovered?</p> <p>9 A. And then discovered that, hey, guys,</p> <p>10 there's --</p> <p>11 Q. So there was an effort by the Peccole --</p> <p>12 MR. PECCOLE: I'm going to object on the</p> <p>13 grounds irrelevant, immaterial.</p> <p>14 Q. (By Mr. Jimmerson) So was there an effort by</p> <p>15 the Peccole family to develop that lot until the</p> <p>16 impossibility was discovered by virtue of the</p> <p>17 underlying pipe?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember that I asked you about an</p> <p>20 entity called BGC?</p> <p>21 A. Yes.</p> <p>22 Q. And a lawsuit between BGC and Fore Stars?</p> <p>23 A. Yes.</p> <p>24 Q. And I showed you the complaint?</p> <p>25 A. Yes.</p>	<p>1 Bruce's company.</p> <p>2 Q. (By Mr. Jimmerson) That's what Mr. Peccole</p> <p>3 suggested in his line of questioning.</p> <p>4 A. Okay. So I thought the B stand for Bayne.</p> <p>5 Okay.</p> <p>6 Q. And do you recall that the breach of contract</p> <p>7 lawsuit that I showed you, the BGC versus Fore Stars</p> <p>8 litigation, arose because the Peccole family was</p> <p>9 attempting to develop the golf course in this 2006-2007</p> <p>10 time period?</p> <p>11 MR. PECCOLE: I can't hear you.</p> <p>12 Q. (By Mr. Jimmerson) After having agreed to</p> <p>13 sell the land to Mr. Lowie?</p> <p>14 A. Can you say that all over again so I get it</p> <p>15 all at once?</p> <p>16 MR. PECCOLE: And speak up, would you,</p> <p>17 please.</p> <p>18 MR. JIMMERSON: Go ahead. Keep your voice</p> <p>19 up.</p> <p>20 (Page 187, Lines 6 through 13, read</p> <p>21 by the reporter.)</p> <p>22 THE WITNESS: What land to Mr. Lowie?</p> <p>23 Q. (By Mr. Jimmerson) The golf course.</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. All right. But do you recall that the</p>
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<p>1 Q. Okay. Opposing counsel, Mr. Peccole, on</p> <p>2 cross-examination, asked you a series of questions</p> <p>3 suggesting that BGC was Bruce Bayne. Do you recall</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. He asked you a line of questions about that.</p> <p>7 As far as you know, and as I pointed out to you, BGC</p> <p>8 was an entity that Mr. Lowie was involved with; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And there was a lawsuit for breach of</p> <p>12 contract that we talked about; and then I showed you</p> <p>13 the settlement agreement, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. As far as you know, Bruce Bayne did</p> <p>16 not have any involvement with that, with the company</p> <p>17 BGC, at least as I showed you litigation?</p> <p>18 A. Correct. I still don't know what BGC is.</p> <p>19 Q. I'm going to suggest that BGC might stand for</p> <p>20 Badlands Golf Course.</p> <p>21 A. Okay.</p> <p>22 Q. All right.</p> <p>23 MR. LOWIE: Quite simple.</p> <p>24 THE WITNESS: Thank you. Because I</p> <p>25 thought -- I'm sorry, but I thought Bob said it was</p>	<p>1 Peccole family in 2006 and 2007 was attempting to</p> <p>2 develop some portion of the golf course in that time</p> <p>3 period?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And what is it -- what is there about</p> <p>6 that that you recall?</p> <p>7 A. We were doing the high-rise.</p> <p>8 Q. And that was located on property --</p> <p>9 A. Alta and Rampart.</p> <p>10 Q. Got it.</p> <p>11 A. So now this is coming back. Yes. Okay. So</p> <p>12 there were easements that were needed for that -- for</p> <p>13 that property.</p> <p>14 MR. PECCOLE: I'd like to pose an objection</p> <p>15 as this is all irrelevant and immaterial.</p> <p>16 Q. (By Mr. Jimmerson) Do you remember the</p> <p>17 Peccole family was attempting to introduce a new</p> <p>18 product line called "time-share"?</p> <p>19 A. Yes.</p> <p>20 Q. Maybe 500 rooms?</p> <p>21 A. Yes.</p> <p>22 Q. Is that the project we're talking about?</p> <p>23 A. Yes.</p> <p>24 Q. And was that in this 2006, 2007?</p> <p>25 A. Yes.</p>

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<p>1 MR. JIMMERSON: Nothing further. Thank you.</p> <p>2 I have no further questions, and I want to</p> <p>3 thank you for your time, sir.</p> <p>4 MR. PECCOLE: Just a couple of cleanups.</p> <p>5 THE WITNESS: Sure.</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. PECCOLE:</p> <p>8 Q. When you, in your head, figured out these</p> <p>9 number of homes that were built according to what</p> <p>10 Mr. Jimmerson asked you, did you consider the homes</p> <p>11 were built on lots?</p> <p>12 A. Was -- I hadn't counted those yet, but I</p> <p>13 would. Yeah, those would be part of them, to get to a</p> <p>14 thousand.</p> <p>15 Q. So another couple thousand, maybe, or a</p> <p>16 thousand?</p> <p>17 A. A thousand.</p> <p>18 Q. The -- Mr. Jimmerson just went through the</p> <p>19 Exhibit 2 --</p> <p>20 A. Yes.</p> <p>21 Q. -- and he asked you a bunch of questions, but</p> <p>22 I would just draw your attention back to Page 1.</p> <p>23 A. Okay. Okay.</p> <p>24 Q. Paragraph B.</p> <p>25 A. Yup.</p>	<p>1 Q. It could be Page 2. Yes.</p> <p>2 A. Okay. And C, or am I on B?</p> <p>3 Q. A and B -- take a look at the very top of the</p> <p>4 page.</p> <p>5 A. Okay. So where it says "Property and the</p> <p>6 Annexable Property is three thousand. The existing</p> <p>7 18-hole golf course commonly known as the 'Badlands' --</p> <p>8 Q. Yes.</p> <p>9 A. -- "is not a part of the Property or the</p> <p>10 Annexable Property"?</p> <p>11 Q. That's the point I was trying to make. Bill</p> <p>12 excluded the 18 holes by saying it's not a part of the</p> <p>13 property or the annexable property. Doesn't it say</p> <p>14 that?</p> <p>15 MR. JIMMERSON: I object. The document</p> <p>16 speaks for itself.</p> <p>17 A. It states, "The existing 18-hole golf course</p> <p>18 commonly known as the 'Badlands Golf Course' is not</p> <p>19 part of the Property or the Annexable Property."</p> <p>20 Q. (By Mr. Peccole) That's --</p> <p>21 A. Not -- but not a part of what property?</p> <p>22 Q. Now, if you look back at 1, and we decided</p> <p>23 that property, with a capital P, could be a use, it</p> <p>24 lists golf course; and Bill removed it from the</p> <p>25 property that was recognized by the CC&amp;Rs by saying</p>
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<p>1 Q. Down in the bottom where it says Property,</p> <p>2 with capital P, can be the following uses, does it list</p> <p>3 golf course and open space?</p> <p>4 MR. JIMMERSON: You mean the "may"?</p> <p>5 A. Yes, it says it.</p> <p>6 Q. (By Mr. Peccole) It says "may"? And</p> <p>7 actually, did the golf course get built?</p> <p>8 A. Yes, it did.</p> <p>9 Q. And did Bill have some concern about whether</p> <p>10 or not it would be included in the CC&amp;Rs, and therefore</p> <p>11 he specifically excluded the 18 holes by saying "not a</p> <p>12 part of"?</p> <p>13 MR. JIMMERSON: Objection, and also lack of</p> <p>14 foundation.</p> <p>15 Q. (By Mr. Peccole) Do you remember that?</p> <p>16 A. I don't.</p> <p>17 Q. Take a look at Page 3.</p> <p>18 A. Okay.</p> <p>19 Q. Very top.</p> <p>20 A. (Witness examined document.)</p> <p>21 Q. Does it say right at the very, very top of</p> <p>22 the page, Badlands -- 18 holes, known as Badlands, is</p> <p>23 not a part of?</p> <p>24 A. Before Article I, right, on Page -- I'm</p> <p>25 reading Page 3. I'm supposed to be Page 2?</p>	<p>1 "not a part of."</p> <p>2 MR. JIMMERSON: I'm going to object. There's</p> <p>3 no question pending, and the document speaks for</p> <p>4 itself.</p> <p>5 Q. (By Mr. Peccole) Isn't what that it says?</p> <p>6 MR. JIMMERSON: It has to be annexed in order</p> <p>7 to be part of the property.</p> <p>8 Q. (By Mr. Peccole) Isn't that what it says?</p> <p>9 It doesn't say anything about annexation, does it?</p> <p>10 A. I don't know. You're asking me to interpret</p> <p>11 something. It says what it says.</p> <p>12 Q. Well, you interpreted it for Mr. Jimmerson.</p> <p>13 MR. JIMMERSON: Objection.</p> <p>14 A. I did not. What did I interpret for him?</p> <p>15 Q. (By Mr. Peccole) You were interpreting the</p> <p>16 sections that he's -- he's been reading to you, and you</p> <p>17 agreed with him.</p> <p>18 A. I did?</p> <p>19 Q. Yes.</p> <p>20 MR. JIMMERSON: Objection. I asked a</p> <p>21 question, though, after reading a section, unlike this</p> <p>22 examiner.</p> <p>23 A. I don't know what you're asking me. It says</p> <p>24 what it says.</p> <p>25 Q. (By Mr. Peccole) Look, just admit you're not</p>

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<p>1 an expert, okay?</p> <p>2 A. Right. Okay. How about that?</p> <p>3 Q. Now, with regard to the golf course --</p> <p>4 A. Okay.</p> <p>5 Q. -- all 27 holes --</p> <p>6 A. Yeah.</p> <p>7 Q. -- are you familiar with the city master</p> <p>8 plan?</p> <p>9 A. No.</p> <p>10 Q. City master plan lists it as PROS.</p> <p>11 MR. JIMMERSON: I just object to the question</p> <p>12 to be outside the scope of direct, cross --</p> <p>13 Q. (By Mr. Peccole) Do you know what PROS --</p> <p>14 A. I don't.</p> <p>15 MR. JIMMERSON: -- and redirect.</p> <p>16 Q. (By Mr. Peccole) How about parks,</p> <p>17 recreation --</p> <p>18 A. Okay.</p> <p>19 Q. -- and open space?</p> <p>20 A. Okay.</p> <p>21 Q. And wasn't it designated that by the fact</p> <p>22 that Larry Miller and Billy Bayne went in and had it</p> <p>23 changed so they wouldn't have to pay taxes on the golf</p> <p>24 courses?</p> <p>25 MR. JIMMERSON: I object to the question --</p>	<p>1 FURTHER EXAMINATION</p> <p>2 BY MR. JIMMERSON:</p> <p>3 Q. Would Mr. Peccole, as an owner of property, a</p> <p>4 residence, in Queensridge, have any rights if against</p> <p>5 property that is not, capital P, property and not</p> <p>6 annexed into the Queensridge master plan?</p> <p>7 In other words, does he have any rights</p> <p>8 against property that is not included within the</p> <p>9 Queensridge master plan?</p> <p>10 A. No.</p> <p>11 Q. And why is that?</p> <p>12 A. Because it's not -- it's not part of these</p> <p>13 documents. It's not a part of.</p> <p>14 Q. And what is included, what is property,</p> <p>15 annexed property, is clearly defined within the</p> <p>16 document, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Anybody who reads this contract, the master</p> <p>19 CC&amp;Rs, would know what's included and what's not</p> <p>20 included, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Just by definition, as well as the maps?</p> <p>23 A. Yes.</p> <p>24 MR. JIMMERSON: Nothing further. Thank you.</p> <p>25 MR. PECCOLE: I would like to clear this one</p>
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<p>1 A. I don't know.</p> <p>2 MR. JIMMERSON: -- as being outside the scope</p> <p>3 of direct, cross, redirect, and assumes facts not in</p> <p>4 evidence.</p> <p>5 Q. (By Mr. Peccole) And the flood drainage,</p> <p>6 which is not a common use in the sense that those --</p> <p>7 that Mr. Jimmerson has read those paragraphs back to</p> <p>8 you dealing with that and you were agreeing, I would</p> <p>9 ask you the question, is the drainage -- the flood</p> <p>10 drainage system specifically included in the CC&amp;Rs?</p> <p>11 A. I don't know.</p> <p>12 Q. We read it once before.</p> <p>13 A. Let's read it again.</p> <p>14 Q. You don't remember because it was too long</p> <p>15 ago?</p> <p>16 A. Yes. I remember things that are long ago.</p> <p>17 Q. Dementia.</p> <p>18 A. Yes.</p> <p>19 MR. PECCOLE: No further questions.</p> <p>20 THE WITNESS: I'm getting there, Bob. I'm</p> <p>21 almost 60.</p> <p>22 MR. JIMMERSON: Are you finished,</p> <p>23 Mr. Peccole?</p> <p>24 MR. PECCOLE: Too many basketballs.</p> <p>25 MR. JIMMERSON: I have just one question.</p>	<p>1 more time.</p> <p>2 THE WITNESS: Okay.</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MR. PECCOLE:</p> <p>5 Q. There is the real property, which is real</p> <p>6 estate, land, that was defined in Paragraph A.</p> <p>7 A. Okay.</p> <p>8 Q. And that can be annexed. We agree with that?</p> <p>9 A. Okay.</p> <p>10 Q. You go over to Paragraph B, and the use can</p> <p>11 become property -- and it says right there, capital P,</p> <p>12 property -- without being annexed. There's nothing to</p> <p>13 do with annexation.</p> <p>14 MR. JIMMERSON: I object to the question.</p> <p>15 There's no question pending.</p> <p>16 Q. (By Mr. Peccole) So you've got two parts;</p> <p>17 and every time the question is posed to you, it's posed</p> <p>18 to you only as property. You don't hear one is land,</p> <p>19 one is use.</p> <p>20 MR. JIMMERSON: I object to the question.</p> <p>21 There's no question pending. It's just a lecture by</p> <p>22 opposing counsel.</p> <p>23 MR. PECCOLE: I'm not finished yet.</p> <p>24 Q. (By Mr. Peccole) So having that in mind, do</p> <p>25 you distinguish between land and use when you talk</p>



<p style="text-align: right;">Page 197</p> <p>1 about property?</p> <p>2 A. Boy. I don't know how to answer that. I</p> <p>3 don't -- I don't -- I don't know how to answer that. I</p> <p>4 don't talk about property unless it has a use or I have</p> <p>5 some sort of thought of what it's going to be used for</p> <p>6 in my mind.</p> <p>7 When I look at raw land or I discuss raw</p> <p>8 land, there's a use in my head, or a potential use for</p> <p>9 that property that is the highest and best use for that</p> <p>10 piece of property. That's real estate.</p> <p>11 I don't know if that -- I don't know if that</p> <p>12 answers your question. I don't look at property as</p> <p>13 just property. Property doesn't have any use --</p> <p>14 property doesn't have any value unless it has a use.</p> <p>15 Okay? So I look to the property's use to define it as</p> <p>16 property. Other than that, to me it's dirt.</p> <p>17 Q. Would you ever define property as being a</p> <p>18 golf course?</p> <p>19 A. Yes. Golf course would go on dirt. Yeah.</p> <p>20 MR. PECCOLE: No further questions.</p> <p>21 FURTHER EXAMINATION</p> <p>22 BY MR. JIMMERSON:</p> <p>23 Q. And the use would be as defined by zoning,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 199</p> <p>CERTIFICATE OF WITNESS</p> <p>2 PAGE LINE CHANGE REASON</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 * * * * *</p> <p>20 I, GREG STEVEN GOORJIAN, witness herein,</p> <p>21 do hereby certify and declare under penalty of perjury</p> <p>22 the within and foregoing transcription to be my</p> <p>23 deposition in said action; that I have read,</p> <p>24 corrected and do hereby affix my signature to said</p> <p>25 deposition.</p> <p>_____ GREG STEVEN GOORJIAN Witness Date</p>
<p style="text-align: right;">Page 198</p> <p>1 Q. Of course.</p> <p>2 MR. JIMMERSON: Thank you. Nothing further.</p> <p>3 Mr. Goorjian, I appreciate your time, and</p> <p>4 apologize for the inconvenience that both sides have</p> <p>5 placed upon you, sir.</p> <p>6 (Deposition recessed at 1:46 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 200</p> <p>REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA )</p> <p>3 ) ss COUNTY OF CLARK )</p> <p>4</p> <p>5 I, Judith Payne Kelly, a duly certified court</p> <p>6 reporter licensed in and for the State of Nevada, do</p> <p>7 hereby certify:</p> <p>8 That I reported the taking of the deposition</p> <p>9 of the witness, GREG STEVEN GOORJIAN, at the time and</p> <p>10 place aforesaid;</p> <p>11 That prior to being examined, the witness was</p> <p>12 by me duly sworn to testify to the truth, the whole</p> <p>13 truth, and nothing but the truth;</p> <p>14 That I thereafter transcribed my shorthand</p> <p>15 notes into typewriting and that the typewritten</p> <p>16 transcript of said deposition is a complete, true</p> <p>17 and accurate record of testimony provided by the</p> <p>18 witness at said time to the best of my ability.</p> <p>19 I further certify (1) that I am not a</p> <p>20 relative, employee or independent contractor of</p> <p>21 counsel of any of the parties; nor a relative,</p> <p>22 employee or independent contractor of the parties</p> <p>23 involved in said action; nor a person financially</p> <p>24 interested in the action; nor do I have any other</p> <p>25 relationship with any of the parties or with counsel</p> <p>of any of the parties involved in the action that</p> <p>may reasonably cause my impartiality to be</p> <p>questioned; and (2) that transcript review pursuant</p> <p>to NRCP 30(e) was not requested.</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand in the County of Clark, State of Nevada, this</p> <p>31st day of December, 2018.</p> <p>_____ Judith Payne Kelly, CCR No. 539, RMR</p>

## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
 ) ss  
3 COUNTY OF CLARK )

4

5 I, Judith Payne Kelly, a duly certified court  
reporter licensed in and for the State of Nevada, do  
6 hereby certify:

7 That I reported the taking of the deposition  
of the witness, GREG STEVEN GOORJIAN, at the time and  
8 place aforesaid;

9 That prior to being examined, the witness was  
by me duly sworn to testify to the truth, the whole  
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand  
notes into typewriting and that the typewritten  
12 transcript of said deposition is a complete, true  
and accurate record of testimony provided by the  
13 witness at said time to the best of my ability.

14 I further certify (1) that I am not a  
relative, employee or independent contractor of  
15 counsel of any of the parties; nor a relative,  
employee or independent contractor of the parties  
16 involved in said action; nor a person financially  
interested in the action; nor do I have any other  
17 relationship with any of the parties or with counsel  
of any of the parties involved in the action that  
18 may reasonably cause my impartiality to be  
questioned; and (2) that transcript review pursuant  
19 to NRCF 30(e) was not requested.

20 IN WITNESS WHEREOF, I have hereunto set my  
hand in the County of Clark, State of Nevada, this  
21 31st day of December, 2018.

22

23

24

25

*Judith P. Kelly*  
Judith Payne Kelly, CCR No. 539, RMR



# **Exhibit 100**

**2019.01.07 Robert Summerfiled Email**

**LO 00003885**

**From:** Robert Summerfield <[rsummerfield@LasVegasNevada.GOV](mailto:rsummerfield@LasVegasNevada.GOV)>  
**Date:** January 7, 2019 at 5:49:44 PM PST  
**To:** "Frank Pankratz (EHB Companies)" <[frank@EHBCompanies.com](mailto:frank@EHBCompanies.com)>  
**Subject:** CLV EOT Question

Frank – I wanted to reach out to you about the question you had for Steve G. in the Planning Office last week regarding an EOT related to SDR-62393. As you know, as a result of Judge Crockett’s order in Case No. A-17-752344-J, the approvals of applications GPA-62387, ZON-62392, and SDR-62393 were “vacated, set aside and shall be void.” Because there are no longer any approvals for the aforementioned applications, there is nothing for the City to extend at this time and we cannot process any application for such an extension.

I hope this answer helps as your team moves forward and please let me know if there is anything else I, or the Department, can help with.

Best – Robert

**Robert Summerfield, AICP**

Director  
Department of Planning | Development Services Center  
**702-229-4856 | 702-229-6301**  
333 N. Rancho Dr. | Las Vegas, NV 89101



[lasvegasnevada.gov](http://lasvegasnevada.gov)



The city of Las Vegas Department of Planning offices are open Monday – Thursday from 7 AM to 5:30 PM. If you need immediate assistance during our office hours, please contact Administrative Secretary Milagros (Miles) Escuin at 702.229.1014 or [mescuin@LasVegasNevada.GOV](mailto:mescuin@LasVegasNevada.GOV).

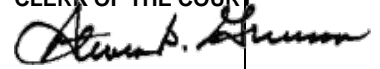
**LO 00003885**

**1019**

# **Exhibit 101**

**2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding  
Finding of Fact and Conclusion of Law Entered November 21, 2019**

**LO 00003886-00003891**



**NEOJ  
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*Attorneys for Plaintiff Landowners*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, a Nevada limited  
liability company, 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

**NOTICE OF ENTRY OF ORDER  
NUNC PRO TUNC Regarding Findings of  
Fact and Conclusion of Law Entered  
November 21, 2019**

LO 00003886

Case Number: A-17-758528-J

1021

1       **PLEASE TAKE NOTICE** that on the 6<sup>th</sup> day of February, 2019, an Order *Nunc Pro Tunc*  
2 Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018, was entered in the  
3 above-captioned case, a copy of which is attached hereto.

4           Dated this 6<sup>th</sup> day of February, 2019.

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

6                               By: /s/ Kermitt L. Waters  
7                               KERMIT L. WATERS, ESQ., NBN 2571  
8                               JAMES JACK LEAVITT, ESQ., NBN 6032  
9                               MICHAEL A. SCHNEIDER, ESQ., NBN 8887  
10                              AUTUMN WATERS, ESQ., NBN 8917  
11                              704 S. 9<sup>th</sup> Street  
12                              Las Vegas, NV 89101

13                              *Attorneys for Plaintiff*  
14  
15  
16  
17  
18  
19  
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22  
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27  
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and  
3 that on the 6<sup>th</sup> day of February, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered**  
5 **November 21, 2019**, was made by electronic means pursuant to EDCR 8.05(a) and 8.05(f), to be  
6 electronically served through the Eighth Judicial District Court's electronic filing system, with the  
7 date and time of the electronic service substituted for the date and place of deposit in the mail and  
8 addressed to each of the following:

9 **McDonald Carano LLP**

10 George F. Ogilvie III  
11 Debbie Leonard  
12 Amanda C. Yen  
2300 W. Sahara Ave., Suite 1200  
13 Las Vegas, Nevada 89102  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)  
[dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)  
[ayen@mcdonaldcarano.com](mailto:ayen@mcdonaldcarano.com)

14 **Las Vegas City Attorney's Office**

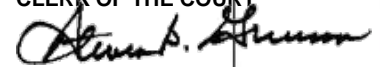
15 Bradford Jerbic  
16 Philip R. Byrnes  
17 Seth T. Floyd  
495 S. Main Street, 6<sup>th</sup> Floor  
18 Las Vegas, Nevada 89101  
[pbyrnes@lasvegasnevada.gov](mailto:pbyrnes@lasvegasnevada.gov)  
[sfloyd@lasvegasnevada.gov](mailto:sfloyd@lasvegasnevada.gov)

19 **Pisanelli Bice, PLLC**

20 Todd L. Bice, Esq.  
21 Dustun H. Holmes, Esq.  
400 S. 7<sup>th</sup> Street  
22 Las Vegas, Nevada 89101  
[tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
[dhh@pisanellibice.com](mailto:dhh@pisanellibice.com)

23  
24  
25 /s/ Evelyn Washington  
An Employee of the Law Offices of Kermitt L. Waters





**ONPT  
LAW OFFICES OF KERMITT L. WATERS**

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jkistler@hutchlegal.com  
mschriever@hutchlegal.com

*Attorneys for Plaintiff Landowners*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, a Nevada limited liability company, 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

**ORDER NUNC PRO TUNC  
Regarding Findings of Fact and  
Conclusion of Law Entered  
November 21, 2018**

Hearing Date: January 17, 2019  
Hearing Time: 9:00 a.m.

01-29-19A10:51 RCVD

LO 00003889

**ORDER NUNC PRO TUNC**  
**Regarding Findings of Fact and Conclusions of Law Entered November 21, 2018**

Plaintiff, 180 LAND COMPANY, LLC ("Plaintiff" and/or "Landowner") Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims and the City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time and the Intervenor's Joinder thereto having come for hearing on January 17, 2019 at 9:00 a.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., and Mark Hutchison, Esq., appearing for and on behalf of the Plaintiff, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of Defendant, the City of Las Vegas, and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenor. The Court having read all the papers filed by the parties and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims filed on December 11, 2018, is GRANTED, as this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed *nunc pro tunc*.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that Defendant, City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time filed on December 21, 2018, and the Joinder thereto is DENIED AS MOOT.

IT IS SO ORDERED.


DATED this 5<sup>th</sup> day of February, 2019.

  
DISTRICT COURT JUDGE

WJ +  
TCW

1 Respectfully Submitted By:

2 **LAW OFFICES OF KERRITT L. WATERS**

3 By:   
4 KERRITT L. WATERS, ESQ., NBN 2571  
5 JAMES JACK LEAVITT, ESQ., NBN 6032  
6 MICHAEL A. SCHNEIDER, ESQ., NBN 8887  
7 AUTUMN WATERS, ESQ., NBN 8917  
8 704 S. 9<sup>th</sup> Street  
9 Las Vegas, NV 89101

10 *Attorneys for Plaintiff*

11 Reviewed and Approved By:

12 **McDonald Carano LLP**

13 By: Declined to Sign  
14 George F. Ogilvie III, Esq., NBN 3552  
15 Debbie Leonard, Esq., NBN 8260  
16 Amanda C. Yen, Esq., NBN 9726  
17 2300 W. Sahara Ave, Suite 1200  
18 Las Vegas, NV 89102

19 *Attorneys for Defendant, City of Las Vegas*

20 **PISANELLI BICE PLLC**

21 By: None Responsive  
22 Todd L. Bice, Esq., NBN 4534  
23 Dustun H. Holmes, Esq., NBN 12776  
24 Kirill V. Mikhaylov, Esq., NBN 13538  
25 400 South 7<sup>th</sup> Street, Suite 300  
26 Las Vegas, NV 89101

27 *Attorneys for Intervenor*

# **Exhibit 102**

**2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss**

**LO 00003892**

DISTRICT COURT  
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal

COURT MINUTES

February 15, 2019

---

A-18-775804-J      180 Land Company LLC, Petitioner(s)  
vs.  
Las Vegas City of, Respondent(s)

---

February 15, 2019      03:00 AM      All Pending Motions

HEARD BY:      Sturman, Gloria      COURTROOM:

COURT CLERK: Shell, Lorna

RECORDER:

REPORTER:

PARTIES PRESENT:

**JOURNAL ENTRIES**

This matter came on for argument on January 15, 2019 on the Motion to Dismiss filed by the City of Las Vegas (City) and Opposition/Counter motions to allow a More Definite Statement/ or for Stay/ and/or for NRCP 56(f) relief filed by Plaintiff 180 Land Co. (Landowner), supplemental briefing having been provided by the parties and the matter having been taken under advisement COURT HEREBY FINDS as follows:

COURT ORDERED, City's Motion to Dismiss GRANTED IN PART as to the Petition for Judicial Review only on the grounds of issue preclusion; Judge Crockett having decided the same issue in his Order issued in A-17-752344 and as that decision is currently on appeal, the dismissal herein is WITHOUT PREJUDICE should that decision be overturned.

COURT FURTHER ORDERED, Landowner's Countermotion for a More Definite Statement and/or for Stay and/or 56(f) relief DENIED AS MOOT as to the Petition for Judicial Review; however, the Complaint on file herein states alternative claims for Inverse Condemnation which may proceed in the ordinary course.

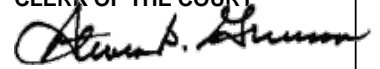
Counsel for the City shall prepare an Order in accordance with this minute order and provide counsel for the Landowner an opportunity to review for form and content, within 30 days from this date.

CLERK'S NOTE: A copy of this minute order was e-mailed, mailed, or faxed as follows: James Leavitt, Esq. (Jim@kermittwaters.com) and George Ogilvie, Esq. (gogilvie@mcdonaldcarano.com) ./ls 02-15-19

# **Exhibit 103**

**2019.01.23 Judge Bixleer's Transcript of Proceedings**

**LO 00003893-00003924**



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

FORE STARS, LTD., SEVENTY )  
ACRES, LLC, ) CASE NO. A-18-773268  
)  
Plaintiffs, )  
) DEPT. NO. SENIOR JUDGES  
vs. )  
)  
CITY OF LAS VEGAS, STATE OF ) **Transcript of Proceedings**  
NEVADA EX REL EIGHTH JUDICIAL )  
DISTRICT COURT, DEPT. 24, )  
COUNTY OF CLARK, )  
)  
Defendants. )

BEFORE THE HONORABLE JAMES BIXLER, SENIOR DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

WEDNESDAY, JANUARY 23, 2019

APPEARANCES:

For the Plaintiffs: JAMES J. LEAVITT, ESQ.  
KERRITT L. WATERS, ESQ.  
AUTUMN L. WATERS, ESQ.  
For the State: STEVEN G. SHEVORSKI, ESQ.  
THERESA M. HAAR, ESQ.  
For the City: GEORGE F. OGILVIE, ESQ.  
DEBBIE LEONARD, ESQ.  
PHILIP BYRNES, ESQ.

RECORDED BY: PATTI SLATTERY, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 WEDNESDAY, JANUARY 23, 2019 AT 12:59 P.M.  
2  
3 THE COURT: This is -- everybody, have a seat.  
4 Relax.  
5 MR. SHEVORSKI: Good afternoon, Your Honor.  
6 THE COURT: Good afternoon. Are we on the record?  
7 THE COURT RECORDER: Yes. We are, Your Honor.  
8 THE COURT: Okay. We're on the record in the  
9 matter of *Fore Stars, Limited, Seventy Acres, LLC, versus*  
10 *City of Las Vegas, Eighth Judicial District Court,*  
11 *Honorable Judge Crockett.* This is case number A-18-773268.  
12 Would everybody identify themselves for the record, please?  
13 MR. SHEVORSKI: I'll go first.  
14 MR. OGILVIE: Go ahead.  
15 MR. SHEVORSKI: Good afternoon again, Your Honor.  
16 Steven Shevorski of the Office of the Attorney General,  
17 with my colleague Theresa Haar, also of the Office of the  
18 Attorney General, representing the Eighth Judicial District  
19 Court, Department 24.  
20 THE COURT: Perfect.  
21 MS. LEONARD: Good afternoon, Your Honor. Debbie  
22 Leonard, of McDonald Carano, representing the City of Las  
23 Vegas.  
24 THE COURT: Heard.  
25 MR. OGILVIE: Hi, Your Honor. George Ogilvie,



1 representing the City of Las Vegas. Also, on behalf of the  
2 City of Las Vegas with us today is Mr. Philip Byrnes from  
3 the City Attorney's Office.

4 THE COURT: Perfect.

5 Good afternoon, Your Honor. James J. Leavitt on  
6 behalf of Fore Star, Limited, and Seventy Acre, LLC, the  
7 landowners.

8 THE COURT: Heard.

9 MR. WATERS: Kermitt Waters on behalf of Fore  
10 Stars, Your Honor.

11 MS. WATERS: And Autumn Waters, also here on  
12 behalf of the landowners, Your Honor.

13 THE COURT: Okay. A couple things real quick  
14 before we get into anything substantive. Due to the nature  
15 of this case and the parties in name -- and this case has  
16 been bumped around quite a few departments. They either --  
17 in the District Court, they either recused themselves or  
18 precluded by one of you guys, I think. Or one or two of  
19 them got preempted by somebody, one of the parties.

20 In any event, this ended up over in the Senior  
21 Judge Department and when I came to look at it, I indicated  
22 that I thought I could hear this matter and be fair and  
23 impartial to everybody. Now, some of you folks I've known  
24 for 30, 40 years. I've certainly known Judge Crockett for  
25 a period of time as a trial attorney and I think he tried

1 at least two or three cases in front of me while I was on  
2 the District Court bench. In any event, the Senior Judge  
3 program is not part of the Eighth Judicial District Court,  
4 let me make that clear. We are part of the Senior Judge  
5 program on the Supreme Court.

6 So, if there's anybody that has a problem with me  
7 hearing this case, you should speak now or you're probably  
8 going to be stuck with me. If you do have a problem with  
9 me hearing it, I think the only alternative left is to get  
10 somebody from Northern Nevada, either Reno or one of the  
11 counties would have to designate somebody.

12 So, that's my first question. Does anybody have a  
13 problem with me hearing this case?

14 MR. OGILVIE: Not on behalf of the City, Your  
15 Honor.

16 MR. SHEVORSKI: Not on behalf of the Eighth  
17 Judicial District Court, Your Honor.

18 MR. WATERS: May we have a couple minutes, Your  
19 Honor?

20 THE COURT: Absolutely. Absolutely.

21 MR. WATERS: Yeah. Thank you, Your Honor.

22 THE COURT: We can go off the record.

23 [Case trailed at 1:02 p.m.]

24 [Hearing resumed at 1:07 p.m.]

25 THE COURT: We're back on the record.

1 MR. WATERS: Yes, Your Honor. We're ready.

2 THE COURT RECORDER: We're back on the record,  
3 Your Honor.

4 THE COURT: All right. We're on the record. Yes,  
5 sir, Mr. Waters?

6 MS. WATERS: Your Honor, because its bounced  
7 around in several departments, we're at a point now where  
8 the clients don't know what to do. We -- if you feel  
9 comfortable with it and you think you can be honest and be  
10 impartial to this matter, we'll go with you. If you have  
11 any inclinations on it, we'd like to go to Reno. So, I'm  
12 going to have to let you tell us what you really think.

13 THE COURT: I wouldn't be sitting here if I  
14 thought there was any problem. If I was going to have any  
15 issues about being fair and impartial to everybody on this  
16 case, --

17 MR. WEAVER: All right.

18 THE COURT: -- I would have declined immediately.

19 MR. WEAVER: Very good, Your Honor. Then we'd go  
20 forward.

21 THE COURT: Okay. All right. So, what the Court  
22 has before it are Motions to Dismiss. The City's got a  
23 Motion to Dismiss and the State has a Motion to Dismiss as  
24 to Judge Crockett and the Eighth Judicial District Court.  
25 I've read the exhaustive briefs that have been filed and,

1 to be perfectly honest with you guys, and this is just how  
2 I've always operated my court, unless you have something  
3 new to add to your briefs, I am -- with the exception of a  
4 couple questions that I have, but I'm basically ready to  
5 rule.

6           So, since it's the State and the City's Motions,  
7 State of Nevada, do you have anything you want to add to  
8 your existing briefs?

9           MR. SHEVORSKI: I'd answer that same -- the  
10 question the way I'd answer it to Stew Bell when he  
11 proposed it to me: No.

12           THE COURT: Does the City have any additions to  
13 their briefs that they filed? New information.

14           MR. OGILVIE: I don't have any new arguments, Your  
15 Honor.

16           THE COURT: Well, I'm going to ask the question  
17 for you guys in just a sec.

18           MR. OGILVIE: Okay. I do want to make a  
19 preliminary objection and a Motion to Strike the filings  
20 that were submitted by the developer on January 16<sup>th</sup>. And  
21 those are -- actually, January 17<sup>th</sup>. And those are  
22 specifically the Plaintiff Landowners' Request to take  
23 Judicial Notice of City's Passage of Ordinance 2018-24 and  
24 the four volumes of the Appendix that were submitted  
25 therewith on the basis that this is a Motion to Dismiss.

1 Motions to Dismiss are not decided -- or extraneous  
2 evidence is not considered on a Motion to Dismiss. This  
3 specifically is evidence of a -- an action taken by the  
4 City subsequent to the filing of this Complaint and  
5 therefore can't be in any way supportive of the claims that  
6 are pleaded in this Complaint. And, therefore, we seek to  
7 -- we object to them and seek to strike them.

8 THE COURT: All right. Let me rule on the  
9 underlying motions and I'll come back to that.

10 Do you have anything to add to your briefs that is  
11 --

12 MR. LEAVITT: Your Honor, if I may?

13 THE COURT: Show me.

14 MR. LEAVITT: Will I have an opportunity to  
15 respond to the Motion to Strike later on, after --

16 THE COURT: Yeah.

17 MR. LEAVITT: Okay. Because we do want to have an  
18 opportunity to respond to that.

19 Your Honor, something happened last week, which we  
20 think is critically important to the decision before you  
21 right now is, as you're aware, there's four other cases  
22 that are pending, which are kind of related to one another.  
23 There's this whole 250-acre property and there's a 17-acre  
24 property that's part of that, a 35-acre property, a 133-  
25 acre property, and a 65-acre property. We have a pending

1 inverse condemnation claim on the 35-acre property case,  
2 which is before Judge Williams. And there was an issue of  
3 whether the 35-acre inverse condemnation Complaint against  
4 the City of Las Vegas should be dismissed or not before  
5 Judge Williams. And Judge Williams denied that request to  
6 dismiss the --

7 THE COURT: He just separated them.

8 MR. LEAVITT: Absolutely. You're right. That was  
9 early on. That was some time ago --

10 THE COURT: Okay.

11 MR. LEAVITT: -- which is relevant to the judicial  
12 taking and I can talk about that if you'd like me to, Your  
13 Honor. But, yes, he separated those two issues out. He  
14 had a trial on the Petition for Judicial Review and, then,  
15 the stayed the inverse condemnation claims. Well, when the  
16 Findings of Facts and Conclusions of Law came down in the  
17 Petition for Judicial Review case, there were four findings  
18 but, at the end of that, dismissing the inverse  
19 condemnation claim. And we filed a motion with Judge  
20 Williams and said: Hey, that should have never been there.  
21 Judge Williams agreed and removed those four findings non  
22 pro tunc, meaning that the inverse condemnation claims  
23 would move forward. And we currently have, pending in  
24 front of him, a Motion for Summary Judgment.

25 Why is that so relevant here today? Because the

1 16 volumes that exist in this case are actually being  
2 reviewed by Judge Williams in the 35-acre case in the  
3 context of a Motion for Summary Judgment where the merits  
4 are actually going to be presented to him and he's got to  
5 make a decision based upon the facts of the case on whether  
6 there's actually been a taking in the 35-acre case or not,  
7 based upon those same exact 16 volumes that appear before  
8 you here today.

9           So, our position would be: Judge, hold on a  
10 minute. Let's just wait a minute here. Let's not dismiss  
11 the landowners' claims. Let's let Judge Williams make a  
12 decision on the actual merits of this case, which is the  
13 underlying policy in the state of Nevada to have cases hear  
14 on the merits whenever possible. We know it's possible to  
15 hear these cases on the merits because we have the facts in  
16 16 volumes and we know where -- it's possible because Judge  
17 Williams is going to do it in the 35-acre case.

18           Here's the problem. Let's suppose Judge Williams  
19 reviews the same exact facts that exist before you here  
20 today on the 16 volumes and he says: I believe there's  
21 been a taking. And that's the procedure that the Nevada  
22 Supreme Court requires, is the judge makes the  
23 determination based upon the complex facts of whether  
24 there's been a taking or not. And he finds a taking under  
25 these 16 volumes. And, then, today, if you dismiss our

1 Complaint against the City of Las Vegas, which is based  
2 upon those same set of facts, we're going to have one case  
3 where a judge actually heard the case on the merits and  
4 found a taking and, then, where one judge wouldn't allow  
5 the case to be heard on the merits and dismissed it. And  
6 now we're going to have to come back before you and we're  
7 going to say: Hold on a minute, Judge, we have another  
8 court over here where the City's a party, we're a party,  
9 same set of facts where there's been a taking. So --

10 THE COURT: It wouldn't be the first time.

11 MR. LEAVITT: What's that?

12 THE COURT: It wouldn't be the first time --

13 MR. LEAVITT: Understood. But --

14 THE COURT: -- that scenario has occurred. Those  
15 HOA foreclosure cases, there were decisions are all over  
16 the place.

17 MR. LEAVITT: I recall that. But this case is  
18 different because we have the same exact parties. And  
19 we're talking about the same exact -- I mean, this was  
20 Exhibit 1 to our brief, Your Honor -- our Appendix, is  
21 these properties are right next to each other. This is the  
22 35-acre case that Judge Williams is going to hear the  
23 issues on. So, our position is let's stay on this matter.  
24 I mean, there's a policy in the state of Nevada -- well,  
25 there's a case, the *Laughlin versus Silver City Shopping*



1 Center [phonetic] case where the Nevada Supreme Court said  
2 if you have -- well, they cited the case law to Colorado  
3 where they said if you have two cases where the facts and  
4 issues are substantially similar, then you should stay the  
5 cases that follow behind the one that was filed first until  
6 the one that's filed first is decided on the merits. And  
7 the Judge Williams case has the lowest case. Sorry.

8 THE COURT: Here's the deal.

9 MR. LEAVITT: Okay.

10 THE COURT: These are the questions that I have.

11 MR. LEAVITT: Sure.

12 THE COURT: Judge Crockett's case, the Order that  
13 was generated out of that judicial review is on appeal.

14 MR. LEAVITT: Yes.

15 THE COURT: Okay. What is the status of the deal?

16 MR. LEAVITT: Currently pending right now --  
17 currently, Your Honor, the landowner has filed the opening  
18 brief. That was my second argument that I was going to say  
19 why this matter should be stayed, is that issue has been  
20 filed and I got the appellate brief right here. The  
21 appellate brief was filed November 6<sup>th</sup> -- I'm sorry. Yeah.  
22 The opening brief, appellant's opening brief, was filed  
23 November 6<sup>th</sup>, 2018.

24 THE COURT: Okay.

25 MR. LEAVITT: I assume, very shortly, the brief in

1 Opposition is going to be filed, then the Reply brief is  
2 going to be filed. We're probably going to have it --  
3 February 12<sup>th</sup>, Your Honor.

4 THE COURT: Yeah.

5 MR. LEAVITT: There's going to be the opposing  
6 brief. Then March 12<sup>th</sup>, I'm assuming the Reply brief.

7 THE COURT: Here is my first question. This  
8 argument -- and I think it's more properly a question to  
9 you guys.

10 MR. LEAVITT: Okay.

11 THE COURT: This argument that you make in regards  
12 to the judicial taking that the order that Judge Crockett  
13 entered in that case, that just basically said this was a  
14 property designated as a PRO5 --

15 MR. LEAVITT: PROS.

16 THE COURT: -- PROS, which requires a major  
17 modification --

18 MR. LEAVITT: Correct.

19 THE COURT: -- application. And there wasn't one.  
20 So, you've got to go back and go through the process of a  
21 major modification. So, my question is, if the Supreme  
22 Court says -- overturns that ruling of Judge Crockett, what  
23 happens in that case? Say that case gets -- first of all,  
24 I can foresee a whole multitude of rulings. Do you  
25 anticipate arguing judicial or inverse of taking occurs as

1 a result of this order in front of the Supreme Court?

2 MR. LEAVITT: Yes, Your Honor.

3 THE COURT: And are you going to be arguing the  
4 concept of judicial taking in conjunction with all those  
5 other claims?

6 MR. LEAVITT: No. The -- well, no. The point at  
7 issue of whether there's been a judicial taking by the  
8 Crockett Order is up at the Nevada Supreme Court right now.

9 THE COURT: I know.

10 MR. LEAVITT: Yeah.

11 THE COURT: And I'm just saying that you're going  
12 to argue that. Right?

13 MR. LEAVITT: Yes.

14 THE COURT: Okay. Now, two scenarios. They deny  
15 it. They say his ruling was proper and there was a  
16 designation on the property zone and why is that require a  
17 major application and they sustain his ruling.

18 MR. LEAVITT: Correct.

19 THE COURT: What does that do? What happens?

20 MR. LEAVITT: Then, of course, that would be part  
21 of the judicial taking.

22 THE COURT: What does it do to the issues in this  
23 case?

24 MR. LEAVITT: Well, that's a different issue. Let  
25 me -- the question is different now because, also pending

1 before the Nevada Supreme Court is the proper venue for  
2 that judicial taking issue. The Nevada -- in front of the  
3 Nevada Supreme Court, we've argued: Hey, the venue should  
4 be here before the State Court. But we raised that issue  
5 in front of the Nevada Supreme Court just to preserve that  
6 and make sure that we did not waive it and I'll tell you  
7 why in just a moment. Because, in the *Stop the Beach* case,  
8 the justices there essentially said there's three places  
9 where you could bring this claim. Justice Scalia said you  
10 should bring it in the original case, which is the Judge  
11 Crockett case, which is up on appeal right now, which is  
12 why we plead that in the first instance in front of the  
13 Nevada Supreme Court. The problem with that is that that  
14 case is a Petition for Judicial Review. And the Nevada  
15 Supreme Court in the *Kay v. Nunez* case said you cannot  
16 bring independent claims other than the Petition for  
17 Judicial Review in that case. So, that's the problem with  
18 bringing it there. But we said we're bringing it here just  
19 to make sure we did not waive it.

20           Then, Justice Scalia said: Well, another place  
21 you could bring it is in the first instance is in Federal  
22 Court. The problem with bringing it in Federal Court is  
23 the United States Supreme Court in the *Williamson County*  
24 case said that you cannot bring an inverse condemnation  
25 claim from a state in the first instance in Federal Court.

1 You first have to run it through the State Court process,  
2 get a final decision, and then you can bring it in Federal  
3 Court. So, the only place we have to bring it is here.

4           So, that -- I think the better question is:  
5 What's the Nevada Supreme Court going to decide as far as  
6 venue is concerned? Should the judicial taking issue be  
7 here or should it be in the first instance and before the  
8 Nevada Supreme Court, even though that's a Petition for  
9 Judicial Review case? That's why we say: Hold on, let's  
10 put the brakes on this. Let's stay it. Let's see what the  
11 Nevada Supreme Court says about that venue issue. They may  
12 not even get to the issue of a judicial taking because they  
13 may say: This is properly before Judge Bixler and he's the  
14 one who has to decide the judicial taking issue. So,  
15 that's the first issue.

16           The second issue would be what if the Nevada  
17 Supreme Court finds that Judge Crockett was correct in its  
18 Order? Then we would say: Well, that's great but we want  
19 you to now find that the upholding of the Judge Crockett  
20 Order is in fact another step in the judicial taking, that  
21 that is indeed a judicial taking. You see the difficulty  
22 with that is the Nevada Supreme -- is the Nevada Supreme  
23 Court is going to uphold a decision by Judge Crockett and,  
24 then, have to feign -- have to make it a finding that that  
25 decision is a part of a judicial taking.

1           Now, that issue went before the Florida Supreme  
2 Court, that same issue. And, then, what the landowner did  
3 there is he took a sur petition up to the United States  
4 Supreme Court and asked the United States Supreme Court to  
5 find that the Florida Supreme Court's decision was indeed a  
6 judicial taking. And that issue is what the one that's  
7 presented to the United States Supreme Court in the *Stop*  
8 *the Beach* case. And that's where they recognized this  
9 claim of a judicial taking.

10           So, that's a long way to answer your question,  
11 Your Honor. I hope I answered it. If you want any more  
12 clarification, I could do it.

13           THE COURT: Well, that's if they affirm. Or just  
14 take it the other side. So, the Supreme Court reverses the  
15 ruling.

16           MR. LEAVITT: Correct.

17           THE COURT: So -- and what happens at that point  
18 in your case? What do you do as a result of that?

19           MR. LEAVITT: Okay.

20           THE COURT: Is it a possibility that the Supreme  
21 Court can say, under the circumstances, when there was no -  
22 - this is one of the scenarios that I conjured up in my  
23 mind, that they could say: Look, there is question marks  
24 all around how this property got moved from a RPD-7, which  
25 is residential density seven per blah, blah, blah, how did

1 it get moved from that kind of a hard zone to a designation  
2 of the PROS or whatever its name?

3 MS. WATERS: Right.

4 THE COURT: How did it happen? I don't know.  
5 Nobody has an explanation of how that happened.

6 MR. LEAVITT: Correct.

7 THE COURT: And that is a fact that needs to be  
8 determined how it happened. Was it done properly or was it  
9 done improperly? If it was done improperly, what effect  
10 does that have? Does that mean that the other designated  
11 with a residential seven perimeter would still apply and  
12 the State's approval of the application should have been  
13 granted and it was properly granted and the development  
14 should have been allowed to proceed? Is that a  
15 possibility?

16 MR. LEAVITT: Absolutely, Your Honor. And, under  
17 that scenario, the United States Supreme Court addressed  
18 that very issue in the *Stop the Beach* case. The United  
19 States Supreme Court addressed that very issue in the *Lucas*  
20 *versus South Carolina Coastal Commission* [sic] case. And  
21 what the United States Supreme Court said is that if we  
22 find that there's a taking as a result of those actions in  
23 those cases, whether it's a judicial taking or the  
24 government adopts a regulation, and then the government  
25 decides, well, hold on a minute, we don't want to pay for

1 that so we're going to reverse our regulation or, in this  
2 case, the Crockett Order is reversed, then the United  
3 States Supreme Court said then there would be a temporary  
4 taking --

5 THE COURT: Right.

6 MR. LEAVITT: -- of the property. Because what's  
7 happened here is there was an approval and the landowner  
8 was ready to build. And the Crockett order came in and  
9 once the Crockett order came in, the City of Las Vegas said  
10 you're not getting anything else now.

11 THE COURT: Well, okay. It --

12 MR. LEAVITT: So, the --

13 THE COURT: Even though that scenario --

14 MR. LEAVITT: Yeah.

15 THE COURT: -- it would be properly designated at  
16 least, at least a temporary taking. That's -- in the big  
17 picture, that doesn't really solve crap. But I understand  
18 your position.

19 Let me move over here. Now I have to ask you  
20 guys, I want you to give me an analysis on both sides of  
21 this. I want you guys to tell me what's the State's  
22 position if the Supreme Court affirms Judge Crockett's  
23 ruling? How does that affect your position?

24 MR. SHEVORSKI: Thank you, Your Honor.

25 If the State Court, if the Nevada Supreme Court



1 affirms Judge Crockett, what happens is precisely what  
2 happened in *Stop the Beach* where the only -- where the  
3 judge -- the eight justices actually could agree, is that  
4 the plaintiff didn't, within its bundle of rights, hold the  
5 thing that he thought he held. In that instance, if you  
6 recall from *Stop the Beach*, there was an organization of  
7 landowners who were saying that the state of Florida, by  
8 adding material that -- to areas that were previously  
9 submerged, had taken the beach -- the adjacent beach  
10 owner's rights.

11 Well, in the portions of the *Stop the Beach*  
12 decision where the justices actually could agree -- and I'm  
13 mainly talking about, I believe it's part 4 in the opinion  
14 where they actually could agree, they analyzed state law  
15 and said that the Florida Supreme Court got it right, you  
16 don't have this right and, therefore, the 14<sup>th</sup> Amendment and  
17 the 5<sup>th</sup> Amendment are defended. We don't even have to reach  
18 the taking because as Justice Scalia would like to say:  
19 It's not part of your bundle of sticks.

20 And, so, if the Court -- if the Supreme Court  
21 affirms Judge Crockett, all that means is that it's not  
22 part of their bundle of sticks, what they were fighting  
23 for, and they couldn't have had, to quote Justice Scalia  
24 again in the *Lucas* decision where poor Mr. Lucas couldn't  
25 develop his beachfront property: It wasn't part of your

1 reasonable investment back expectations because it's not  
2 part of your right. It's not part of the sticks if that  
3 gets affirmed.

4 Now --

5 THE COURT: If it doesn't, if it gets overturned.

6 MR. SHEVORSKI: If it gets overturned is the more  
7 important question but, actually, is quite easy to resolve.  
8 I -- and I -- you don't use that to be flip. But I think  
9 it's quite easy to resolve under Justice Rehnquist's  
10 opinion in the *First Lutheran* decision. And, so, in that -  
11 -

12 THE COURT: You know that if this -- if Judge  
13 Crockett's decision gets overturned, he's not going to be  
14 able to hear any of that case -- I mean this case. That  
15 case, that judicial review, I am quite sure he will be  
16 recused.

17 MR. SHEVORSKI: I'm sure it will be, Your Honor.

18 THE COURT: All right.

19 MR. SHEVORSKI: But what we're here to talk about  
20 is what possible liability could the Department 24, in its  
21 official capacity as an arm of the judicial branch, have if  
22 Judge Crockett's decision is overturned and disagreed with?

23 THE COURT: It was sort of -- if it's overturned,  
24 it's your position that a Motion to Dismiss you out would  
25 be automatic.

1           MR. SHEVORSKI: Absolutely. And it -- because it  
2 doesn't matter, either way. And Judge Rehnquist in *First*  
3 *Lutheran* was quite clear about this.

4           If you recall in *First Lutheran*, it was once again  
5 this troublesome problem where courts are struggling with  
6 regulations to deal with flooding. And, in that instance,  
7 there was a temporary interim order from the state of  
8 California that prohibited a property owner from building  
9 anything in a particular area. And the Court was  
10 confronted with a problem in the 1970s from the in -- that  
11 was unique to the benighted state of California where I'm  
12 from. And, in that instance, there was a California  
13 Supreme Court decision that said: Well, if you want to sue  
14 for a regulatory taking, what you have to do is you have to  
15 go to court first and seek a declaration that the  
16 regulation is too onerous.

17           And what Justice Rehnquist did is say: No, that's  
18 silly. If there has been a final action that has excluded  
19 -- taken away one of your sticks for a [indiscernible] the  
20 right of exclusion or the right to make any use whatsoever  
21 on your property, it doesn't -- you don't need to wait.  
22 The 5<sup>th</sup> Amendment protects you at that point. And, so,  
23 dealing with very specific facts, dealing with a very  
24 unique problem that was brought on by this California  
25 Supreme Court in the '70s, Justice Rehnquist said: You

1 have a taking right there.

2           And it's no different from the problem that was  
3 confronting the United States Supreme Court in the 1940s  
4 dealing where the United -- where the government of the  
5 United States during the war years would temporarily  
6 garrison troops somewhere or temporarily use a factory.  
7 The fact that the United States would take its troops off  
8 the property or stop using the factory doesn't mean that  
9 there wasn't a taking.

10           Now, contrast that to what has happened here. A  
11 District Court Order can never take away one of the bundle  
12 of sticks, ever. The only way it could possibly do that is  
13 if the plaintiffs themselves were to make it final by not  
14 appealing. If the plaintiffs themselves -- but the Order  
15 itself doesn't do that. It is subject to revision; it's  
16 subject to appeal.

17           THE COURT: Okay. You're beginning to argue your  
18 brief.

19           MR. SHEVORSKI: Okay. I -- so, what the -- and  
20 the important part of Justice Rehnquist's opinion, just to  
21 go back to *First Lutheran*, is he distinguished the ordinary  
22 hurly burly of zoning fights and said: We're not -- no one  
23 thinks those are takings. If you're in a temporary fight  
24 with -- about your zoning problem and you may or you may  
25 not be proven right but, during that process, that's not a

1 taking. What we're here talking about in *First Lutheran* is  
2 where you have this very specific problem in California and  
3 a final action has prohibited you from making any economic  
4 use of your property whatsoever. And the fact that it  
5 later gets taken away doesn't matter. That's not the case  
6 here and it would never be so with a State Court Order.

7 THE COURT: At some point, I think I will  
8 probably, hopefully -- I don't know. Maybe not be as  
9 conversive on this subject as you are. But, at this point,  
10 I'm actually not. But you do understand that if the  
11 Supreme Court overturns the Crockett ruling, you're still  
12 not getting out of this case because there's still going to  
13 be a temporary taking argument that you're going to have to  
14 answer.

15 MR. SHEVORSKI: I'm happy to answer it then; I'm  
16 happy to answer it now.

17 THE COURT: Yeah. Does the City have some input  
18 in regards to what your opinion as to what effect the  
19 rulings of the Supreme Court on the Crockett holding would  
20 have on your position? That if they affirm the Crockett  
21 ruling, do you -- how do you see that affecting your case?

22 MR. OGILVIE: This case gets dismissed. That case  
23 decides every issue before this Court.

24 THE COURT: I don't necessarily disagree.  
25 Assuming that they overturn it, what happens?

1 MR. OGILVIE: Then, the --

2 THE COURT: They could do a multitude of --

3 MR. OGILVIE: They could. They could. They could  
4 remand it for further findings.

5 But under the two most clean-cut decisions,  
6 affirmance, or flat out reversal -- I've already said what  
7 affirmance means. It means every issue before this Court  
8 is decided and this case gets dismissed.

9 On the other hand, if it gets reversed, it's  
10 almost as simple. The land use applications that were  
11 approved, mind you, Your Honor, approved. So, there isn't  
12 a taking by the City.

13 THE COURT: I hear you.

14 MR. OGILVIE: The land use applications that were  
15 approved the City that was reversed by Judge Crockett are  
16 reinstituted. The approval is reinstituted and the  
17 developer stands where it stood prior to the Crockett  
18 order.

19 THE COURT: You think that there is a distinct  
20 possibility that if the Court reverses Judge Crockett's  
21 ruling that they might take a step that says: Look, they  
22 came in -- they came in and they went through that process  
23 before the City and all this was approved and the zoning  
24 issue wasn't mandated or was complied with and the City  
25 approved it properly, so give them the -- let them proceed

1 with their development? Is that a possibility?

2 MR. OGILVIE: Well, that's what I'm saying is the  
3 most clear-cut reversal is saying: Judge Crockett, you're  
4 wrong, there wasn't a major modification necessary for  
5 these land use applications to be approved so you're wrong.  
6 And you go back to the status quo ante, which is what the  
7 status quo was prior to Judge Crockett issuing this order,  
8 which means that the City had approved those land use  
9 applications.

10 THE COURT: I -- the only reason I don't think  
11 that that's very realistic is because, apparently, at the  
12 time of this matter, at least got in front of Judge  
13 Crockett on a judicial review. Apparently, some mysterious  
14 form or fashion, the zoning on the property had gone from  
15 RPD-7 to a PR05.

16 MR. OGILVIE: Well, let's -- let me clarify that.  
17 Because I don't think there's really any dispute in what  
18 I'm going to say. So, the zoning is RPD-7. That's the --  
19 and it has been RPD-7, not --

20 THE COURT: It's always been the City's position.  
21 I mean, that's always been the City's position. And -- but  
22 --

23 MR. OGILVIE: There is a land use designation, a  
24 general plan designation of parks, recreation, and open  
25 space. That's what PROS stands for.

1 THE COURT: But how --

2 MR. OGILVIE: Overlaying all of the zoning, there  
3 is this designation of PROS. So, it's always, since 1989 -  
4 -

5 THE COURT: For the entire 250 acres?

6 MR. OGILVIE: Yes.

7 THE COURT: Or just the --

8 MR. OGILVIE: For the entire 250 acres. It's  
9 always been the same since 1989, 1990.

10 THE COURT: Well, when did the RPD-7 zone --  
11 that's referred to as a hard-zoning designation. When did  
12 that occur? At what point from 1986 until -- I mean, there  
13 were confirmations -- you know what? Here. You know what?  
14 We're going to get off in the weeds here. Here's the deal.  
15 I think --

16 MR. OGILVIE: Let me just -- let me answer the  
17 question by saying at all times relevant to this dispute.

18 THE COURT: Okay. Here's the deal. I don't think  
19 there's anybody in this room that doesn't agree the Supreme  
20 Court case, pending appeal of the judicial review, has the  
21 potential for major impact on this litigation. And I don't  
22 know how anybody can -- in fact, maybe everybody does  
23 agree, I don't know how anybody thinks that we can proceed  
24 in any form or fashion with this litigation until that  
25 appeal has been heard and determined. I mean, to me, it



1 just seems completely crazy to even think that we can  
2 proceed in any fashion with this litigation until they  
3 rule. That's what this is -- that's what this is kind of  
4 all about.

5           So, here's the deal. I am going to stay this  
6 proceeding. Now, I have to be honest with you, I was  
7 toying with the idea that -- the argument by the landowners  
8 here, as it applies to the Crockett decision and the Eighth  
9 Judicial District Court, has been made based upon an  
10 assumption that the Court Order is in effect and will be  
11 sustained by the Supreme Court. Personally, I kind of  
12 doubt that's going to happen. But, the point is, their  
13 position and their argument has been kind of based upon the  
14 fact that this Order is valid and existing and is  
15 constituting a taking. And I don't know that I necessarily  
16 agree with that under the circumstances for a variety of  
17 reasons. But I was toying with the possibility of outright  
18 dismissing that part of the case but I'm not going to.  
19 Because I don't think -- once again, I think this thing  
20 needs to be decided by the Supreme Court before this Court  
21 addresses anything else about the case.

22           So, therefore, I am staying this entire  
23 proceeding. We're going to stay -- I want to make sure  
24 that it's clear. All of the provisions of NRCP 41(e) are  
25 going to be tolled while this case is stayed. And it'll --

1 there's some other litigation out there that doesn't  
2 necessarily involve the same issues as this case does  
3 because it doesn't involve the ruling by Judge Crockett.  
4 But there are some other matters that are going to be  
5 proceeding that may also have some effect. I don't want to  
6 get into it.

7           There's a lot of questions I have about the  
8 rulings that Judge Smith made. And the fact that some of  
9 those issues were, in fact, addressed by the Supreme Court.  
10 And I haven't read the Supreme Court opinion in that  
11 particular case. That was one of the 1777 -- I got the  
12 case number. That's one of the things I'm going to do  
13 before we come back for the whatever -- whenever it is.

14           And I do apologize for having to do it like this  
15 but I don't see any other choice. Unfortunately, they don't  
16 move so fast. And this case on appeal is at a very early  
17 stage. And, unfortunately, for everybody, this case may be  
18 stayed awhile while we're waiting for the Supreme Court to  
19 decide what they're going to do.

20           So, I don't know what -- we want to do it like  
21 this and maybe status check this in six months and see  
22 what's going on with the Supreme Court.

23           MR. LEAVITT: That'd be fine with us, Your Honor.

24           THE COURT: You guys want to?

25           MR. SHEVORSKI: No objection, Your Honor.

1           THE COURT: The City probably wants to object and  
2 get out.

3           MR. OGILVIE: I'm just -- I'm still stuck on  
4 dismissal, Your Honor. I mean, there -- aside from the  
5 Crockett Order, there's every reason to dismiss the City.  
6 The City didn't take anything. It granted the  
7 applications.

8           THE COURT: I understand. I understand. And I  
9 think that the impact of the Supreme Court's ruling will  
10 have an impact on your position. Maybe not -- maybe from  
11 your perspective, not as great as I think. But I think it  
12 will have a big impact on how we proceed with this matter.  
13 And I don't see any way to avoid staying this. I think  
14 it's just too critical with what's going on here.

15           So, that being said, the Order to stay these  
16 proceedings pending the outcome of the -- do we have the  
17 case number in that other matter?

18           MR. LEAVITT: Yes, Your Honor.

19           THE COURT: I have it right here. It's A-16-  
20 739654. Now, that's the District Court case number. I  
21 don't know what the Appellate --

22           MR. LEAVITT: If you might, Your Honor? The  
23 Appellate Court case number is 75481.

24           THE COURT: Okay. All right. Pending the  
25 decision of that case and we will status check this case.

1 And you'll have to kind of check because I don't know if  
2 we're going to get to use this courtroom because we -- I  
3 don't have a designated courtroom and, so, we kind of just  
4 float around.

5 MR. LEAVITT: Yeah.

6 THE COURT: But I would presume it will be here  
7 and we'll pick out a date in six months if that's --

8 THE CLERK: What day of week would you like?

9 THE COURT: Guys, what's a convenient -- is there  
10 one more convenient than another?

11 MR. LEAVITT: Tuesday through Thursday.

12 THE COURT: Tuesday, Wednesday, Thursday.

13 MR. SHEVORSKI: That's fine with me, Your Honor.

14 MR. LEAVITT: Any day is fine.

15 THE COURT: You guys are good with a Wednesday?

16 MR. LEAVITT: Yeah. Any day is fine.

17 THE COURT: Okay. Let's do a Wednesday. And just  
18 in case I got a trial going on, let's say noon.

19 MR. LEAVITT: Okay.

20 THE COURT: Is that all right?

21 MR. OGILVIE: Yes.

22 MR. SHEVORSKI: It's fine, Your Honor.

23 THE COURT: Let's say 12 o'clock on a Wednesday,  
24 six months?

25 THE CLERK: It would be July 24<sup>th</sup>.

1 THE COURT: Okay. There we go.  
2 MR. SHEVORSKI: Thank you, Your Honor. Thank you.  
3 THE COURT: And, gentlemen, Thank you very much.  
4 MR. SHEVORSKI: Thank you, Your Honor. Thank you.  
5 MR. LEAVITT: Real quick, just housekeeping, Your  
6 Honor?  
7 THE COURT: Yes.  
8 MR. LEAVITT: Do you want have a written order  
9 prepared and submitted?  
10 THE COURT: Yeah.  
11 MS. WATERS: I'm happy to do it, Your Honor.  
12 THE COURT: Okay.  
13 MR. LEAVITT: Thank you.  
14 THE COURT: Nothing further.  
15 MR. SHEVORSKI: Very good.  
16 THE COURT: Heard.

17  
18 PROCEEDING CONCLUDED AT 1:41 P.M.

19 \* \* \* \* \*

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25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

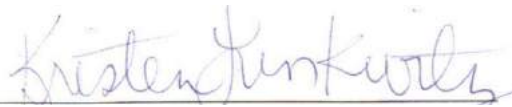
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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

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# **Exhibit 104**

**2019.01.17 Judge Williams' Recorder's Transcript of  
Plaintiff's Request for Rehearing**

**LO 00003925-00003938**

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9

180 LAND COMPANY LLC,

)

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Plaintiff,

)

11

vs.

)

12

LAS VEGAS CITY OF,

)

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Defendant.

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15

REPORTER'S TRANSCRIPT

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OF

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PLAINTIFF'S REQUEST FOR REHEARING

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED THURSDAY, JANUARY 17, 2019

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

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1 LAS VEGAS, NEVADA; THURSDAY, JANUARY 17, 2019

2 9:08 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5

6 THE COURT: First up would be page 1. 180

7 Land Company versus City of Las Vegas. Well, it's

8 going to be uncontested because I'm going to issue a --

9 have someone issue a nunc pro tunc order.

09:08:58 10 And let's go ahead and place our appearances

11 on the record.

12 MR. LEAVITT: Your Honor, James A. Leavitt on

13 behalf of 180 Land LLC.

14 MR. WATERS: Kermitt L. Waters on behalf of

09:09:03 15 the 180 Land Company LLC.

16 MR. HUTCHISON: And Mark Hutchinson on behalf

17 of the 180 Land LLC.

18 MR. OGLIVIE: George Ogilvie on behalf the

19 City of Las Vegas.

09:09:11 20 MS. LEONARD: Debbie Leonard on behalf of the

21 City of Las Vegas.

22 MR. HOLMES: Dustun Holmes on behalf of the

23 intervenors, your Honor.

24 THE COURT: Okay. Anyway, normally, I invite

09:09:21 25 argument and discussion, but under the facts and

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09:09:24 1 circumstances of this case I see no need to. And I  
2 don't mind telling you why.  
3 First and foremost no one can argue what my  
4 intent was when I issued my decision as it related to  
09:09:38 5 the petition for judicial review from a -- and I  
6 understand the history of this case. I remember when I  
7 granted the motion to sever. I understand there's some  
8 complex issues regarding eminent domain in the other  
9 case. I haven't looked at it. I recognize that  
09:09:55 10 they're there.

11 Secondly -- you should be reporting this.

12 THE COURT REPORTER: They are.

13 THE COURT: Okay. All right.

14 Secondly, I have never sua sponte ruled on any  
09:10:08 15 issue in thousands of cases as a trial judge. I'm just  
16 going to tell you that.

17 I read -- I was reading the points and  
18 authorities. And as I was reading them, I called my  
19 law clerk in. And I said what the heck is going on in  
09:10:21 20 this case? I don't mind telling you that. And so he  
21 said, Well, Judge I don't know. And understand this.  
22 He was a new law clerk at the time. We rotate them out  
23 every year.

24 MR. HUTCHISON: Right.

09:10:35 25 THE COURT: And I had him pull the minutes.

09:10:37 1 And at the very end of the order that was submitted for  
2 my signature, and we'll be more specific for the  
3 record, to my chagrin, and I think it was -- was it  
4 paragraph, let me see here, 64 on page 23 of the order,  
09:10:57 5 specifically set forth the following:

6 Further, petitioner's alternative claims  
7 for inverse condemnation must be dismissed for  
8 lack of ripeness.

9 I never intended on any level for that to be  
09:11:09 10 included in the order. It was never briefed.

11 As a trial judge, I have certain core values.  
12 I don't mind saying this. And I think from a  
13 historical prospective everyone that has appeared in  
14 this courtroom understands that, number one, I believe,  
09:11:25 15 in the Seventh Amendment to the United States  
16 Constitution. When it's close, let a jury decide. I  
17 feel very strongly about that.

18 Just as -- and it was discussed, but it didn't  
19 have to be really argued because I believe in due  
09:11:39 20 process. That's one of the foundations of our justice  
21 system. This issue was never vetted. It was never  
22 raised. It was never discussed, right?

23 MR. HUTCHISON: Correct, your Honor.

24 MR. WATERS: That's correct.

09:11:51 25 MR. LEAVITT: Yes.

09:11:51 1 THE COURT: Yes. So it doesn't matter why  
2 this was here. I'm not going to throw my law clerk  
3 under the bus. We didn't catch it. And I want to make  
4 sure the record is clear. And I want a nunc pro tunc  
09:12:06 5 order superseding any determination as it relates to  
6 "Further, petitioner's alternative claim for inverse  
7 condemnation must be dismissed." Right?

8 And I want to make sure the record is clear.  
9 I haven't made any factual rulings or determination as  
09:12:24 10 it relates to the severed case. I have not made any  
11 issue, rulings, or determinations as a matter of law as  
12 it relates to the severed case.

13 Does everybody understand that?

14 MR. HUTCHISON: Yes, your Honor.

09:12:39 15 THE COURT: And normally, I invite too much  
16 argument and discussion. And I've always taken a  
17 cautious approach when it comes to all issues. And I  
18 invite more briefing. That's how I've done it for  
19 close to 14 years.

09:12:52 20 So this happened. We're going to move  
21 forward. Can you prepare a nunc pro tunc order, sir,  
22 for me to take a look at. And I'll take a close look  
23 at it.

24 MR. WATERS: Sure.

09:13:04 25 THE COURT: And it's specifically regarding

09:13:05 1 the severed case.

2 MR. HUTCHISON: Yes, your Honor.

3 THE COURT: Anything else? Yes.

4 MR. LEAVITT: Yes, your Honor. Just on the

09:13:09 5 record really quick. The severed case is addressed in

6 findings number 63, 64, 65, and 66.

7 THE COURT: I see that.

8 MR. LEAVITT: Okay.

9 THE COURT: But I focused on the decision.

09:13:21 10 MR. LEAVITT: Understood.

11 THE COURT: It was really -- I mean, you know,

12 whether you win or lose, it was a very unique issue.

13 It involved judicial review of the city council.

14 That's it, am I right?

09:13:34 15 MR. HUTCHISON: Yes.

16 THE COURT: I'm glad -- I was going to call

17 you up first even if you weren't first because at the

18 end of the day there's -- we can't have argument on

19 what my intent was. Only I can express what my intent

09:13:46 20 was when I made my decision and had that placed on the

21 record. Right?

22 MR. HUTCHISON: Yes, your Honor.

23 MR. LEAVITT: Yes.

24 THE COURT: Well, you can't argue, Well,

09:13:55 25 Judge, this is what your intent was, right? No. You

09:13:56 1 can argue a lot of other things and the intent of the  
2 legislature, but not my intent.

3 MR. HUTCHISON: Correct, your Honor.

4 THE COURT: And so for the record I just want  
09:14:03 5 to make sure I'm clear. And you are correct, sir. You  
6 pointed it out. You can prepare that type of order.  
7 Nunc pro tunc. And we all know what that means.

8 MR. LEAVITT: Yes, your Honor.

9 THE COURT: Yeah. And so, anyway, that's what  
09:14:14 10 I want to do. And we'll just move forward. And I  
11 have -- I realize potentially in the inverse  
12 condemnation case there's going to be some unique  
13 issues. I don't know. Hypothetically, the entire  
14 conduct of the city council could impact that. I don't  
09:14:31 15 know. I'm pretty good at issue spotting. But my mind  
16 is completely open. I just want to tell everybody  
17 that.

18 MR. HUTCHISON: Thank you, your Honor.

19 MR. LEAVITT: Your Honor, we'll prepare the  
09:14:42 20 order.

21 THE COURT: Prepare the order. And there's no  
22 need for argument.

23 MR. WATERS: All right.

24 THE COURT: I'm sorry you had to do briefing.  
09:14:47 25 But that's my decision. And to be honest with you, I



09:14:51 1 was kind of surprised when I saw it because I would  
2 think you realize I don't do things that way.

3 MR. LEAVITT: I understand.

4 MR. WATERS: We respect that, your Honor.

09:14:59 5 Thank you.

6 THE COURT: Okay. Everyone, enjoy your day.

7 MR. LEAVITT: Thank you, your Honor.

8

9 (Proceedings were concluded.)

10

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## REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO  
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE  
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE  
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID  
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT  
AND UNDER MY DIRECTION AND SUPERVISION AND THE  
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND  
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE  
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF  
NEVADA.

\_\_\_\_\_  
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<b>MR. HOLMES:</b> [1] 4/21	<b>65</b> [1] 8/6 <b>66</b> [1] 8/6 <b>7</b>	7/16 8/18 9/22 <b>as</b> [9] 5/4 5/15 5/18 6/11 6/18 7/5 7/9 7/11 7/11	4/19 4/21 8/13 9/14 <b>claim</b> [1] 7/6 <b>claims</b> [1] 6/6 <b>CLARK</b> [3] 1/7 11/3 11/14	11/9 <b>discussed</b> [2] 6/18 6/22 <b>discussion</b> [2] 4/25 7/16 <b>dismissed</b> [2] 6/7 7/7 <b>DISTRICT</b> [2] 1/6 1/19
<b>MR. HUTCHISON:</b> [9] 4/15 5/23 6/22 7/13 8/1 8/14 8/21 9/2 9/17	<b>702</b> [8] 2/10 2/11 2/20 2/21 3/11 3/12 3/21 3/22 <b>704</b> [1] 2/8 <b>731-1964</b> [1] 2/11 <b>733-8877</b> [1] 2/10	<b>at</b> [9] 5/9 5/22 6/1 7/22 7/23 8/17 9/15 11/6 11/8 <b>authorities</b> [1] 5/18 <b>AVENUE</b> [1] 3/8	<b>clear</b> [3] 7/4 7/8 9/5 <b>clerk</b> [3] 5/19 5/22 7/2 <b>close</b> [3] 6/16 7/19 7/22 <b>comes</b> [1] 7/17 <b>COMPANY</b> [3] 1/9 4/7 4/15 <b>completely</b> [1] 9/16 <b>complex</b> [1] 5/8 <b>concluded</b> [1] 10/9 <b>condemnation</b> [3] 6/7 7/7 9/12 <b>conduct</b> [1] 9/14 <b>CONSTITUTES</b> [1] 11/10 <b>Constitution</b> [1] 6/16 <b>CONTINUED</b> [1] 3/1 <b>core</b> [1] 6/11 <b>correct</b> [4] 6/23 6/24 9/3 9/5 <b>could</b> [1] 9/14 <b>council</b> [2] 8/13 9/14 <b>COUNTY</b> [3] 1/7 11/3 11/14 <b>COURT</b> [2] 1/6 1/19 <b>courtroom</b> [1] 6/14	<b>do</b> [4] 9/10 9/24 10/2 11/4 <b>DOCKET</b> [1] 1/2 <b>Does</b> [1] 7/13 <b>doesn't</b> [1] 7/1 <b>domain</b> [1] 5/8 <b>don't</b> [7] 5/2 5/20 5/21 6/12 9/13 9/14 10/2 <b>done</b> [1] 7/18 <b>DOWN</b> [1] 11/5 <b>DRIVE</b> [1] 2/17 <b>due</b> [1] 6/19 <b>DUSTUN</b> [2] 3/17 4/22
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<b>S</b>	<b>tell [2]</b> 5/16 9/16 <b>telling [2]</b> 5/2 5/20 <b>Thank [3]</b> 9/18 10/5 10/7 <b>that [19]</b> <b>that's [6]</b> 6/20 6/24 7/18 8/14 9/9 9/25 <b>them [2]</b> 5/18 5/22 <b>there [1]</b> 5/10 <b>there's [4]</b> 5/7 8/18 9/12 9/21 <b>THEREAFTER [1]</b> 11/7 <b>They [1]</b> 5/12 <b>they're [1]</b> 5/10 <b>things [2]</b> 9/1 10/2 <b>think [3]</b> 6/3 6/12 10/2 <b>this [11]</b> 5/1 5/6 5/11 5/20 5/21 6/12 6/14 6/21 7/2 7/20 8/25 <b>thousands [1]</b> 5/15 <b>throw [1]</b> 7/2 <b>THURSDAY [2]</b> 1/21 4/1 <b>time [2]</b> 5/22 11/7 <b>TIMOTHY [1]</b> 1/18 <b>too [1]</b> 7/15 <b>TOOK [1]</b> 11/5 <b>TRANSCRIBED [1]</b> 11/8 <b>TRANSCRIPT [2]</b> 1/15 11/10 <b>trial [2]</b> 5/15 6/11 <b>TRUE [1]</b> 11/10 <b>tunc [4]</b> 4/9 7/4 7/21 9/7 <b>type [1]</b> 9/6 <b>TYPEWRITING [1]</b> 11/8	<b>up [2]</b> 4/6 8/17		
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<b>T</b> <b>take [2]</b> 7/22 7/22 <b>taken [1]</b> 7/16		<b>X</b> <b>XVI [1]</b> 1/3		
		<b>Y</b> <b>Yeah [1]</b> 9/9 <b>year [1]</b> 5/23 <b>years [1]</b> 7/19 <b>Yes [10]</b> 6/25 7/1 7/14 8/2 8/3 8/4 8/15 8/22 8/23 9/8 <b>you [20]</b> <b>your [15]</b>		

Peggy Isom, CCR 541, RMR (3) said - your  
(702)671-4402 - CROERT48@GMAIL.COM Pursuant to NRS 239.053, illegal to copy without payment.

LO 00003938

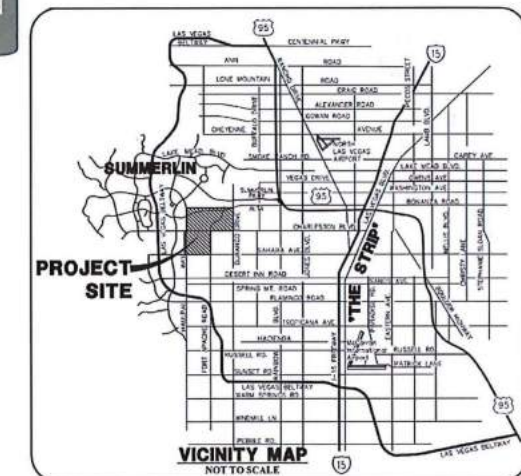
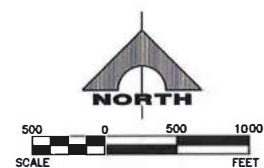
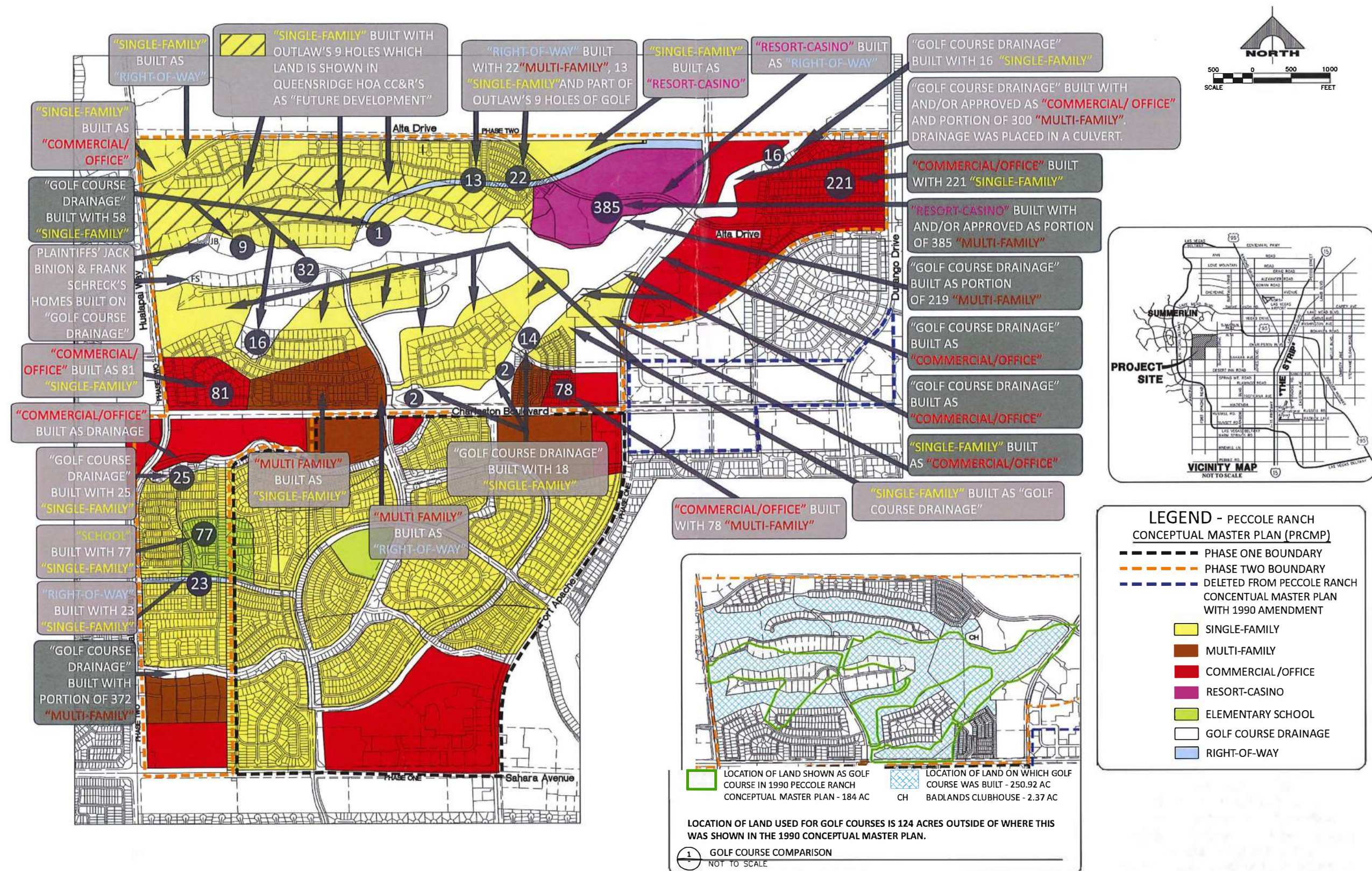
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# **Exhibit 105**

**Approved Land Uses in Peccole Conceptual Plan**

**LO 00003939**





LO 00003939

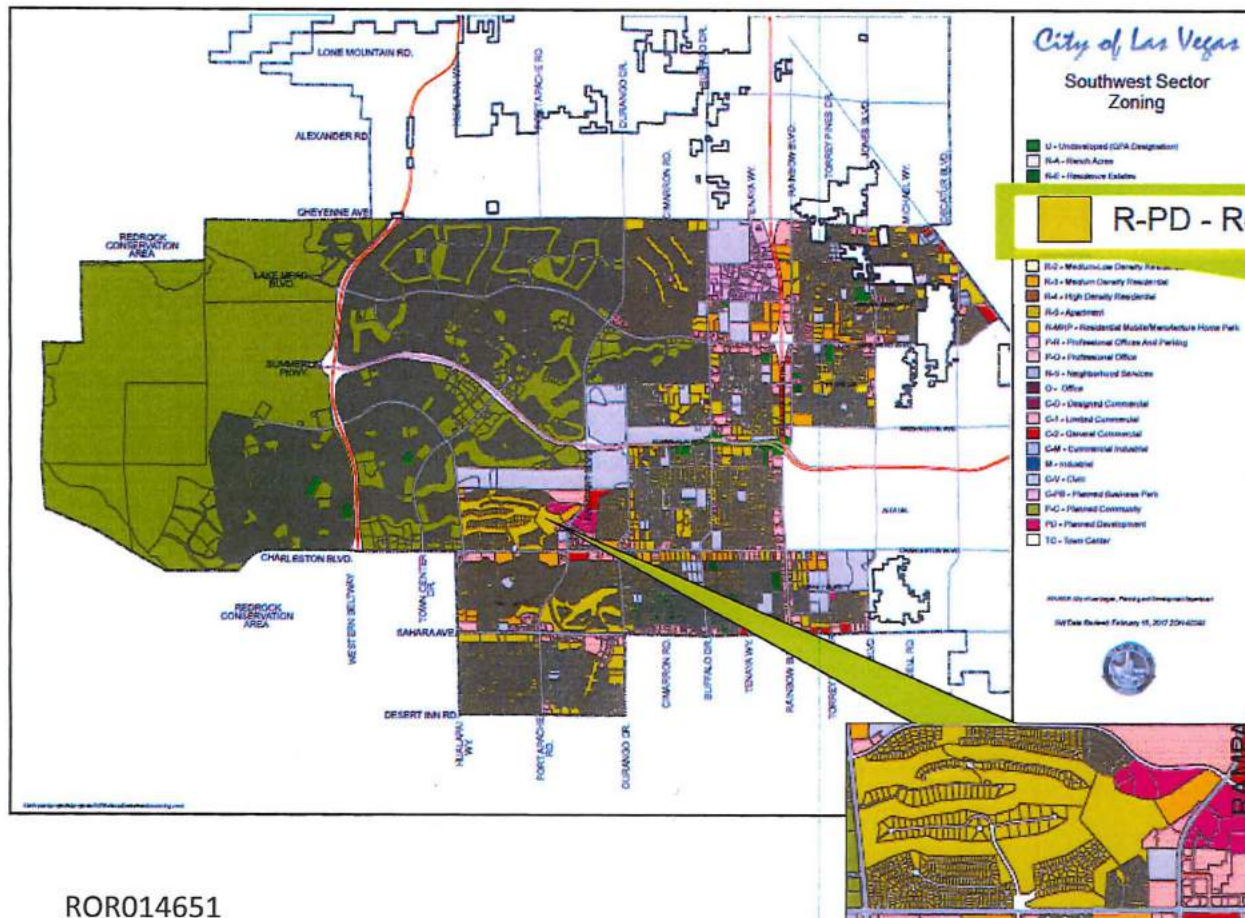


# **Exhibit 106**

**2020 Master Plan - Southwest Sector Zoning**

**LO 00003940**





ROR014651

City of Las Vegas  
Southwest Sector  
Zoning

R-PD - Residential Planned Development

- R-E - Residence Estates
- R-D - Single-Family Residential Restricted
- R-PD - Residential Planned Development
- R-1 - Single Family Residential
- R-MH - Mobile/Manufactured Home Residence
- R-CL - Single-Family Compact Lot
- R-2 - Medium-Low Density Residential
- R-3 - Medium Density Residential
- R-4 - High Density Residential
- R-5 - Apartment
- R-MHP - Residential Mobile/Manufacture Home Park
- P-R - Professional Offices And Parking
- P-O - Professional Office
- N-S - Neighborhood Services
- O - Office
- C-D - Designed Commercial
- C-1 - Limited Commercial
- C-2 - General Commercial
- C-M - Commercial Industrial
- M - Industrial
- C-V - Civic
- C-PB - Planned Business Park
- P-C - Planned Community
- PD - Planned Development
- TC - Town Center

SOURCE: City of Las Vegas, Planning and Development Department

Map Date Revised: February 15, 2017 220442282

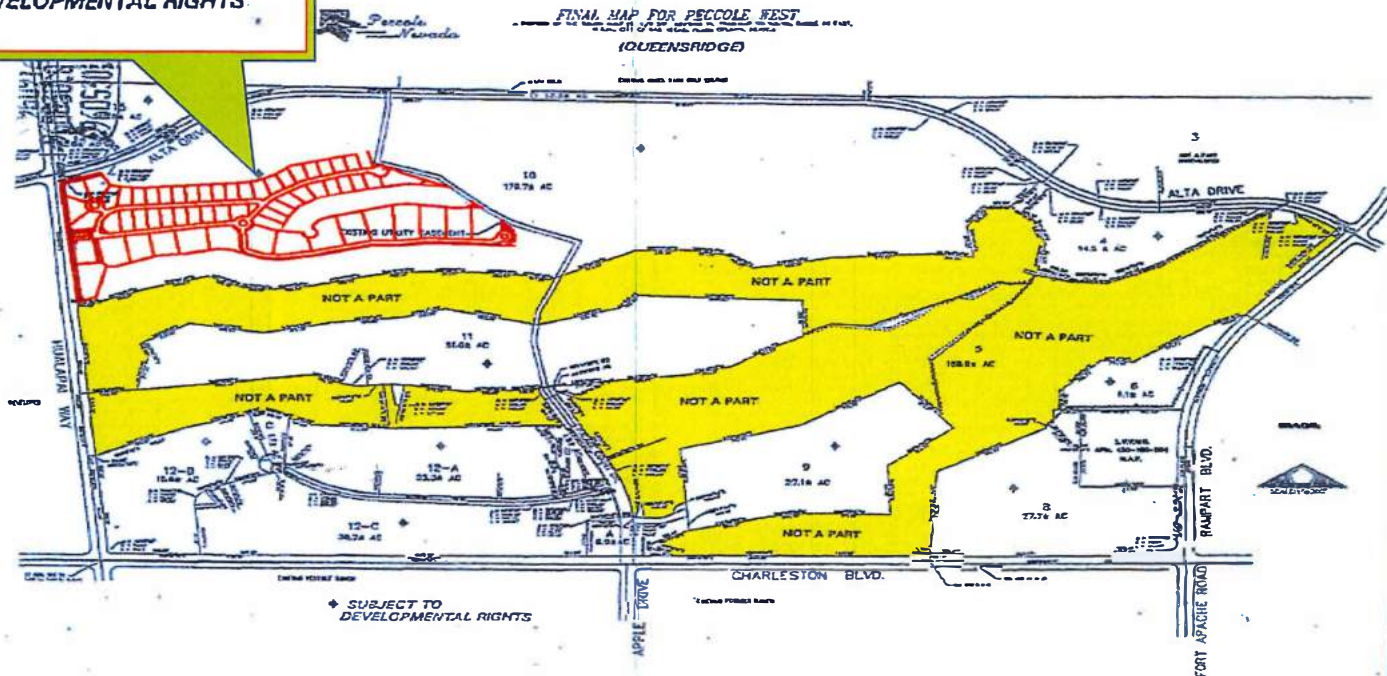
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# **Exhibit 107**

**35 Acre in Relation to Peccole Pan**

**LO 00003941**

**SUBJECT TO  
DEVELOPMENTAL RIGHTS**



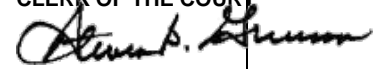
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ROR014424

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

180 LAND COMPANY, LLC, a Nevada limited  
liability company, 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

**NOTICE OF ENTRY OF ORDER  
ORDER GRANTING EX PARTE  
APPLICATION TO FILE MOTION FOR  
JUDICIAL DETERMINATION OF  
LIABILITY IN EXCESS OF 30 PAGES**

1       **PLEASE TAKE NOTICE** that on the 11<sup>th</sup> day of March, 2019, an Order Granting Ex Parte  
2 Application to File Motion for Judicial Determination of Liability in Excess of 30 Pages, was entered  
3 in the above-captioned case, a copy of which is attached hereto.

4  
5       Dated this 11<sup>th</sup> day of March, 2019.

6                               **LAW OFFICES OF KERMITT L. WATERS**

7                               By: /s/ Kermitt L. Waters

8                               KERMITT L. WATERS, ESQ., NBN 2571  
9                               JAMES JACK LEAVITT, ESQ., NBN 6032  
10                              MICHAEL A. SCHNEIDER, ESQ., NBN 8887  
11                              AUTUMN WATERS, ESQ., NBN 8917  
12                              704 S. 9<sup>th</sup> Street  
13                              Las Vegas, NV 89101

14                              *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and  
3 that on the 11<sup>th</sup> day of March, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER GRANTING EX PARTE APPLICATION TO FILE MOTION FOR JUDICIAL**  
5 **DETERMINATION OF LIABILITY IN EXCESS OF 30 PAGES** was made by electronic means  
6 pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District  
7 Court's electronic filing system, with the date and time of the electronic service substituted for the  
8 date and place of deposit in the mail and addressed to each of the following:

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23  
24  
25 /s/ Evelyn Washington  
An Employee of the Law Offices of Kermitt L. Waters  
26  
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*Steven D. Grierson*

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15 *Attorneys for Plaintiff Landowners*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 180 LAND COMPANY, LLC, a Nevada limited  
liability company, FORE STARS, Ltd., SEVENTY  
19 ACRES, LLC, DOE INDIVIDUALS I through X,  
DOE CORPORATIONS I through X, DOE LIMITED  
20 LIABILITY COMPANIES I through X,

21 Plaintiffs,

22 vs.

23 CITY OF LAS VEGAS, political subdivision of the  
State of Nevada, ROE government entities I through X,  
24 ROE CORPORATIONS I through X, ROE  
INDIVIDUALS I through X, ROE LIMITED  
25 LIABILITY COMPANIES I through X, ROE quasi-  
governmental entities I through X,  
26

27 Defendants.

Case No.: A-17-758528-J

Dept. No.: XVI

**(PROPOSED) ORDER  
GRANTING EX PARTE  
APPLICATION TO FILE  
MOTION FOR JUDICIAL  
DETERMINATION OF  
LIABILITY IN EXCESS OF  
30 PAGES**

1 **ORDER**

2 It is hereby ordered that Plaintiffs, 180 LAND COMPANY, LLC, FORE STARS, LTD., and  
3 SEVENTY ACRES, LLC, may file their Opposition To City's Motion for Judgment on the  
4 Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial  
5 Determination of Liability on the Landowner's Inverse Condemnation Claims and Countermotion  
6 to Supplement/Amend the Pleadings that is in excess of thirty (30) pages.

7 DATED this 8 day of <sup>March</sup>~~February~~, 2019.

8   
9 DISTRICT COURT JUDGE 

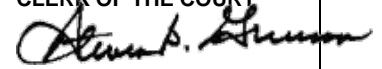
10  
11 Respectfully submitted by:

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

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

180 LAND CO LLC, a Nevada limited-liability  
company; 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

**CITY OF LAS VEGAS' REPLY IN  
SUPPORT OF MOTION FOR  
JUDGMENT ON THE PLEADINGS  
ON DEVELOPER'S INVERSE  
CONDEMNATION CLAIMS**

Hearing Date: March 19, 2019

Hearing Time: 9:00 a.m.

**I. INTRODUCTION**

The Developer has attempted to divert the Court from the legal deficiencies of its inverse condemnation claims by papering the Court's docket with extraneous filings, manipulating the procedural process and personally attacking opposing counsel. Setting aside this transparent effort at sleight of hand, the Developer cannot manufacture a vested right to redevelop the golf course where none exists under Nevada law. Nor can the Developer turn back the clock on the actions of its predecessor, which sought and obtained the open space designation, and then effectuated that designation by building the golf course. The Developer stands in the shoes of its predecessor, and is time-barred from challenging its predecessor's actions. Further, unless and until the Nevada Supreme Court rules otherwise, the Developer's inverse condemnation claims are barred by the preclusive effect of Judge Crockett's Decision.

Because it cannot refute the sound legal arguments presented in the City's motion, the Developer has improperly inundated the Court with thousands of pages of documents that the Court cannot consider in adjudicating a Rule 12 motion. The Developer has also resorted to misrepresenting the procedural history and the law. Because the Court has already correctly concluded that the Developer lacks any vested rights to have its redevelopment applications approved and must submit and obtain approval of a major modification of the Master Plan, the Court should not be misled by the Developer's legerdemain.

Inverse condemnation claims are properly dismissed pursuant to Rule 12 where, as here, the complaint fails to state a claim upon which relief can be granted. The basic pleading standard is not lowered for inverse condemnation cases. Dismissal with prejudice is mandated in this matter because the allegations in the Developer's complaint, even if accepted as true, do not give rise to a cognizable legal claim.

...

...

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...

1     **II.     LEGAL ARGUMENT**

2             **A.   Nothing Presented in the Developer’s Opposition Can Create a Vested Right**  
3             **Where None Exists Under Nevada Law**

4                 **1.   A Mere “Property Interest” is Not a Vested Property Right**

5             This Court already correctly determined that the Developer has no vested rights to have  
6     its redevelopment applications approved because the City had the discretion to deny those  
7     applications. *See* Findings of Fact and Conclusions of Law entered on November 21, 2018  
8     (“FFCL”) at Conclusions of Law ¶¶35-38, 52, *citing Am. W. Dev., Inc. v. City of Henderson*,  
9     111 Nev. 804, 807, 898 P.2d 110, 112 (1995); *Stratosphere Gaming Corp. v. City of Las Vegas*,  
10    120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004); *Bd. of Cty. Comm’rs of Clark Cty. v. CMC*  
11    *of Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983). Nothing in the Developer’s  
12    opposition casts any doubt on the correctness of the Court’s conclusion. And, other than  
13    *Stratosphere*, the Developer makes no effort to distinguish the authorities cited by the Court.

14            To sidestep this legal infirmity, the Developer conflates the term “property interest”  
15    with a vested property right. *See* Opposition at 10:1-12:27. These are not the same concept.  
16    Under Nevada law, a property interest alone does not constitute a constitutionally protected  
17    vested right; to become vested, the property interest must be “fixed and established.”  
18    *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949); *see also Stop the Beach*  
19    *Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property  
20    right must be “established” for a taking to occur); *Bowers v. Whitman*, 671 F.3d 905, 914 (9th  
21    Cir. 2012) (holding that a property interest that is “inchoate and does not provide a certain  
22    expectation” cannot be deemed a vested right that gives rise to a taking).

23            Redevelopment applications do not meet the vested rights standard because “[i]n order  
24    for rights in a proposed development project to vest, zoning or use approvals ***must not be***  
25    ***subject to further governmental discretionary action affecting project commencement***, and  
26    the developer must prove considerable reliance on the approvals granted.” *Am. W. Dev.*, 111  
27    Nev. at 807, 898 P.2d at 112 (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527-  
28    28, 96 P.3d at 759-60 (holding that, because City’s site development review process under Title

1 19.18.050 involved discretionary action by City Council, the project proponent had no vested  
2 right to construct). The RPD-7 zoning does not create a vested right because “compatible  
3 zoning does not, ipso facto, divest a municipal government of the right to deny certain uses  
4 based upon considerations of public interest.” *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833  
5 P.2d 1135, 1137 (1992); *see also Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792  
6 P.2d 31, 31-32 (1990) (affirming county commission’s denial of a special use permit even  
7 though property was zoned for the use).

8 The Developer’s erroneous contention that this law does not apply to inverse  
9 condemnation claims is absurd. *See* Opposition at 10:12-14, 29:3-31:1. Constitutional  
10 guarantees are only triggered by a vested right. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266  
11 (1994); *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*,  
12 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). “A Takings Clause claim requires proof that the  
13 plaintiff possesses a property interest that is constitutionally protected.” *Sierra Med. Servs. All.*  
14 *v. Kent*, 883 F.3d 1216, 1223 (9th Cir. 2018) (quotations omitted). A constitutionally protected  
15 property interest only exists when an individual has a “legitimate claim of entitlement” under  
16 state law that derives from “existing rules or understandings.” *Bd. of Regents v. Roth*, 408 U.S.  
17 564, 577 (1972).

18 “To determine whether a property interest has vested for Takings Clause purposes, ‘the  
19 relevant inquiry is the certainty of one’s expectation in the property interest at issue.’” *Bowers*  
20 *v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012); *quoting Engquist v. Oregon Dep’t of Agric.*, 478  
21 F.3d 985, 1002 (9th Cir. 2007), *aff’d*, 553 U.S. 591 (2008). If a property interest is “contingent  
22 and uncertain,” “speculative” or “discretionary,” then the government’s action will not  
23 constitute a constitutional taking. *Bowers*, 671 F.3d at 913, *quoting Engquist*, 478 F.3d at 1002-  
24 03; *accord Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1081 (9th Cir. 2015). For this  
25 reason, applications that are subject to the governmental authority’s discretion are not vested  
26 rights that could trigger a taking. *See Bowers*, 671 F.3d at 913; *Hermosa on Metropole, LLC v.*  
27 *City of Avalon*, 659 F. App’x 409, 411 (9th Cir. 2016); *Charles Wiper, Inc. v. City of Eugene*,  
28 486 F. App’x 630, 631 (9th Cir. 2012).

1 Because the residential redevelopment that the Developer proposes is not “fixed and  
2 established,” the Developer has no vested right to build it. *See id.* Similarly, because the  
3 Developer’s 35-Acre Applications were speculative and contingent upon the Council’s  
4 discretionary decision-making authority, the Developer had no vested right to have those  
5 applications approved. *See Bowers*, 671 F.3d at 913. In light of this law, the Developer cannot  
6 transform mere ownership of the golf course into a vested right to redevelop the golf course into  
7 houses. *See id.* The Developer’s contention that this Court should recognize a vested right to  
8 build houses on the golf course when the decision to grant or deny redevelopment applications  
9 is discretionary is plainly an incorrect statement of the law. *See Filippini*, 66 Nev. at 22, 202  
10 P.2d at 537; *Bowers*, 671 F.3d at 913.

11 Moreover, in that the golf course was built years ago, the Developer’s assertion that the  
12 land is “vacant” is patently false. *See* Opposition at 36:16-24; 56:18-58:15 and *passim*. And, in  
13 that the Developer could continue to use the property as open space and a golf course, the  
14 Developer is misrepresenting that the City has denied “all” uses of the property. *See* Opposition  
15 at 48:17-20 and *passim*. The City Council only denied the specific 35-Acre Applications that  
16 sought to change the approved golf course into the project proposed in the applications.<sup>1</sup>

17 The Developer’s complaint contains no allegation that the City interfered with the  
18 Developer’s rights to operate its golf course. To the contrary, the Developer sabotaged its own  
19 ability to do so by selling the appurtenant water rights. For this reason, *Richmond Elks Hall*  
20 *Assoc. v. Richmond Redev. Agency*, 561 F.2d 1327, 1330 (9<sup>th</sup> Cir. 1977) and other cases  
21 regarding *de facto* takings upon which the Developer relies are inapposite. *See* Opposition 55:1-  
22 56:10. Because the Developer may continue to use the property as a golf course – which its  
23  
24  
25

26 <sup>1</sup> For this reason, the Developer’s reliance on *City of Monterey v. Del Monte Dunes at*  
27 *Monterey, Ltd.*, 526 U.S. 687, 720 (1999) and *Lucas v. South Carolina Coastal Council*, 505  
28 U.S. 1003, 1020 (1992), is misplaced. Both of those cases involved denial of all economical use  
of the property. Here, the Developer can continue to use the property in exactly the manner  
sought and built by its predecessor, in whose shoes the Developer now stands.

predecessor sought, was granted and built – the Developer cannot identify any vested right that has been *taken*. See *Murr v. Wisconsin*, 137 S. Ct. 1933, 1937 (2017); *Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537.

**2. Neither *Sisolak* Nor *Schwartz* Gives the Developer a Vested Right to Redevelop the Golf Course Into Houses**

The Developer’s erroneous contention that landowners have vested rights under Nevada law to change the use of their property from open space to houses is not supported by the authorities the Developer cites. See Opposition at 10:11-12:27 and *passim*, citing *McCarran Intl. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006); *Schwartz v. State*, 111 Nev. 998, 900 P.2d 939 (1995). Neither *Sisolak* nor *Schwartz* is analogous here.

In *Sisolak*, the Nevada Supreme Court simply interpreted the word “vested” in NRS 493.040, which states that “[t]he ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath.” *Sisolak*, 122 Nev. at 659, 137 P.3d at 1120 (emphasis added). In other words, the vested right discussed in *Sisolak* derived from statutory language. *Id.*, quoting NRS 493.040. Based on that statute, which does not apply here, the Court concluded that physical invasion by airplanes flying below the minimum altitudes needed for flight established by the FAA warranted compensation for a physical invasion. *Id.* at 658-59, 137 P.3d at 1119-20. *Sisolak* simply has no bearing here, where there is no statute that creates a vested right to redevelop a golf course and no physical invasion of the Developer’s property.

*Schwartz* also involved a physical invasion in which the state condemned the landowner’s easement to access its property, which the Court deemed a special class of property right protected by NRS 37.110(3). *Schwartz*, 111 Nev. at 1003, 900 P.2d at 942. Neither of these cases alters the well-established case law that there can be no vested right to develop property where further governmental approvals are discretionary. See *Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60 (post-dating *Sisolak*); *Foothills of Fernley, LLC v. City of Fernley*, 355 Fed.Appx. 109, 111, 2009 WL 3602019 at \*1 (9th Cir. 2009) (continuing to cite *Am. W. Dev.* for that proposition even after the *Sisolak* decision).

**3. Inverse Condemnations Claims Do Not Have a Lower Pleading Standard**

In light of this clear law, the Developer's argument regarding a purported constitutional "mandate" is misguided and does not excuse the Developer from pleading legally viable claims. *See* Opposition at 47:21-48:21. The only "fixed and established" use of the Property is the open space golf course, which was built by the Developer's predecessor according to the open space designation it sought and granted by the City Council 30 years ago. *See Filippini*, 66 Nev. at, 22, 202 P.2d at 537. The Developer cannot sidestep the Rule 12 requirement of a vested right by asserting an "entitlement" to bring an inverse condemnation action based upon the "self-executing character" of just compensation. The "self-executing" language upon which the Developer relies does not lower the pleading threshold for inverse condemnation claims. Rather, for compensation to be "self-executing," the plaintiff must first demonstrate a taking, and a plaintiff's taking claim cannot withstand a Rule 12 motion without stating a legally cognizable claim. *See Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

The authorities cited by Developer for its "self executing" argument do not alter this conclusion. In *Alper v. Clark County*, 93 Nev. 569, 571 P.2d 810 (1977), the taking was established by the county's construction of a road, and the question presented was whether the landowner had to first seek compensation under NRS 244.245 and NRS 244.250, which create procedures for filing claims with, and recovering costs from, a county. *See Alper*, 93 Nev. at 811-13, 571 P.2d at 572-74. The Nevada Supreme Court held that, under those circumstances, the landowner did not need to exercise state statutory rights to compensation before it could proceed in court under its constitutional claims. *Id.*

In contrast, here, the Developer brings takings claims for the City's discretionary denial of its redevelopment applications, not a physical invasion. *See* First Am. Compl. ¶¶44-93. No actual occupation of its property is alleged, nor could it be, because the only action being challenged is the Council's denial of the 35-Acres Applications. *See id.* No matter what type of claim it asserts, to survive a Rule 12 motion, the Developer must state legally cognizable claims. Absent a vested right to have its development applications approved, the Developer

1 cannot state a constitutional claim. *See Landgraf*, 511 U.S. at 266. The *Alper* case does nothing  
2 to alter that conclusion. *See Alper*, 93 Nev. at 811-13, 571 P.2d at 572-74.

3 The same is true of the Developer's reliance on *U.S. v. Clarke*, 445 U.S. 253 (1980). *See*  
4 *Opposition* at 46:26-28 n.66. The question presented in *Clarke* was whether, under 25 U.S.C.  
5 §357, a state or local government could "condemn allotted Indian trust lands by physical  
6 occupation." *Clarke*, 445 U.S. at 254. In a general description of the term "inverse  
7 condemnation," the Court noted that "[i]nverse condemnation is 'a cause of action against a  
8 governmental defendant to recover the value of property **which has been taken in fact by the**  
9 **governmental defendant**, even though no formal exercise of the power of eminent domain has  
10 been attempted by the taking agency.'" *Id.* at 256 (emphasis added), quoting D. Hagman, Urban  
11 Planning and Land Development Control Law 328 (1971). Again, as in *Alper*, the "self-  
12 executing character of the constitutional provision [is] **with respect to compensation....**" *Id.* at  
13 257 (emphasis added), quoting 6 P. Nichols, Eminent Domain § 25.41 (3d rev.ed.1972). The  
14 actual taking must first be established before compensation becomes "self executing." *See id.*  
15 Like *Alper*, *Clarke* does not obviate the requirement that a plaintiff plead a legally cognizable  
16 claim in order to overcome a Rule 12 motion. Because the Developer cannot do so, dismissal of  
17 all claims is required. *See Sanchez*, 125 Nev. at 823, 221 P.3d at 1280.

18 The Developer would have this Court eliminate NRCP 12 motions altogether in takings  
19 cases. Contrary to the Developer's erroneous assertions (at 1:7-10, 4:20-22, 6:18-7:12), the  
20 City's motion for judgment on the pleadings does not deprive the Developer from being heard  
21 "on the merits." Long ago, the Nevada Supreme Court held that a Rule 12 dismissal constitutes  
22 "a determination on the merits." *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 171, 400  
23 P.2d 621, 625 (1965). There is no special exception to this rule where the complaint asserts  
24 inverse condemnation claims. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning*  
25 *Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003) (dismissing takings claims, noting that "a  
26 dismissal on statute of limitations grounds is a judgment on the merits").

27 ...

28 ...



**B. The Supreme Court's Affirmance of Judge Smith's Interpretation of the Queensridge CC&R's Did Not Create Any Vested Rights for the Developer**

Notwithstanding the Developer's misleading assertion, Judge Smith's interpretation of the Queensridge CC&R's does not create vested development rights where none exist under Nevada law.

**1. Judge Smith's Interpretation of the Queensridge CC&R's Does Not Affect the City's Discretionary Authority to Deny Redevelopment Applications**

Judge Smith's interpretation of a contractual agreement among private parties has no bearing on the City's open space designation, the requirements of the City Code or the mandates of NRS Chapter 278, nor diminish the Council's discretion to deny land use applications. "[C]ontracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of [government]." *Guar. Tr. Co. of New York v. Henwood*, 307 U.S. 247, 258-59 (1939).

Judge Smith described the matter before him as claims by the Queensridge homeowners that *their* "vested rights" in the CC&Rs were violated; *whether the Developer had vested rights under state law was not at issue*. See 11.30.16 Smith FFCL in Case No. A-16-739654-C at ¶¶2, 7, 29, 108, Ex. 2 to Developer's Motion for New Trial.<sup>2</sup> Indeed, Judge Smith confirmed that, notwithstanding the zoning designation for the golf course property, the Developer is nonetheless "*subject to City of Las Vegas requirements*" and that the City is not obligated to make any particular decision on the Developer's applications. See 1.31.17 FFCL ¶¶9, 16-17, 71, Ex. 3 (emphasis added).

In other words, Judge Smith's orders undermine the very argument the Developer now advances. Because Judge Smith's interpretation of the Queensridge CC&R's is irrelevant to Judge Crockett's interpretation of the City's Development Code requiring that the City approve a major modification to the Peccole Ranch Master Development Plan before the Developer can

<sup>2</sup> The numbered exhibits referenced in this reply may be found in the Developer's exhibits filed in support of its Motion for New Trial filed on December 13, 2018. The City objects to the Court's consideration of the extraneous matters cited by the Developer but, without waiving its objections, references them here only for the purposes of responding to the Developer's contentions. The exhibits referenced by letter are attached hereto.

1 convert the golf course to houses, the Developer's reliance on Judge Smith's orders is  
2 misplaced.

3 **2. The Supreme Court's Order of Affirmance is Not Binding Precedent**

4 Moreover, when affirming Judge Smith's orders, the Supreme Court simply stated that  
5 Judge Smith did not abuse his discretion when "concluding that the golf course property was  
6 not subject to the CC&Rs." *See* Supreme Court Order at 2, Ex. 4. The Developer's leap from  
7 that language to the assertion that these decisions affirmatively state, as a matter of law, the  
8 Developer has "vested rights" to have the 35-Acre Applications granted has no foundation in  
9 reality, much less the law or the record. *See* Opposition at 13:25-14:1. Nothing stated in the  
10 Supreme Court's order of affirmance broadened the limited scope of the underlying orders  
11 being affirmed. Judge Smith's Orders, and the affirmance of those orders by the Nevada  
12 Supreme Court, had nothing to do with the law regarding when development rights vest. *See*  
13 *Stratosphere Gaming Corp.*, 120 Nev. at 527-28, 96 P.3d at 759-60.

14 **3. The City is Not Bound By Judge Smith's Orders Because It Was Not a**  
15 **Party When the Orders Were Issued and Has Independent Decision-**  
16 **Making Authority Under NRS Chapter 278**

17 Nothing about Judge Smith's interpretation of the Queensridge CC&Rs alters the City's  
18 land use authority under NRS Chapter 278, particularly since the City was dismissed from the  
19 case long before judgment was entered. Although Judge Smith made a finding that the property  
20 is zoned RPD-7, nowhere did he even suggest, much less hold, that zoning alone creates a  
21 vested right to develop. *See generally* 11.30.16 Smith FFCL, Ex. 2; *see also* 1.31.17 Smith  
22 FFCL, Ex. 3. To the contrary, Judge Smith expressly held that the Developer must submit  
23 development applications to the City for consideration and approval. *See* 1.31.17 Smith FFCL,  
24 Ex. 3, ¶¶ 9 and 12, Ex. 3; 11.31.16 Smith FFCL, ¶¶ 50 and 86, Ex. 2. As this Court correctly  
25 concluded, Nevada law is clear that a zoning designation does not confer a vested right nor  
26 overcome the requirement that zoning must conform to the master plan. NRS 278.250(2);  
27 *Stratosphere Gaming Corp.*, 120 Nev. at 527-28, 96 P.3d at 759-60. Judge Smith's decisions  
28 and the Nevada Supreme Court's order of affirmance do not hold otherwise.

...

1 The Developer incorrectly argues that Judge Smith's Orders have preclusive effect on  
2 the City. *See* Opposition at 22:13-23:14. Yet, as the Developer well knows, because the case  
3 before Judge Smith involved only the interpretation of a contract between private parties, the  
4 City was dismissed long before a judgment was entered. *See* 11.30.16 Smith FFCL, ¶ 34, Ex. 2.  
5 For that reason, the City was not a party to the appeal. *See* Ex. 4. Nothing in Judge Smith's  
6 Orders or the Supreme Court's order of affirmance, therefore, can have preclusive effect on the  
7 City. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008),  
8 *holding modified by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015).

9 **C. The Developer's Own Argument Confirms Its Claims Are Time Barred**  
10 **Because the Open Space Designation Was Implemented By Construction of the**  
11 **Golf Course**

12 The statute of limitations has run on the Developer's challenge to the Parks, Recreation  
13 and Open Space designation for the Property because that designation was implemented when  
14 the Developer's predecessor built the golf course to satisfy the City's parks and open space  
15 requirement. A development restriction created by a predecessor landowner binds successors.  
16 *See* NRS 278.0205; *Tompkins v. Buttrum Const. Co. of Nev.*, 99 Nev. 142, 146, 659 P.2d 865,  
17 868 (1983) (noting that successor landowner steps into shoes of predecessor, and "one who  
18 creates a restriction is not permitted to violate it"); *Gladstone v. Gregory*, 95 Nev. 474, 480, 596  
19 P.2d 491, 495 (1979) (holding that successor owner could not violate height restriction recorded  
20 by predecessor). The Developer's failure to even address these Nevada authorities, and its  
21 citation to cases from other jurisdictions (at 62:8-63:4) cannot overcome the time bar to its  
22 claims.

23 Here, the Developer's predecessor sought and obtained the open space designation **and**  
24 **then built the golf course**, thereby **implementing on the ground** the master plan designation.  
25 There is no dispute that the land the Developer now seeks to redevelop was built out as a golf  
26 course by its predecessor. Because the Developer's predecessor actually built the golf course  
27 according to the open space designation it sought, the Developer's contention (at 13:1-21;  
28 27:19-29:2; 60:1-65:10) that the Peccole Ranch Master Development Plan and General Plan  
were not implemented as to the 35-Acre Property is hollow. The Developer's predecessor chose

1 the location of the open space and developed the golf course in furtherance of the development  
2 plan it submitted, deriving economic benefit from being able to sell houses that abutted or were  
3 in close proximity to an open space amenity. *See* ROR 2658-2667. As a result, the Developer's  
4 own argument (at 60:1- 61:14) confirms that the statute of limitations has run. *See Tompkins*, 99  
5 Nev. at 146, 659 P.2d at 868; *Wilson v. Bd. of Cty. Comm'rs of Cty. of Teton*, 153 P.3d 917, 925  
6 (Wyo. 2007); *Serra Canyon Co. v. California Coastal Comm.*, 16 Cal. Rptr. 3d 110, 113 (Cal.  
7 Ct. App. 2004); *Trimen Dev. Co. v. King Cty.*, P.2d 226, 231 (Wash. 1992).

8 The Developer's reliance on *Palazzolo v. Rhode Island* (at 61:25-62:7) is misplaced  
9 because *Palazzolo* held only that the state's "blanket rule" that a restriction on land use adopted  
10 prior to the current owner's acquisition defeats a takings claim based on that use restriction was  
11 overly broad. 533 U.S. 606, 628 (2001). Those are not the facts here. *Compare Daniel v. Cty.*  
12 *of Santa Barbara*, 288 F.3d 375, 384 (9th Cir. 2002) (distinguishing *Palazzolo* and holding that  
13 takings claim was time barred when taking occurred at time that predecessor granted county an  
14 offer to dedicate an easement). Here, the Developer's predecessor actively sought and obtained  
15 the land use restriction in order to enhance the value of its overall project and to satisfy the  
16 City's parks requirement and ***then built the golf course in furtherance of that designation.***

17 In other words, the predecessor solidified the open space designation on the ground, and  
18 the existence of the open space and golf course was not "repealed" in 2001 as the Developer  
19 contends. *See* Opposition at 63:11-28. The land remained a golf course until the Developer  
20 ceased that use and sold the water rights in 2015. As a result, the statute of limitations to object  
21 to that designation commenced in 1990 at the time the benefit was conferred on the Developer's  
22 predecessor.

23 **D. The Developer's Effort to Exceed the Scope of its Complaint Constitutes**  
24 **Impermissible Claim Splitting**

25 The Developer cannot overcome the legal deficiencies of its complaint by improperly  
26 filing thousands of pages of documents and making arguments (based on those extraneous  
27 documents) that the Court may not consider on this Rule 12(c) motion. The scope of a civil  
28 action is defined by the issues raised in the pleadings. *See Nevada-Douglas Consol. Copper Co.*

1 v. *Berryhill*, 58 Nev. 261, 75 P.2d 992, 994 (1938) (“A fact necessary to be proven is equally  
2 necessary to be alleged.”). In adjudicating a motion to dismiss, the Court is limited to the  
3 pleading being attacked. *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d  
4 1258, 1261 (1993). Matters outside the complaint being challenged may not be considered. *Id.*

5 The Developer ignores this well-settled law by submitting reams of exhibits and  
6 presenting extensive arguments regarding matters that post-date the Council’s decision to deny  
7 the 35-Acre Applications and that are outside the scope of its complaint. *See generally*  
8 Developer’s appendix and Opposition at 31:13-46:11; 57:5-18; 68:6-74:11 and *passim*. Every  
9 purported “fact” the Developer asserts that does not exist in the Court’s record on review was  
10 not before the Council when it denied the 35-Acre Applications. Such improper submissions  
11 and arguments must be disregarded. *See Nevada-Douglas Consol. Copper*, 58 Nev. at 261, 75  
12 P.2d at 994. They relate to matters not alleged by the Developer and that are irrelevant to the  
13 straightforward issues of law that require dismissal.

14 Moreover, the Developer is already litigating elsewhere the subsequent City Council  
15 proceedings that it now invokes here in an attempt to survive the City’s Rule 12 motion.  
16 *Compare* Opposition at 33:1-45:23 and 72:12-73:11 to Complaints in Case Nos. A-18-775804-  
17 J; A-18-780184-C, attached hereto as **Exhibit A** and **Exhibit B**, respectively. To allow the  
18 Developer to rely on matters that are already the subject of pending court cases constitutes  
19 impermissible claim splitting. *See Fitzharris v. Phillips*, 74 Nev. 371, 376, 333 P.2d 721, 724  
20 (1958), disapproved on other grounds by *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416  
21 (2000). “It would be contrary to fundamental judicial procedure to permit two actions to remain  
22 pending between the same parties upon the identical cause.” *Id.* A main purpose behind the  
23 rule preventing claim splitting is “to protect the defendant from being harassed by repetitive  
24 actions based on the same claim.” Restatement (Second) Judgments, § 26 comment a.

25 In considering the City’s motion for judgment on the pleadings, the Court may look no  
26 further than the allegations in the First Amended Complaint that challenge the City Council’s  
27 denial of the 35-Acre Applications. All of the extraneous documents submitted by the  
28 Developer, and the matters outside the Developer’s pleadings that the Developer asserts in its

opposition, constitute impermissible claim splitting and cannot be considered. *See Breliant*, 109 Nev. at 847, 858 P.2d at 1261; *Fitzharris*, 74 Nev. at 376, 333 P.2d at 724. Even if these materials could be considered, however, they do not alter the conclusion that the Developer's claims must be dismissed.

**E. The Developer's Judicial Estoppel Argument is Inapplicable**

The Developer's contention that the City should be judicially estopped from asserting certain arguments must be rejected because there have been no statements made that are subject to judicial estoppel. The elements of judicial estoppel in Nevada are: "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).

Here, the Developer erroneously contends that the statements of its City Attorney and Planning Director that the Property is zoned R-PD7 and that a major modification was not required bar the City from asserting in this litigation that the Developer has no vested right to have its redevelopment applications approved and the Court lacks subject matter jurisdiction. *See Opposition at 24:1-27:9*. Judicial estoppel does not apply here for a number of reasons.

First, because Judge Crockett's Decision requires a major modification, and this Court has determined that Judge Crockett's Decision has preclusive effect on this case, statements made by the City Attorney and staff prior to the issuance of Judge Crockett's Decision have no bearing here. The City is bound to follow Judge Crockett's Decision unless and until it is reversed on appeal. Second, statements by the City Attorney and staff regarding the zoning are irrelevant because "compatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990) (affirming county commission's denial of a special use permit even though property was zoned for the use). Third, the

Developer identifies no judicial proceeding in which the City successfully argued two totally inconsistent positions and none exists. *See NOLM*, 120 Nev. at 743, 100 P.3d at 663.

The Developer's *ad hominem* attack on the City's counsel is baseless and does not alter the conclusion that the elements of judicial estoppel are not satisfied here. A party has the right to retain outside counsel without interference from the opposing side. *See City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 371, 302 P.3d 1118, 1134 (2013). The City's attorneys owe duties to the City, not to third parties such as the Developer, and act only on behalf of their client, the City. *See* Restatement (Third) of the Law Governing Lawyers §51 (2000). The Developer's attacks on opposing counsel are simply an attempt to divert the Court from the narrow legal issue before it, and do not help the Developer survive this Rule 12 motion.

**F. Threatening the Court With A "Judicial Taking" Cannot Prevent Dismissal**

In the absence of any viable legal arguments, the Developer resorts to threatening the Court with a "judicial takings" claim, for which no factual or legal basis exists. *See* Opposition at 21:24-22:10; 56:11-17. No Nevada Supreme Court decision recognizes a judicial taking. Even if this Court were to look for guidance in federal law, the Developer's judicial taking theory fails as a matter of law because the United States Supreme Court has never recognized the concept of a judicial taking in a majority opinion.

Once, in a concurring opinion, Justice Potter Stewart wrote that a judicial taking could only occur where a judicial decision "constitutes a sudden change in state law, unpredictable in terms of relevant precedents." *Hughes v. Washington*, 389 U.S. 290, 296 (1967). As set forth in the legal authorities cited *supra*, the Court's dismissal of the Developer's claims is well-grounded in Nevada law. The circumstance described by Justice Stewart, even if it were binding precedent (it is not), is inapplicable here.

Second, in the case cited by the Developer, Justice Antonin Scalia wrote in a plurality opinion that a state court *of last resort* could be found to have "taken" property for public use where its decision contravened an established right of private property. *Stop The Beach Renourishment, Inc. v. Florida Dep't of Env'tl. Prot.*, 560 U.S. 702, 715 (2010). This district court is not a Nevada court of last resort and, therefore, could never effectuate a taking even

1 under the case cited by the Developer. Moreover, as set forth in the legal authorities cited  
2 *supra*, the Developer has no “established” right to change the use of the golf course from open  
3 space to anything else. Indeed, as Justice Scalia notes, “A property right is not established if  
4 there is doubt about its existence; and when there is doubt we do not make our own assessment  
5 but accept the determination of the state court.” *Id.* at 726 n.9.

6 The Developer bought an existing golf course knowing that it was designated open  
7 space by the City’s General Plan and the Peccole Ranch Master Development Plan and  
8 constructed by its predecessor. Changes to this designation are within the sole discretion of the  
9 City Council. As a result, even if a judicial taking were recognized in Nevada (it is not), the  
10 Court’s conclusion that Judge Crockett’s order has preclusive effect, or that the Developer lacks  
11 vested rights, could not be construed as a judicial taking. The Court should, therefore, disregard  
12 the Developer’s threats.

13 **G. The Developer Fails to Establish its Claims Are Ripe Because Judge Crockett’s**  
14 **Decision, Which the Court Has Determined Has Preclusive Effect, Requires the**  
15 **Approval of a Major Modification**

16 The Court already determined as a matter of law that Judge Crockett’s Decision has  
17 preclusive effect. *See* FFCL at Conclusions of Law ¶¶57-62. The Developer offers no rationale  
18 for the Court to revisit that correct conclusion. Pursuant to Judge Crockett’s Decision, because  
19 the Developer has not provided the City Council with an opportunity to consider and decide an  
20 application for a major modification to the Peccole Ranch Master Development Plan, the  
21 ripeness doctrine bars the inverse condemnation claims. If a party’s claims are not ripe for  
22 review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them.  
23 *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v.*  
*Nev. Gaming Comm’n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988).

24 Consideration of a major modification application is precisely the type of procedure the  
25 Supreme Court recognizes as a threshold requirement before a landowner can assert a takings  
26 claim. *See Palazzolo*, 533 U.S. at 620-21. Here, the Developer submitted **and then withdrew** a  
27 major modification application, preventing the City Council from considering it. *See* FFCL at  
28 Finding of Fact 33, *citing* ROR 1; 5; 6262. Where the application has been withdrawn, it



1 cannot be considered “meaningful” to satisfy the ripeness requirements. *Zilber v. Town of*  
2 *Moraga*, 692 F. Supp. 1195, 1199 (N.D. Cal. 1988) (discussing *Kinzli v. City of Santa Cruz*,  
3 818 F.2d 1449, 1455 (9th Cir. 1987).

4 Simply because the Developer may not agree with the procedures Judge Crockett  
5 deemed mandatory, or may contend that its prior actions already effectively met those  
6 requirements (*see* Opposition at 65:11-74:12), does not excuse the Developer from complying  
7 with them. *See Zilber*, 692 F. Supp. at 1199. The Developer does not get to unilaterally make  
8 that determination, and the City Council alone has the authority to consider and decide land use  
9 applications. Moreover, the Court cannot assume the role of the City Council, as the Developer  
10 requests. Also, because a district court cannot second guess another court’s final judgment, the  
11 Developer must comply with Judge Crockett’s Order unless and until it is reversed on appeal.  
12 *See Rohlfiing v. Second Jud. Dist. Ct.*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990) (*citing* Nev.  
13 Const. art. 6, § 6; NRS 3.220).

14 The case of *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 720  
15 (1999) cited by the Developer (at 67:3-13) addressed whether a judge or jury should decide if  
16 “a landowner has been deprived of all economically viable use of his property.” *Id.* The  
17 Developer cannot get to this question unless and until it can demonstrate the existence of a  
18 justiciable controversy and legally viable claims. *See* NRCP 12(c). The Developer’s claims are  
19 time barred, subject to issue preclusion, fail to state a cognizable claim and are not ripe for  
20 review. The *Monterey* case does not help the Developer.

### 21 **III. CONCLUSION**

22 Because the Court correctly concluded that the Developer lacks vested rights to have its  
23 redevelopment applications approved, there can be no taking as a matter of law, and the inverse  
24 condemnation claims must be dismissed. Moreover, the statute of limitations has run on the  
25 Developer’s inverse condemnation claims. Finally, as the Court has determined that Judge  
26 Crockett’s Decision has preclusive effect on this case, the Court lacks subject matter  
27 jurisdiction to hear the inverse condemnation claims because they are not ripe. For these  
28 reasons, the Developer’s First Amended Complaint must be dismissed with prejudice.

Respectfully submitted this 14<sup>th</sup> day of March, 2019.

McDONALD CARANO LLP

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 14th day of March, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/Jelena Jovanovic

An employee of McDonald Carano LLP

# **EXHIBIT “A”**



1 **PTJR/COMP**  
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9  
10 DISTRICT COURT  
CLARK COUNTY, NEVADA

11 180 LAND COMPANY, LLC, a Nevada limited  
12 liability company, DOE INDIVIDUALS I  
13 through X, DOE CORPORATIONS I through X,  
and DOE LIMITED LIABILITY COMPANIES  
14 I through X,

15 Petitioners,

16 vs.

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

21 Defendant.

A-18-775804-J

Case No.: \_\_\_\_\_  
Dept. No.: \_\_\_\_\_ Department 26

**PETITION FOR JUDICIAL REVIEW,  
COMPLAINT FOR DECLARATORY  
RELIEF AND INJUNCTIVE RELIEF,  
AND ALTERNATIVE VERIFIED  
CLAIMS IN INVERSE  
CONDEMNATION**

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

22 Petitioner, by and through its attorneys of record, The Law Offices of Kermitt L. Waters,  
23 for its Petition for Judicial Review and alternative claims in inverse condemnation complains and  
24 alleges as follows:

2001867\_1 17334.1

**PARTIES**

1  
2           1.     Petitioner ("Petitioner and/or Landowner") is organized and existing under the  
3 laws of the state of Nevada.

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

12           3.     That the true names and capacities, whether individual, corporate, associate, or  
13 otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE  
14 CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X  
15 (hereinafter collectively referred to as "DOEs") inclusive are unknown to Petitioner at this time  
16 and who may have standing to sue in this matter and who, therefore, sue the Defendants by  
17 fictitious names and will ask leave of the Court to amend this Complaint to show the true names  
18 and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as  
19 principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other  
20 entities with standing to sue under the allegations set forth herein.

21           4.     That the true names and capacities, whether individual, corporate, associate, or  
22 otherwise of Defendants named herein as ROE government entities I through X, ROE  
23 CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY  
24 COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter

1 collectively referred to as "ROEs"), inclusive are unknown to the Landowners at this time, who  
2 therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this  
3 Complaint to show the true names and capacities of Defendants when the same are ascertained;  
4 that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or  
5 actions, either alone or in concert with the aforementioned defendants, resulted in the claims set  
6 forth herein.

#### 7 JURISDICTION AND VENUE

8 5. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS  
9 278.0235 and NRS 278.3195 and this Court has jurisdiction over the alternative claims for  
10 inverse condemnation pursuant to the United States Constitution, Nevada State Constitution and  
11 the Nevada Revised Statutes.

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

#### 13 GENERAL ALLEGATIONS

14 7. Petitioner owns 132.92 Acres of real property generally located south of Alta  
15 Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas,  
16 Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-  
17 31-601-008, 138-31-702-003, and 138-31-702-004 (hereinafter referred to as the "133 Acre  
18 Property" or "Property").

#### 19 Zoning Governs Existing Permitted Land Uses

20 8. Zoning defines what uses 'presently' are permitted, and not permitted, on a  
21 parcel.

22 9. A "master plan" designation, as such term is used in NRS 278 and the Las Vegas  
23 2020 Master Plan, determines 'future' land use and is considered only when changing the zoning  
24 on a parcel.

1           10. General Plan Amendments and Major Modifications, as such mechanisms are  
2 defined in the Las Vegas 2020 Master Plan are not required if the proposed use complies with  
3 existing zoning on a parcel.

4           11. The City of Las Vegas Unified Development Code in Title 19.10.040 defines a  
5 zoning district titled "PD (Planned Development District)" and in Title 19.10.050 defines a  
6 zoning district titled "R-PD (Residential Planned Development)". The "PD" and "R-PD" zoning  
7 districts are separate and distinct from each other.

8           12. A "R-PD" district is not governed by the provisions of Title 19.10.040. The term  
9 "Major Modification" as used in Title 19.10.040 does not apply to a "R-PD" zoning district.

#### 10                                   **The Undisputed R-PD7 Residential Zoning**

11           13. The existing zoning district on the 133 Acre Property is R-PD7 (Residential  
12 Planned Development District – 7.49 Units per Acre).

13           14. No formal action approving a plot plan, nor site development review, was ever  
14 taken by the Planning Commission, nor City Council, to allow the use of the Property as a golf  
15 course.

16           15. The R-PD7 zoning designation on the Property was established by Ordinance No.  
17 5353 (Bill Z-2001-1) PASSED, ADOPTED, and APPROVED by the Las Vegas City Council on  
18 August 15, 2001 ("Ordinance 5353"). Specifically:

19                   a. Assessor's Parcel Number 138-31-212-002 was changed from its then  
20 "Current Zoning" designation of "U(PR)" to its "New Zoning" designation  
21 "R-PD7";

22                   b. Assessor's Parcel Number 138-31-610-002 was changed from its then  
23 "Current Zoning" designation of "U(PR)" to its "New Zoning" designation  
24 "R-PD7";



1 c. Assessor's Parcel Number 138-31-713-002 was changed from its then  
2 "Current Zoning" designation of "U(M)" to its "New Zoning" designation "R-  
3 PD7"; and

4 d. Assessor's Parcel Number 138-31-712-004 was changed from its then  
5 "Current Zoning" designation of "U(ML)" to its "New Zoning" designation  
6 "R-PD7".

7 16. Ordinance 5353 provided: "SECTION 4: All ordinances or parts of ordinances or  
8 section, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of  
9 the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

10 17. Ordinance 5353 repealed any then existing master plans, including the conceptual  
11 Peccole Ranch Master Plan approved in 1990, with respect to the Property.

12 18. In a December 30, 2014 dated letter ("Zoning Verification Letter"), the City  
13 verified in writing that "The Subject properties are zoned R-PD7 (Residential Planned  
14 Development District – 7 Units per Acre)." This includes the 133 Acre Property.

15 19. At a May 16, 2018 City Council hearing, the City Attorney and the City Staff  
16 affirmed the issuance and content of the Zoning Verification Letter.

17 20. The City does not dispute that the Property is zoned R-PD7.

18 21. None of the 133 Acre Property is zoned "PD".

19 22. Petitioner materially relied upon the City's verification of the Property's R-PD7  
20 vested zoning rights.

21 23. At all relevant times herein, Petitioner had the vested right to use and develop the  
22 133 Acre Property under and in conformity with the existing R-PD7 zoning.

23 24. R-PD7 zoning allows up to 7.49 residential units per acre, subject to  
24 comparability and compatibility adjacency planning principles.

1           25.     The Property is taxed by the Clark County Assessor based on its R-PD7 zoning  
2 and Vacant Single Family Residential use classification.

3           26.     Petitioner's vested property rights in the 133 Acre Property is recognized under  
4 the United States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

5                   **The Legally Irrelevant 2016 General Plan Amendment**

6           27.     In late 2005, the City changed the Land Use Designation under its 2020 Master  
7 Plan to "PR-OS" (Parks/Recreation/Open Space). The City Attorney has on multiple occasions  
8 stated that the City is unable to establish that it complied with its legal notice and public hearing  
9 requirements when it changed the General Plan Designation on the Property to PR-OS.

10          28.     The PR-OS designation on the Property was legally deficient and is therefore void  
11 ab initio and has no legal effect on the Property.

12          29.     On or about December 29, 2016, and at the request of the City, Petitioner filed an  
13 application for a General Plan Amendment to change the General Plan Designation relating to  
14 the 133 Acre Property and several other parcels of real property from PR-OS to L (Low Density  
15 Residential) and the application was given number GPA-68385 ("GPA-68385" also referred to  
16 herein as the "2016 GPA").

17          30.     The City Council denied the 2016 GPA on June 21, 2017.

18          31.     The 133 Acre Property was also previously included, at the request of the City, as  
19 part of one master development agreement that would have allowed the development of 250.92  
20 acres of property as a whole. At that time, the City Council advised Petitioner that the only way  
21 the City Council would allow development on the 133 Acre Property was under a master  
22 development agreement ("MDA") for the entirety of the Property (totaling 250.92 acres). On  
23 August 2, 2017, less than two months after the City Council said it was very, very close to  
24

1 approving the MDA, however, the City Council voted to deny the MDA altogether, which also  
2 included the 133 Acre Property.

3 32. The City's denial of the 2016 GPA does not affect the R-PD7 zoning on the  
4 Property, nor Petitioner's exercising its vested property rights to develop the 133 Acre Property  
5 under the existing R-PD7 zoning.

6 33. The 2016 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.  
7 The R-PD7 zoning on the 133 Acre Property takes precedence over the PR-OS General Plan  
8 Designation, per NRS 278.349(3)(e).

9 34. Whether or not Petitioner files a General Plan Amendment to remove or change  
10 the PR-OS designation does not prohibit Petitioner from exercising its vested property rights to  
11 develop the 133 Acre Property under the existing vested R-PD7 zoning.

12 **The Unjustified Delay of the 2017 Tentative Map Applications**

13 35. On or about October, 2017, Petitioner filed all applications required by the City  
14 for the purpose of obtaining approval on tentative maps pursuant to NRS 278 to utilize the  
15 existing vested R-PD7 zoning on the 133 Acre Property. The October 2017 applications were  
16 identified as WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009;  
17 WVR-72010; SDR-72011; and TMP-72012 (collectively "2017 Tentative Map Applications").

18 36. Shortly after the acceptance of the 2017 Tentative Map Applications by the City,  
19 the Planning Staff requested that Petitioner file a General Plan Amendment to accompany 2017  
20 Tentative Map Applications. The City Planning Staff informed Petitioner that a General Plan  
21 Amendment was being "requested only", and that it is not a requirement under City code.

22 37. Under protest as being legally unnecessary, Petitioner accommodated the City's  
23 request to file a General Plan Amendment application to change the designation on the Property  
24

1 from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential). The  
2 application was identified as GPA-72220 ("2017 GPA").

3 38. The 2017 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.

4 39. The R-PD7 zoning on the 133 Acre Property takes precedence over the PR-OS  
5 General Plan Designation, per NRS 278.349(3)(c).

6 40. The 2017 Tentative Map Applications and 2017 GPA were recommended for  
7 APPROVAL by the City Staff, and APPROVED by a vote of the Planning Commission.

8 41. The 2017 GPA and the 2017 Tentative Map Applications were scheduled to be  
9 heard by the Las Vegas City Council ("City Council") on February 21, 2018.

10 42. At the February 21, 2018, City Council hearing, Petitioner requested that  
11 Councilman Coffin and Councilman Seroka recuse themselves from participation on the matter  
12 based on bias and conflicts of interest. The request was denied.

13 43. Although the 2017 Tentative Map Applications were on the agenda for a  
14 presentation and vote by the City Council, the City Council voted to abey the items to delay them  
15 several months, stating as the basis for the delay that one of the City Council seats was vacant  
16 and that Councilman Coffin was participating by phone from abroad. The stated reasons were  
17 invalid as the required quorum was present for the City Council to proceed with the applications  
18 at the February 21, 2018 hearing. Petitioner was denied any opportunity to be heard before the  
19 vote. The City Council vote resulted in a three (3) month delay to the hearing of the 2017  
20 Tentative Map Applications.

21 44. After the vote resulting in abeyance, Petitioner stated on the record that it  
22 "vehemently opposed any kind of abeyance and continued delay of this matter" as the efforts to  
23 develop the Property had already been systematically delayed by the City for many years and  
24

1 that Petitioner wanted a "vote on these applications and due process and the ability for [the City  
2 Council] to hear the zoning facts."

3 45. The abeyance resulted in the City Council delaying the hearing of the 2017  
4 Tentative Map Applications for three (3) months, until May 16, 2018.

5 **The "Yohan Lowie" Bill**

6 46. On May 16, 2018, the day the 2017 Tentative Map Applications were scheduled  
7 to be heard, the City Council passed Bill No. 2018-5, the sole and singular intent of which was to  
8 prevent any development on the 133 Acre Property (and other properties, owned by affiliates of  
9 Petitioner, upon which the former Badlands Golf Course was operated).

10 47. During the discussion of Bill No. 2018-5:

11 a. Councilman Coffin foreshadowed the City Council's plan for the 2017  
12 Tentative Map Applications (scheduled to be heard in the City Council's  
13 afternoon session) when he admitted that if the bill were to apply to the 2017  
14 Tentative Map Applications, it could be interpreted as having the effect of  
15 influencing the City Council's decision on them<sup>1</sup>.

16 b. Councilwoman Fiori stated her opinion that *"this Bill is for one development*  
17 *and one development only . . . [t]his Bill is only about Badlands Golf Course*  
18 *[which includes the 133 Acre Property]. . . . I call it the Yohan Lowie [a*  
19 *principal of Petitioner ] Bill."* ("Yohan Lowie Bill")

20 <sup>1</sup> Coffin: Thank you, your Honor. I'm not the sponsor of the bill but I do want to weigh in as I have heard testimony.  
21 And thank you very much for conducting the recommending committee without me there Monday, I couldn't be  
there. Uh, and I do appreciate the fact. But I knew the bill pretty well and I know that it doesn't address the, uh,  
current, uh, topic du jour of a- of a certain, uh, golf course, in, uh, the western part of town.

22 That would be retroactive treatment and, uh, I don't see how we can draw a conclusion or a connection between a  
23 bill discussing the future, with something that's been in play for quite a long time. So I think we've got to separate  
those two out for one thing. One, if we were to connect these two then someone might interpret this action today as  
24 somehow influencing the discussion on Badlands and that is not what we want to do. We wanna keep it separate and  
keep it clean, and this bill has nothing to do with that as far as I'm concerned. Thank you very much, your honor.

1           48.     The City Council proceeded to vote to approve the Yohan Lowie Bill, refusing to  
2 allow Petitioner to be heard to make a record of its opposition to the ordinance.

3           49.     Councilwoman Fiori and Mayor Goodman voted against the Yohan Lowie Bill  
4 and concurred with City Staff that the current policies relating to neighborhood engagement,  
5 which have been in place for many years, are effective and the Yohan Lowie Bill code revisions  
6 are unnecessary.

7                                   **The 2017 Tentative Map Applications Are**  
8                                   **Stricken From The City Council Agenda**

9           50.     Finally, seven (7) months after the filing, the 2017 Tentative Map Applications  
10 and legally irrelevant 2017 GPA were set on the afternoon agenda of the City Council hearing on  
11 May 16, 2018, the same day as the passing of the "Yohan Lowie Bill".

12           51.     At the commencement of the afternoon session of the May 16, 2018 City Council  
13 hearing, Councilman Seroka made an unprecedented "motion to strike" the 2017 Tentative Map  
14 Applications from the agenda, in order to avoid the 2017 Tentative Map Applications from being  
15 presented and voted upon by the City Council, and to cause them to be subjected to the Yohan  
16 Lowie Bill when re-filed by Petitioner.

17           52.     The proffered bases of Councilman Seroka's unprecedented Motion to Strike  
18 Petitioner's applications were violations of Nevada law, and contradicted the positions and  
19 opinions of the City Staff, City Attorney, and prior formal actions of the City Council.

20           53.     During the discussion of the motion, Councilman Coffin usurped the  
21 responsibilities of the City Attorney by giving legal advice to the other City Councilmembers  
22 stating that no advance notice is necessary for a procedural motion and that there was no need to  
23 have public comment on a motion to strike.  
24

54. Based upon information and belief, other City Councilmembers were sandbagged and confused by the unprecedented and procedurally improper Motion to Strike Petitioner's applications. Specifically:

a. Councilwoman Fiori stated that “*none of us [on the City council] had a briefing on what just occurred*” and that “*it is quite shady and I don't see how we can even proceed*” and the actions were “*very shocking.*”;

b. Councilman Crear said he did not feel comfortable moving forward and did not know if he had enough information to move forward; and

c. Councilman Anthony said "95% of what Councilman Seroka just said, I heard it for the first time. I don't know what it means, I don't understand it."

55. Petitioner's representative stated that just a few days earlier Petitioner's representative met with councilman Seroke and other members of the City Council to address any open issues related to the 2017 Tentative Map Applications and no mention was made of the "motion to strike" or issues related thereto. Petitioner's representative further explained that Petitioner has been being stonewalled in its efforts to develop its property for many years, and that despite full compliance with City code and City Staff requests, the City keeps changing the rules on the fly for the purpose of preventing development of the property.

**Scroka's Fiction #1**  
**'That A GPA Was Necessary Yet Time Barred'**

56. Councilman Seroka's first basis for the motion to strike was a legally fictitious claim ("Fiction #1") that Petitioner's 2017 GPA was the same or similar to the 2016 GPA that was denied in June of 2017, and under the City Code the 2017 GPA could not be filed sooner than one year from the date of the denial of the 2016 GPA. This was a legal fiction, because Petitioner is not required to file a General Plan Amendment ("GPA") in order to proceed under

1 its existing R-PD7 zoning. Petitioner would only be required to file a GPA if it filed an  
2 application seeking to change the zoning from R-PD7 to another zoning district classification.

3 57. At the May 16, 2018 hearing:

4 a. City Planning Staff advised the City Council that the 2017 GPA was filed by  
5 Petitioner only at the City's request and that Petitioner's filing of the 2017  
6 GPA was under protest as being legally unnecessary.

7 b. City Attorney Brad Jerbic and City Staff both stated on the record that a GPA  
8 was not required to be filed by Petitioner to have the Tentative Map  
9 Applications heard.

10 58. Under Nevada law, existing land use is governed by zoning, and only future land  
11 use (the changing of zoning) takes the general plan (also commonly referred to as a master plan)  
12 designation into consideration. A GPA is not required for the submission, consideration and  
13 approval of a tentative map application if the underlying zoning allows for the use delineated on  
14 the tentative map.

15 59. Whether or not the 2017 GPA was filed by Petitioner, nor heard, approved, or  
16 denied by the City Council, was irrelevant in all respects regarding the hearing of Petitioner's  
17 2017 Tentative Map Applications.

18 60. NRS 278.349(3) unambiguously provides that: "The governing body, or planning  
19 commission if it is authorized to take final action on a tentative map, shall consider: (e)  
20 Conformity with the zoning ordinances and master plan, except that **if any existing zoning**  
21 **ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;**"

22 61. The City Council's striking Petitioner's 2017 Tentative Map Applications from  
23 the City Council agenda due to the "PR-OS" master plan designation was a violation of Nevada  
24



1 law. Specifically, NRS 278349(3)(c) which provides that the Property's R-PD7 residential  
2 zoning rights take precedence over an inconsistent master plan designation.

3 62. No general plan amendment was required to be filed by Petitioner in order to have  
4 the 2017 Tentative Map Applications heard and voted upon by the City Council.

5 63. The courtesy filing of the 2017 GPA by Petitioner, at the specific request (but not  
6 requirement) of City Planning Staff, was an improper and illegal basis for striking Petitioner's  
7 2017 Tentative Map Applications.

8 **Seroka's Fiction #2**  
9 **'That a "Major Modification" To A Master Plan Is Required**  
10 **In Order To Proceed With The 2017 Tentative Map Applications**

11 64. Councilman Seroka's second basis for the motion to strike was a legally fictitious  
12 claim ("Fiction #2") that a "major modification" application to the conceptual Peccole Ranch  
13 Master Plan was required to be filed concurrently with the 2017 Tentative Map Applications.

14 65. At the May 16, 2018 hearing City Attorney Brad Jerbic stated on the record that  
15 Petitioner had a due process right to have its 2017 Tentative Map Applications heard that day.

16 66. In fact, the City Council, on January 3, 2018, had previously taken formal action  
17 on that exact issue, voting 4-2 that NO MAJOR MODIFICATION of the conceptual Peccole  
18 Ranch Master Plan was necessary in order for the City Council to hear the 2017 Tentative Map  
19 Applications.

20 67. The January 3, 2018 formal action that Petitioner was not required to file a "major  
21 modification" with the 2017 Tentative Map Applications was affirmed on January 17, 2018,  
22 when the City Council DENIED Councilman Coffin's motion to rescind the January 3, 2018 NO  
23 MAJOR MODIFICATION vote.  
24

1           68.     Fiction #2 was illegal in that it was a violation of the formal action taken by the  
2 City Council on January 3, 2018 that NO MAJOR MODIFICATION was required, and on  
3 January 17, 2018 denying a rescission of the NO MAJOR MODIFICATION vote.

4           69.     Under Nevada law, existing zoning on a parcel supersedes any conflicting land  
5 use designations within the Las Vegas 2020 Master Plan, Land Use Elements, Land Use  
6 Designations, Master Development Plans (including the conceptual Peccole Ranch Master Plan),  
7 Master Development Plan Areas, and Special Area Plans, as such terms are used in the Las  
8 Vegas 2020 Master Plan.

9           70.     Notwithstanding its inapplicability with respect to development under existing  
10 zoning on a parcel, the conceptual Peccole Ranch Master Plan was repealed by Ordinance 5353  
11 in 2001.

12           71.     Despite having no basis in law, either substantively or procedurally, to strike  
13 Petitioner's applications, the City Council voted 5-2 in favor of striking the 2017 Tentative Map  
14 Applications, altogether conflicting with its prior formal actions to the contrary and preventing a  
15 hearing on the merits of Petitioner's 2017 Tentative Map Applications to develop its Property  
16 under its existing vested R-PD7 zoning.

17           72.     This motion to strike the 2017 Tentative Map Applications by the City Council  
18 was not supported by substantial evidence and was arbitrary and capricious. By striking the  
19 Tentative Map Applications, the City Council entirely prevented the applications from even  
20 being heard on the merits.

21           73.     Based on the City's actions, it is clear that the purpose of the February 21, 2018  
22 City Council abeyance was to allow Councilman Seroka time to put his "Yohan Lowie Bill" on  
23 the May 16, 2018 morning agenda, get it passed, and then improperly strike the applications for  
24

1 the 133 Acre Property causing them to fall under the Yohan Lowie Bill if they are re-filed in the  
2 future.

3 74. Regardless of which route Petitioner takes to develop its Property, the City gives  
4 Petitioner specific instructions on what applications to file, then after extensive delays the City  
5 Council changes the rules and denies the applications or prevents the applications from even  
6 being heard and voted upon.

7 75. Based upon information and belief, the City is attempting to purchase Petitioner's  
8 133 Acre Property and is taking action to depress the market value of the Property or has placed  
9 an arbitrarily low value on the Property, thereby showing the City's bad faith intent to drive  
10 down the value of the Property so that it can purchase it at a greatly reduced value.

11 76. The City's actions in denying and/or striking Petitioner's applications has  
12 foreclosed all development of the 133 Acre Property in violation of Petitioner's vested right to  
13 develop the 133 Acre Property.

14 77. On or about May 17, 2018, Notices of Final Action were issued striking and  
15 preventing a hearing on GPA-7220; WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-  
16 72008; TMP-72009; WVR-72010; SDR-72011; TMP-72012.

17 78. This Petition for Judicial Review has been filed within 25 days of the Notices of  
18 Final Action as required by NRS 278.3195.

19  
20 **FIRST CLAIM FOR RELIEF**  
**(Judicial Review)**

21 79. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
22 included in this pleading as if set forth in full herein.

23 80. The City has a duty to refrain from exercising its entitlement and land use  
24 authority in a manner that is arbitrary and capricious.

1           81. The City, by engaging in the conduct set forth above, acted arbitrarily and  
2 capriciously when it struck and denied a hearing on the 2017 Tentative Map Applications.

3           82. The City's decision to strike and deny a hearing on the 2017 Tentative Map  
4 Applications were not supported by evidence a reasonable mind would find adequate to support  
5 such action.

6           83. By striking and denying a hearing on the 2017 Tentative Map Applications  
7 without substantial evidence supporting such action, the City abused its discretion.

8           84. The City's arbitrary and capricious action in regards to the 2017 Tentative Map  
9 Applications has caused Petitioner to suffer real and significant damages.

10          85. Petitioner is aggrieved by the City's action to strike and deny a hearing on the  
11 2017 Tentative Map Applications.

12          86. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law  
13 to correct the City's arbitrary and capricious actions.

14          87. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of the City's  
15 arbitrary and capricious action to strike and deny a hearing on the 2017 Tentative Map  
16 Applications and for an order reversing the City's actions regarding the 2017 Tentative Map  
17 Applications.

18           **FIRST ALTERNATIVE CAUSE OF ACTION FOR DECLARATORY RELIEF**

19          88. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
20 included in this pleading as if set forth in full herein.

21          89. As a result of the PR-OS being improperly placed on the 133 Acre Property, and  
22 the City Council's action in denying Petitioner's zoning rights as a result of such designation,  
23 there is uncertainty as to its validity and application to the 133 Acre Property (although  
24 Petitioner denies that the PR-OS should even apply to the 133 Acre Property).

1           90. Declaratory relief is necessary to terminate or resolve the uncertainty.

2           91. Declaratory relief is permitted under Nevada law, including but not limited to  
3 NRS Chapter 30.

4           92. Therefore, Petitioner requests that this Court immediately enter an order finding  
5 the PR-OS designation on the 133 Acre Property is invalid and/or of no effect on the 133 Acre  
6 Property's R-PD7 zoning rights, thereby prohibiting the City or any other person, agency, or  
7 entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's  
8 existing zoning and to the 133 Acre Property entirely.

9           **SECOND ALTERNATIVE CAUSE OF ACTION FOR PRELIMINARY INJUNCTION**

10          93. Petitioner repeats, re-alleges, and incorporates by reference all paragraphs  
11 included in this pleading as if set forth in full herein.

12          94. Any action that placed a designation of PR-OS on the 133 Acre Property was  
13 without legal authority and, therefore, entirely invalid.

14          95. There is a reasonable and strong likelihood of success on the merits which will  
15 invalidate the improper PR-OS designation on the 133 Acre Property.

16          96. Continued application of the PR-OS designation on the 133 Acre Property will  
17 result in irreparable harm and cause a significant hardship on Petitioner as: 1) the 133 Acre  
18 Property is legally recognized real property and is unique in the State of Nevada; 2) the PR-OS  
19 designation on the 133 Acre Property may prevent Petitioner from using the Property for any  
20 beneficial use; 3) Petitioner relies upon the purchase and development of property, including the  
21 133 Acre Property, to provide a livelihood for numerous individuals and continued application of  
22 the PR-OS to prevent development of the 133 Acre Property will interfere with the livelihood of  
23 these individuals; 4) under NRS 278.349(3(e) the PR-OS zoning has no applicability with respect  
24 to the existing R-PD7 zoning on the Property; and, 5) allowing the development of the 133 Acre

1 Property will result in significant financial benefit to the City, including but not limited to  
2 increasing the City tax base and creating additional jobs for its citizens.

3 97. There is no plain, adequate or speedy remedy at law.

4 98. Therefore, Petitioner is entitled to injunctive relief prohibiting the City or any  
5 other person, agency, or entity from applying the PR-OS to any application, land use decision, or  
6 otherwise, relating to the Property's existing zoning and/or to the 133 Acre Property entirely.

7 **THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

8 **(Categorical Taking)**

9 99. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
10 included in this pleading as if set forth in full herein.

11 100. Petitioner has vested rights to use and develop the 133 Acre Property.

12 101. The City reached a final decision that it will not allow development of Petitioner's  
13 133 Acre Property.

14 102. Any further requests to the City to develop the 133 Acre Property would be futile.

15 103. The City's actions in this case have resulted in a direct appropriation of  
16 Petitioner's 133 Acre Property by entirely prohibiting Petitioner from using the 133 Acre  
17 Property for any purpose and reserving the 133 Acre Property undeveloped.

18 104. As a result of the City's actions, Petitioner has been unable to develop the 133  
19 Acre Property and any and all value in the 133 Acre Property has been entirely eliminated.

20 105. The City's actions have completely deprived Petitioner of all economically  
21 beneficial use of the 133 Acre Property.

22 106. The City's actions have resulted in a direct and substantial impact on Petitioner  
23 and on the 133 Acre Property.

24 107. The City's actions result in a categorical taking of Petitioner's 133 Acre Property.

1           108. The City has not paid just compensation to Petitioner for this taking of its 133  
2 Acre Property

3           109. The City's failure to pay just compensation to Petitioner for the taking of its 133  
4 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and  
5 the Nevada Revised Statutes, which require the payment of just compensation when private  
6 property is taken for a public use.

7           110. Therefore, Petitioner is compelled to bring this cause of action for the taking of  
8 the 133 Acre Property to recover just compensation for property the City has taken without  
9 payment of just compensation.

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

11                           **FOURTH ALTERNATIVE CLAIM FOR RELIEF**

12                                   **IN INVERSE CONDEMNATION**

13   **(Penn Central Regulatory Taking)**

14          112. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
15 included in this pleading as if set forth in full herein.

16          113. Petitioner has vested rights to use and develop the 133 Acre Property.

17          114. The City reached a final decision that it will not allow development of Petitioner's  
18 133 Acre Property.

19          115. Any further requests to the City to develop the 133 Acre Property would be futile.

20          116. The City through its motion to strike, and its prior actions denying an application  
21 to develop the 133 Acre Property, has done so even though: 1) Petitioner's proposed 133 Acre  
22 Property development was in conformance with its zoning density and was comparable and  
23 compatible with existing adjacent and nearby residential development; 2) the Planning  
24 Commission recommended approval; and 3) the City's own Staff recommended approval.

1           117. The City also stated that it would allow Petitioner to develop the 133 Acre  
2 Property as part of the MDA, referenced above. Petitioner worked on the MDA for nearly two  
3 years, with numerous City-imposed and/or City requested abeyances and with the City's direct  
4 and active involvement in the drafting and preparing the MDA and the City's statements that it  
5 would approve the MDA and despite nearly two years of working on the MDA, on or about  
6 August 2, 2017, the City denied the MDA.

7           118. The City's actions have caused a direct and substantial economic impact on  
8 Petitioner, including but not limited to preventing development of the 133 Acre Property.

9           119. The City was expressly advised of the economic impact the City's actions were  
10 having on Petitioner.

11           120. At all relevant times herein Petitioner had specific and distinct investment backed  
12 expectations to develop the 133 Acre Property.

13           121. These investment backed expectations are further supported by the fact that the  
14 City, itself, confirmed the Property has vested R-PD7 development rights prior to Petitioner's  
15 acquiring the 133 Acre Property.

16           122. The City was expressly advised of Petitioner's investment backed expectations  
17 prior to denying Petitioner the use of the 133 Acre Property.

18           123. The City's actions are preserving the 133 Acre Property as open space for a public  
19 use and the public is physically entering on and actively using the 133 Acre Property.

20           124. The City's actions have resulted in the loss of Petitioner's investment backed  
21 expectations in the 133 Acre Property.

22           125. The character of the City action to deny Petitioner's use of the 133 Acre Property  
23 is arbitrary, capricious, and fails to advance any legitimate government interest and is more akin  
24



1 to a physical acquisition than adjusting the benefits and burdens of economic life to promote the  
2 common good.

3 126. The City never allowed Petitioner to be heard on the applications to develop the  
4 133 Acre Property and never stated that Petitioner did not have a vested property right to develop  
5 the 133 Acre Property.

6 127. The City denied Petitioner the right to be heard on its applications to develop the  
7 133 Acre Property.

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

9 129. The City has not paid just compensation to Petitioner for this taking of its 133  
10 Acre Property.

11 130. The City's failure to pay just compensation to Petitioner for the taking of its 133  
12 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and  
13 the Nevada Revised Statutes, which require the payment of just compensation when private  
14 property is taken for a public use.

15 131. Therefore, Petitioner is compelled to bring this cause of action for the taking of  
16 the 133 Acre Property to recover just compensation for property the City has taken without  
17 payment of just compensation.

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

19 **FIFTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

20 **(Regulatory Per Se Taking)**

21 133. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
22 included in this pleading as if set forth in full herein.

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

4           135. The City's actions exclude the Petitioner from using the 133 Acre Property and,  
5 instead, permanently reserve the 133 Acre Property for a public use and the public is physically  
6 entering on and actively using the 133 Acre Property.

7           136. The City's actions have shown an unconditional and permanent taking of the 133  
8 Acre Property.

9           137. The City has not paid just compensation to Petitioner for this taking of its 133  
10 Acre Property.

11           138. The City's failure to pay just compensation to Petitioner for the taking of its 133  
12 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and  
13 the Nevada Revised Statutes, which require the payment of just compensation when private  
14 property is taken for a public use.

15           139. Therefore, Petitioner is compelled to bring this cause of action for the taking of  
16 the 133 Acre Property to recover just compensation for property the City has taken without  
17 payment of just compensation.

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

19           **SIXTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

20                           **(Nonregulatory Taking)**

21           141. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
22 included in this pleading as if set forth in full herein.

23           142. The City actions directly and substantially interfere with Petitioner's vested  
24 property rights rendering the 133 Acre Property unusable and/or valueless.

1           143. The City has intentionally delayed approval of development on the 133 Acre  
2 Property and, ultimately, struck or denied any and all development in a bad faith effort to  
3 preclude any use of the 133 Acre Property and/or to purchase the 133 Acre Property at a  
4 depressed value.

5           144. The City's actions are oppressive and unreasonable.

6           145. The City's actions result in a nonregulatory taking of Petitioner's 133 Acre  
7 Property.

8           146. The City has not paid just compensation to Petitioner for this taking of its 133  
9 Acre Property.

10           147. The City's failure to pay just compensation to Petitioner for the taking of its 133  
11 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and  
12 the Nevada Revised Statutes, which require the payment of just compensation when private  
13 property is taken for a public use.

14           148. Therefore, Petitioner is compelled to bring this cause of action for the taking of  
15 the 133 Acre Property to recover just compensation for property the City has taken without  
16 payment of just compensation.

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

18           **SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

19                           **(Temporary Taking)**

20           150. Petitioner repeats, re-alleges and incorporates by reference all paragraphs  
21 included in this pleading as if set forth in full herein.

22           151. If there is subsequent Government Action or a finding by the Nevada Supreme  
23 Court, or otherwise, that Petitioner may develop the 133 Acre Property, then there has been a  
24 temporary taking of Petitioner's 133 Acre Property for which just compensation must be paid.

152. The Government has not offered to pay just compensation for this temporary taking.

153. The Government's failure to pay just compensation to Petitioner for the taking of its 133 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.

154. Therefore, the Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

**EIGHTH CLAIM FOR VIOLATION OF**  
**THE LANDOWNERS' DUE PROCESS RIGHTS**

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

157. The Government action in this case retroactively and without due process transformed Petitioner's vested property right to a property without any value.

158. The Government action in this case was taken without proper notice to Petitioner.

159. This Government action to eliminate or substantially change Petitioner's vested and established property rights, had the effect of depriving Petitioner of its legitimate constitutionally protected property rights.

160. This Government action was arbitrary and/or irrational and unrelated to any legitimate governmental objective or purpose.

161. This is a violation of Petitioner's substantive and procedural due process rights under the United States and Nevada State Constitutions.

1           162. This Government action mandates payment of just compensation as stated herein.

2           163. The Government action should be invalidated to return Petitioner's property  
3 rights to Petitioner thereby allowing development of the 133 Acre Property.

4           164. This requested relief is in excess of fifteen thousand dollars (\$15,000.00).

5                                   **PRAYER FOR RELIEF**

6           **WHEREFORE**, Petitioner prays for judgment as follows:

7           1. For Judicial Review of the City's denial and/or striking of the Petitioner's  
8 applications stated herein;

9           2. For an Order reversing the City's denial and/or striking of the Petitioner's  
10 applications stated herein;

11           3. Declaratory judgment with this Court immediately entering an order finding the  
12 PR-OS designation on the 133 Acre Property is invalid and of no effect on the 133 Acre Property  
13 and prohibiting the City or any other person, agency, or entity from applying the PR-OS to any  
14 land use application, decision, or otherwise, relating to the Property's existing vested zoning and  
15 to Petitioner's Property entirely;

16           4. Injunctive relief prohibiting the City or any other person, agency, or entity from  
17 applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing  
18 zoning and to the 133 Acre Property entirely;

19           5. An award of just compensation according to the proof for the taking (permanent  
20 or temporary) and/or damaging of Petitioner's property by inverse condemnation;

21           6. Prejudgment interest commencing from the date the Government first froze the  
22 use of the 133 Acre Property which is prior to the filing of this Complaint in Inverse  
23 Condemnation;

- 1           7.     Invalidation of the Government action, returning the vested property rights to  
2     Petitioner thereby allowing development of the 133 Acre Property;  
3           8.     A preferential trial setting pursuant to NRS 37.055;  
4           9.     Payment for all costs incurred in attempting to develop the 133 Acre Property;  
5           10.    For an award of attorneys' fees and costs incurred in and for this action; and/or,  
6           11.    For such further relief as the Court deems just and equitable under the  
7     circumstances.

8                     DATED this 7<sup>th</sup> day of June, 2018.

9  
10                                     **LAW OFFICES OF KERMITT L. WATERS**

11                                     BY: /s/ Kermitt L. Waters  
12   KERMITT L. WATERS, ESQ.  
13   Nevada Bar No. 2571  
14   JAMES J. LEAVITT, ESQ.  
15   Nevada Bar No. 6032  
16   MICHAEL SCHNEIDER, ESQ.  
17   Nevada Bar No. 8887  
18   AUTUMN WATERS, ESQ.  
19   Nevada Bar No. 8917  
20  
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VERIFICATION

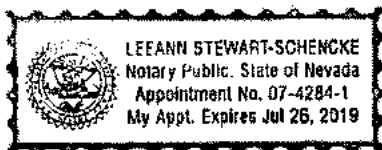
STATE OF NEVADA     )  
                                  ) :ss  
COUNTY OF CLARK    )

Vickie DeHart, on behalf of Petitioner, being first duly sworn, upon oath, deposes  
and says: that he/she has read the foregoing PETITION FOR JUDICIAL REVIEW,  
COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, AND  
ALTERNATIVE CLAIMS IN INVERSE CONDEMNATION and based upon information  
and belief knows the contents thereof to be true and correct to the best of his/her knowledge.

V DeHart  
Name: Vickie DeHart, as manager

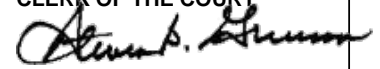
SUBSCRIBED and SWORN to before me  
This 7 day of June, 2018.

NOTARY PUBLIC  
Leeann Stewart Schencke



# **EXHIBIT “B”**





**COMP**  
**LAW OFFICES OF KERMITT L. WATERS**

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*Attorneys for Plaintiff Landowners*

DISTRICT COURT  
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited  
liability company, FORE STARS, Ltd,  
SEVENTY ACRES, LLC, a Nevada limited  
liability company, 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-18-780184-C  
Dept. No.: Department 28

**COMPLAINT FOR DECLARATORY  
RELIEF AND INJUNCTIVE RELIEF,  
AND VERIFIED CLAIMS IN INVERSE  
CONDEMNATION**

**(Exempt from Arbitration –Action  
Concerning Title To Real Property)**

COMES NOW Plaintiffs, 180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., and SEVENTY ACRES, LLC, a Nevada Limited Liability Company ("Landowners") by and through its attorney of record, The Law Offices of Kermitt L. Waters, for its Complaint for Declaratory and Injunctive Relief and In Inverse Condemnation allege as follows:

**PARTIES**

1. Landowners are organized and existing under the laws of the State of Nevada.
2. Defendant 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 Art. 1, §§ 8 and 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 Landowners 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 Landowners 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 claims set forth herein pursuant to the United States Constitution, Nevada State Constitution, and the Nevada Revised Statutes, including the Chapter 30 provisions applicable to declaratory relief actions.

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

## GENERAL ALLEGATIONS

7. Landowners own three separate and distinct properties that make up approximately 65 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 138-31-801-002 (11.28 acres, owned by 180 LAND COMPANY, LLC); 138-31-801-003 (5.44 acres, owned by SEVENTY ACRES, LLC), and; 138-32-301-007 (47.59 acres, owned by SEVENTY ACRES, LLC) (although these are three separate and distinct parcels, the parcels will hereinafter be collectively referred to as the "65 Acres").

1           8.     The 65 Acres with several other separate parcels of property comprises  
2 approximately 250 acres of residential zoned land (hereinafter “250 Acre Residential Zoned  
3 Land”).

4                           **Zoning Governs Existing Permitted Land Uses**

5           9.     Zoning specifically defines what uses *presently* are allowable on a parcel.

6           10.    A “master plan” designation, as such term is used in NRS 278 and the Las Vegas  
7 2020 Master Plan, determines *future* land use and is considered only when legally changing the  
8 zoning on a parcel.

9           11.    General Plan Amendments and Major Modifications, as such mechanisms are  
10 defined in the Las Vegas 2020 Master Plan (adopted on September 6, 2000 through ordinance  
11 2000-62) are not required if the proposed use complies with existing zoning on a parcel.

12          12.    The City of Las Vegas subsequently adopted the Land Use & Neighborhoods  
13 Preservation Element of the Las Vegas 2020 Master Plan on September 2, 2009, Ordinance #6056;  
14 revised with ordinance #6152 on May 8, 2012.

15          13.    The Land Use & Neighborhoods Preservation Element establishes the City’s land  
16 use hierarchy which progresses in the following ascending order: 2020 Mater Plan; Land Use  
17 Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning  
18 Designation. In the hierarchy, the land use designation is subordinate to the zoning designation  
19 because land use designations indicate the intended use and development density for a particular  
20 area while zoning designations specifically define allowable uses and contain the design and  
21 development guidelines for those intended uses.

22          14.    The City of Las Vegas Unified Development Code Title 19.10.040 defines a zoning  
23 district titled “PD (Planned Development District)” and Title 19.10.050 defines a zoning district  
24 titled “R-PD (Residential Planned Development)”. The “PD” and “R-PD” zoning districts are

1 separate and distinct from each other and governed by separate and distinct provisions in the City  
2 Code.

3 15. An “R-PD” district is not governed by the provisions of Title 19.10.040. The term  
4 “Major Modification” as used in Title 19.10.040 does not apply to an “R-PD” zoning district.

### 5 **The Undisputed R-PD7 Residential Zoning**

6 16. The existing zoning district on the 65 Acres is R-PD7 (Residential Planned  
7 Development District – 7.49 Units per Acre).

8 17. Upon information and belief, no formal action approving a plot plan, nor site  
9 development review, was ever taken by the Planning Commission, nor City Council, to allow the  
10 use of the 250 Acre Residential Zoned Land as a golf course.

11 18. The R-PD7 zoning designation on the Property was established by Ordinance No.  
12 5353 (Bill Z-2001-1) PASSED, ADOPTED, and APPROVED by the Las Vegas City Council on  
13 August 15, 2001 (“Ordinance 5353”). Specifically:

- 14 a. Assessor’s Parcel Number 138-31-801-002 (11.28 acres, owned by 180 LAND  
15 COMPANY, LLC) was changed from its then “Current Zoning” designation of  
16 “U (M)” to its “New Zoning” designation “R-PD7”;
- 17 b. Assessor’s Parcel Number 138-31-801-003 (5.44 acres, owned by SEVENTY  
18 ACRES, LLC) was changed from its then “Current Zoning” designation of “U  
19 (M)” to its “New Zoning” designation “R-PD7”; and,
- 20 c. Assessor’s Parcel Number 138-32-301-007 (47.59 acres, owned by SEVENTY  
21 ACRES, LLC) was changed from its then “Current Zoning” designation of “U  
22 (M)” to its “New Zoning” designation “R-PD7.”

23 19. Ordinance 5353 provided: “SECTION 4: All ordinances or parts of ordinances or  
24 section, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of

1 the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.” (emphasis  
2 supplied).

3 20. Ordinance 5353 repealed any then existing master plans, including the conceptual  
4 Peccole Ranch Master Plan approved in 1990, with respect to the Property.

5 21. In a December 30, 2014, letter (“Zoning Verification Letter”), the City verified in  
6 writing that “The subject properties are zoned R-PD7 (Residential Planned Development District  
7 – 7 Units per Acre).” This Zoning Verification Letter includes the 65 Acres.

8 22. At a May 16, 2018 City Council hearing, the City Attorney and the City Staff  
9 affirmed the issuance and content of the Zoning Verification Letter.

10 23. The City does not dispute that the Property is zoned R-PD7.

11 24. None of the 65 Acres is zoned “PD”.

12 25. Landowners materially relied upon the City’s verification of the Property’s R-PD7  
13 vested zoning rights.

14 26. At all relevant times herein, Landowners had the vested right to use and develop  
15 the 65 Acres under and in conformity with the existing R-PD7.

16 27. R-PD7 zoning allows up to 7.49 residential units per acre, subject to comparability  
17 and compatibility adjacency planning principles.

18 28. The Property is taxed by the Clark County Assessor based on its R-PD7 zoning and  
19 Vacant Single Family Residential use classification, further evidencing the vested property rights.

20 29. Landowners’ vested property rights in the 65 Acres is recognized under the United  
21 States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

### 22 **The Legally Irrelevant 2016 General Plan Amendment**

23 30. In or about late 2005, the City changed the Land Use Designation for the Property  
24 under its 2020 Master Plan to “PR-OS” (Parks/Recreation/Open Space). The City Attorney has

1 on multiple occasions stated that the City is unable to establish that it complied with its legal notice  
2 and public hearing requirements when it changed the General Plan Designation on the Property to  
3 PR-OS.

4 31. The PR-OS designation on the Property was procedurally deficient and is therefore  
5 void ab initio and has no legal effect on the Property.

6 32. On or about December 29, 2016, and at the request of the City, the Landowners  
7 filed an application for a General Plan Amendment to change the General Plan Designation relating  
8 to the 65 Acres and several other parcels of real property from PR-OS to L (Low Density  
9 Residential) and the application was given number GPA-68385 ("GPA-68385" also referred to  
10 herein as the "2016 GPA").

11 33. The City Council thereafter denied the 2016 GPA on June 21, 2017, even though  
12 the City requested that the Landowners file the GPA.

13 34. The City's denial of the 2016 GPA does not affect the R-PD7 zoning on the  
14 Property, nor prohibit the Landowners from exercising their vested property rights to develop the  
15 65 Acres under the existing R-PD7 zoning.

16 35. The 2016 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.  
17 The R-PD7 zoning on the 65 Acres takes precedence over the PR-OS General Plan Designation,  
18 per The Land Use & Preservation Elements of the Las Vegas 2020 Master Plan and per NRS  
19 278.349(3)(e).

20 36. Whether or not the Landowners file a General Plan Amendment to remove or  
21 change the PR-OS designation does not prohibit the Landowners from exercising their vested  
22 property rights to develop the 65 Acres under the existing vested R-PD7 zoning.

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1           44.     The City issued notice of the final decision denying the MDA on August 3, 2017.

2                                   **THE 133 ACRES DENIALS**

3                                   **The Unjustified Delay of the 2017 Tentative Map Applications**

4           45.     Since the denial of the MDA, the City has stricken three sets of applications to  
5 develop three separate properties, also zoned RPD-7, comprising approximately 133 acres (the  
6 “133 Acres”).

7           46.     On or about October, 2017, 180 Land Company, LLC (“180 Land”) filed all  
8 applications required by the City for the purpose of obtaining approval on tentative maps pursuant  
9 to NRS 278 and LVMC Title 19 to utilize the existing vested R-PD7 zoning on the 133 Acres,  
10 (which was also part of the MDA for the 250 Acre Residential Zoned Land). The October 2017  
11 applications were identified as WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-  
12 72008; TMP-72009; WVR-72010; SDR-72011; and TMP-72012 (collectively “2017 Tentative  
13 Map Applications”). These October 2017 applications were distinct from the MDA.

14          47.     Shortly after the acceptance of the 2017 Tentative Map Applications by the City,  
15 the Planning Staff requested that 180 Land file a General Plan Amendment to accompany the 2017  
16 Tentative Map Applications. The City Planning Staff informed 180 Land that a General Plan  
17 Amendment was being “requested only,” and that it is not a requirement under City code.

18          48.     Under protest as being legally unnecessary, 180 Land accommodated the City’s  
19 request and filed a General Plan Amendment application to change the designation on the 133  
20 Acres from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential).  
21 The application was identified as GPA-72220 (“2017 GPA”).

22          49.     The 2017 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.

1           50.     The R-PD7 zoning on the 133 Acres takes precedence over the PR-OS General Plan  
2 Designation, per The Land Use & Preservation Elements of the Las Vegas 2020 Master Plan and  
3 per NRS 278.349(3)(e).

4           51.     The 2017 Tentative Map Applications and 2017 GPA were recommended for  
5 APPROVAL by the City Staff, and APPROVED by a vote of the Planning Commission.

6           52.     The 2017 GPA and the 2017 Tentative Map Applications were scheduled to be  
7 heard by the Las Vegas City Council ("City Council") on February 21, 2018.

8           53.     At the February 21, 2018, City Council hearing, 180 Land requested that  
9 Councilman Coffin and Councilman Seroka recuse themselves from participation on the matter  
10 based, amongst other things on bias, conflicts of interest, and their public statements that the 133  
11 Acres would never be developed. The request to recuse was denied.

12           54.     Although the 2017 Tentative Map Applications were on the agenda for a  
13 presentation and vote by the City Council, the City Council voted to abey the items to delay them  
14 several months, stating as the basis for the delay that one of the City Council seats was vacant and  
15 that Councilman Coffin was participating by phone from abroad. The stated reasons were baseless  
16 as the required quorum was present for the City Council to proceed with the applications at the  
17 February 21, 2018 hearing. 180 Land was denied the opportunity to be heard before the vote. The  
18 City Council vote resulted in an additional three (3) month delay to the hearing of the 2017  
19 Tentative Map Applications on the 133 Acres.

20           55.     After the vote resulting in abeyance, 180 Land stated on the record that it  
21 “vehemently opposed any kind of abeyance and continued delay of this matter” as the efforts to  
22 develop the 133 Acres had already been systematically delayed by the City for years and that 180  
23 Land wanted a “vote on these applications and due process and the ability for [the City Council]  
24 to hear the zoning facts.”

56. The City took no action on the Landowners' request and allowed the abeyance.

57. The abeyance resulted in the City Council delaying the hearing of the 2017 Tentative Map Applications on the 133 Acres for three (3) months, until May 16, 2018.

## The “Yohan Lowie” Bill

58. After the three month delay, on May 16, 2018, the day the 2017 Tentative Map Applications were scheduled to be heard on the 133 Acres, the City Council passed Bill No. 2018-5, the sole and singular intent of which was to prevent any development on the 133 Acres (and other properties that comprise the 250 Acre Residential Zoned Land – including the 65 Acres that is the subject of this complaint).

59. During the discussion of Bill No. 2018-5:

a. Councilman Coffin foreshadowed the City Council's plan for the 2017 Tentative Map Applications (scheduled to be heard in the City Council's afternoon session) when he admitted that if the bill were to apply to the 2017 Tentative Map Applications, it could be interpreted as having the effect of influencing the City Council's decision on them<sup>1</sup>.

b. Councilwoman Fiore stated her opinion that “*this Bill is for one development and one development only . . . [t]his Bill is only about Badlands Golf Course [which includes the 133 Acres– and the 65 Acres that is the subject of the*

<sup>1</sup> **Coffin:** Thank you, your Honor. I'm not the sponsor of the bill but I do want to weigh in as I have heard testimony. And thank you very much for conducting the recommending committee without me there Monday, I couldn't be there. Uh, and I do appreciate the fact. But I knew the bill pretty well and I know that it doesn't address the, uh, current, uh, topic du jour of a- of a certain, uh, golf course, in, uh, the western part of town.

That would be retroactive treatment and, uh, I don't see how we can draw a conclusion or a connection between a bill discussing the future, with something that's been in play for quite a long time. So I think we've got to separate those two out for one thing. One, if we were to connect these two then someone might interpret this action today as somehow influencing the discussion on Badlands and that is not what we want to do. We wanna keep it separate and keep it clean, and this bill has nothing to do with that as far as I'm concerned. Thank you very much, your honor.

1                    *pending complaint]. . . . I call it the Yohan Lowie [a principal of 180 Land]*  
2                    *Bill.*” (“Yohan Lowie Bill”)

3            60.     The City Council proceeded to vote to approve the Yohan Lowie Bill, refusing to  
4 allow 180 Land to be heard to make a record of its opposition to the bill/ordinance.

5            61.     Councilwoman Fiore and Mayor Goodman voted against the Yohan Lowie Bill and  
6 concurred with City Staff that the current policies relating to neighborhood engagement, which  
7 have been in place for many years, are effective and the Yohan Lowie Bill code revisions are  
8 unnecessary.

9                    **The 2017 Tentative Map Applications for the 133 Acres Are**  
10                   **Stricken From the City Council Agenda**

11            62.     Finally, seven (7) months after the filing, the 2017 Tentative Map Applications and  
12 legally irrelevant 2017 GPA for the 133 Acres were set on the afternoon agenda of the City Council  
13 hearing on May 16, 2018, the same day as the passing of the “Yohan Lowie Bill”.

14            63.     At the commencement of the afternoon session of the May 16, 2018 City Council  
15 hearing, Councilman Seroka made an unprecedented “motion to strike” the 2017 Tentative Map  
16 Applications from the agenda, in order to avoid the 2017 Tentative Map Applications from being  
17 presented and voted upon by the City Council, and to cause them to be subjected to the Yohan  
18 Lowie Bill when re-filed by 180 Land.

19            64.     The proffered bases of Councilman Seroka’s unprecedented motion to strike 180  
20 Land’s applications for the 133 Acres were “violations of Nevada law,” an assertion of which  
21 contradicted the positions and opinions of the City Staff, City Attorney, and prior formal actions  
22 of the City Council.

23            65.     During the discussion of the motion, Councilman Coffin usurped the  
24 responsibilities of the City Attorney by giving legal advice to the other City Councilmembers

1 stating that no advance notice is necessary for a procedural motion and that there was no need to  
2 have public comment on a motion to strike.

3 66. Based upon information and belief, other City Councilmembers were sandbagged  
4 and confused by the unprecedented and procedurally improper motion to strike 180 Land's  
5 applications to develop the 133 Acres. Specifically:

- 6 a. Councilwoman Fiore stated that *"none of us [on the City council] had a briefing*  
7 *on what just occurred"* and that *"it is quite shady and I don't see how we can*  
8 *even proceed"* and the actions were *"very shocking."*;  
9 b. Councilman Crear said he did not feel comfortable moving forward and did not  
10 know if he had enough information to move forward; and  
11 c. Councilman Anthony said *"95% of what Councilman Seroka just said, I heard*  
12 *it for the first time. I don't know what it means, I don't understand it."*

13 67. 180 Land's representative stated that just a few days earlier 180 Land's  
14 representative met with councilman Seroka and other members of the City Council to address any  
15 open issues related to the 2017 Tentative Map Applications for the 133 Acres and no mention was  
16 made of the "motion to strike" or issues related thereto. 180 Land's representative further  
17 explained that 180 Land has been being stonewalled in its efforts to develop its property for many  
18 years, and that despite full compliance with City code and City Staff requests, the City keeps  
19 changing the rules on the fly for the purpose of preventing development of the property.

20 **Seroka's Fiction #1**  
21 **'That A GPA Was Necessary Yet Time Barred' for the 133 Acres**

22 68. Councilman Seroka's first basis for the motion to strike the applications that would  
23 have allowed development of the 133 Acres was a legally fictitious claim ("Fiction #1") that 180  
24 Land's 2017 GPA was the same or similar to the 2016 GPA that was denied in June of 2017, and  
under the City Code the 2017 GPA could not be filed sooner than one year from the date of the

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1 denial of the 2016 GPA. This was a legal fiction, because 180 Land is not required to file a General  
2 Plan Amendment (“GPA”) in order to proceed under its existing R-PD7 zoning. 180 Land would  
3 only be required to file a GPA if it filed an application seeking to change the zoning from R-PD7  
4 to another zoning district classification.

5 69. At the May 16, 2018 hearing:

6 a. City Planning Staff advised the City Council that the 2017 GPA was filed by  
7 180 Land only at the City’s request and that 180 Land’s filing of the 2017 GPA  
8 was under protest as being legally unnecessary.

9 b. City Attorney Brad Jerbic and City Staff both stated on the record that a GPA  
10 was not required to be filed by 180 Land to have the Tentative Map  
11 Applications for the 133 Acres to be heard.

12 70. Under Nevada law, existing land use is governed by zoning, and only future land  
13 use (the changing of zoning) takes the general plan (also commonly referred to as a master plan)  
14 designation into consideration. A GPA is not required for the submission, consideration and  
15 approval of a tentative map application if the underlying zoning allows for the use delineated on  
16 the tentative map.

17 71. Whether or not the 2017 GPA was filed by 180 Land, nor heard, approved, or  
18 denied by the City Council, was irrelevant in all respects regarding the hearing of 180 Land’s 2017  
19 Tentative Map Applications on the 133 Acres.

20 72. NRS 278.349(3) unambiguously provides that: “The governing body, or planning  
21 commission if it is authorized to take final action on a tentative map, shall consider: (e) Conformity  
22 with the zoning ordinances and master plan, except that **if any existing zoning ordinance is**  
23 **inconsistent with the master plan, the zoning ordinance takes precedence;**”

73. The City took the following position in its Answering Brief filed in a petition for judicial review in Clark County District Court Case No. A-17-752344-J:

The Land Use & Neighborhood Preservation Element is significant, *inter alia*, because it plainly establishes the City’s land use hierarchy. The land use hierarchy progresses in the following *ascending order*: 2020 Master Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. *In the hierarchy, the land use designation is subordinate to the zoning designation*, for example, because land use designations indicate the intended use and development density for a particular area, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

74. The City Council's striking 180 Land's 2017 Tentative Map Applications to develop the 133 Acres from the City Council agenda due to the "PR-OS" master plan designation was a violation of Nevada law. Specifically, NRS 278.349(3)(e) which provides that the Property's R-PD7 residential zoning rights take precedence over an inconsistent master plan designation.

75. No general plan amendment was required to be filed by 180 Land in order to have the 2017 Tentative Map Applications heard and voted upon by the City Council.

76. The courtesy filing, under protest of the 2017 GPA by 180 Land, at the specific request (but not requirement) of City Planning Staff, was an improper and illegal basis for striking 180 Land's 2017 Tentative Map Applications.

**Seroka's Fiction #2**  
**'That a "Major Modification" To A Master Plan Is Required**  
**In Order To Proceed With the 2017 Tentative Map Applications for the 133 Acres**

77. Councilman Seroka's second basis for the motion to strike the 133 Acres applications was a legally fictitious claim ("Fiction #2") that a "major modification" application

1 to the conceptual Peccole Ranch Master Plan was required to be filed concurrently with the 2017  
2 Tentative Map Applications to develop the 133 Acres.

3 78. At the May 16, 2018 hearing City Attorney Brad Jerbic stated on the record that  
4 180 Land had a due process right to have its 2017 Tentative Map Applications heard that day.

5 79. In fact, the City Council, on January 3, 2018, had previously taken formal action  
6 on that exact issue, voting 4-2 that NO MAJOR MODIFICATION of the conceptual Peccole  
7 Ranch Master Plan was necessary in order for the City Council to hear the 2017 Tentative Map  
8 Applications.

9 80. The January 3, 2018 formal action that 180 Land was not required to file a “major  
10 modification” with the 2017 Tentative Map Applications was affirmed on January 17, 2018, when  
11 the City Council DENIED Councilman Coffin’s motion to rescind the January 3, 2018 NO  
12 MAJOR MODIFICATION vote.

13 81. Fiction #2 was illegal in that it was a violation of the formal action taken by the  
14 City Council on January 3, 2018 that NO MAJOR MODIFICATION was required, and on January  
15 17, 2018 denying a rescission of the NO MAJOR MODIFICATION vote.

16 82. Under Nevada law, existing zoning on a parcel supersedes any conflicting land use  
17 designations within the Las Vegas 2020 Master Plan, Land Use Elements, Land Use Designations,  
18 Master Development Plans (including the conceptual Peccole Ranch Master Plan), Master  
19 Development Plan Areas, and Special Area Plans, as such terms are used in the Las Vegas 2020  
20 Master Plan.

21 83. The City affirmed that zoning prevails over all other planning land use designations  
22 in its Answering Brief filed in a petition for judicial review in Clark County District Court Case  
23 No. A-17-752344-J.



1           84.     Notwithstanding its inapplicability with respect to development under existing  
2 zoning on a parcel, the conceptual Peccole Ranch Master Plan was repealed by Ordinance 5353 in  
3 2001.

4           85.     On May 16, 2018, despite having no basis in law, either substantively or  
5 procedurally, to strike 180 Land's applications for the 133 Acres, the City Council voted 5-2 in  
6 favor of striking the 2017 Tentative Map Applications, altogether conflicting with its prior formal  
7 actions to the contrary and preventing a hearing on the merits of 180 Land's 2017 Tentative Map  
8 Applications to develop the 133 Acres under its existing vested property right R-PD7 zoning.

9           86.     The motion to strike the 2017 Tentative Map Applications by the City Council was  
10 not supported by substantial evidence and was arbitrary and capricious. By striking the Tentative  
11 Map Applications, the City Council entirely prevented the applications to develop the 133 Acres  
12 from even being heard on the merits.

13           87.     Based on the City's actions, it is clear that the purpose of the February 21, 2018  
14 City Council abeyance was to allow Councilman Seroka time to put his "Yohan Lowie Bill" on  
15 the May 16, 2018 morning agenda, get it passed, and then improperly strike the applications for  
16 the 133 Acres causing them to fall under the Yohan Lowie Bill if they are re-filed in the future.

17           88.     Regardless of which route 180 Land took to develop the 133 Acres, the City gave  
18 180 Land specific instructions on which applications to file. Then, after accepting, processing and  
19 recommending 'approval' by both the City Planning Department and the City Planning  
20 Commission, the City Council extensively delayed the matter from being heard and ultimately and  
21 arbitrarily changed the requirements on the fly and improperly struck the applications preventing  
22 the applications from even being heard and voted upon.

23           89.     Based upon information and belief, the City was attempting to acquire the entire  
24 250 Acre Residential Zoned Land and took action to intentionally and artificially depress the value

1 of the 133 Acres (and the 65 Acres at issue in the pending complaint), or has publicly placed an  
2 arbitrarily low value on the Property, thereby showing the City's bad faith intent to manipulate the  
3 value of the entire 250 Acre Residential Zoned Land so that it can acquire it at a greatly reduced  
4 value.

5 90. The City's actions in denying and/or striking 180 Land's applications on the 133  
6 Acres has foreclosed all development of the 133 Acres in violation of 180 Land's vested right to  
7 develop the 133 Acres.

8 91. On or about May 17, 2018, Notices of Final Action were issued striking and  
9 preventing a hearing on GPA-7220; WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-  
10 72008; TMP-72009; WVR-72010; SDR-72011; TMP-72012.

11 92. The City's actions in entirely preventing any development of the 133 Acres further  
12 establishes that the City will not allow any part of the 65 Acres to be developed and any further  
13 requests to develop are futile.

#### 14 **THE 35 ACRE PROPERTY DENIALS**

15 93. A 35 Acre Property is also one of the properties that comprise the 250 Acre  
16 Residential Zoned Land and individual applications to develop the 35 Acre Property have also  
17 been summarily denied by the City.

18 94. 180 Land also filed all applications required by the City for the purpose of obtaining  
19 approval on tentative maps pursuant to NRS 278 to utilize the existing vested R-PD7 zoning on  
20 the 35 Acre Property, (which was also part of the MDA for the 250 Acre Residential Zoned Land).  
21 These applications were separate from the MDA for the 250 Acre Residential Zoned Land.

22 95. While an application for a General Plan Amendment was filed by 180 Land relating  
23 to the larger 250 Residential Zoned Land, being application number, GPA-68385; additional  
24 applications were filed by 180 Land with the City that related more particularly to the 35 Acre

1 Property, being Assessor's Parcel Number 138-31-201-005. Those zoning applications pertaining  
2 to the 35 Acre Property were application numbers WVR-68480; SDR-68481 and TMP-68482.

3 96. At all relevant times herein, 180 Land had the vested right to use and develop the  
4 35 Acre Property, at a density of up to 7.49 residential units per acre, subject to comparability and  
5 compatibility adjacency standards.

6 97. This vested right to use and develop the 35 Acre Property, was confirmed by the  
7 City in writing prior to 180 Land's acquisition of the 35 Acre Property and 180 Land materially  
8 relied upon the City's confirmation regarding the Property's vested zoning rights.

9 98. 180 Land's vested property rights in the 35 Acre Property is recognized under the  
10 United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

11 99. Although the 35 Acre Property showed the General Plan Designation of PR-OS  
12 (Parks/Recreation/Open Space), that Designation was placed on the 35 Acre Property by the City  
13 without the City having followed its own proper notice requirements or procedures. Therefore,  
14 the General Plan Designation of PR-OS was shown on the property in error.

15 100. On or about December 29, 2016, and at the suggestion of the City, The Landowners  
16 filed with the City an application for a General Plan Amendment to change the General Plan  
17 Designation on the 250 Acre Residential Zoned Land (including the 35 Acre Property) from PR-  
18 OS (Parks/Recreation/Open Space) to L (Low Density Residential) and the application was given  
19 number GPA-68385 ("GPA-68385").

20 101. This proposed General Plan Designation of "L" allows densities less than the  
21 corresponding General Plan Designation on the Property prior to the time the PR-OS designation  
22 was improperly placed on the Property by the City.

1           102. As noted, while the General Plan Amendment application (GPA-68385) related to  
2 the property, the balance of the applications filed with the City related specifically to the proposed  
3 development of sixty one (61) residential lots on the 35 Acre Property.

4           103. The development proposal for the 35 Acre Property was at all times comparable to  
5 and compatible with the existing adjacent and nearby residential development as the proposed  
6 development was significantly less dense than surrounding development with average lot sizes of  
7 one half (1/2) of an acre amounting to density of 1.79 units per acre. The adjacent Queensridge  
8 common interest community density is approximately 3.48 units per acre. To the north of the 35  
9 Acre Property are existing residences developed on lots generally ranging in size from one quarter  
10 (1/4) of an acre to one third (1/3) of an acre. In the center of the 35 Acre Property, are existing  
11 residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one  
12 third (1/3) of an acre. To the south of the 35 Acre Property are existing residences developed on  
13 lots generally ranging in size from three quarters (3/4) of an acre to one and one quarter (1¼) acre.

14           104. The applications to develop the 35 Acre Property met every single City Staff  
15 request and every single applicable City of Las Vegas Municipal Code section and Nevada Revised  
16 Statute.

17           105. The Planning Staff for the City's Planning Department ("Planning Staff") reviewed  
18 GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval  
19 for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No  
20 Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning" relating  
21 to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of  
22 GPA-68385 as "Approval."

1           106. On February 14, 2017, the City of Las Vegas Planning Commission ("Planning  
2 Commission") conducted a public hearing on GPA-68385, WVR-68480, SDR-68481, and TMP-  
3 68482.

4           107. After considering 180 Land's comments, and those of the public, the Planning  
5 Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's  
6 conditions.

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

10           109. On June 21, 2017, the City Council heard WVR-68480, SDR-68481, TMP-68482  
11 and GPA-68385.

12           110. In conjunction with this City Council public hearing, the Planning Staff, in  
13 continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482 for the 35 Acre  
14 Property, noted **"the adjacent developments are designated ML (Medium Low Density  
15 Residential) with a density cap of 8.49 dwelling units per acre. The proposed development  
16 would have a density of 1.79 dwelling units per acre...Compared with the densities and  
17 General Plan designations of the adjacent residential development, the proposed L (Low  
18 Density Residential) designation is less dense and therefore appropriate for this area, capped  
19 at 5.49 units per acre."** (emphasis supplied).

20           111. The Planning Staff found the density of the proposed General Plan for the 35 Acre  
21 Property compatible with the existing adjacent land use designation, found the zoning designations  
22 compatible, and found that the filed applications conform to other applicable adopted plans and  
23 policies that include approved neighborhood plans.

1           112.    At the June 21, 2017 City Council hearing, 180 Land addressed the concerns of the  
2 individuals speaking in opposition to the 35 Acre Property development, and provided substantial  
3 evidence, through the introduction of documents and through testimony, of expert witnesses and  
4 others, rebutting each and every opposition claim.

5           113.    Included as part of the evidence presented by 180 Land at the June 21, 2017 City  
6 Council hearing for the 35 Acre Property applications, 180 Land introduced evidence, among other  
7 things, (i) that representatives of the City had specifically noted in both City public hearings and  
8 in public neighborhood meetings, that the standard for appropriate development based on the  
9 existing R-PD7 zoning on the 35 Acre Property would be whether the proposed lot sizes were  
10 compatible with and comparable to the lot sizes of the existing, adjoining residences; (ii) that the  
11 proposed lot sizes for the 35 Acre Property were compatible with and comparable to the lot sizes  
12 of the existing residences adjoining the lots proposed in the 35 Acres; (iii) that the density of 1.79  
13 units per acre provided for in the 35 Acre Property was less than the density of those already  
14 existing residences adjoining the 35 Acre Property; and (iv) that both Planning Staff and the  
15 Planning Commission recommended approval of WVR-68480, SDR-68481 and TMP-68482, all  
16 of which applications pertain to the proposed development of the 35 Acre Property.

17           114.    Any public statements made in opposition to the various 35 Acre Property  
18 applications were either conjecture or opinions unsupported by facts; all of which public  
19 statements were either rebutted by findings as set forth in the Planning Staff report or through  
20 statements made by various City representatives at the time of the City Council public hearing or  
21 through evidence submitted by 180 Land at the time of the public hearing.

22           115.    Despite the fact that the applications to develop the 35 Acre Property met every  
23 single City Staff request and every single applicable City of Las Vegas Municipal Code section  
24 and Nevada Revised Statute, despite Staff recommendation of approval and the recommendation

1 of approval from the Planning Commission, despite the substantial evidence offered by 180 Land  
2 in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385, and despite the fact that  
3 no substantial evidence was offered in opposition, the City Council denied WVR-68480, SDR-  
4 68481, TMP-68482 and GPA-68385 for the 35 Acre Property.

5 116. The City Council's stated reason for the denial was its desire to see, not just the 35  
6 Acre Property, but the entire 250 Acre Residential Zoned Land, developed under one master  
7 development agreement which would include many other parcels of property that were legally  
8 subdivided and separate and apart from the 35 Acre Property.

9 117. At the City Council hearing considering and ultimately denying WVR-68480,  
10 SDR-68481, TMP-68482 and GPA-68385 for the 35 Acre Property, the City Council advised 180  
11 Land that the only way the City Council would allow development on the 35 Acre Property was  
12 under a master development agreement (MDA) for the entirety of the 250 Acre Residential Zoned  
13 Land. This is the same MDA that is referenced in the above allegations 39 through 44.

14 118. At the time the City Council was considering WVR-68480, SDR-68481, TMP-  
15 68482 and GPA-68385, that would allow the 35 Acre Property to be developed, the City Council  
16 stated that the approval of the MDA is "very, very close" and "we are going to get there [approval  
17 of the MDA]." The City Council was referring to the next public hearing wherein the MDA for  
18 the entire 250 Acre Residential Zoned Land would be voted on by the City Council.

19 119. The City Attorney stated that "if anybody has a list of things that should be in this  
20 agreement [MDA], but are not, I say these words speak now or forever hold your peace, because  
21 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  
22 to get it in. . . . This is where I have to use my skills and say enough is enough and that's why I  
23 said tonight 'speak now or forever hold your peace.' If somebody comes to me with an issue that  
24 they should have come to me with months ago I'm gonna ignore them 'cause that's just not fair

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

3 120. On August 2, 2017, less than two months after the City Council said it was "very,  
4 very close" to approving the MDA for the 250 Acre Residential Zoned Land, the City Council  
5 voted to deny the MDA altogether.

6 121. The City's actions in denying the Landowners' tentative map (TMP-68482), WVR-  
7 68480, SDR-68481 and GPA-68385 and then denial of the MDA for the entire 250 Acre  
8 Residential Zoned Land foreclosed all development of the 35 Acre Property in violation of 180  
9 Land's vested right to develop the 35 Acre Property and the denial by the City Council was not  
10 supported by substantial evidence and was arbitrary and capricious.

11 122. On or about June 28, 2017, Notices of Final Action were issued by the City for  
12 WVR-68480, SDR-68481, TMP-68482 and GPA-68385 stating that all applications to develop  
13 the 35 Acre Property had been denied.

14 123. The City's actions directed at entirely preventing any development of the 35 Acre  
15 Property further establishes that the City will not allow any part of the 250 Acre Residential Zoned  
16 Land, including the 65 Acres, to be developed and that any further requests to develop are futile.

17 **OTHER ACTIONS DEMONSTRATING THAT THE CITY WILL NOT ALLOW**  
18 **DEVELOPMENT OF ANY PART OF THE 65 ACRES (A TAKING) AND THAT IT IS**  
19 **FUTILE TO SEEK FURTHER DEVELOPMENT APPLICATIONS FROM THE CITY**

20 124. In addition to the actions taken by the City directed at the 250 Acre Residential  
21 Zoned Land by way of the MDA, the actions directed at the 133 Acres, and the actions directed at  
22 the 35 Acre Property, as set forth above, the City has taken other actions that also firmly establish  
23 that the City will not allow any development of the 65 Acres, amounting to a taking, and it is futile  
24



1 to seek further development applications from the City as the City will never allow the Landowners  
2 to develop the 65 Acres.

3 125. One member of the City Council ran a political campaign for the City Council, prior  
4 to being elected to the City Council, that development will not be allowed on the 65 Acres and/or  
5 the 65 Acres should be taken by eminent domain to prevent development.

6 126. The City has refused to approve a standard application to place a fence around  
7 certain areas of the 250 Acre Residential Zoned Land, including ponds on the Property, that were  
8 requested for security and safety reasons.

9 127. The City has refused to issue Trespass Complaints against the numerous and  
10 continuous trespassers even though police reports have been filed.

11 128. The City has refused to allow the construction of an access gate directly to the  
12 Landowners' Property from existing City streets for which the Landowners have a special right of  
13 access under Nevada law.

14 129. The City is even proposing an ordinance that: forces the Landowners to water all  
15 grass areas in the 250 Acre Residential Zoned Land, even though a golf course has not been  
16 operated on the property since December 1, 2016, and would now be illegal as a "non-conforming  
17 use" under Title 19; retroactively removes the Landowners' vested hard zoning and requires the  
18 Landowners to submit to a City application process and comply with development requirements  
19 that are vague and ambiguous, incredibly uneconomical, financially impossible, time consuming  
20 and impossible to meet; and imposes a conscious shocking retroactive \$1,000 fine per day on the  
21 Landowners' property (without any factual or legal basis whatsoever).

22 130. The purpose of this new Bill proposed by the City is to create an expense without  
23 income on the Property and a development process that is so financially infeasible and timely that  
24 it renders the Property entirely unusable and valueless.

1           131. Based upon information and belief, the sole and express intent of these City actions  
2 is to enable the City to acquire the 250 Acre Residential Zoned Land for pennies on the dollar, and  
3 the City has sought the funds to accomplish this purpose.

4           132. Accordingly, it would be futile to submit any further applications with the City of  
5 Las Vegas to seek development of the 65 Acres.

6           133. It is clear that no development on the 65 Acres will ever be approved by the City.  
7 Therefore, the extent of the permitted development on the 65 Acres is known and final.

8           134. The City has forced the Landowners to leave the 65 Acres in a vacant and  
9 undeveloped condition for public use and the public is using the property.

10                           **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

11           135. The Landowners repeat, re-allege and incorporate by reference all paragraphs  
12 included in this pleading as if set forth in full herein.

13           136. As a result of the PR-OS being improperly placed on the 65 Acres, and the City  
14 Council's action in denying the Landowners' zoning rights as a result of such designation, there is  
15 uncertainty as to the validity of the PR-OS and its application to the 65 Acres (although the  
16 Landowners deny that the PR-OS applies to the 65 Acres).

17           137. Declaratory relief is necessary to terminate or resolve the uncertainty.

18           138. Declaratory relief is permitted under Nevada law, including but not limited to NRS  
19 Chapter 30.

20           139. Therefore, the Landowners request that this Court immediately enter an order  
21 finding the PR-OS designation on the 65 Acres is invalid and/or of no effect on the 65 Acres' R-  
22 PD7 zoning rights, thereby prohibiting the City or any other person, agency, or entity from  
23 applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing  
24 zoning and to the 65 Acres entirely.

1                   **SECOND CAUSE OF ACTION FOR PRELIMINARY INJUNCTION**

2           140.   The Landowners repeat, re-allege, and incorporate by reference all paragraphs  
3 included in this pleading as if set forth in full herein.

4           141.   Any action that placed a designation of PR-OS on the 65 Acres was without legal  
5 authority and, therefore, entirely invalid.

6           142.   There is a reasonable and strong likelihood of success on the merits which will  
7 invalidate the improper PR-OS designation on the 65 Acres.

8           143.   Continued application of the PR-OS designation on the 65 Acres will result in  
9 irreparable harm and cause a significant hardship on the Landowners as: 1) the 65 Acres is legally  
10 recognized real property and is unique in the State of Nevada; 2) the PR-OS designation on the 65  
11 Acres may prevent the Landowners from using the 65 Acres for any beneficial use; 3) the  
12 Landowners rely upon the acquisition and development of property, including the 65 Acres, to  
13 provide a livelihood for numerous individuals and continued application of the PR-OS to prevent  
14 development of the 65 Acres will interfere with the livelihood of these individuals; 4) under NRS  
15 278.349(3)(e) the PR-OS zoning has no applicability with respect to the existing R-PD7 zoning on  
16 the 65 Acres; and, 5) allowing the development of the 65 Acres will result in significant financial  
17 benefit to the City, including but not limited to increasing the City tax base and creating additional  
18 jobs for its citizens.

19           144.   There is no plain, adequate or speedy remedy at law.

20           145.   Therefore, the Landowners are entitled to injunctive relief prohibiting the City or  
21 any other person, agency, or entity from applying the PR-OS to any application, land use decision,  
22 or otherwise, relating to the 65 Acres's existing zoning and/or to the 65 Acres entirely.

1                                   **THIRD CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

2                                   **(Categorical Taking)**

3           146.   The Landowners repeat, re-allege and incorporate by reference all paragraphs  
4 included in this pleading as if set forth in full herein.

5           147.   The Landowners have vested rights to use and develop the 65 Acres.

6           148.   The City reached a final decision that it will not allow development of the  
7 Landowners' 65 Acres.

8           149.   Any further requests to the City to develop the 65 Acres would be futile.

9           150.   The City's actions in this case have resulted in a direct appropriation of the  
10 Landowners' 65 Acres by entirely prohibiting the Landowners from using the 65 Acres for any  
11 purpose and reserving the 65 Acres as undeveloped/open space.

12          151.   As a result of the City's actions, the Landowners have been unable to develop the  
13 65 Acres and any and all value in the 65 Acres has been entirely eliminated.

14          152.   The City's actions have completely deprived the Landowners of all economically  
15 beneficial use of the 65 Acres.

16          153.   The City's actions have resulted in a direct and substantial impact on the  
17 Landowners and on the 65 Acres.

18          154.   The City's actions result in a categorical taking of the Landowners' 65 Acres.

19          155.   The City has not paid just compensation to the Landowners for this taking of their  
20 65 Acres

21          156.   The City's failure to pay just compensation to the Landowners for the taking of  
22 their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and  
23 the Nevada Revised Statutes, which require the payment of just compensation when private  
24 property is taken for a public use.

1           157.   Therefore, the Landowners are compelled to bring this cause of action for the taking  
2 of the 65 Acres to recover just compensation for property the City has taken without payment of  
3 just compensation.

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

5                           **FOURTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

6                                   **(Penn Central Regulatory Taking)**

7           159.   The Landowners repeat, re-allege and incorporate by reference all paragraphs  
8 included in this pleading as if set forth in full herein.

9           160.   The Landowners have vested rights to use and develop the 65 Acres.

10          161.   The City reached a final decision that it will not allow development of the  
11 Landowners' 65 Acres.

12          162.   Any further requests to the City to develop the 65 Acres would be futile.

13          163.   The City also stated that it would only allow the Landowners to develop the 65  
14 Acres as part of the MDA, referenced above. The Landowners worked on the MDA for nearly  
15 two years, with numerous City-imposed and/or City requested abeyances and with the City's direct  
16 and active involvement in the drafting and preparing the MDA and the City's statements that it  
17 would approve the MDA and despite nearly two years of working on the MDA, on or about August  
18 2, 2017, the City denied the MDA.

19          164.   The City's actions have caused a direct and substantial economic impact on the  
20 Landowners, including but not limited to preventing development of the 65 Acres.

21          165.   The City was expressly advised of the economic impact the City's actions were  
22 having on the Landowners.

23          166.   At all relevant times herein the Landowners had specific and distinct investment  
24 backed expectations to develop the 65 Acres.

1           167. These investment backed expectations are further supported by the fact that the  
2 City, itself, confirmed the Property has vested R-PD7 development rights prior to the Landowners  
3 acquiring the 65 Acres.

4           168. The City was expressly advised of the Landowners' investment backed  
5 expectations prior to denying the Landowners the use of the 65 Acres.

6           169. The City's actions are preserving the 65 Acres as open space for a public use and  
7 the public is physically entering on and actively using the 65 Acres.

8           170. The City's actions have resulted in the loss of the Landowners' investment backed  
9 expectations in the 65 Acres.

10           171. The character of the City action to deny the Landowners' use of the 65 Acres is  
11 arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to  
12 a physical acquisition than adjusting the benefits and burdens of economic life to promote the  
13 common good.

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

15           173. The City has not paid just compensation to the Landowners for this taking of its 65  
16 Acres.

17           174. The City's failure to pay just compensation to Landowners for the taking of their  
18 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the  
19 Nevada Revised Statutes, which require the payment of just compensation when private property  
20 is taken for a public use.

21           175. Therefore, Landowners are compelled to bring this cause of action for the taking of  
22 the 65 Acres to recover just compensation for property the City has taken without payment of just  
23 compensation.

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

1 **FIFTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

2 **(Regulatory Per Se Taking)**

3 177. The Landowners repeat, re-allege and incorporate by reference all paragraphs  
4 included in this pleading as if set forth in full herein.

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

8 179. The City's actions exclude the Landowners from using the 65 Acres and, instead,  
9 permanently reserve the 65 Acres for a public use and the public is physically entering on and  
10 actively using the 65 Acres.

11 180. The City's actions have shown an unconditional and permanent taking of the 65  
12 Acres.

13 181. The City has not paid just compensation to the Landowners for this taking of their  
14 65 Acres.

15 182. The City's failure to pay just compensation to the Landowners for the taking of  
16 their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and  
17 the Nevada Revised Statutes, which require the payment of just compensation when private  
18 property is taken for a public use.

19 183. Therefore, the Landowners are compelled to bring this cause of action for the taking  
20 of the 65 Acres to recover just compensation for property the City has taken without payment of  
21 just compensation.

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

23 //

24 //

**SIXTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

**(Nonregulatory Taking)**

185. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

186. The City actions directly and substantially interfere with the Landowners' vested property rights rendering the 65 Acres unusable and/or valueless.

187. The City has intentionally delayed approval of development on the 65 Acres and, ultimately, struck or denied any and all development in a bad faith effort to preclude any use of the 65 Acres and/or to purchase the 65 Acres at a depressed value.

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

189. The City's actions result in a nonregulatory taking of the Landowners' 65 Acres.

190. The City has not paid just compensation to the Landowners for this taking of their 65 Acres.

191. The City's failure to pay just compensation to the Landowners for the taking of their 65 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.

192. Therefore, that Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

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1                                   **SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION**

2   **(Temporary Taking)**

3           194.   The Landowners repeat, re-allege and incorporate by reference all paragraphs  
4 included in this pleading as if set forth in full herein.

5           195.   If there is subsequent City Action or a finding by the Nevada Supreme Court, or  
6 otherwise, that the Landowners may develop the 65 Acres, then there has been a temporary taking  
7 of the Landowners' 65 Acres for which just compensation must be paid.

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

9           197.   The City failure to pay just compensation to the Landowners for the taking of their  
10 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the  
11 Nevada Revised Statutes, which require the payment of just compensation when private property  
12 is taken for a public use.

13          198.   Therefore, the Landowners are compelled to bring this cause of action for the taking  
14 of the 65 Acres to recover just compensation for property the City has taken without payment of  
15 just compensation.

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

17   **EIGHTH CLAIM FOR VIOLATION OF**

18   **THE LANDOWNERS' DUE PROCESS RIGHTS**

19          200.   The Landowners repeat, re-allege and incorporate by reference all paragraphs  
20 included in this pleading as if set forth in full herein.

21          201.   The City action in this case retroactively and without due process transformed the  
22 Landowners' vested property right to a property without any value.

23          202.   The City action in this case was taken without proper notice to the Landowners.  
24

203. This City action to eliminate or substantially change the Landowners' vested and established property rights, had the effect of depriving the Landowners of their legitimate constitutionally protected property rights.

204. This City action was arbitrary and/or irrational and unrelated to any legitimate governmental objective or purpose.

205. This is a violation of the Landowners' substantive and procedural due process rights under the United States and Nevada State Constitutions.

206. This City action mandates payment of just compensation as stated herein.

207. The City action should be invalidated to return the Landowners' property rights to the Landowners thereby allowing development of the 65 Acres.

208. This requested relief is in excess of fifteen thousand dollars (\$15,000.00).

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Landowners pray for judgment as follows:

1. Declaratory judgment with this Court immediately entering an order finding the PR-OS designation on the 65 Acres is invalid and of no effect on the 65 Acres and prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use application, decision, or otherwise, relating to the property's existing vested zoning and to the Landowners' property entirely;

2. Injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the property's existing zoning and to the 65 Acres entirely;

3. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of the Landowners' property by inverse condemnation;

1           4.       Prejudgment interest commencing from the date the City first froze the use of the  
2 65 Acres which is prior to the filing of this Complaint in Inverse Condemnation;

3           5.       Invalidation of the City action, returning the vested property rights to the  
4 Landowners thereby allowing development of the 65 Acres;

5           6.       A preferential trial setting pursuant to NRS 37.055;

6           7.       Payment for all costs incurred in attempting to develop the 65 Acres;

7           8.       For an award of attorneys' fees and costs incurred in and for this action; and/or,

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

10                 DATED this 27<sup>th</sup> day of August, 2018.

11  
12                                 **LAW OFFICES OF KERMITT L. WATERS**

13                                 BY:    /s/ Kermit L. Waters  
14   KERMITT L. WATERS, ESQ.  
  Nevada Bar. No.2571  
15   JAMES J. LEAVITT, ESQ.  
  Nevada Bar No. 6032  
16   MICHAEL SCHNEIDER, ESQ.  
  Nevada Bar No. 8887  
17   AUTUMN WATERS, ESQ.  
  Nevada Bar No. 8917

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VERIFICATION

STATE OF NEVADA       )  
                                  ):SS  
COUNTY OF CLARK       )

Vickie DeHart, on behalf of the Landowners, being first duly sworn, upon oath, deposes and says: that he/she has read the foregoing **COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, AND 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/her knowledge.

  
Vickie DeHart

SUBSCRIBED and SWORN to before me  
This 27<sup>th</sup> day of August, 2018.

  
NOTARY PUBLIC

