IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

No. 84345

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

JOINT APPENDIX, VOLUME NO. 52

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **APPENDIX OF EXHIBITS IN SUPPORT OF CITY OF LAS VEGAS' RULE 56(d) MOTION ON ORDER SHORTENING TIME**

Defendant City of Las Vegas hereby submits this Appendix of Exhibits in Support of its Rule 56(d) Motion on Order Shortening Time.

Exhibit	Exhibit Description	Bates No.
A	Declaration of George F. Ogilvie III, Esq.	001-004
B	Membership Interest Purchase and Sale Agreement	005-021
C	Plaintiff Landowners' Twentieth Supplement to Initial Disclosures	022-036
D	The City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculations and Related Documents on Order Shortening Time	037-066

Exhibit	Exhibit Description	Bates No.
E	Order Granting in Part and Denying in Part Defendant City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculations and Related Documents	067-075
F	Reporter's Transcript of Hearing- November 17, 2020 (Excerpts)	076-090
G	Letter to Developer's Counsel dated April 1, 2021	091-092
H	City of Las Vegas' Motion for Reconsideration of Order Granting in Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents	093-106
I	Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	107-144
J	Valbridge Property Advisors Appraisal Report (Excerpts)	145-146
K	Plaintiffs' Opposition to Defendant City of Las Vegas' Motion to Compel Discovery Responses and Damages Calculations	147-158

Dated this 6th day of April, 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 8th day of April, 2021, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF CITY OF LAS VEGAS' RULE 56(d) MOTION ON ORDER SHORTENING TIME** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification, and as referenced below to the following:

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EXHIBIT “A”

DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF RULE 56(d) MOTION ON ORDER SHORTENING TIME

I, GEORGE F. OGILVIE III, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner in the law firm of McDonald Carano LLP. I am co-counsel for Defendant City of Las Vegas (the "City") in Case No. A-17-758528-J. I am over the age of 18 years and a resident of Clark County, Nevada.

2. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

3. I make this declaration in support of the City's Motion Pursuant to Rule 56(d) on Order Shortening Time.

4. On March 26, 2021, the Developer filed a Motion to Determine Take and for Summary Judgement on the First, Third, and Fourth Claims for Relief (the "MSJ").

5. The MSJ is premature. Discovery in this matter is nowhere close to being complete despite the City's efforts to conduct the discovery needed to prepare its case.

6. The MSJ affords the City just two weeks to file an opposition, and asking the Court to rule on the merits of this case without resolution of the pending discovery disputes and necessarily denying the City further discovery, including a deposition of the Developer's principal, that the City has, for more than a year, indicated it required to prepare a defense.

7. The City has been diligent in pursuing discovery in this case. However, the Developer has refused to respond to the City's discovery requests in good faith. The City served its First Set of Requests For Production of Documents on 180 Land ("First Set of Requests") and First Set of Interrogatories ("First Interrogatories") on July 2, 2019. The Developer refused to produce the purchase and sale agreement through which the Developer acquired the Badlands Property for more than a year after the City served the First Set of Requests.

8. After finally producing the purchase agreement, the Developer refused to amend its interrogatory response claiming that the Developer $45 million to acquire the Badlands Property.

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Then the Developer refused to produce documents to support its claim that it paid $45 million to acquire the property. These discovery abuses are brief extensively in the City's Motion to Compel Discovery Responses, Documents and Damages Calculations and Related Documents filed on October 22, 2020 (the "Motion to Compel").

9. The Court's Order Granting in Part and Denying In Part the City's Motion to Compel ("February 24 Order") required the Developer to produce all documents related to its claim that it paid $45 million for the Badlands Property.

10. Despite the representations made by the Developer's counsel during the hearing on the Motion to Compel, the documents the Developer produced pursuant to the February 24 Order relate exclusively to just one transaction that occurred in 2005 involving Queensridge Towers, Tivoli Village, and Hualapai Commons. None of the produced documents refer to any transactions from before or after 2005. The Developer did not comply with the February 24 Order based on a comparison of the documents and the representations made by the Developer's counsel during the hearing on the Motion to Compel.

11. Despite failing to comply with the February 24 Order and despite the fact that the February 24 Order expressly states that the City is entitled to the documents before taking the Yohan Lowie's deposition, the Developer submitted two declarations in support of the MSJ made by Yohan Lowie.

12. On April 1, 2021, I sent a letter to the Developer's counsel reminding the Developer that the City is entitled to all documents related to the Developer's claim that it paid $45 million for the Badlands Property before taking Mr. Lowie's deposition. The City is not able to prepare a response to claims made in Mr. Lowie's declarations without reviewing the documents that allegedly support those claims and taking Mr. Lowie's deposition.

13. The City also needs discovery of matters addressed in the Motion to Compel but on which the February 24 Order denied discovery, including but not limited to communications with Chris Kaempfer. The Developer's refusal to produce these communications is one of several issues addressed in the City's pending motion for reconsideration. Other issues addressed in the motion for reconsideration that are directly relevant to the City's opposition to the MSJ include the

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Developer's refusal to produce communications with its lenders, communications between the Developer's principals, and communications with the Peccole family regarding the purchase price for the Badlands.

14. The City also needs to conduct a site inspection to gather evidence necessary to oppose the MSJ and the evidence attached to the Affidavit of Donald Richards, who is apparently the superintendent of the Badlands property. The Developer failed to identify Mr. Richards in its NRCP 16.1 disclosures, and the City had never even heard of Mr. Richards until the Developer filed the MSJ. The evidence attached to Mr. Richards' affidavit includes photos purportedly depicting the 35-acre parcel. The City's preliminary review of these photos leads the City to believe that many of them do not depict the 35-acre property. In fact, a substantial number of photos appear to have been taken on the 17-Acre Property, where the City approved the Developer's 435-luxury condominium project. A site inspection will allow the City to confirm. A site inspection is also necessary to rebut the Developer's claim that the City took actions to deny the Developer access to the Badlands Property and to gather evidence to demonstrate that the existing access was sufficient The City was forced to cancel a site inspection previously scheduled for March 31, 2020 because of the outbreak of the COVID-19 pandemic. The City intends to reschedule the site visit as soon as it is safe to do so.

15. The amount the Developer paid for the Badlands property is not the only issue for which Mr. Lowie's deposition is needed in order for the City to prepare its opposition to the MSJ. Mr. Lowie's declarations contain several claims about other transactions with the Peccole family, the feasibility of running the golf course, and the proposals for redeveloping the Badlands Property. However, the Developer refused to produce any communications with the Peccole family from before 2014.

16. The Developer has also claimed that it has no records related to the operation of the golf course. No evidence has been produced to support the Developer's claim that the golf course could not be operated profitably, such as the number of tee times booked, the green fees charged, overall operating costs, etc. The Developer has the burden of proving that the golf course was not profitable, and the City is entitled to discovery regarding this issue whether or not the Developer

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contracted with third parties to operate the course.

17. The Developer is relying on a declaration made by Chris Kaempfer to support the Developer's arguments regarding R-PD7 zoning. Contrary to the Developer's arguments, Chris Kaempfer is quoted as saying the opposite in an appraisal conducted in 2015 when the Developer acquired by the Badlands property. The City's motion for reconsideration asks the Court to reconsider the February 24 Order to compel the Developer to produce communications with Mr. Kaempfer or at least produce a privilege log.

18. The City attempted to meet and confer with the Developer on three separate occasions regarding the Developer's refusal to produce communications with Mr. Kaempfer and its other land use consultants. The Developer initially indicated that it would produce a privilege log for these communications but later changed its position.

19. It is necessary for the City to bring this Motion with a request for an Order Shortening Time pursuant to EDCR 2.26 because the City should not be forced to file an opposition to the MSJ without an opportunity to marshal facts essential to the opposition. The purpose of this Motion would be defeated if it were heard in the ordinary course. This Motion is not brought for purposes of delay.

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

Executed this 6th day of March 2021.

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

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EXHIBIT “B”

MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

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

RECITALS

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

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

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

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

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

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

SECTION 1
Definitions.

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

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

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

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

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

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

(a) Initial Deposit. THREE HUNDRED THOUSAND DOLLARS AND N0/100 CENTS ($300,000.00) as an earnest money deposit (the "Deposit"), by wire transfer to the following account designated by and controlled by PNC for the benefit of the Seller.

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

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

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

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

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

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

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

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

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

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

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

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

i. 5.9 The Golf Course Lease.

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

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

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

2.02 Prorations.

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

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

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

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

(a) Closing Deliveries by Seller:

(i) Good Standing Certificate and a copy of the filed Articles of Organization for Fore Stars;

(ii) executed resignations by PNC as the duly appointed Manager for Fore Stars;

(iii) amendment to annual list to be filed with the Nevada Secretary of State for Fore Stars to replace PNC as the Manager with a designee of the Purchaser;

(iv) executed documents (if any) and if not previously delivered showing the sale of the Securities in Fore Stars to the Purchaser that may be required to maintain the Liquor License issued by the City of Las Vegas, Nevada;

(v) a License Agreement issued by an affiliate of the Seller for Purchaser to have the right to use the mark "Queensridge" in accordance with the terms and conditions set forth therein (the "Trademark License Agreement"); and

(vi) such other documents as are reasonable or necessary to consummate the transactions contemplated by this Agreement.

(b) Closing Deliveries by Purchaser:

(i) the balance of the Purchase Price;

(ii) an executed Trademark License Agreement; and

(iii) all other documents required to be executed by Purchaser pursuant to the terms of this Agreement.

SECTION 3
REPRESENTATIONS AND WARRANTIES; COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Fore Stars does not have any employees.

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

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

SECTION 4
TAX MATTERS

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

SECTION 5
ARBITRATION

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

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

SECTION 6
BROKERAGE FEES

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

SECTION 7
PURCHASER'S INDEMNIFICATION

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

SECTION 8
NOTICES

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

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

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

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

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

SECTION 9
MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

SELLER:

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

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

William Bayne, Vice President

PURCHASER:

RAMALTA LLC
a Nevada limited liability company

Yohan Lowie, Manager

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

Executive Home Builders, Inc.
a Nevada corporation

Frank Pankratz, President

EXHIBIT "A"

REAL PROPERTY LEGAL DESCRIPTION

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

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

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

Also that certain parcel of land described as follows:

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

Beginning at the most westerly corner of said Lot Four (4); thence South 50°26'37' East a distance of 26.46 feet; thence North 29°03'33" West a distance of 28.42 feet; thence South 39°33'23" West a distance of 10.36 feet to the point of beginning.

Excepting therefrom that certain parcel of land described as follows:

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

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

thence Northwesterly 79.44 feet along a curve concave Southwest having a central angle of 5°59'20" with a radius of 760.00 feet to the point of beginning.

Also that certain parcel of land described as follows:

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

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

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

Excepting therefrom that portion of Lot 5 of Amended Peccole West as shown by map thereof on file in Book 83, Page 57 of Plats, in the Clark county Recorder's Office, Clark County, Nevada, lying within the Southwest Quarter (SW ¼) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, and described as follows:

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

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

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

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

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

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

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

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

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

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

BEING A PORTION OF THE WEST HALF (Wl/2) OF SECTION 32,TOWNSHIP 20 SOUTH, RANGE 60 EAST M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF FINAL MAP OF "ONE QUEENSRIDGE PLACE, PHASE 1", RECORDED IN BOOI< 137, PAGE 88 OF PLATS, CLARK COUNTY, OFFICIAL RECORDS; THENCE SOUTH 65°04'09" WEST A DISTANCEOF 37.06 FEET; THENCE NORTH 89°22'39" WEST A DISTANCE OF 275.72 FEET; THENCE NORTH 68°22'14" WESTA DISTANCE OF 218.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°23'29" WEST A DISTANCE OF 268.84 FEET; THENCE NORTH 05°34'48" WEST A DISTANCE OF 95.02 FEET; THENCE NORTH 24°04'10" WEST ADISTANCE OF 95.59 FEET; THENCE SOUTH 43°23;20" WEST A DISTANCE OF 126.26 FEET; THENCE SOUTHWESTERLY 12.52 FEET ALONG A CURVE CONCAVE NORTHWEST HAVING A CENTRAL ANGLE OF 26°04'44" WITH A RADIUS OF 27.50 FEET; THENCE SOUTH 69° 28'04" WEST A DISTANCE OF 166.21 FEET; THENCE SOUTHWESTERLY 8.73 FEET ALONG A CURVE CONCAVE NORTHWEST HAVING A CENTRAL ANGLE OF 18°11'42" WITH A RADIUS OF 27.50 FEET TO A POINT OF A REVERSE CURVE; THENCE SOUTHEASTERLY 87.18 FEET ALONG A CURVE CONCAVE SOUTHEAST HAVING A CENTRAL ANGLE OF 95°08'30" WITH A RADIUS OF 52.50 FEET; THENCE SOUTH 07°·28'45" EAST A DISTANCE OF 75.10 FEET; THENCE SOUTHEASTERLY 31.34 FEET ALONG A CURVE CONCAVE NORTHEAST HAVING A CENTRALANGLE OF 34°05'44" WITH A RADIUS OF 52.50 FEET; THENCE SOUTH 41°34'29" EAST A DISTANCE OF 28.68 FEET; THENCE SOUTH 59·09'33" EAST A DISTANCE OF 67.35 FEET; THENCE SOUTH 74°29'49" EAST A DISTANCE OF38.97 FEET; THENCE SOUTH 74°45'44" EAST A DISTANCE OF 208.90 FEET; THENCE SOUTH 68°22'14" EAST A DISTANCE OF 24.41 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

EQUIPMENT LIST

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

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

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

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

EXHIBIT *"C"*

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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. 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, 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 **PLAINTIFF LANDOWNERS' TWENTIETH SUPPLEMENT TO INITIAL DISCLOSURES**

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS

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

I.

LIST OF WITNESSES

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

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

Person Most Knowledgeable at the City of Las Vegas regarding the City's guidelines, instructions, process and/or procedures for adopting a land use designation on the City of Las Vegas General Plan Land Use Element and/or Master Plan, including the guidelines, instructions, process and/or procedures applicable for each and every year from 1986 to present.

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

Person Most Knowledgeable at the City of Las Vegas regarding the City of Las Vegas guidelines, instructions, process and/or procedures implemented to place a designation of PR-OS or any similar open space designation on all or any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element and/or Master Plan from 1986 to present.

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

Person Most Knowledgeable at the City of Las Vegas regarding the Master Development Agreement referenced in the Landowners' Complaint.

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

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

5. Steve Seroka
c/o Las Vega City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Mr. Seroka may have information regarding the facts and circumstances surrounding the allegations alleged in the Landowners' Complaint which occurred while Mr. Seroka was running for the City Council and while Mr. Seroka was on the City Council.

6. Person Most Knowledgeable
180 LAND COMPANY, LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101

Person Most Knowledgeable at 180 Land Company, LLC regarding the facts and circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of discovery, liability.

7. Person Most Knowledgeable
FORE STARS, Ltd
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101

Person Most Knowledgeable at FORE STARS, LTD regarding the facts and circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of discovery, liability.

8. Person Most Knowledgeable
SEVENTY ACRES, LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101

Person Most Knowledgeable at Seventy Acres, LLC regarding the facts and circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of discovery, liability.

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

II.

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

Document No.	Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
7	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order and Judgment, Eighth Judicial District Court Case No. A-16-739654-C filed 1.31.17	3	LO 00000557-00000601
8	Intentionally left blank	3	LO 00000602-00000618
9	12.7.16 Letter From Jimmerson to Jerbic	3	LO 00000619-00000627
10	City of Las Vegas' Answering Brief, Eighth Judicial District Court Case No. A-17-752344-J filed 10.23.17	3	LO 00000628-00000658
11	7.12.16 City of Las Vegas Planning Commission Meeting Transcript excerpts Items 4, 6, 29-31, 32-35	3	LO 00000659-00000660
12	Staff Recommendation 10.18.16 Special Planning Commission Meeting	3	LO 00000661-00000679
13	10.18.16 Special Planning Commission Meeting Agenda Items 10-12 Summary Pages	3	LO 00000680-00000685
14	2.15.17 City Council Meeting Transcript Items 100-102	3-4	LO 00000686-00000813
15	LVMC 19.10.040	4	LO 00000814-00000816
16	LVMC 19.10.050	4	LO 00000817-00000818
17	Staff Recommendation 2.15.17 City Council Meeting GPA-62387, ZON-62392, SDR-62393	4	LO 00000819-00000839

18	2.15.17 City Council Agenda Summary Pages Items 100-102	4	LO 00000840-00000846
19	Seroka Campaign Contributions	4	LO 00000847-00000895
20	Crear Campaign Contributions	4	LO 00000896-00000929
21	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	4	LO 00000930-00000931
22	35 Acre Applications: SDR-68481; TMP-68482; WVR-68480	4	LO 00000932-00000949
23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR-68481, TMP 68482	4	LO 00000950-00000976
24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
25	MDA Combined Documents	5	LO 00001132-00001179
26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
30	City requested concessions signed by Landowners representative dated 5.4.17	8	LO 00001837
31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
32	Two Fifty Development Agreement (MDA) Comparison – July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
33	The Two Fifty Design Guidelines, evelopment Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913
34	Seroka Campaign Literature	8	LO 00001914-00001919
35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
36	Tax Assessor's Values for 250 Acre Residential Land	8	LO 00001923-00001938
37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7/2/18	8	LO 00001939-00001963

38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
45	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	9	LO 00002099-00002105
46	Bill No. 2018-24	9	LO 00002106-00002118
47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336
54	Coffin Email	10	LO 00002337-00002344
55	8.10.17 Application For Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353
57	LVMC 19.16.100	10	LO 00002354-00002358
58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364

59	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	10	LO 00002365
60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
63	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	10-11	LO 00002473-00002543
64	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
66	Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge	11	LO 00002552-00002704
67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge effective 10.1.2000	11	LO 00002705
68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Prankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
70	Land Use Hierarchy Exhibit	11	LO 00002740
71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11-12	LO 00002741-00002820
72	Order Granting Plaintiffs' Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834
73	City of Las Vegas' Reply In Support of Its Motion to Dismiss and Opposition To Petitioner's Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 12.21.17	12	LO 00002835-00002840
74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18	12	LO 00002841-00002849

75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851
76	Email	12	LO 00002852
77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
78	1.23.17 onsite Drainage Agmt.	12	LO 00002936-00002947
79	9.11.18 PC – Hardstone Temp Permit Transcript	12	LO 00002948-00002958
80	Estate Lot Concepts	12	LO 00002959-00002963
81	Text Messages	12	LO 00002964-00002976
82	Intentionally left blank	12	Not bates stamped
83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
84	Supreme Court Affirmance	13	LO 00002983-00002990
85	City Confirmation of R-PD7	13	LO 00002991-00003020
86	De Facto Case Law	13	LO 00003021-00003023
87	Johnson v. McCarran	13	LO 00003024-00003026
88	Boulder Karen v. Clark County	13	LO 00003027-00003092
89	Supreme Court Order Dismissing Appeal *in part* and Reinstating Briefing	13	LO 00003093-00003095
90	Bill No. 2018-24	13	LO 00003096-00003108
91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564
95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593
96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
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 Pecocole Plan	16	LO 00003941
108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
109	GPA Code and Application	17	LO 00004035-00004044
110	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00004045- 00007607 (abandoned LO 6190-6215; 6243-6411; 6421-6704; 7436-7538)
111	No Documents Assigned to this Bates range		LO 00007608-00008188
112	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00008189-00009861 (abandoned LO 9353-9833)
113	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 00009862-0010915
114	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents		LO 0010916-0011440
115	Documents produced in Response to City of Las Vegas' First Set of Request for Production of Documents, Request No. 5		LO 0011441-0012534
116	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 11		LO 0012535-0016083

117	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 2		LO 0016084-0018029
118	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 6		LO 0018030-0018441
119	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 1		LO 0018442-0022899
120	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 14		LO 0022900-0025236
121	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 3		LO 0025237-0029411
122	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 5		LO 0029412-0033196
123	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 9		LO 0033197-0033795
124	Documents produced in Response to City of Las Vegas' First Request for Production of Documents to Plaintiff, Request No. 5		LO 0033796-0033804
125	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27		LO 0033805-0033826
126	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 28-29		LO 0033827-0034181
127	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27		LO 0034182-0034186
128	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 21		LO 0034187-0034761

129	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 22		LO 0034762-0035783
130	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 20		LO 0035784-0035819
131	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 24-27		*LO 0033817*
132	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Plaintiff, Request Nos. 28-29		*LO 0034115-0034116*
133	Clear and Grub files		LO 0035820-0035851
134	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Plaintiff, Request No. 18		LO 0035852-0035858
135	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 9		LO 0035859-0035896
136	Documents *idendified* in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 8		Privileged and Confidential LO 0035897-0035903
137	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 6		LO 0035904-0035969
138	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 1		LO 0035970-0035972
139	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 7		LO 0035973-0036601
140	Documents produced in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 7		LO 0036602-0036806

141	Native Files		LO35 00000001-00009668
142	Documents released from Privilege Log responsive to Request for Production of Documents to Plaintiff, Request No. 1 Documents released from Privilege Log responsive to Request for Production of Documents to Plaintiff, Request No. 2		LO 00004063-00004079 *also produced as* LO 0036807-0036823 LO 00004142 - 00004155 LO 00004416 - 00004479 LO 00004645 - 00004854 *also produced as* LO 00036824 - 00037064
143	Documents *identified* in Response to City of Las Vegas' Second Request for Production of Documents to Fore Stars, Request No. 8		Amended Privileged and Confidential *LO 0035897-0035903*
144	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 12		LO 0037065-0037112
145	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 13		LO 0037113-0037258
146	Documents produced in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 14		LO 0037259-0037279
147	Documents previously produced *LO 0037070-0037093* in Response to City of Las Vegas' Third Request for Production of Documents to Fore Stars, Request No. 12 *redactions partially removed*		LO 0037070-0037093
148	***Confidential Information*** **Documents produced in Response to Request for Production of Documents to Plaintiff 180 Land Co. LLC, Request No. 16**		**LO 00037280-00037661**

I.

COMPUTATION OF DAMAGES

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

Objection: The Landowners object to disclosing the computation of any category of "damages" at this time as this information requires the preparation of expert reports that will be produced in the normal course of discovery as provided in the Nevada Discovery Rules. The Landowners further object to disclosing any category of "damages" as discovery has been bifurcated, the damages/just compensation phase of discovery has not commenced yet. Additionally, the computation of any category of "damages" may contain attorney work product, privileged information, and may require legal instructions or court rulings, accordingly, the same cannot be produced at this time.

The Landowners will disclose their expert opinions/testimony regarding the just compensation owed pursuant to NRCP 16.1(a)(2) and in accordance with the scheduling order set in this matter.

The Landowners further object to disclosing the computation of any category of "damages" at this time as the date of value has not be determined by the Court. Without waiving said objections, and assuming the date of value is on or about September 7, 2017 (the date the inverse condemnation claims were filed and served on the City) the Landowners' preliminary estimate of damages (just compensation) for the total taking of the 35 Acre Property (APN 138-31-201-005) is approximately $54 Million. This is an average of the per acre value assigned by the following: 1) an appraisal report prepared by Lubawy and Associates of seventy acres of property formerly known as APN 138-32-301-004 at ± $700,510/acre as of July 2015; 2) an offer to purchase 16-18 acres of the seventy acre property formerly known as APN 138-32-301-004 for ± $1,525,000/acre as of December 2015; and, 3) the sale of APN 138-32-314-001 for ± $2,478,000/acre as of August 2019. This computation will be supplemented upon the completion of expert reports, if needed, or as otherwise deemed necessary in this matter. The Landowners' damages also include pre-judgment and post-judgment interest and attorney fees and costs, which will be calculated after trial.

The Landowners' damages also include property tax payment (which are public record).

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

IV.

POTENTIALLY APPLICABLE INSURANCE AGREEMENTS

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

N/A

The Landowners incorporate by reference herein all witnesses and documents disclosed by other parties to this action. The Landowners further reserve the right to supplement and/or amend these disclosures as discovery continues. The Landowners also reserve the right to object to the introduction and/or admissibility of any document at the time of trial.

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

DATED this day 2nd day of March, 2021

By: /s/ *Elizabeth G. Ham, Esq.*
ELIZABETH G. HAM, ESQ. (NBN 6987)
In-house Counsel for Plaintiff Landowners

LAW OFFICES OF KERMITT L. WATERS
KERMITT L. WATERS, ESQ. (NBN 2571)
JAMES J. LEAVITT, ESQ. (NBN 6032)
MICHAEL SCHNEIDER, ESQ. (NBN 8887)
AUTUMN WATERS, ESQ. (NBN 8917)

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 2nd day of March, 2021, I caused to be served a true and correct copy of the foregoing document(s): **PLAINTIFF LANDOWNERS' TWENTIETH SUPPLEMENT TO INITIAL DISCLOSURES** via the Court's filing and/or for mailing in the U.S. Mail, postage prepaid and addressed to the following:

MCDONALD CARANO LLP
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Amanda C. Yen, Esq.
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/s/ Evelyn Washington
Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters

EXHIBIT “D”

MCOM
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Philip R. Byrnes (NV Bar No. 166)
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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J
DEPT. NO.: XVI

THE CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS ON ORDER SHORTENING TIME

OST HEARING REQUESTED

(Per July 16, 2020 Order Granting Request For District Court to Decide All Discovery Disputes the hearing of this motion is to be handled by the Honorable Timothy Williams)

Date/hearing: November 17, 2020
Time/hearing: 9:00 a.m.

Pursuant to Rules 16.1, 26, 34 and 37 of the Nevada Rules of Civil Procedure, EDCR 2.26, 2.34 and 2.40 and the Declaration of George F. Ogilvie III, Esq. ("Ogilvie Decl."), attached as **Exhibit A**, the City of Las Vegas (the "City") moves this Court for an Order (i) compelling Plaintiff 180 Land Co. LLC ("180 Land") to produce all documents responsive to the City's requests for

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production of documents ("Requests for Documents");[1] (ii) compelling 180 Land and Plaintiff Fore Stars, Ltd. ("Fore Stars") (collectively "Developer" or "Plaintiff") to supplement its NRCP 16.1 damages calculation to provide the computation of its category of damages; (iii) compelling 180 Land to produce all responsive documents to the Requests for Documents and as required under NRCP 16.1(a)(1)(A)(iv) related to its damages calculation and which 180 Land has refused to produce until the expert disclosure deadlines; and (iv) awarding the City its fees and costs associated with this Motion, the December 19, 2019 meet and confer, March 10, 2020 meet and confer and September 16, 2020 meet and confer.

The Developer's continued systematic efforts to conceal documents responsive to written discovery speaks volumes. The Developer has failed to produce documents that will reveal that its takings claims are not only without merit but are frivolous. Whether the City is liable for a regulatory taking turns on the value of the Badlands before and after the City regulated the use of the property alleged to be a taking. The amount the Developer paid for the Badlands in 2015 is a key indicator of the value of the property before the City's alleged regulatory action and of the Developer's investment-backed expectations when it bought the property, the primary factors in the categorical and *Penn Central* takings tests invoked by the Developer.

The Developer claims in a discovery response that it paid $45 million for the Badlands golf course and that its damages from the City's alleged restrictions on its use of a 35-acre portion of the Badlands is $54 million. To prove how much the Developer paid for the Badlands, the City has been seeking *for 15 months* the agreement by which the Developer acquired the Badlands and all other documents related to the consideration the Developer paid for the property. The Developer, however, has withheld these critical documents for more than a year and improperly interfered with the production of documents by the seller of the Badlands concerning the Developer's purchase, necessitating the City's motion to compel production of documents from the seller, which this Court

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[1] The City served a first set of requests for production of documents on 180 Land on July 2, 2019 ("First Set of Requests") and a second set of requests for production of documents on February 21, 2020 ("Second Set of Requests"). The First Set of Requests and Second Set of Requests are collectively referred to herein as "Requests for Documents" and are the subject of this Motion.

ultimately granted. Nonetheless, the City is entitled to the documents in the Developer's possession that show or relate to the Developer's purchase of the Badlands. The City understands from documents produced by third parties that the Developer paid less than $7.5 million for the entire Badlands. That documentation demonstrates that the Developer's claim that it paid $45 million to buy the Badlands and its claim for $54 million in damages are both obvious frauds.

Doubling down on its obstruction of the City's discovery attempts regarding the single most important evidence in the case, the Developer responded that there is no single document stating that the purchase price was $45 million and flatly refused to produce *any documents* whatsoever relating to how much it paid for the Badlands. The reason for the Developer's failure to comply with discovery as to the amount it paid for the Badlands is transparent: the City approved 435 luxury units for construction on a 17-acre portion of the Badlands and according to the Developer's own contentions, the entitlement to build 435 housing units makes the 17-acre portion of the Badlands alone worth more than $7.5 million (and the Developer still has 233 acres left). The $7.5 million purchase price, if true, defeats the Developer's takings claim. The City is entitled to *all evidence* showing the purchase price of the Badlands, or alternatively, an order dismissing the Developer's takings claims.

In addition to withholding these fundamentally relevant documents, as set forth in detail below, the Developer has refused to produce communications with consultants, lenders and others related to the litigation as well as evidence regarding the Developer's plans for the developing the Badlands. As shown below, the requested discovery is relevant to the Developer's claims and the City's affirmative defenses. Accordingly, the City requests the Court grant this Motion.

This Motion and the request for an Order Shortening Time is supported by the Ogilvie Declaration (Exhibit A), the additional exhibits contained in the concurrently filed Appendices, the below memorandum of points and authorities, the papers on file with the Court and any argument by counsel the Court entertains on this matter.

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ORDER SHORTENING TIME

Upon good cause shown, please take notice that the hearing before the above-entitled Court on **THE CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS ON ORDER SHORTENING TIME** is shortened to the 17th day of November, 2020, at 1:30 p.m., or as soon thereafter as counsel may be heard.

Any opposition to this Motion must be filed and served by the 5th day of November, 2020 no later than 5:00 p.m.

DATED this 21st day of October, 2020.

DISTRICT COURT JUDGE ZJ

Submitted By:

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Amanda C. Yen (NV Bar No. 9726)
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(Additional Counsel Identified on Signature Page)

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MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. 180 Land Fails To Fully Respond To The City's Requests For Documents And Interrogatories And The City Engages In Multiple Meet And Confers With The Developer.

1. 180 Land's Deficient Responses To Requests For Documents

i. The First Set of Requests

On July 2, 2019, over 15 months ago, the City served its First Set of Requests on 180 Land. *See* First Set of Requests, attached as **Exhibit B**. Due to 180 Land's failure to respond to the First Set of Requests, the City's counsel sent a letter on October 8, 2019 requesting 180 Land's responses and documents by October 18, 2019. *See* October 8, 2019 Letter, attached as **Exhibit C**.

Ultimately, on November 6, 2019, over four months after service of the First Set of Requests, 180 Land finally served its responses and on November 7, 2019, 180 Land provided some documents in response to the First Set of Requests. *See* Plaintiff 180 Land Company LLC's Response to Defendants City of Las Vegas' First Set of Requests for Production to Plaintiff ("Responses to First Set of Requests"), attached as **Exhibit D**;[2] *see also* Ogilvie Decl., ¶ 4, **Ex. A**.

Because 180 Land's responses were deficient and 180 Land withheld responsive documents, the City requested a meet and confer with 180 Land's counsel. *See* Ogilvie Decl., ¶ 5, **Ex. A**. To that end, and to make the meet and confer productive, on December 12, 2019, the City sent a letter specifically identifying the deficiencies with 180 Land's responses to the First Set of Requests. *See* December 12, 2019 Letter, attached as **Exhibit E**. In sum, 180 Land withheld documents and provided a privilege log; however, the log did not provide the requisite information to allow the City to confirm that the documents withheld fell into a protected category. *Id.* at 1. In addition, 180 Land refused to produce documents that go directly to the issues in this case, including: (i) communications between itself and its identified consultants and/or prior owners of the Badlands Property regarding 180 Land's expectations for developing the Badlands Property (which is an essential element of its *Penn Central* taking claim); (ii) documents related to any damages calculation or monetary calculations; and (iii) documents related to the maintenance and/or operation of the Badlands golf course. *Id.* at 2-3.

ii. The December 19, 2019 Meet and Confer

On December 19, 2019, the City's counsel and Developer's counsel conducted a telephonic meet and confer. *See* Ogilvie Decl., ¶ 6, **Ex. A**. During that meet and confer, the parties reached an agreement on several issues. *See* December 19, 2019 email chain, attached as **Exhibit F**. Despite the agreement, however, it still took a reminder from the City's counsel to the Developer's counsel

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[2] The City already brought a motion to compel 180 Land to produce documents it refused to produce absent a stipulated protective order. *See* February 26, 2020 Motion to Compel, incorporated herein by this reference. Ultimately, this Court granted the City's motion to compel, ordering that the City may use the documents produced by 180 Land in this case in the three other inverse condemnation cases in which the parties or their affiliates are involved. *See* August 31, 2020 Minute Order. In sum, there is no protective order in this case and the parties did not enter into any stipulated protective order.

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that 180 Land was to supplement its responses and provide follow-up answers to several inquiries. *See* January 16, 2020 Email, attached as **Exhibit G**. Accordingly, over a month after the December 19, 2019 meet and confer, on January 23, 2020, 180 Land served its Amended Response to Defendant City of Las Vegas' First Requests for Production to Plaintiff ("Amended Response to First Set of Requests"). *See* Amended Response to First Set of Requests, attached as **Exhibit H**.

180 Land's Amended Response to First Set of Requests did not correct all of the issues with 180 Land's production, so, on February 6, 2020, the City's counsel sent another letter to the Developer's counsel regarding the deficient responses and production. *See* February 6, 2020 Letter ("Feb. Letter"), attached as **Exhibit I**. In addition, during the December 19, 2020 meet and confer, the parties did not meet and confer regarding all of the Developer's responses to the First Set of Requests or its documents because 180 Land had not yet produced all responsive documents it represented were in its possession. *See* December 12, 2019 Letter, **Ex. E** ("Because 180 Land has not produced all documents responsive to the Requests pending an approved Stipulated Protective Order,[3] the City reserves its right to address any deficiencies with the actual documents produced and/or 180 Land's failure to produce responsive documents at a later date.").

iii. Remaining Issues from the December 19, 2019 Meet and Confer

The remaining issues from the December 19, 2019 meet and confer were, in brief, failing to produce: (i) communications with all of 180 Land's identified consultants; (ii) communications with its sometimes consultants/sometimes counsel Stephanie Allen and Chris Kaempfer or identify such communications on a privilege log; (iii) communications with prior owners of the Badlands Property; (iv) communications involving the Developer's principals, Yohan Lowie and Vicki

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[3] The parties never entered into a stipulated protective order and, notably, the City only agreed to do so – not because it agreed that the information was confidential or protective – but because 180 Land had hamstrung the City by withholding necessary information and the City simply agreed to move the process along to obtain the relevant information. *See* February 26, 2020 Motion to Compel at 5:7-14 and Ex. J attached thereto ("Because the City was hamstrung without the requested documents and the City was willing to cooperate with 180 Land, on November 7, 2019, the City provided 180 Land with the City's edits to 180 Land's proposed protective order, noting that the 'City is willing to enter into an SPO, but the one proposed was too onerous – since only 180 Land will be claiming confidentiality, the City should not be the one burdened by this stipulation.'").

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DeHart; (v) documents related to any damages calculation or monetary calculations; (vi) documents related to the maintenance and/or operation of the Badlands golf course; and (vii) electronically stored information ("ESI") in native format. *See* Feb. Letter, **Ex. I**.

For many of the remaining issues, 180 Land's counsel represented that it had responsive documents and/or agreed to supplement 180 Land's responses, but simply never did. By way of example only, during the December 19, 2019 meet and confer, 180 Land's counsel agreed to discuss with their client how to address 180 Land's obligation to produce non-privileged communications with Stephanie Allen and Chris Kaempfer and to identify any privileged communications on a privilege log. *Id.* at 1-2. Despite this agreement, by February 6, 2020, 180 Land still had not provided any additional information regarding those communications. *Id*. In addition, during the December 19, 2019 meet and confer, 180 Land's counsel represented that they had just collected documents related to the City's Request No. 10 (regarding the maintenance and operation of the Badlands golf course); yet, by February 6, 2020 – over 7 weeks from that representation – 180 Land still had not produced those documents. *Id.* at 2.

Also in the Feb. Letter, the City addressed the fact that due to 180 Land's significant delays in producing responsive documents, 180 Land had effectively prevented the City from completing a wholesale determination as to whether180 Land had fully complied with the First Set of Requests. *Id.* at 3. To that end, once 180 Land provided its piecemeal production, the City became aware that it "now understands that there are several documents that 180 Land has neither produced, nor listed on its privilege log." *Id.* Those documents included:

- Documents, including communications, related to the acquisition of Fore Stars, the entity that owned the Badlands;
- Appraisals, opinion letters and communications related to financing for the acquisition and development of the Badlands;
- Financial statements and other information reviewed by the Developer in connection with due diligence related to the acquisition of Fore Stars, the owner of the Badlands;
- Communications with consultants identified by the Developer in response to the City's interrogatories; and
- Documents related to the acquisition of water rights, a water rights lease, and the acquisition of WRL, LLC

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Id. at 3-4. In other words, due to 180 Land's intentionally haphazard and piecemeal production of documents, the City was unable to determine the extent of 180 Land's failure to respond to the First Set of Requests until February 2020.

Once it became clear that 180 Land had withheld certain documents, the City's counsel sent the Feb. Letter requesting that 180 Land supplement its responses and production. *Id.* at 5. The City again emphasized that it was apparent that 180 Land had not produced any communications sent by Yohan Lowie and/or Vickie DeHart, the only individuals who personally guaranteed loans used to acquire the Badlands Property. *Id.* at 4. And further that 180 Land was not producing any documents related to its categories and/or computation of damages. *Id.* at 4-5.

Having not received a response to the Feb. Letter, on February 26, 2020, the City's counsel asked to schedule another meet and confer, which was ultimately scheduled for March 10, 2020. *See* February 27, 2020 email chain, attached as **Exhibit J**; *see also* April 15, 2020 Email Chain ("April 15 Email"), attached as **Exhibit K**.

iv. The March 10, 2020 Meet and Confer

The March 10, 2020 meet and confer was conducted mainly by Todd Davis, in-house counsel for EHB Companies, LLC ("EHB"), and Elizabeth Ham, in-house counsel for EHB and co-counsel for 180 Land, along with the City's counsel.[4] *Id*. During the meet and confer, Mr. Davis represented that 180 Land would undertake a good faith effort to supplement its production and fully resolve a majority of the disputes. *Id.* However, Mr. Davis' representation proved false.

By way of example only, during the March 10 meet and confer, Mr. Davis represented that all communications with Stephanie Allen and Chris Kaempfer that should be listed on a privilege log would be listed. *Id.* On April 15, Mr. Davis reversed this position stating that 180 Land would only produce emails between Ms. Allen and Mr. Kaempfer that involved the City. *Id.* Ultimately, 180 Land produced 77 unique emails (the rest were duplicates) of which 57 were exchanged with the City and the remaining were exchanged with the Developer's other consultants. *See* August 28,

[4] According to the Secretary of State's website, EHB Companies LLC is the manager of 180 Land and Fore Stars. The managers of EHB Companies LLC are Yohan Lowie, Vickie Dehart, Paul Dehart, and Frank Pankratz.

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2020 Letter ("Aug. Letter") at 2, attached as **Exhibit L**. 180 Land only added two emails to its privilege log for Ms. Allen and/or Mr. Kaempfer.

Similarly, Mr. Davis represented that all communications with the prior owners of the Badlands Property, the Peccole family, were or would be produced in response to Request No. 6. *See* April 15 Email, **Ex. K**. Ultimately, after removing duplicates and grouping emails into threads, 180 Land produced only 66 emails with Peccole-Nevada Corporation's CEO Billy Bayne and, as is apparent from a June 12, 2014 email, omitted emails from Yohan Lowie to Billy Bayne. *See* Aug. Letter at 3, **Ex. L**; *see also* June 12, 2014 Email, attached as **Exhibit M**. In addition, 180 Land only produced 15 emails with Peccole-Nevada's president Kerry Walters, who was actively involved in facilitating due diligence for the sale of Fore Stars. *See* Aug. Letter at 4, **Ex. L**. In sum, it was readily apparent that 180 Land did not meet Mr. Davis' March 10 representation.

Although the Developer's counsel stated it would supplement its responses and documents by no later than March 14, 2020, citing COVID-related difficulties, 180 Land did not supplement its responses and documents until July 7, 2020. *See* First Supplement to Plaintiff 180 Land Company, LLC's *Amended* Response to Defendant City of Las Vegas' First Requests for Production to Plaintiff (emphasis in original) ("First Supp. to Amended Responses"), attached as **Exhibit N**. The Developer's First Supp. to Amended Responses contained several issues, which made it difficult for the City to review and analyze the responses. *See* July 14, 2020 Email, without attachments, attached as **Exhibit O**. For example, the Developer responded with Bates stamps in its Amended Response to First Set of Requests but in its First Supp. to Amended Responses later omitted the same Bates from its response. *Id.* In other words, in its Amended Response to First Set of Requests, 180 Land first claimed that certain Bates-stamped documents were responsive to a request but then, in its First Supp. to Amended Responses, 180 Land omitted those Bates-stamped documents. *Id.* It was unclear to the City whether this omission was intentional. *Id.*

To add further confusion, in some instances, 180 Land claimed it was supplementing its amended response but did not reference any additional Bates-stamped documents. *Id.* Thus, the City was unsure as to what 180 Land was actually supplementing for those responses. *Id.* Similarly, for one response, the City could not tell the difference between the initial and supplemental

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response. *Id.* Due to this confusion, on July 15, 2020, 180 Land served an Errata to First Supplement to Plaintiff 180 Land Company, LLC's *Amended* Response to Defendant City of Las Vegas' First Requests for Production to Plaintiff ("Errata"). *See* Errata, attached as **Exhibit P**.

v. The Second Set of Requests

On February 21, 2020, the City served its Second Set of Requests for Production of Documents ("Second Set of Requests") on 180 Land. *See* Plaintiff 180 Land Company, LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production to Plaintiff ("Responses to Second Set of Requests") (incorporating the City's Second Set of Requests), attached as **Exhibit Q**. 180 Land did not respond to the Second Set of Requests until six months later, on September 4, 2020. *Id.* As with the First Set of Requests, 180 Land did not respond in full or in good faith.

vi. The September 16, 2020 Meet and Confer

On August 28, 2020, the City's counsel sent another letter regarding the Developer's outstanding discovery obligations and discovery deficiencies. *See* Aug. Letter, **Ex. L**. The August 28 Letter identified remaining issues outstanding from the December 19, 2019 meet confer and additional issues including, among other things, 180 Land's failure to produce: (i) letters of intent regarding offers to purchase the Badlands Property; (ii) communications with Stephanie Allen, Chris Kaempfer, and other identified consultants; (iii) all communications, including text messages, between the Developer and prior owners of the Badlands Property; (iv) attachments and other files identified in emails but not produced; (v) communications with the Developer's lenders; (vi) documents related to damages, including non-privileged cost estimates; and (vii) communications sent or received by Yohan Lowie, Vickie DeHart and Paul DeHart. *Id.* at 1-4 and 5-7.

Because 180 Land failed to respond to the Second Set of Requests until September 4, 2020, the City was unable to include its deficient responses to those requests in the August 28 Letter. Accordingly, on September 14, 2020, the City sent another letter to address issues with the Responses to Second Set of Requests. *See* September 14, 2020 Letter ("Sept. 14 Letter"), attached as **Exhibit R**. Among other things, the Sept. 14 Letter identified 180 Land's failure to provide (i) a good faith response regarding documents to support its claim that the Developer paid $45 million

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to acquire the Badlands Property and (ii) documents related to its damages, including non-privileged cost estimates. *Id.* at 2 and 5.

Mr. Davis and Ms. Ham attended the September 16, 2020 meet and confer on behalf of 180 Land. *See* September 18, 2020 Email with Attachment ("Sept. 18 Email"), attached as **Exhibit S**. Ultimately, counsel disagreed more than it was able to agree; however, counsel did make the following representations: (i) Mr. Davis will look for the requested letter of intent; (ii) Mr. Davis will review what 180 Land produced related to an identified consultant and see if the production was limited to the 35-Acre portion of the Badlands Property; (iii) Ms. Ham will look at potential text messages for production; (iv) if the Developer has the referenced file in an email from Kerry Walters, President of Peccole-Nevada Corporation, it will be produced; (v) Ms. Ham will amend the response to Request No. 16 to state that no documents exist that support the Developer's claim that it paid $45 million to acquire the Badlands Property; (vi) Ms. Ham will update 180 Land's response to Request No. 23 due to the City's agreement to narrow the request and will confirm no responsive documents exist; (vii) Mr. Davis will provide a redacted promissory note to one of its lenders; and (viii) the Developer would provide the prior productions in native format with an updated privilege log. *Id.* at 1, 3, 5, 6, 9, 10 and 12. Ms. Ham represented that the Developer would provide the above by no later than September 25, 2020, if not sooner. *Id.* at 13.

vii. 180 Land's Second Supplement to its Amended Response to the City's First Set of Requests

On September 28, 2020, the Developer produced copies of the promissory note and other loan documents with Vegas Ventures Funding, LLC with virtually all pertinent information redacted. *See* Ogilvie Decl., ¶ 11, **Ex. A**. On September 30, 2020, the Developer served its Second Supplement to Plaintiff 180 Land Company LLC's Amended Response to Defendant City of Las Vegas' First Set of Requests for Production of Documents to Plaintiff ("Second Supp. to Amended Responses"), which confirmed that documents produced from an identified consultant were not limited to the 35-Acre property. *See* Second Supp. to Amended Responses, attached as **Exhibit T**. Although the Second Supp. to Amended Responses stated that the letter of intent and file from Kerry Walters had been produced therewith, the Developer failed to actually produce them until

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October 6, 2020. *See* Ogilvie Decl., ¶ 13, **Ex. A**.

viii. 180 Land's First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff

Also on October 6, 2020, the Developer served its First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff ("First Supp. to Response to Second Set of Requests"). *See* First Supp. to Response to Second Set of Requests, attached as **Exhibit U**. Despite Ms. Ham's representation during the September 16, 2020 meet and confer that 180 Land would amend its response to Request No. 16 to clarify that no documents "support" the Developer's claim that it paid $45 million to acquire the Badlands Property, 180 Land instead provided another evasive response. *Id.* at 4:14-16. Similarly, instead of amending its response to Request No. 23 to confirm that it is not withholding responsive documents, 180 Land simply added additional objections to its response.

2. 180 Land's Deficient Response to Interrogatory No. 20

On July 2, 2019, the City served Interrogatories on 180 Land. *See* Interrogatories, attached as **Exhibit V**. Interrogatory No. 20 requested 180 Land identify in detail all water rights that have been associated with or appurtenant to the Badlands Property and to state whether those rights had been disposed of with the date, recorded document number and purpose of the conveyance. *Id.* at 12:25-27. 180 Land responded to the Interrogatories on August 1, 2019. *See* Plaintiff 180 Land Company, LLC's Responses to Defendant City of Las Vegas' First Set of Interrogatories to Plaintiff ("Responses to Interrogatories"). *See* Responses to Interrogatories, attached as **Exhibit W**. For several interrogatories, including Interrogatory No. 20, 180 Land responded that the City had exceeded its allowed number interrogatories and thus it was not required to provide a response to the Interrogatory. *Id.* at 18:2-9. Ultimately, on February 7, 2020, 180 Land supplemented its responses and provided a more substantive response to Interrogatory No. 20. *See* Plaintiff 180 Land Company, LLC's Responses to Defendant City of Las Vegas' First Set of Interrogatories to Plaintiff, Third Supplement ("Third Supp. to Interrogatory Responses") at 21:10-21, attached as part of **Exhibit X**.

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As set forth in detail below, on February 21, 2020, the City identified deficiencies in 180 Land's response to Interrogatory No. 20, including the fact that 180 Land's response is contrary to public records and testimony previously provided by Mr. Lowie in a separate matter. *See* February 21, 2020 Letter attached as **Exhibit Y**. During the March 10, 2020 meet and confer, counsel discussed the lack of documentation and responses related to the water rights. *See* April 15 Email, **Ex. K**. Mr. Davis agreed to provide the permit numbers for the water rights (which the City found on its own) but refused to produce the WRL purchase and sale agreement or anything else related to the water rights. *Id.*

B. The Developer Has Refused To Provide A Computation Of Each Category Of Its Damages And Has Withheld Documents To Support Its Damages.

In its Initial Disclosures through its fourth supplement to Initial Disclosures, the Developer objected to any disclosure of its damages, arguing that the information "requires the preparation of expert reports that will be produced in the normal course of discovery as provided in the Nevada Discovery Rules [sic]." *See* Fourth Supplement to Initial Disclosures at 10:24-25, relevant portions attached as **Exhibit Z**. The Developer further argued that "the computation of any category of 'damages' may contain attorney work product, privileged information, and may require legal instructions or court rulings, accordingly, the same cannot be produced at this time." *Id.* at 10:25-11:2.

During the March 10, 2020 meet and confer, the City's counsel raised the lack of a computation of each category of damages with the Developer's counsel. *See* April 15 Email, **Ex. K**. Per the Developer's counsel, the City would receive a categorical identification of damages with the expert disclosures and would not receive any computation prior to that time. *Id.* Based on the Developer's position, in the City's Status Report Submitted in Advance of April 1, 2020 Status Conference ("Status Report"), the City identified the Developer's failure to comply with Rule 16.1(a)(1)(A)(iv) of the Nevada Rules of Civil Procedure. *See* Status Report at 9:12-10:4. Accordingly, on May 13, 2020, the Developer amended its initial disclosures providing an additional objection to its computation of categories of damages. *See* Fifth Supplement to Initial Disclosures at 11:6-19, relevant portions attached as **Exhibit AA**.

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Specifically, the Developer stated that it objected to "disclosing the computation of any category of 'damages' at this time as the date of value has not be [sic] determined by the Court." *Id.* at 11:6-7. The Developer then provided that its "preliminary estimate of damages (just compensation) for the total taking of the 35 Acre Property…is approximately $54 Million." *Id.* at 11:10-11. The Developer also stated that this amount was the average of the per acre value assigned by an appraisal and offer to purchase 16-18 acres of the property and the sale of property. *Id.* at 11:11-16. The Developer's objection and preliminary estimate did not provide any supporting calculations and, based on the Developer's responses to the City's Requests for Production of Documents, the Developer is admittedly withholding documents that allegedly support its damages until it discloses its expert report. *See* Sept. 18 Email and Attachment, **Ex. S**.

II. SPECIFIC WRITTEN DISCOVERY REQUESTS PURSUANT TO LR 2.40.

REQUEST FOR PRODUCTION NO. 1:

Produce all documents related to Plaintiff's acquisition of the Badlands Property including but not limited to offers, counteroffers, letters of intent, term sheets, purchase agreements, options, redemption agreements, rights of first refusal, indemnification agreements, non-disclosure agreements, joint venture agreements, access agreements, escrow files, and any documents related to any other transactions consummated in connection with Plaintiff's acquisition of the Badlands Property.

RESPONSE TO REQUEST TO PRODUCE NO. 1:

The Landowner objects to this request as irrelevant, it has no application to the City's taking of the Subject Property nor the value of the Subject Property. The Landowner further objects to this request because it is overbroad and unduly burdensome in that it seeks "any document" as such request does not describe the requested documents with reasonable particularity as required by Rule 34(b)(1). The Landowner further objections to this request as it may include privileged, proprietary and/or confidential information. Without waiving said objections, see documents Bates-stamped *LO 00004045-00004091.* Documents Bates-stamped *LO 00004063-00004079,* have been withheld due to being confidential (see privilege log).

1st Supplemental Response to Request No. 1:

Without waiving said objections, see documents Bates-stamped *LO 0018442-0022327.* Documents Bates-stamped *LO 0022328-0022899* have been withheld (see privilege log).

2nd Supplemental Response to Request No. 1:

Without waiving said objections and pursuant to a meet and confer with the City the Landowners searched for original emails at the City's request, however, the Landowners were unable to locate [sic] original email. The Landowner [sic] were able to locate the Letter of Intent which is produced herewith. See documents Bates-stamped *LO 0035970-0035972*.

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REQUEST FOR PRODUCTION NO. 2:

Produce any and all documents related to the financing of Plaintiff's acquisition and proposed development of the Badlands Property including but not limited to loan documents, mortgages, deeds of trust, loan agreements, security agreements, pledge agreements, letters of credit, construction loans, promissory notes and other evidence of indebtedness, legal opinions, non-disturbance agreements, subordination agreements, guarantees, estoppel certificates, assignments, assumption agreements, contribution agreements, and any other documents related to any of the foregoing.

RESPONSE TO REQUEST TO PRODUCE NO. 2:

The Landowner objects to this request as irrelevant, it has no application to the City's taking of the Subject Property nor the value of the Subject Property. The Landowner further objects to this request because it is overbroad and unduly burdensome in that it seeks "any and all document" and "any other document" as such requests does not describe the requested documents with reasonable particularity as required by Rule 34(b)(1). The Landowner further objections to this request as it includes proprietary, privileged and confidential information. The Landowner further objects to this request as it seeks information to harass the Landowner by causing conflict with any lender. Without waiving said objections, see documents Bates-stamped *LO 00004092-00005015.* Documents Bates stamped *LO 00004142-00004155; LO 00004416-00004479; LO 00004645-00004787; LO 00004789-00004854,* have been withheld as confidential (see privilege log).

1st Supplemental Response to Request No. 2:

Without waiving said objections, see documents Bates-stamped *LO 0016084-0018029.*

REQUEST FOR PRODUCTION NO. 5:

Produce copies of all communications related to the Badlands Property between Plaintiff and any of Plaintiff's consultants, financial advisors, appraisers, surveyors, engineers, experts and other contractors, and any and all communications between and among any of the foregoing persons or entities.

RESPONSE TO REQUEST TO PRODUCE NO. 5:

The Landowner objects to this request as irrelevant as having no application to the City's taking of the Subject Property nor the value of the Subject Property. The Landowner further objects to this request as the definition of Badlands Property is vague and overly broad. The Landowner further objects to this request as it is not limited to the Subject Property, at issue in this litigation, and instead seeks discovery for other pending matters. The Landowner further objects to this request because it is overbroad and unduly burdensome in that it seeks "any communications" as such request does not describe the requested documents with reasonable particularity as required by Rule 34(b)(1). The Landowner further objects to this request as it may include proprietary, privileged and/or confidential information. The Landowner further objects to this request as it relates to documents that are protected by the attorney/expert privilege and requests documents that are non-discoverable under Nevada's Discovery rules, namely, experts and consultants that have been retained and may not be called to testify at trial. The Landowner further objects to this request as it may seek expert reports which are not currently due to be exchanged. Without waiving said objection, see documents Bates-stamped *LO 00008684-00009181; LO 00009850-00009859; LO 0010916-0011440.* Documents Bates-stamped *LO 00008691-00008711; LO 00008727-00008812* have been withheld as confidential (see privilege log).

1st Supplemental Response to Request No. 5:

Without waiving said objection, see documents Bates-stamped *LO 0029412-0033180.* Documents Bates-stamped *LO 0033181-0033196 and LO 0033796-0033804* have been withheld (see privilege log).

2nd Supplemental Response to Request No. 5:

Without waiving said objections and pursuant to a meet and confer with the City, the Landowners verified that none of the ULTRXY searches were limited to only 35-acres.

REQUEST FOR PRODUCTION NO. 6:

Produce copies of all communications between Plaintiff and any persons owning an interest in the Badlands Property, including but not limited to any of the former members and managers of Fore Stars, Ltd. and any other persons owning an interest in the Badlands Property, whether directly or indirectly through one or more trusts or entities.

RESPONSE TO REQUEST TO PRODUCE NO. 6:

The Landowner objects to this request as irrelevant as having no application to the City's taking of the Subject Property nor the value of the Subject Property. The Landowner further objects to this request as the definition of Badlands Property is vague and overly broad. The Landowner further objections to this request as it is not limited to the Subject Property, at issue in this litigation, and instead seeks discovery for other pending matters. The Landowner further objects to this request because it is overbroad and unduly burdensome in that it seeks "all communications" without any limitation on subject matter and/or time, such request does not describe the requested documents with reasonable particularity as required by Rule 34(b)(1). The Landowner further objections to this request as it may include proprietary, privileged and/or confidential information.

1st Supplemental Response to Request No. 6:

Without waiving said objections, see documents Bates-stamped *LO 0018030-0018441.*

2nd Supplemental Response to Request No. 6:

Without waiving said objections and pursuant to a meet and confer with the City, the document provided through Evernote on LO0023329 are produced herewith. See documents Bates-stamped *LO 0035904-0035969*.

* * *

REQUEST FOR PRODUCTION NO. 16:

Produce all documents that support your 1st Supplemental Answer to Interrogatory No. 19 stating that "the aggregate of consideration given to the Peccole family for the former Badlands golf course property was approximately $45 million."

RESPONSE TO REQUEST TO PRODUCE NO. 16:

OBJECTION: This request is irrelevant having no application to the City's taking of the Subject Property nor the value of the Subject Property. Further this request is cumulative and/or duplicative and therefore oppressive and burdensome to the Plaintiff as it seeks information already requested pursuant to the City's Request to Produce No. 1 and 2. This request also includes a request for information that is confidential and privileged. Without waiving said objections, there are no documents within the Plaintiffs custody and control that state that the aggregate of

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consideration given to the Peccole family for the former Badlands golf course property was $45 million.

1st Supplemental Response to Request No. 16:

Pursuant to a meet and confer with the City, without waiving said objections and with the additional objection that the Landowners are not obligated to create a document in response to a request for production of documents, the Landowners have confirmed that no such documents exist.

REQUEST FOR PRODUCTION NO. 17:

Produce all documents related to the dispute between BGC Holdings LLC and Fore Stars Ltd. regarding the acquisition of the Badlands Property, including but not limited to any settlement agreement reached in connection with Case No. A543847.

RESPONSE TO REQUEST TO PRODUCE NO. 17:

OBJECTION: This request is cumulative and/or duplicative and therefore oppressive and burdensome to the Plaintiff as it seeks information already requested pursuant to the City's Request to Produce No. 1, some of which are equally available to all parties via public filings. This request further seeks information outside the scope of this matter that is irrelevant to the subject matter of this action having no application to the City's taking of the Subject Property nor the value of the Subject Property. Further, Case No. A543847 is too remote in time to be reasonably related to any claims or defenses in this matter. This request also calls for the disclosure of documents which are protected from disclosure to third parties by a confidentiality provision.

REQUEST FOR PRODUCTION NO. 18:

Produce all documents related to that certain Restrictive Covenant recorded March 14, 2008 in the Official Records of Clark County as Document No. 20080314-0003100, including but not limited to the Badlands Golf Course Clubhouse Improvements Agreement referenced therein.

RESPONSE TO REQUEST TO PRODUCE NO. 18:

OBJECTION: This request seeks information which is equally available to all parties via public filings, and is therefore oppressive and burdensome to Plaintiff. Further, this request seeks information that is irrelevant to the subject matter of this action and is not reasonably related to any claims or defenses in this matter having no application to the City's taking of the Subject Property nor the value of the Subject Property. Without waiving said objections, see LO 0035852-0035858.

REQUEST FOR PRODUCTION NO. 19:

Produce all documents related to that certain Memorandum of Agreement recorded June 28, 2013 in the Official Records of Clark County as Document No. 201306280004173, including but not limited to the Settlement Agreement referenced therein.

RESPONSE TO REQUEST TO PRODUCE NO. 19:

OBJECTION. This request seeks information which is equally available to all parties via public filings, and is therefore oppressive and burdensome to Plaintiff. This request further seeks information that is irrelevant to the subject matter of this action and is not reasonably related to any claims or defenses in this matter having no application to the City's taking of the Subject Property nor the

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value of the Subject Property. Without waiving said objections, there are no documents within Plaintiffs control responsive to this request.

REQUEST FOR PRODUCTION NO. 23:

Produce all estimates of the cost of construction of roadways, sanitary sewers, clean water delivery, electric power, internet cable, natural gas, flood control, drainage, earthwork, and other infrastructure for your proposed development of the Badlands Property or any portion thereof.

RESPONSE TO REQUEST TO PRODUCE NO. 23:

OBJECTION: This request is cumulative and/or duplicative and therefore oppressive and burdensome to the Plaintiff as it seeks information already requested pursuant to the City's Request to Produce No 5. This request is also overly broad, indefinite as to time and without reasonable limitation in its scope. This request also seeks information that is attorney / expert work product and requests documents that are non-discoverable under Nevada's Discovery rules, namely, experts and consultants that have been retained and may not be called to testify at trial. This request seeks expert reports which are not currently due to be exchanged. Further, this request is outside the scope of this case as it requests documents for 250 acres of land owned by other entities or part of other parcels and not a part of this case.

1st Supplemental Response to Request No. 23:

To the extent this request seeks cost estimates for properties other than the Subject Property (35 acre property) at issue here, then this request is also irrelevant having no application to the City's taking of the Subject Property nor the value of the Subject Property. Further, this request is outside the scope of this case as it requests documents for land owned by other entities or part of other parcels and not a part of this case[.]

* * *

INTERROGATORY NO. 20:

Identify in detail all water rights that have been associated with or appurtenant to the Badlands Property. If you have disposed of any such water rights, identify the date, the recorded document number and the purpose of any such conveyance.

ANSWER TO INTERROGATORY NO. 20:

Objection, overly burdensome as the City has exceeded its allowed number of interrogatories. Accordingly, the Landowner is not required to provide a response to this interrogatory.

1st Supplement to Answer to Interrogatory No. 20:

Pursuant to agreement by counsel to the addition of 6 interrogatories per side, the Landowner hereby responds as follows: There are no water rights appurtenant to the Badlands Property. Notwithstanding the foregoing, third party water rights were utilized to irrigate a portion of the Property.

See Errata at 4:1-5:13, 6:18-8:4, **Ex. P**; *see also* Second Supp. to Amended Responses at 4:20-24, 7:18-20 and 8:10-13, **Ex. T**; Responses to Second Set of Requests at 4:1-13 and 6:24-7:4, **Ex. Q**; First Supp. to Response to Second Set of Requests at 4:1-5:14 and 7:5-10, **Ex. U**; Third Supp. to Interrogatory Responses at 21:10-21, **Ex. X**.

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III. LEGAL ARGUMENT

A. Legal Standard For A Motion To Compel.

Rule 26(b)(1) of the Nevada Rules of Civil Procedure permits parties to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case…." *See* NRCP 26(b)(1). It is well established that courts construe this language, and other discovery rules, broadly and liberally to eliminate surprise and promote settlement. *See Palmer v. Pioneer Inn Assocs., Ltd.*, 118 Nev. 943, 59 P.3d 1237 (2002) (stating discovery rules are designed to afford parties broad access to information); *Club Vista Fin. Servs., Eighth Judicial Dist. Court*, 276 P.3d 246, 249 (2012) (quoting *Maheu v. District Court*, 88 Nev. 26, 42, 493 P.2d 709, 719 (1972)) ("Nevada's discovery rules 'grant broad powers to litigants promoting and expediting the trial of civil matters by allowing those litigants an adequate means of discovery during the period of trial preparation.'"). In addition, Rule 16.1(a)(1)(A)(iv) of the Nevada Rules of Civil Procedure mandates that a party "**must**, without awaiting a discovery request, provide to the other parties: . . . a computation of each category of damages claimed by the disclosing party – who must make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosures, on which each computation is based, including materials bearing on the nature and extent of injuries suffered." *See* NRCP 16.1(a)(1)(A)(iv) (emphasis added).

A party may move to compel disclosure of documents and electronically stored information and documents responsive to a request made pursuant to NRCP 34; as well as an answer to interrogatories. NRCP 37(a)(3)(B)(iii)-(iv). Furthermore, "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond" NRCP 37(a)(4). A party may also move to compel disclosures required under NRCP 16.1(a) and may seek appropriate sanctions. *See* NRCP 37(a)(3)(A).

B. The Scope of Discovery in Inverse Condemnation Cases is Exceptionally Broad.

The Developer has asserted a variety of takings claims based on different theories of inverse condemnation, each of which raises its own highly complex factual issues. "Given 'the nearly infinite variety of ways in which government actions or regulations can affect property interests,'

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no 'magic formula' exists in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution." *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (quoting *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31-32, 133 S. Ct. 511, 518 (2012)). "[M]ost takings claims turn on situation-specific factual inquiries." *Arkansas Game*, 568 U.S. at 32.

A "categorical taking" only occurs where the government has deprived a landowner of ***all*** economically beneficial uses." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1017–18, 112 S. Ct. 2886 (1992). To establish this claim, the Developer must not only show that the approved use of the Badlands Property (a golf course) is not an economically beneficial use, it must also show that no other permitted use of the land would be economically beneficial. Outside of situations where a regulation deprives property of all beneficial use, regulatory takings claims are guided primarily by three factors: (1) "the economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment backed expectations"; and (3) "the character of the government action." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S. Ct. 2646, 2659 (1978).

C. The Developer Refused To Provide Responses And Documents To The City's Relevant Written Discovery And The Developer Must Be Compelled To Supplement And Produce All Relevant Documents.

1. The Developer is Intentionally Concealing Documents and Other Evidence Showing It Paid Less than $4.5 Million Dollars for the 250-Acre Badlands Property

Since the City served its Interrogatories and the First Set of Requests on the Developer, the Developer has set up roadblock after roadblock and engaged in dilatory behavior, fighting tooth and nail to avoid providing any information or documents regarding the value of the Badlands Property and other assets it acquired from the Peccole family. More than 15 months after the City served the written discovery, the City has finally started to understand why the Developer has taken such steps to avoid producing relevant information. ***Importantly, while the Developer initially claimed in its interrogatory responses that it paid $45 million to acquire the Badlands Property, the documents and communications the Developer has long fought to keep private tell a fundamentally different story.***

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The documents the City has been able to obtain thus far reveal that, in prior real estate transactions, the Developer made substantial commitments to the Peccole family that the Developer failed to fulfill. *See* Badlands Golf Course Clubhouse Improvements Agreement dated September 6, 2005 ("Improvements Agreement") attached as **Exhibit BB**; Settlement Agreement and Mutual Release dated June 28, 2013 ("2013 Settlement Agreement") attached as **Exhibit CC**. At one point, the Developer sued the Peccole family in an attempt to takeover of the golf course and unwind those commitments. *See* Complaint, Eighth Judicial District Court Case No. A546847 attached as **Exhibit DD**; *see also* Settlement Agreement between BGC Holdings LLC and Fore Stars dated January 28, 2008 ("BGC Settlement Agreement") attached as **Exhibit EE**.

In the year leading up to the Developer's acquisition of the Badlands Property, these unfulfilled commitments came to a head while the Developer was simultaneously negotiating the purchase of the Badlands Property and an extension to an option to purchase the office building that the Developer leased from the Peccole family for EHB's corporate offices. *See* February 19, 2015 Email from Billy Bayne attached as **Exhibit FF** ("I discussed with the family for some time yesterday and last night, the possibility of closing with 12M and extending the option on the end cap at Hualapai for 1 year as you work to pay off the additional 3m. . . "). Ultimately, the Developer paid $7.5 million to acquire Fore Stars (which owned the entire Badlands Property at the time) and $7.5 million to acquire WRL, LLC (which owned the water rights for the golf course). *See* Membership Interest Purchase and Sale Agreements, attached as **Exhibit GG**. However, $3 million was apparently intended to satisfy outstanding obligations the Developer owed the Peccole family with respect to prior transactions. *See* August 27, 2014 Email from Billy Bayne, attached as **Exhibit HH** ("We do not care how you value the different parts of the transaction, provided, that we get 12 million on closing and 3 million should you end up buying the phase 2 property if we obtain it. Thus if you want to put more money toward the water rights than the land that will be up to you.").

Specific terms were inserted into some of the early drafts of the purchase agreement for the Badlands Property to address matters related to prior transactions between the Developer and the Peccole family. *See* July 24, 2014 Draft, attached as **Exhibit II** (terminating BGC Settlement Agreement and requiring Developer the assume obligations under the 2013 Settlement Agreement);

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see also August 22, 2014 Draft, attached as **Exhibit JJ** (adding contingencies regarding the 2013 Settlement Agreement). The early drafts and emails also show how the Developer engineered a windfall by acquiring Fore Stars at a time when it was guaranteed to receive either $3.15 million or 2.37 acres. *See* August 27, 2014 Email form Billy Bayne, **Ex. HH** ("Should IDB give us money instead of the land associated with their phase 2 we will give Yohan anything in excess of the 3 million dollars to help offset the cost of the clubhouse.").

All references to the Improvements Agreement, the 2013 Settlement Agreement, and the BGC Settlement Agreement were omitted from the final draft of the purchase agreement, which was not even executed until the day the acquisition of Fore Stars closed. *See* February 27, 2020 Email from Henry Lichtenberger, attached as **Exhibit KK** ("The current executed agreement remains in full force and effect until the WRL and Fore Stars agreements are finalized and signed at the closing."). The Developer nevertheless refuses to produce any documents or communications related to those agreements because it does not want to the City to know how little the Developer actually paid for the Badlands Property.

The Developer's failure to produce these documents appears to be a calculated attempt to conceal the purchase price of the Badlands Property from the City and the Court. Therefore, the Developer must be compelled to respond to:

- Request for Production No. 1, by producing all agreements between the Developer and the Peccole family (and their respective affiliates) related or connected to the acquisition of the Badlands Property;
- Request for Production No. 16, by producing all documents pertinent to the consideration paid by the Developer in connection with the acquisition of the Badlands Property;
- Request for Production No. 17, by producing all documents related to the BGC Settlement Agreement and the attempted takeover of the Badlands golf course by BGC Holdings LLC;
- Request for Production No. 18, by producing all documents related to the restrictive covenant recorded against the Badlands Property for the benefit of BGC Holdings LLC and Queensridge Towers LLC; and
- Request for Production No. 19, by producing all documents related to the 2013 Settlement Agreement, including but not limited to Queensridge Towers LLC's election to transfer 2.37 acres to Fore Stars.

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2. Failure to Comply with Request Nos. 2 and 23

In determining whether a governmental action has gone beyond "regulation" and effects a "taking," courts consider "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations…" *Penn Cent. Transp. Co.*, 438 U.S. at 124, 98 S. Ct. at 2659. If the Developer's expectations were not reasonable, its takings claims fail. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1006, 104 S. Ct. 2862, 2874 (1984).

In order to obtain loans to acquire and the develop the Badlands Property, the Developer would have needed to present some evidence that the Developer had a feasible plan for developing the property and receiving a return on its investment. And in order to determine the feasibility of developing the property profitably, the Developer would have needed to estimate the costs of development. The City is thus entitled to discovery regarding the information the Developer provided its lenders in order to obtain financing for the acquisition and proposed development of the Badlands Property. The City is also entitled to discovery regarding the estimated costs of developing the Property.

The Developer's refusal to produce communications with its lenders suggests that the Developer likely exaggerated the development potential of the Badlands Property. In fact, an appraisal prepared by Lubawy & Associates ("Lubawy Appraisal") for one of the Developer's lenders suggests that the Developer made blatantly false representations about having developmental rights. *See* Lubawy Appraisal, attached as **Exhibit LL** at 2 ("According to the borrower and owner Yohan Lowie, the Badlands Golf Course was purchased in 2007 and his company possesses the declarant rights and development rights associated with the property. We have requested and have not been provided with a purchase agreement or written documentation confirming this.").

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In addition, the Developer may have sought to obtain developmental rights by acquiring Nevada Legacy 14, LLC ("Nevada Legacy").[5] *See* March 5 Email from Henry Lichtenberger, attached as **Exhibit MM**. But the Developer certainly did not acquire Nevada Legacy before the Lubawy Appraisal was prepared. *See* October 1, 2015 Email from Todd Davis, attached as **Exhibit NN** ("Yohan has asked to proceed with the reinstatement and purchase of Nevada Legacy 14 LLC.") The Secretary of State's website indicates that Nevada Legacy has been dissolved since 2007, which means that the Lubawy Appraisal is clearly based on false information. Despite this, the Developer intends to use it to support its claim for damages. *See* Plaintiff Landowners' Fifth Supplement to Initial Disclosures, **Ex. AA** at 11:11-14. Communications with the Developer's lenders and cost estimates are therefore critical to evaluating whether the Developer's proposed use was an economical use of the Badlands Property and the reasonableness of Developer's expectations regarding such use. Accordingly, the Developer must be compelled to respond to:

- Request No. 2, by producing all communications with its lenders, including but not limited communications regarding project feasibility; and
- Request No. 23, by producing all cost estimates for developing the Badlands Property, including cost estimates related to different portions of the Badlands Property.

3. Failure to Comply with Request No. 5

Based on the Lubawy Appraisal, the Badlands Property was worth $700,510 per acre with development rights; yet, the Peccole family sold it to the Developer for less than $30,000 per acre. The amount the Developer paid to acquire the Badlands Property demonstrates that the Developer could not have possibly believed that the property had all necessary entitlements for residential development or that R-PD7 zoning gives the Developer a "vested right" or a "property right" to develop the Badlands Property. In fact, even the Developer's own land use attorney recognized that a zone change was necessary. *See* Lubawy Appraisal, **Ex. LL** at 30 ("In conversation with the

[5] Nevada Legacy was the declarant under the Master Declaration of Covenants, Conditions & Restrictions ("CC&Rs") for the Queensridge Common Interest Community. Under the Uniform Common-Interest Ownership Act, the developmental rights of a declarant include the right to add real estate to a common-interest community and to subdivide and create new units. *See* NRS 116.039.

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subject owner's attorney, Chris Kaempfer with Kaempfer Crowell Law Firm, it is likely that the subject can obtain zoning that would allow for the development of 7 to 10 units per acre.").

Notwithstanding that this is the linchpin of the Developer's entire case, the Developer has failed to produce any evidence that it sought opinions or analyses regarding local zoning laws before or after purchasing the property. However, the Lubawy Appraisal demonstrates that the Developer's counsel was clearly involved in communicating such opinions to the Developer's lenders, which communications would not be privileged. *See id.* The Developer nevertheless refuses to produce communications with the three local land use experts the Developer identified as consultants in its interrogatory responses: Greg Borgel, Chris Kaempfer and Stephanie Allen. *See* Third Supp. to Interrogatory Responses at 4:28, **Ex. X**.

As the Lubawy Appraisal suggests, these consultants likely advised the Developer that it had no vested right to develop the Badlands Property. The Developer obviously could not have reasonable expectations about developing the property as anything other than a golf course. *See e.g., Penn Cent. Transp. Co.*, 438 U.S. at 136, 98 S. Ct. at 2665 (landmark designation law did not limit historical use of property as railroad terminal, "which must be regarded as [the owner's] primary expectation concerning the use of the parcel."). However, evidence that the Developer was aware that the PR-OS designation for the Badlands Property precluded residential development would be fatal to the Developer's takings claims. Accordingly, the Developer must be compelled to comply with Request No. 5. by:

- Producing all communications with Mr. Borgel, who is not an attorney;
- Producing all non-privileged communications with Chris Kaempfer and Stephanie Allen; and
- Identifying all privileged communications with Chris Kaempfer and Stephanie Allen on its privilege log.

4. Failure to Comply with Request No. 6

The Developer's failure to produce communications with the prior owners of the Badlands Property is particularly troublesome because of the longstanding relationship between the Developer and the Peccole family and the entanglements between their respective real estate interests. Over a year after the First Set of Requests were served, the Developer finally produced

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some communications with the Peccole family. However, these communications contained significant gaps and omitted critical facts. The most salient and noticeable omission is the lack of communications sent by the Developer's principals, Yohan Lowie and Vickie Dehart. After excluding duplicates and emails forwarded without any text, the Developer only produced 12 emails from Yohan Lowie and 5 emails from Vickie Dehart. *See* Ogilvie Decl., ¶ 14, **Ex. A**. In addition, other communications produced by the Developer indicate that Yohan Lowie communicated with the Peccole family via text in connection with negotiations for the Badlands Property. *See* August 27, 2014 Email form Billy Bayne, **Ex. HH**. The Developer must be compelled to produce these text messages as well as all e-mail communications related to the subject matter.

5. Failure to Response to Interrogatory No. 20.

The Developer's response to Interrogatory No. 20 is false as it claims that there are no water rights appurtenant to the Badlands. Third Supp. to Interrogatory Responses at 21:10-21, **Ex. X**. However, the City notes that the Nevada Division of Water Resources' website shows four groundwater permits appurtenant to the Badlands Property and which recognizes WRL, LLC as the current owner of those permits. *See* February 21, 2020 Letter, **Ex. Y**. And the Nevada Secretary of State's website shows Mr. Lowie, Mr. Pankratz and Ms. DeHart as the managers of WRL, LLC. *Id.* As a result, not only are there currently water rights appurtenant to the property, the water rights are owned by an entity affiliated with the Developer. *Id.* Accordingly, publicly available information contradicts 180 Land's answer. *Id.*

The Developer's intentions in acquiring WRL LLC's water rights are relevant to the Developer's expectations for the Badlands Property. Indeed, the water rights owned by the WRL permit was to be used to irrigate the golf course, which suggests the Developer purchased the Badlands Property expecting to use them for that purpose. *Penn Cent. Transp. Co.*, 438 U.S. at 124, 98 S. Ct. at 2659. 180 Land should be compelled to amend its response to provide a truthful and accurate response.

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C. The Developer Must Provide A Computation Of Each Of Its Categories Of Damages And Produce *ALL* Documents That Support That Calculation.

Despite the plain language of Rule 16.1(a)(1)(A)(iv) of the Nevada Rules of Civil Procedure set forth in full, *supra*, the Developer argues that it need not provide a computation of its damages – or provide documents supporting its damages – until it produces its expert report(s). However, this position runs afoul of the plain language of the Rule. *See* NRCP 16.1(a)(1)(A)(iv); *see also Silvagni v. Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 241 (D.Nev. 2017) (finding that reliance on future expert analysis does not relive a plaintiff of providing information reasonably available regarding its damages computation).[6]

The Developer has alleged that its damages are $54 million. That calculation must be based on an analysis. Without knowing the basis of the Developer's damages claim, the City cannot prepare a defense. The Developer cannot have it both ways: if it claims injury from the City's action, it must provide its evidence and calculations to support that claim.

D. The Developer Has Improperly Designated Documents As Confidential And Privileged

All the documents produced by the Developer since July 2020 were improperly marked "(A-17-758528-J Confidential and Privileged NRCP 26c)." *See e.g.*, Documents Bates Stamped LO 0012535 and LO 0012536, attached as **Exhibit OO**. Yet, even a cursory review of the documents demonstrates that they are neither confidential, nor privileged. *Id.* In addition, and by way of example only, the Developer has asserted that the Purchase and Sale Agreement ("PSA") for the Badlands, which the Developer has refused to produce for more than 15 months, is confidential. To the contrary, the PSA, a copy of which the City obtained from Peccole Nevada, was an arms-length agreement between two adverse parties. The PSA contains no proprietary or privileged information and does not state that it is to remain confidential. There is no other evidence or indication that the parties intended the PSA to be confidential. Nor is there any authority to

---

[6] "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal quotations omitted).

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support the confidentiality of an agreement negotiated between two adversaries that contains no proprietary or privileged information. And, moreover, there does not exist any confidentiality or protective order in this case and the Developer has never sought a confidentiality designation or protective order from the Court. *See* Ogilvie Decl., ¶ 16, **Ex. A**.

During the September 16, 2020 meet and confer, the City's counsel requested the Developer remove this mark; however, the Developer's counsel stated that in its opinion, all of the documents are privileged and confidential. *See* Sept. 18 Email and Attachment, **Ex. S**. Because the Developer has incorrectly and misleadingly marked the documents as confidential and privileged, the documents should be re-produced without the mark.

E. The City Is Entitled To Its Fees And Costs Related To The Developer's Gamesmanship Over The Past 14-Months, The Multiple Letters, Review Of Confusing And Incomplete Discovery, Multiple Meet And Confers And This Motion.

Rule 37(a)(5)(A) of the Nevada Rules of Civil Procedure states that if a motion to compel is granted, "the court **must**" require the party or attorney or both "to pay the movant's reasonable expenses incurred in making the motion, including attorney fees." *See* NRCP 37(a)(5)(A) (emphasis added). In addition, EDCR 7.60 provides that this Court may "impose upon an attorney or a party and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause: . . . (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously." *See* EDCR 7.60(b)(3).

As set forth in detail above, the City served its written discovery on July 2, 2019 and it still does not have complete responses and/or responsive documents to the written discovery. The City has been overly accommodating to the Developer and its counsel prior to filing this Motion. Indeed, the City sent multiple letters and conducted three meet and confers prior to filing this Motion. In response, the Developer has refused to comply with its discovery obligations and has forced the City (*i.e.* the taxpayers) to expend unnecessary fees and costs to obtain simple responses to discovery and the Developer's required damages disclosure. It is without question that the Developer (and its counsel) have so multiplied these proceedings as to unreasonably and

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vexatiously increase the City's costs and the Developer (and its counsel) must be sanctioned.

Because the City has incurred significant attorneys' fees in connection with the written discovery to which the Developer has refused to fully respond and in seeking the Developer's damages calculation, including having to file this Motion, the City respectfully requests an order awarding the City's its attorneys' fees and costs.[7]

IV. CONCLUSION

Based on the foregoing, the City respectfully requests the Court grant the instant Motion.

Dated this 20th day of October, 2020.

McDONALD CARANO LLP

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[7] Should the Court award the City is fees and costs, the City will provide the Court with its redacted invoices, which demonstrate the exact amount of fees and costs incurred in connection herewith.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the ____ day of October, 2020, a true and correct copy of the foregoing **THE CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS ON ORDER SHORTENING TIME** 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 on the following:

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An employee of McDonald Carano LLP

EXHIBIT “E”

ELECTRONICALLY SERVED
2/24/2021 11:42 AM

Electronically Filed
02/24/2021 11:42 AM
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Attorneys for Plaintiff Landowners

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, Plaintiff, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	Case No. A-17-758528-J Dept. No. XVI **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATIONS AND RELATED DOCUMENTS**

This matter having come before the Court for hearing on November 17 and 18, 2020, the Court having considered the Points and Authorities on file and oral arguments presented by the Parties,

hereby enters its Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part The City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time ("Motion") and Plaintiffs' Request for Attorney's Fees and Cost.

FINDINGS OF FACT

1. The City filed its Motion on October 22, 2020. As part of its Motion, the City requested all documents related to 180 Land's discovery response that it paid an aggregate of consideration for the entire Badlands Property, which includes the 35 Acre Property, for $45 million (the "Transaction").

2. Plaintiff filed an Opposition on November 6, 2020 and requested attorneys' fee and costs.

3. During the hearing on the Motion, Plaintiffs' offered to allow the City to depose Yohan Lowie, a principal of Plaintiffs, related solely to the documents supporting Plaintiffs' contention that it paid $45 million for the Badlands Property and to reserve all other issues for a subsequent deposition of Mr. Lowie.

4. In response to Plaintiffs 'offer, the Court determined that, as a baseline, the City has a right to conduct and receive all documents relied upon by 180 Land to support its contention that it paid $45 million for the Badlands Property prior to taking Mr. Lowie's deposition.

5. Plaintiffs represented that several documents were subject to confidentiality agreements and requested the documents only be produced pursuant to a protective order.

6. Computation of damages in this case are based upon expert testimony and analysis, which is scheduled to be disclosed pursuant to the Court's scheduling order.

7. 180 Land has no ownership interest in the entity that operated the Badlands golf course and therefore does not have any maintenance records to produce.

8. In relation to communications with counsel, 180 Land produced 57 pages of Documents in conjunction with a privilege log.

CONCLUSIONS

1. Although NRCP 16.1 requires a plaintiff to prepare and submit a damage calculation in the NRCP 16.1 early case conference, this case involves more than a simple computation of past and future expenses in a tort case or cost of repair in a construction defect case as it relies heavily on expert opinion. Thus, 180 Land's computation of damages may be produced in conjunction with its expert witness disclosures.

2. 180 Land cannot be required to produced maintenance records for an entity in which it does not have or maintain an ownership interest.

3. NRCP 26 provides that parties may obtain discovery regarding any non-privileged matter. Communications between a client and the client's lawyer are privileged unless an exception can be shown. NRS Chapter 49.

4. 180 Land has complied with NRCP 34 in relation to the request to produce communication with counsel by producing 57 pages of documents along with a privilege log.

5. Pursuant to NRCP 26 (c) (1)(B) and (G) a Court may, for good cause, issue an order specifying terms for the disclosure of discovery and requiring that confidential information be revealed only in a specified way.

6. The City is entitled receive all documents relied upon by 180 Land to support its contention that it paid $45 million for the Badlands Property prior to taking Mr. Lowie's deposition.

ORDER

IT IS HEREBY ORDERED that the City's Motion is **GRANTED IN PART AND DENIED IN PART.** The City's Motion is **GRANTED** as it seeks to compel all documents related to its contention that it paid $45 million for the Badlands Property.

IT IS FURTHER ORDERED that Plaintiffs and the City are to negotiate and agree upon a Stipulated Protective Order, which shall govern the protection over those documents to be produced by Plaintiffs and which relate to the Transaction and/or were relied upon by Plaintiffs to support its contention that it paid $45 million for the Badlands Property.

IT IS HEREBY FURTHER ORDERED that the remaining relief sought by the City's Motion is DENIED**.**

IT IS HEREBY FURTHER ORDERED that the Plaintiff's Request for Attorney's Fees and Costs is **DENIED**.

Dated this _____ day of _____, 2021.

Dated this 24th day of February, 2021

_____
District Judge Timothy C. Williams
FFA 29A 2C8B 0356
Timothy C. Williams
District Court Judge

ZJ

Submitted by:

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
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Evelyn Washington

From: Autumn Waters
Sent: Monday, February 22, 2021 7:43 AM
To: Evelyn Washington
Subject: FW: Orders

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Sent: Monday, February 22, 2021 7:26 AM
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Cc: Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>
Subject: RE: Orders

These are acceptable. You may affix my electronic signature and submit.

George F. Ogilvie III | Partner

McDONALD CARANO

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From: Elizabeth Ham (EHB Companies) [mailto:EHam@ehbcompanies.com]
Sent: Friday, February 12, 2021 4:27 PM
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Cc: Jennifer Knighton (EHB Companies) <jknighton@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>
Subject: Orders

Dear Mr. Ogilvie,

Attached are the finals in pdf – I believe they are correctly formatted and all agreed upon changes made.

Please let me know if you are good on signature and we can submit to the Court.

Best,

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

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EXHIBIT “F”

CASE NO. A-17-758528-J

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

180 LAND COMPANY LLC,
Plaintiff,
vs.
LAS VEGAS CITY OF,
Defendant.

REPORTER'S TRANSCRIPT
OF
HEARING
(TELEPHONIC HEARING)

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED TUESDAY, November 17, 2020

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

APPEARANCES:

(PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC APPEARANCE)

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ANDREW W. SCHWARTZ

* * * * *

01:54:26 We spoke at 5:00 o'clock. I said, I agree with you that this is a very complicated case. It's not the typical case where a landowner went out, and he purchased a parcel of property and that purchase price
01:54:38 is very clear and that we have a deed and a declaration of value setting out that value. That's not this case. In fact, that's the opposite of this case.

Just by way of background, your Honor, this acquisition of this 250-acre property which includes
01:54:56 the 35-acre property in this case involves a complicated history. And Mr. Ogilvie and I discussed this a little bit last night. But it involves an extremely complicated history of approximately 20 years of the principal, who's the principal of 180 Land in
01:55:16 this case -- his name is Yohan Lowie -- where he worked with the Peccole family over a 20-year period to acquire the rights to purchase this property.

So the right to acquire the 250-acre property, the due diligence done to acquire that property, and
01:55:31 the consideration paid for the right to acquire the property occurred over an approximately 20-year period. It's over that approximately 20-year period that there were several complicated transactions out of which was born the right to acquire the 250-acre property.
01:55:49 And, your Honor, to complicate matters further

01:55:51 is at the end of that 20-year period, our client didn't just purchase the 250-acre property; he purchased a company that owned the 250-acre property, all of that company's assets and accounts, and all of that
01:56:03 company's liabilities.

So I understand this issue. The City -- the City wants two things. They want to fully understand the complicated historical purchase of the property, and they want to review the relevant documents
01:56:17 associated with that background.

Almost all of the discovery disputes arise out of this complicated historical background.

Now, your Honor, we believe that it's not relevant. And the reason we believe that it's not
01:56:32 relevant is because what happened 20 years ago, how this transaction occurred over the past 20 years, the consideration that was paid beginning in 2001 through 2005 and 2010, that consideration that was paid way back then has absolutely nothing to do with the value
01:56:52 of this property in 2017. The statutory date of value in this case is 2017.

What happened back in that time frame has nothing to do with that -- with this value. What has to do with this value today is to have an appraiser
01:57:05 identify the property, look at the comparable sales,

and determine the value today.

It doesn't matter, again, what happened during the past. However, the City has made it an issue, and so we've been trying to comply as best as we can and to explain this issue to Mr. Ogilvie and to the City of Las Vegas.

It hasn't worked. I'll just tell you right now, your Honor, it hasn't worked. And the reason it hasn't worked is because this historical transaction that occurred that Mr. Ogilvie wants to find out about that we believe is irrelevant occurred over a 20-year period. And the only individual that can tell this story is Mr. Lowie.

And I -- I'll share this with you. I shared it with Mr. Ogilvie last night. It took me four and a half straight hours of listening to Mr. Lowie and having him explain this to fully understand that transaction. And so I'm going to make a proposal. And I talked to Mr. Ogilvie a little bit about this last night, is that I propose that Mr. Lowie's deposition occur on this one issue, the historical background associated with the acquisition of the property, and that we reserve for a later time all of the related valuation issues that Mr. Lowie may testify to as of 2017. Now, we don't typically offer up our clients for

two depositions, but this is a unique circumstance that warrants it.

Secondly, during that deposition there will be several documents that are contracts that are referenced. Your Honor, those contracts and those documents do not include a purchase price for the property. They do not include the consideration paid for the property. Again, what happened is out of those complicated land transaction deals was born the right to purchase the property. Just one of those complicated transactions that Mr. Lowie entered into with the Peccole family involved the Queensridge Towers; Tivoli Village, which is built now; Hualapai Commons, which is on the corner of Hualapai and Sahara here in Las Vegas; two other partners; the prior golf course operator. Just one of them.

And so, your Honor, I believe that we can get to the bottom of this. I believe we can resolve all of Mr. Ogilvie's issues regarding this complicated transaction, regarding these -- these contracts if Mr. Lowie's deposition is taken.

And here's what I would recommend, your Honor, is that within the next week, next two weeks -- I'll double-check with our client. I believe it can happen. Within the next two weeks we can schedule this

is still on the phone here with us.

MS. HAM: I'm still on the phone. I am still on the phone.

And so you wanted me to respond to specifically in regard to our response to interrogatory -- I forget which number it was -- where we stated that the consideration given for the former Badlands Golf Course property was 45 million. And our response to that request for production was that -- and we revised it, but the request of the government, the defendant, that said that there are no documents, again, as I stated to you earlier, your Honor, that within the plaintiff's custody and control that states that the aggregate of consideration given to the Peccole family for the former Badlands Golf Course property was 45 million.

There is a multitude in binders and binders of documents that memorialize this complicated transaction to ultimately finalize the dealings with -- that they were already in process with the Peccoles, some of which Mr. Leavitt has already referenced previously in the different properties and different ventures whether they were joint ventures or partnerships or whatever they were in multitude of properties, and none of them will address that.

They have already requested the deposition of Mr. Baines, who I believe is being put forward as either the PMK or in some regard on the Peccole side who can answer these questions as well.

02:33:14 There's already been deposition testimony that's been provided that sort of confirms this sort of out of this relationship and all other transactions that was born in this right.

These are highly confidential documents that

02:33:28 involve several other parties. If the Court is going to order that we -- that we produce them, they must be produced under confidentiality provision. And I would request that the Court review them first in camera because we are in a position where the City has

02:33:45 continued and repeatedly continues to be in bed really with the homeowners, for lack of a better term, who started litigation with us before the year even finished of owning this -- or this entity Fore Stars that owned the land. And through the City's actions

02:34:01 which have been so egregious and outrageous, everything stemming from intending to destroy the company beyond even just the development of this property, but seeking intel through a private investigator on some of our principals. They have reached out to every

02:34:17 relationship that we have had one way or another,

whether it's been the City directly through their counsel members or the homeowners that they have worked with to destroy relationships, to change positions. So we are highly guarded over here, more than usual, because of what's gone on for the past five years.

And they -- the City doesn't want you to know what they have done. They don't want you to know what they have said. They don't want -- they don't want to get to that issue. They keep trying to dismiss our case because what they have done is outrageous, and they continue their outrageous conduct through this discovery.

I take very great issue with how Mr. Ogilvie has raised what has gone on here and that it's taken all these months to get it. When he agreed to extensions of time, he can't now complain about it when we're in the middle of a pandemic complaining that we didn't produce these documents. The minute we got the protective order from the discovery commissioner, the next day we produced documents. We have produced thousands of pages of documents.

So, again, if you are going to order that these documents be produced, I ask that you first review them. They are binders and binders of complicated, involved transactions that will never

mention the transaction of the golf course. It was honored for this price because of the family dealings and because of these years -- years of dealings with the Peccole family.

So this is why we thought it would be important and we continue to offer up information and go beyond what we think is -- is related to either the claims for defenses of this case in order to appease the City, but they keep digging deeper into other things which have nothing to do with it.

I understand why they would want the documents in front of them, but they are not going to be relevant. They are not going to show this number. The only thing that will show that is the explanation.

So, again, if you're inclined to order it, I would ask that it be 100 percent protected. We may have to alert some other parties. I don't know how they'll feel about this being produced in any other manner beyond an in-camera review, and then you can make the determination if at all it's relevant to this case and this action.

And that's -- and that's all I can offer in regards to that. Our positions and our responses have been 100 percent accurate and truthful.

And so, you know, I -- I -- we have continued

to offer up Mr. Lowie or anyone in the company should they want that to ask that question. We are saying, you know, we don't want it to be deposed twice, but if this will help resolve these issues, we're willing to do it.

And so, again, I would ask that if you're going to order that these documents be released, that it be done in the proper manner and in the way that we requested.

THE COURT: Well, there's a lot there to unwind. But, ultimately --

MS. HAM: Yes.

THE COURT: -- if the plaintiff is taking the position that they paid $45 million or they've paid $45 million in consideration or that's the value of what they paid for the 35 acres at issue, it's their burden to produce reliable testimony and documentation to support that claim. And, ultimately, that's what -- what -- what this aspect of the case, I would anticipate, is about.

When it comes to confidentiality and the like, I got to go back to -- I guess it's roman numeral Rule VII or whatever it is from our Nevada Supreme Court. They have specific rules as it relates to confidentiality. Just as important too, when you use

the Court system, that's another avenue we have to look at as to whether documents are confidential or not. I just can't arbitrarily make that determination.

Any determination I make as to confidentiality, I have to make specific findings of fact as to why it's confidential pursuant to the rule. That's another issue.

But at the end of the day -- and this is all I can say is this: That if there's transactions and/or documents out there that support the valuation property by the plaintiff as to the purchase price, it seems to me potentially those might be germane to the case.

MS. HAM: And, your Honor, this may be splitting hairs. It's not that they support the $45 million answer that we provided in regard to this request.

They support the 20-year history that from those transactions was born this right to purchase it for the -- for the 15 million, which included the water rights. Then that was divided later.

So they're not going to reference at all the golf course property.

It's -- it's, you know, again, I don't mean to -- it is the testimony of Mr. Lowie what was given over the years, but it is not -- these documents will

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOTYPE 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.

_____
PEGGY ISOM, RMR, CCR 541

EXHIBIT “G”

ELECTRONICALLY SERVED
4/1/2021 4:06 PM

McDONALD CARANO

George F. Ogilvie III Reply to Las Vegas

April 1, 2021

VIA ELECTRONIC MAIL
AND ELECTRONIC SERVICE

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LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
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EHB COMPANIES
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Re: 180 Land Co, LLC, et al. v. The City of Las Vegas (Case No. A-17-758528-J)
Plaintiff Landowners' 20th Supplement to Initial Disclosures

Counsel,

The Court's Order Granting in Part and Denying Part Defendant City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculations and Related Documents entered February 24, 2021 (the "Order") requires production of all documents related to the consideration paid to acquire the Badlands Property and/or relied upon by the Developer to support its contention that it paid $45 million for the Badlands Property. The Developer has not complied with the Order based on our review of the documents produced with Plaintiff Landowners' Twentieth Supplement to Initial Disclosures (the "20th Supp.").

During the hearing on the City's Motion to Compel, Mr. Leavitt stated that "the right to acquire the 250-acre property, the due diligence done to acquire that property, and the consideration paid for the right to acquire the property occurred over an approximately 20-year period." *See* November 17, 2020 Transcript at 19:18-21. Mr. Leavitt also stated:

> ***Just one of those complicated transactions*** that Mr. Lowie entered into with the Peccole family involved the Queensridge Towers; Tivoli Village, which is built now; Hualapai Commons, which is on the corner of Hualapai and Sahara here in Las Vegas; two other partners; the prior golf course operator. ***Just one of them***.

Id. at 22:10-16 (emphasis added).

The documents produced with the 20th Supp. relate solely to just this "one" transaction from 2005 involving Queensridge Towers, Tivoli Village, and Hualapai Commons. None of the documents refer to any other transaction or consideration paid during the 20-year period. *Id.* at 20:17-18. Moreover, none of the documents refer to the payments Mr. Leavitt described as having been made in 2001 and 2010. *Id.* at 20:17-18.

According to the declaration Mr. Lowie submitted in support of the Developer's motion for summary judgment that was just filed in this case, Mr. Lowie began working with the Peccole family in 1996. Mr. Lowie's declaration also references "various other transactions" with the Peccole family that took place in and around 2007. Yet, none of these transactions are reflected in the documents produced with the 20th Supp.

During the hearing on the City's Motion to Compel, Ms. Ham stated "[t]here is a multitude in binders and binders of documents that memorialize this complicated transaction to ultimately finalize the dealings with… the Peccoles." *Id.* at 47:17-18. However, the documents produced with the 20th Supp. fill no more than two-thirds of a single 3-inch binder.

Comparing the documents produced with the representations of counsel and Mr. Lowie's declaration, the City can only conclude that the Developer has failed to comply with the Order. As a reminder, the Order states that the City is entitled to receive all of these documents prior to taking Mr. Lowie's deposition. If the documents have already been organized into binders, as Ms. Ham indicated, they should be produced immediately without further delay.

Sincerely,

MCDONALD CARANO LLP

George F. Ogilvie III, Esq.

cc: Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
Bryan K. Scott, Esq.
Andrew W. Schwartz, Esq.
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EXHIBIT “H”

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' MOTION FOR RECONSIDERATION OF ORDER GRANTING IN PART AND DENYING IN PART THE CITY'S MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS** **HEARING REQUESTED**

Pursuant to EDCR 2.24, the City of Las Vegas (the "City") respectfully request this Court reconsider its Order Granting In Part and Denying In Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents entered February 24, 2021 (the "Order"). The City asks the Court to reconsider aspects of the Order relating to discovery of information and documents relevant to potentially dispositive issues. Reconsideration is warranted to avoid manifest injustice.

. . .

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City's Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents (the "Motion") requested an order compelling (i) Plaintiff 180 Land Co LLC ("180 Land") to produce all documents responsive to certain requests for production of documents; (ii) 180 Land and Plaintiff Fore Stars Ltd. ("Fore Stars," and collectively with 180 Land, the "Developer") to supplement the Developer's NRCP 16.1 damages calculation to provide a computation of damages; (iii) compelling 180 Land to produce all documents related to its damages calculation as required under NRCP 16.1(a)(1)(A)(iv); and (iv) awarding the City fees and costs associated with the Motion and the City's attempts to meet and confer with the Developer. *See* Motion attached as **Exhibit A**.

The Order granted the Motion with respect to the City's request for documents related to the Developer's contention that it paid $45 million to acquire the Badlands Property. *See* Order attached hereto as **Exhibit B**. All remaining relief sought by the Motion was denied. *Id.* By this Motion for Reconsideration, the City requests that the Court reconsider the Order as it relates to the following requests for documents:

1. All communications between the Developer's principals regarding the Badlands Property;
2. All communications with the Developer's lenders, including communications regarding the feasibility of developing the Badlands Property;
3. All communications with the Peccole family, including but not limited to text messages and communications regarding other transactions between the Developer and the Peccole family;
4. All communications with the Developer's land use attorneys, Chris Kaempfer and Stephanie Allen. Alternatively, the City requests that the Developer be compelled to produce a privilege log for such communications;
5. All communications with land use consultant Greg Borgel;
6. All cost estimates for development of the Badlands Property or any portion thereof;

7. All documents related to the lawsuit brought by BGC Holdings LLC against Fore Stars;

8. All documents related to the restrictive covenant recorded for the benefit of BGC Holdings LLC and Queensridge Towers LLC; and

9. All documents related to the 2013 Settlement Agreement between Queensridge Towers LLC and Fore Stars.

Documents responsive to the foregoing requests are relevant to dispositive issues and critical to the City's ability to prepare its defense. Such documents are also necessary to eliminate significant gaps in the documents already produced by the Developer. To exclude these highly relevant documents from discovery greatly prejudices the City, resulting in manifest injustice.

II. RELEVANT BACKGROUND

A. Procedural Background

The Court conducted a hearing on the Motion on November 17, 2020. *See* November 17, 2020 Hearing Transcript attached as **Exhibit C**. The hearing focused primarily on the Developer's failure to produce documents in support of its contention that it paid $45 million to acquire the Badlands golf course. *Id.* at 11:6-15, 15:17-25, 32:6-19, 34:3-19; 43:2-44:3, 45:8-17, 47:4-16, 51:13-20, 52:13-55:3, 54, 58:1-13, 59:7-10, 60:1-6. Although the Developer concedes there are no documents that support its claim that it paid $45 million to acquire the Badlands Property, the Developer's counsel suggested that the Developer's principal Yohan Lowie acquired the rights to purchase the property over a 20-year period through complicated transactions with the Peccole family. *Id.* at 19:12-17. According to the Developer's counsel:

> "[T]he right to acquire the 250-acre property, the due diligence done to acquire that property, and the consideration paid for the right to acquire the property occurred over an approximately 20-year period. It's over that approximately 20-year period that there were several complicated transactions out of which was born the right to acquire the 250-acre property.

Id. at 19:18-24.

With respect to the Developer's admission that no documents support the claim that the Developer paid $45 million for the Badlands Property, the Developer's counsel claimed that "the

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only individual that can tell this story is Mr. Lowie." *Id.* at 21:12-13. The Developer's counsel therefore offered to let the City depose Yohan Lowie "on this one issue, the historical background associated with the acquisition of the property…" *Id.* at 21:20-22. The Developer's counsel also represented:

> "[D]uring that deposition there will be several documents that are contracts that are referenced. Your Honor, those contracts and those documents do not include a purchase price for the property. They do not include the consideration paid for the property. Again, what happened is out of those complicated land transaction deals was born the right to purchase the property. Just one of those complicated transactions that Mr. Lowie entered into with the Peccole family involved the Queensridge Towers; Tivoli Village, which is built now; Hualapai Commons, which is on the corner of Hualapai and Sahara here in Las Vegas…"

Id. at 22:5-15. Later in the hearing, the Developer's counsel clarified what the documents would show:

> It's not that they support the $45 million answer that we provided in regard to this request. They support the 20-year history that from those transactions was born this right to purchase it for the -- for the 15 million, which included the water rights. Then that was divided later. So they're not going to reference at all the golf course property.

Id. at 52:14-20.

The Court ultimately deferred ruling on the Motion until a status check scheduled for the following day. *Id.* at 59-61. At the November 18 status check, the Developer's counsel finally agreed to produce the transactional documents the Developer contends refute the $7.5 million purchase price of the 250-acre Badlands property set forth in the purchase and sale agreement produced by the seller, Peccole-Nevada Corporation. *See* November 18, 2020 Hearing Transcript attached as **Exhibit D** at 5-6. The Court did not address the remaining issues raised by the Motion but stated it would issue a decision on such matters. *Id.* at 20:13-22. On January 19, 2021, the Court issued a minute order denying the Motion as to all remaining issues. *See* Minute Order attached hereto as **Exhibit E**.

B. Relevant Factual Background

The documents the Developer has finally produced tell a fundamentally different story from what the Developer contends. Contrary to the Developer's claim that it paid $45 million to acquire

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the Badlands Property, the documents attached to the Motion indicate that the Developer actually paid only $4.5 million for the 250-acre Badlands Property (as opposed to the $7.5 million purchase price set forth in the purchase and sale agreement), and documents produced by the Developer after the Motion was filed confirm this.

The transactional documents the Developer has now produced pursuant to the Order demonstrate that, in 2005, the Peccole family sold their interests in three entities (Queensridge Towers, LLC, Great Wash Park LLC, and Sahara Hualapai LLC) which owned the land and rights to develop three different real estate projects (the Queensridge Towers, Tivoli Village, and Sahara Center). *See* Term Sheet attached as **Exhibit F**. One of the terms of this deal required the Peccole family to transfer 5.13 acres of land on which the Badlands golf course clubhouse was located to Queensridge Towers LLC. *Id.* No additional consideration was given to the Peccole family for the 5.13-acre parcel other than Queensridge Tower LLC's promise to build a new clubhouse. *Id.*

The obligation to build a new clubhouse was memorialized in an agreement between Queensridge Towers LLC and Fore Stars, which was still owned by the Peccole family at the time. *See* Badlands Golf Course Clubhouse Improvements Agreement ("Clubhouse Improvements Agreement") attached as **Exhibit G**. The Clubhouse Improvements Agreement required Queensridge Towers LLC to spend up to $3,150,000 on the new clubhouse and to reimburse the Peccole family up to $850,000 for reconfiguring the golf course to facilitate the 5.13-acre transfer to Queensridge Towers LLC. *Id.* Importantly, the Clubhouse Improvements Agreement required Executive Homes, Inc. ("EHB") to pledge as collateral its rights to purchase its corporate offices at 9755 W. Charleston Blvd., which EHB leased from the Peccole family. *Id.* The pledge would only terminate upon payment of the new golf course clubhouse costs. *Id.* In other words, EHB would not be able to exercise its option to purchase the building unless and until the new clubhouse was built.

Queensridge Towers LLC never built the new clubhouse, which led to a dispute that culminated in a settlement agreement with Fore Stars in 2013 (the "2013 Settlement Agreement"). *See* 2013 Settlement Agreement attached as **Exhibit H**. The 2013 Settlement Agreement gave Queensridge Towers LLC the option to terminate the Clubhouse Improvements Agreement by

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transferring 2.13 acres where the original clubhouse is located back to Fore Stars. *Id.* The 2013 Settlement Agreement also released the rights EHB pledged as collateral under the Clubhouse Improvements Agreement. *Id.* Although the release terminated the pledge, it did not extinguish the underlying debt. This was clarified in a form letter attached to the 2013 Settlement Agreement and addressed EHB, which stated:

> This letter hereby confirms that, pursuant to Section 3 of the Improvements Agreement EHB's pledge of the Office Collateral is hereby released, deemed terminated in full and of no further force or effect. Notwithstanding the foregoing release, all other agreements that exist between Hualapai Commons, Ltd., LLC, Peccole-Nevada Corporation and EHB with respect to the actual transfer of ownership of the Office Collateral are not altered or modified by this letter, ***including the understanding that until the existing debt covering the Office Collateral is paid in full, the title of the property cannot transfer.***

Id. (emphasis added).

One year after Fore Stars and Queensridge Towers LLC entered into the 2013 Settlement Agreement, Yohan Lowie sent the Peccole family a letter of intent expressing interest in negotiating the purchase and sale of the Badlands Golf Course and related water rights. *See* Letter of Intent dated June 12, 2014 attached as **Exhibit I**. The letter of intent proposed a purchase price of $12 million for both the golf course and water rights. *Id.*

The $3 million that EHB owed Fore Stars became an issue when the Developer and the Peccole family were finalizing the purchase agreements based on an email from one of the members of the Peccole family to the Developer, which states:

> I discussed with the family for some time yesterday and last night, the possibility of closing with 12M and extending the option on the end cap at Hualapai for 1 year as you work to pay off the additional 3m, as well as extending the reps and the warranties, as you proposed yesterday. The families position, is that they have a signed agreement, they are and were comfortable with, and they are not willing to change the terms, at this stage.

See 2/19/15 Email from Billy Bayne attached as **Exhibit J**.

On March 2, 2015, the Developer acquired Fore Stars, which owned the Badlands Property, for $7.5 million. *See* Purchase Agreements attached as **Exhibit K**. The Developer also acquired

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WRL LLC, which owned the water rights, for $7.5 million pursuant to a separate agreement. *Id.* The total consideration paid for both companies was $15 million, which was $3 million more than the purchase price proposed under the original letter of intent. According to emails between the Peccole family and the Developer, the additional $3 million was directly allocable to the 2.13-acre parcel that Queensridge Towers LLC transferred to Fore Stars pursuant to the 2013 Settlement Agreement. *See* 8/27/2014 Email from Billy Bayne attached as **Exhibit L**.

Importantly, the 2.13-acre clubhouse parcel is not included in this litigation, nor was it included it in any of the development applications filed with the City, presumably because it is already improved with a clubhouse. In any event, the key takeaway is that the Developer paid $3 million for the clubhouse parcel and only $4.5 million for the entire 250-acre Badlands Property, meaning the Developer paid approximately $630,000 for the 35-acre portion of the Badlands Property at issue in this case.

I. LEGAL ARGUMENT

A. Legal Standard For Reconsideration

The Court has the inherent authority to reconsider its prior orders. EDCR 2.24; *Trail v. Faretto*, 91 Nev. 401, 403 (Nev. 1975). In particular, "[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (Nev. 1997). The Court may amend, correct, modify or vacate an order previously made and entered on a motion. *Trail*, 91 Nev. at 403. The Court may rehear a motion that was previously denied even if the facts and law remain unchanged. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217 (Nev. 1980) (no abuse of discretion to rehear a previously decided motion even though the facts and law were unchanged because the judge granted leave to renew the motions and the judge was more familiar with the case by the time the second motion was heard).

B. Legal Standard Applicable to Inverse Condemnation Claims

The Developer is seeking $54 million damages as compensation for the claimed taking of a 35-acre parcel the Developer paid no more than $630,000 to acquire. In order to prevail on its inverse condemnation claims, the Developer must prove that the City did one of the following: (1)

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caused a permanent physical invasion of the property, (2) deprived the Developer of all economically beneficial use of the property, or (3) took some other action that amounts to a regulatory taking under the *Penn Central* factors. The Developer cannot establish an inverse condemnation claim under the first two theories because nothing physically interferes with the use of the property and nothing prevents the Developer from resuming the property's historical use as a golf course.

Under *Penn Central*, determining whether a regulatory taking has occurred depends on an essentially ad hoc analysis of three factors: (1) "the economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 420, 351 P.3d 736, 742 (2015) (quoting *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S. Ct. 2646, 2659 (1978)). The evidence the City seeks by this motion is relevant to both the first and second factors.

Discovery regarding the second factor is especially critical because "unilateral expectations or abstract needs cannot form the basis of a claim that the government has interfered with property rights." *Bridge Aina Le'a, LLC v. Land Use Comm'n*, 950 F.3d 610, 633–34 (9th Cir. 2020) (internal quotations and punctuation omitted) (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005, 104 S.Ct. 2862 (1984)). The Developer's expectation that the City would change the historical general plan designation for the Badlands Property to accommodate the Developer's grandiose proposals is not a reasonable investment-backed expectation.

C. The Court Should Reconsider Denying the City's Right to Discover Communications Relevant To The Developer's Investment-Backed Expectations

The Developer has produced virtually no evidence of its expectations for developing the property. The limited evidence the Developer has produced suggests that the Developer did not have any concrete plans to develop the 35-acre property when the Developer acquired it. For example, an email from a golf course architect hired by the Developer during the due diligence phase of acquiring the Badlands Property states, "I understand that closing 9 holes for development is the goal." *See* 12/4/2014 Email from Bobby Weed attached as **Exhibit M**. An email sent by the

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Developer's attorneys to the City planning staff several months after the Developer acquired the Badlands Property indicates that the Developer considered dedicating 184 acres as a conservation easement "to protect it forever from any development." *See* 11/16/2015 Email from Chris Kaempfer attached as **Exhibit N**.

The limited communications the Developer has already produced are extremely relevant as they demonstrate that the Developer did not have distinct investment backed expectations when it acquired the Badlands Property. The documents already produced demonstrate a very strong likelihood that additional communications regarding the Developer's expectations and intentions for developing the property exist, many of which may be critical to the City's defense. The City believes that the Court erred in denying discovery of the requested communications.

1. Communications With Land Use Counsel

The Order states that "180 Land has complied with NRCP 34 in relation to the request to produce communication [sic] with counsel by producing 57 pages of documents along with a privilege log." The City believes this portion of the Order is clearly erroneous.

The burden of establishing that a privilege exists is on the party claiming the privilege. *Rogers v. State*, 127 Nev. 323, 330, 255 P.3d 1264, 1268 (2011). "In order to properly discharge the burden of establishing a privilege in the Eighth Judicial District, the first step by the objecting party, in sync with E.D.C.R. 2.34, is to produce an informative privilege log." *Alboum v. Koe, M.D., et al.*, Discovery Commissioner Opinion #10 (November 2001).

The Developer has acknowledged that thousands of emails exist with its land use counsel that are not identified on its privilege log. *See* Opposition to Motion to Compel, attached as **Exhibit O** at p. 10, fn. 9. However, the Developer's privilege log identified only one email from Chris Kaempfer and none from the Developer's other land use attorney, Stephanie Allen. *See* Privilege Log for Sixth Supplement attached as **Exhibit P**. The Developer's privilege log is clearly deficient because it fails to identify thousands of emails the Developer refuses to produce based on the attorney client privilege.

The Developer has waived the attorney client privilege by making no serious effort to comply with the City's repeated requests for an adequate privilege log. *See Merits Incentives, LLC*

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v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark, 127 Nev. 689, 693, 262 P.3d 720, 723 (2011) ("General objections to a request for production of documents are insufficient to preserve a privilege"); *see also Bullion Monarch Mining, Inc. v. Newmont USA Ltd.*, 271 F.R.D. 643, 649–50 (D. Nev. 2010) (Failure to produce log resulted in waiver).

The Developer's selective production of only 57 pages of emails with its land use attorneys also waives the attorney client privilege with respect to all other emails involving the same subject matter. *See Wardleigh v. Second Judicial Dist. Court In & For Cty. of Washoe*, 111 Nev. 345, 354, 891 P.2d 1180, 1186 (1995) ("where a party seeks an advantage in litigation by revealing part of a privileged communication, the party shall be deemed to have waived the entire attorney-client privilege as it relates to the subject matter of that which was partially disclosed").

Finally, the City has a substantial need for these communications because they are highly relevant to potentially dispositive issues in the case. If the Developer claims no communications responsive to the City's other requests exist, the City would be entitled to communications with the Developer's land use counsel under NRCP 26(b)(3)(A)(ii), as the City would be unable to obtain their substantial equivalent by other means.

2. Communications Between The Developer's Principals

The Order does not identify why the City's request for communications regarding the Badlands Property between the Developer's principals was denied. The Developer's Opposition to the Motion to Compel did not address this issue either. There is no basis for claiming that communications between Yohan Lowie and Vickie Dehart are privileged.

The Developer has produced only 12 emails from Yohan Lowie and 5 emails from Vickie Dehart, which suggests that the Developer made no serious effort to gather emails from the Developer's principals at all. Communications between these individuals would provide the most probative evidence regarding the Developer's investment backed expectations, as they are the only persons who guaranteed the loans used to acquire the Badlands Property.

3. Communications With The Developer's Lenders

The Order does not identify why the City's request for communications with the Developer's lenders was denied. The Developer produced copies of loan documents themselves,

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but these documents contain no information relevant to the Developer's investment backed expectations. The Developer produced no communications with its lenders, which are likely to contain information related to the Developer's plans for the property. No rational lender would extend a multimillion-dollar loan secured by a failing golf course without conducting any due diligence into the borrower's plans for developing the property.

4. Communications With the Peccole Family

The Order does not identify why the City's request for communications with the Peccole family was denied. The need for such communications is more critical than it was before now that the Developer is claiming it acquired the right to purchase the Badlands Property over a 20-year through other transactions with the Peccole family. If the Developer is entitled to introduce evidence of transactions dating back 20 years, the City is entitled to request communications related to those transactions. There is no basis for claiming that the communications are privileged.

5. Communications With Greg Borgel

The Order does not identify why the City's requests for communications with Greg Borgel was denied. The Developer identified Greg Borgel, a local land use expert, as one of its consultants in its interrogatory responses. Communications with Greg Borgel are likely to contain highly relevant evidence regarding the development potential for the property as Greg Borgel represented the Peccole family in connection with the entitlements for the Queensridge Towers and Tivoli Village. The Developer's Opposition does not provide any substantive justification for failing to produce communications with Greg Borgel.

D. The Court Should Reconsider Its Denial of The City's Request For Cost Estimates

The Order does not identify why the City's requests for cost estimates was denied. The Order explains that the Developer's computation of damages may be produced with its expert witness disclosures, **but this request does not seek expert materials**. Rather, this request seeks cost estimates performed by the Developer or its consultants while development plans were being prepared.

. . .

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During the hearing on the Motion, the Developer's counsel admitted that the Developer has in-house preliminary estimates for their properties, including estimates for drainage issues. *See* 11/17/2020 Hearing Transcript, Ex. C at 37:12-15. In fact, an appraisal of the Badlands Property expressly states that the Developer provided cost estimates for grading and drainage to the appraiser. *See* Lubawy Appraisal attached as **Exhibit Q**, at p. 2 (extraordinary assumptions). Such cost estimates should have been produced.

E. The Court Should Reconsider Its Order Denying the City's Request for Documents Related to Other Transactions Between The Developer and The Peccole Family

By claiming that it paid $45 million to acquire the Badlands Property, it should be painfully obvious that the Developer is attempting to inflate the amount of consideration paid by including payments made to the Peccole family in other transactions involving different properties. However, as discussed above, communications between the Developer and the Peccole family indicate that the amount of consideration paid for the Badlands Property is actually lower than the purchase agreement reflects.

At a minimum, the Developer should be required to produce documents (including communications) related to transactions that were mentioned during the negotiations for the Developer's purchase of the Badlands Property. That would include: (i) the agreement settling the lawsuit the Developer filed against the Peccole family in 2007 on behalf of BGC Holdings LLC, including the right of first refusal granted by the agreement and the restrictive covenant recorded for the benefit of BGC Holdings LLC and Queensridge Towers LLC; (ii) the 2013 Settlement Agreement between Fore Stars and Queensridge Towers LLC; (iii) the lease and option to purchase the Developer's corporate offices; and (iv) the proposed acquisition of Nevada Legacy 14, LLC, the entity that held the declarant's rights under the CC&Rs for the Queensridge Common Interest Community.

F. The City Should Be Awarded Its Fees and Costs

Many of the requests sought by the Motion were included in the original request for production of documents that the City served on the Developer in July of 2019. The City's efforts to obtain responses and documents pursuant to those requests are described in painstaking detail in

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the Motion, which included no less than six meet and confer letters, at least three EDCR 2.34 conferences, dozens of follow up emails, and countless wasted hours reviewing duplicative documents. The sheer volume of correspondence related to these efforts demonstrates that the Developer's refusal to comply with the City's requests was willful. The Developer repeatedly relied on self-serving relevance objections and baseless claims of confidentiality to justify its failures to comply with discovery. The Court should award sanctions for these discovery abuses and failures, which were not justified let alone substantially justified. At a minimum, the Court should award the fees and costs associated with the costs of bringing the Motion.

II. CONCLUSION

Based upon the foregoing, the City respectfully requests that the Court reconsider its Order and enter an order compelling the Developer to produce the documents described herein, and awarding the City the fees and costs in incurred in bringing the Motion, without which the Developer would never have produced the transaction documents.

Respectfully submitted this 11th day of March, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 11th day of March, 2021, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' MOTION FOR RECONSIDERATION OF ORDER GRANTING IN PART AND DENYING IN PART THE CITY'S MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification, and as referenced below to the following:

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EXHIBIT “I”

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, a Nevada Limited Liability Company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiff, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE	Case No.: A-17-758528-J Dept. No.: XVI **SECOND AMENDMENT and FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** **(Exempt from Arbitration – Action Seeking Review of Administrative Decision and Action Concerning Title To Real Property)**

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

Defendant.

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

PARTIES

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

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

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

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

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

PROPERTY INTEREST / VESTED RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY ACTIONS TO TAKE THE LANDOWNER'S PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City Action #3 - Adoption of the Yohan Lowie Bills

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City Action #6 - Denial of a Drainage Study

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES / RIPENESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIXTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Judicial Taking)

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

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

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

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

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

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

//

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

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

LAW OFFICES OF KERMITT L. WATERS
BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ. (NBN 2571)
JAMES J. LEAVITT, ESQ. (NBN 6032)
MICHAEL SCHNEIDER, ESQ. (NBN 8887)
AUTUMN WATERS, ESQ. (NBN 8917)

HUTCHISON & STEFFEN
BY: /s/ Mark A. Hutchison
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Robert T. Stewart (13770)

Attorneys for 180 Land Company, LLC

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

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

YOHAN LOWIE

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

NOTARY PUBLIC

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

CERTIFICATE OF SERVICE

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

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

EXHIBIT “J”

Valbridge
PROPERTY ADVISORS

Appraisal Report

NWC of Rampart & Charleston
Portion of Badlands Golf Course
Las Vegas, Clark County, Nevada 89145

Report Date: August 26, 2015

FOR:

Bank of Nevada
Ms. Cheryl Moss
2700 W. Sahara Avenue, 4th Floor
Las Vegas NV 89102

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15-0139-001

Highest and Best Use

The Highest and Best Use of a property is the use that is legally permissible, physically possible, and financially feasible which results in the highest value. An opinion of the highest and best use results from consideration of the criteria noted above under the market conditions or likely conditions as of the effective date of value. Determination of highest and best use results from the judgment and analytical skills of the appraiser. It represents an opinion, not a fact. In appraisal practice, the concept of highest and best use represents the premise upon which value is based.

Analysis of Highest and Best Use As If Vacant

In determining the highest and best use of the property as if vacant, we examine the potential for: 1) near term development, 2) a subdivision of the site, 3) an assemblage of the site with other land, or 4) holding the land as an investment.

Legally Permissible

The subject site is zoned R-PD7, Residential Planned Development District which controls the general nature of permissible uses and allows for development of 7 units to the acre. However, according to the City of Las Vegas, "new development under the R-PD District is not favored and will not be available under this Code" and also states that "the "equivalent standard residential district" means a residential district listed in the Land Use Tables which, in the Director's judgement, represents the (or a) district which is most comparable to the R-PD District in question in terms of density and development type". Therefore, a change in zoning is likely. In conversation with the subject owner's attorney, Chris Kaempfer with Kaempfer Crowell Law Firm, it is likely that the subject can obtain zoning that would allow for the development of 7 to 10 unit per acre. We were told that this zoning is probable as it is based off of obtaining densities similar to the surrounding zoning that ranges from 5 units to the acre to very high density (from One Queensridge Place.

We have been provided with title reports for the site and there are no known easements, encroachments, covenants or other use restrictions that would unduly limit or impede development.

Physically Possible

The physical attributes allow for a number of potential uses. Elements such as size, shape, availability of utilities, known hazards (flood, environmental, etc.), and other potential influences are described in the Site Description and have been considered.

The subject is located in an area that has fairly stable soils and subsoil's with regard to support of commercial and residential structures. Moreover, we have been provided a Phase I soils report (performed by GES Services Inc. Project No. 20072184V2 and dated December 19, 2014) for the subject that concludes that there are no development limitations on the subject site. The site however, is developed with approximately 40% golf course and there will be need for removal of the top golf course soils prior to construction of any residential units due organic matter and the poor soil stability of the topsoil.

The property is located within a flood hazard area (Flood Zone A); therefore, flood insurance is required for any improvements on the site. The parcel has mild to severe sloping and undulations

EXHIBIT “K”

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **PLAINTIFFS' OPPOSITION TO DEFENDANT CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES AND DAMAGE CALCULATIONS** **Hearing Date: November 17, 2020** **Hearing Time: 9:00 A.M.**

Plaintiffs 180 Land Co LLC (hereinafter "180 Land Company") and Fore Stars, LTD. (hereinafter "Fore Stars") (collectively "Landowners," "Plaintiffs," or "Plaintiff Landowners") hereby oppose Defendant City of Las Vegas' (hereinafter "City") Motion to Compel and For an Order to Show Cause (the "Motion"). This Opposition is made and based on the following

Memorandum of Points and Authorities, the papers and pleadings on file herein, and the oral argument this Honorable Court entertains at the hearing on the matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As the Court is aware, this case seeks to remedy the City's systematic, aggressive and outrageous actions[1] to prevent the Landowners from using approximately 35 acres of land (APN 138-31-201-005, hereinafter "35 Acre Property" or "Property") they own in Las Vegas, Nevada.

Specifically, the Landowners have brought claims against the City for the uncompensated taking by inverse condemnation of the 35 Acre Property. The Landowners were forced to initiate this lawsuit because the City's intentional and outrageous conduct has caused substantial harm to the Landowners and their livelihood and deprived them of all use of their land rendering the Property useless and valueless.

The City has continued its intentional harmful conduct by engaging in illicit litigation practices and predatory discovery only some of which this Court is aware.[2] It is the Landowners who are incurring exorbitant, unnecessary legal fees in opposing the numerous, virtually identical, and meritless motions filed by the City costing the tax payers millions of dollars in their attempt to keep the facts of the City's outrageous conduct of government abuse from being fully considered. This latest motion filed by the City is nothing more than a facade with the real intent of continued disparagement of the Landowners and more importantly it is a rearguing of legal positions already decided by this Court and others. The City has been using procedure to lay out its legal positions in every single court hearing regardless of what the issue is before the Court.

[1] These City actions include everything from calling the principal landowners a "motherf----er" to seeking "intel" via a private investigator on individual principals because "dirt may be handy if I need to get rough" to enacting a law aimed at the entire 250 acres in the middle of attempted development to prevent development of this property all together. *See* Exhibit 1, 2, 3.

[2] This Court may recall that the City submitted an order after the PJR hearing dismissing the claims for inverse condemnation for lack of ripeness causing this Court to issue an order *nunc pro tunc* and exclaim "This issue was never vetted. It was never raised. It was never discussed; right? Exhibit 4, pg 6 (January 17, 2019)

Here the City devoted 30 pages of self-serving conjectures and a manufactured story as to what took place in relation to the purchase of Fore Stars, using words like "apparently", "appears to be", "this suggests" and "it is likely" ultimately concluding "its taking claims fail" and requesting "an order dismissing the Developer's takings claims" in a motion to compel discovery.[3] Moreover any statements the City believes "apparently" took place in the transaction between other parties and the sellers of Fore Stars must be completely ignored by this Court as they are wholly false and based on the City's manufactured story. Thus, the only thing that is apparent is that the City cannot grasp (or is intentionally fabricating) what took place in this matter.[4]

Eventually, the City complains of the following items[5]:

1. Documents related to its damage calculations.
2. Documents related to the maintenance and/or operation of the Badlands golf course.
3. All communications between the Landowners and their attorneys Chris Kaempfer and Stephanie Allen and non-attorney Greg Borgel.

On page 22 of the City's brief the City requests the following items be produced.

"All agreement between the Developer and the Peccole family (and their respective affiliates) related or connected to the acquisition of the Badlands Property;

All documents pertinent to consideration paid by the Developer in connection with the acquisition of the Badlands Property;

[3] The City made no less than 11 assumptions throughout its brief to support their manufactured factual background. Clearly the City does not want this Court to consider all of its egregious actions in taking the land and would rather have the Court dismiss the case in a motion to compel documents.

[4] The City provides an example of a complaint in 2007 between BGC Holdings and Fore Stars claiming that "the Developer sued the Peccole family in an attempt to takeover of the golf course and unwind those commitments" further evidencing their lack of understanding of any transaction related to this property let alone the relationship between the seller and Landowner.

[5] The City also largely complains that it took *15 months* and/or *over a year* to get these items. These statements are also false as the City either agreed to allow an extension (while taking 90 days itself to produce documents) of time and/or actually received responsive document but insisted "there must be more" as they continue to do in their briefs to this Court. Additionally, the City seems to ignore the fact that there during the discovery phase, there was a pandemic necessitating multiple administrative orders from the Court which suspended all deadlines for discovery responses. Regardless, the Landowners continued to work to the best of their ability to produce documents.

All documents related to the restrictive covenant recorded against the Badlands Property for the benefit of BGC Holdings LLC and Queensridge Towers LLC, and

All documents related to the 2013 Settlement Agreement, including but not limited to Queensridge Towers LLC's election to transfer 2.37 acres to Fore Stars.

In relation to these requests, all documents have been produced that are in the possession of the Landowner. As explained multiple times during the 2.34 conferences, there simply are no more documents whether they believe it or not or whether "in their experience" there are usually more documents. Specifically, over 4,600 documents have been produced in relation to these requests and are as follows:

- Consultants: 1,707 documents produced LO 0029412-0033180; 7 withheld for privilege LO0033181-0033196

- Communications with previous owners of Fore Stars: 413 documents Produced LO0018536 – LO0022694; LO00186020- 0022315; LO0018448 – 0022319; LO0018557-0022320; LO0018030-0018270; 2 withheld LO0022695 – 0022696.

- Prior owners president, Walters: 70 documents produced LO 0018442-0022326; 0018445-0022327.

- Appraisals, opinion letters and communications related to financing for the acquisition of Badlands RFP 1 1,129 Documents Produced LO0018442-0022327; 112 Documents Withheld LO0022328 – 0022899; LO00036807-00037064.

- Documents related to the acquisition of water rights, a water rights lease, and the acquisition of WRL LLC - 1,104 Documents Produced 45 withheld for Privilege

To date, the Landowner has produced over 38,000 pages and as is more fully discussed below, documents have been produced for nearly each and every item outlined above. Thus, Court should summarily deny the City's motion because, as admitted by the City itself in its brief, documents and/or answers have been provided for each and every one of these items, but the City refuses to believe these are the extent of the documents claiming "it is apparent there is more."

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II. ARGUMENT

A. Computation of Damages

The City's assertion that the Landowners' computation of damages is deficient is also without merit. City Motion, 14. The Landowners initially objected to the computation of damages prior to disclosure of expert reports, because the courts have recognized that eminent domain cases are "a field dominated by expert opinion,"[6] meaning all valuation data must be compiled, properly analyzed, and then a conclusion of value reached and produced as part of the expert exchange.[7] The City, however, insisted on receiving an estimate of the value of the property prior to the time the Landowners had the opportunity to fully analyze the data and the expert reports. The Landowners complied, providing a "preliminary estimate," without the benefit of their expert reports(s), as follows, and stated that this damages calculation will be updated at the time of expert exchange:

> Without waiving said objections, and assuming the date of value is on or about September 7, 2017 (the date the inverse condemnation claims were filed and served on the City) the Landowners' preliminary estimate of damages (just compensation) for the total taking of the 35 Acre Property (APN 138-31-201-005) is approximately $54 Million. This is an average of the per acre value assigned by the following: 1) an appraisal report prepared by Lubawy and Associates of seventy acres of property formerly known as APN 138-32-301-004 at ± $700,510/acre as of July 2015; 2) an offer to purchase 16-18 acres of the seventy acre property formerly known as APN 138-32-301-004 for ± $1,525,000/acre as of December 2015; and, 3) the sale of APN 138-32-314-001 for ± $2,478,000/acre as of August 2019. This computation will be supplemented upon the completion of expert reports, if needed, or as otherwise deemed necessary in this matter.

The City's accusation that the Landowners are withholding documents related to this preliminary estimate is without merit as the documents referenced in the above preliminary estimate have already been produced to the City. And, as this Court will recall, at the most recent Status Conference undersigned counsel explained that the Landowners are facing significant difficulties obtaining all of the data necessary to completely and fully value the 35 Acre Property in light of the recent lock downs and individuals trying to catch up with the backlog and, for that

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[6] Sparks v. Armstrong, 103 Nev. 619, 622 (1987).

[7] Landowners are also permitted to provide their opinion of value at trial, which will be produced to the City with the exchange of expert reports. *See* City of Elko v. Zillich, 100 Nev. 366 (1984).

purpose, the expert exchange date was moved to December 1, 2020. Once all of this valuation data is obtained and fully analyzed by the Landowners and their expert(s), opinions of value and expert reports will be produced and this damage calculation will be finalized. Again, the City is trying to create a mirage of non-compliance that does not exist.

Finally, the complaint about the computation of damages is not only disingenuous it is contrary to counsel's own statements to this Court. During a hearing before this Court on May 14, 2020, attorney George Ogilvie stated "**I will say that the developer did supplement yesterday its initial disclosures with an estimate of its damages related to the 35 acres. So, the developer has addressed that.**" *See* Exhibit 5, page 43, lines 2-5 (emphasis added.) If the disclosure was not sufficient then City's counsel should have addressed it at the May hearing, which he did not.

B. The City's Allegation of "Fraud" is Unwarranted

The City asserts that "the City understands from documents" that "the developer paid less than $7.5 million for the entire Badlands" and that this "demonstrates that the Developer's claim that it paid $45 million to buy the Badlands and its claims for $54 million in damages are both obvious **frauds**." City Motion 3:2-5. Emphasis supplied. The City's "understanding" and accusations of "fraud" are patently wrong. These numbers the City refers to as the amount "paid" for the 250 Acre Residential Zoned Land (Badlands) was not indicative of, nor tied to, the "value" of the 250 Acre Residential Zoned Land. In fact, immediately after closing on the 250 Acre Residential Zoned Land, an appraisal of just 70 acres of the 250 Acre Residential Zoned Land was issued by a bank (which are typically low to assure the underlying collateral is protected), and this bank appraisal valued just 70 acres of the entire 250 Acre Residential Zoned Land at $700,510 per acre or $49,400,000 for just the 70 acres of land. Exhibit 6, (cover sheet for appraisal and value conclusion). And, the City was given this appraisal report during discovery – although the City chooses to ignore its significance in relation to the City's "understanding" of the facts and "fraud" allegation. The City clearly is ignoring facts to create a mirage of non-compliance that does not exist and the City's mis-"understanding" does not impute fraud on the Landowners.

C. The City Misinterprets Well Established Inverse Condemnation Law

Although not directly relevant to the City's pending motion, the City entirely misinterprets and misapplies Nevada inverse condemnation law. The City asserts that discovery on a Nevada landowner in an inverse condemnation case is wide open, because there is "no magic formula" to determine a taking and that most cases "turn on situation-specific factual inquiries." City Motion pp. 19-20. The City leaves out that that the "situation-specific factual inquiry" is focused entirely on "government action," not "landowner action." In fact, this very issue has already been litigated in this case, with this Court entering the following order:

> In determining whether a taking has occurred, Courts must look at the **aggregate of all of the government actions** because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).

The City has argued, yet again, that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, **unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered**. Exhibit 7, pp. 8-9 (May 15, 2019, Order Denying City's Motion to

Dismiss (35 Acre Opinion)). The basis for this rule is only the "government action" can rise to the level of a taking. A landowner cannot engage in actions that either defeat or cause the taking of his or her property. Therefore, this law is not an excuse for the City to blow discovery wide open in this case.

D. The City Leaps to Conclusions and Makes Baseless Accusations Against the Landowners that Contradict the City's Own Past Actions

The City claims that the Landowners "could not have possibly believed" that the 250 Acre Residential Zoned Land had the vested right to be developed residentially and that the Landowners must have known there was a PR-OS designation precluding development, because they only paid $30,000 per acre for the property and, therefore, there must be other information and documents showing that the Landowners knew they could not develop the 250 Acre Residential Zoned Land that is discoverable. City Motion 24:17-22. First, the City's underlying premise of $30,000 per acre is false, as explained above. Second, it is unconscionable that the City is advancing this blatantly false narrative. The City, itself, issued the Landowners a Zoning Verification Letter prior to the Landowners purchasing the property and as part of the Landowners due diligence, which expressly states the entire 250 Acre Residential Zoned Land is hard zoned for residential development. Exhibit 8. The Landowners could also provide here the unequivocal and extensive evidence rejecting the City's PR-OS argument and confirming the right to develop the 35 Acre Property residentially **by the City's own Planning Director and City Attorney**, but that evidence has already been presented to this Court through extensive briefing and oral argument, resulting in this Court issuing an order which rejects the City's argument of non-developability. Therefore, not only did the Landowners know the 35 Acre Property had the vested right to be developed residentially prior to purchasing the property, but the City, itself, also knew this, as it issued the Landowners a Zoning Verification Letter stating as much. Again, it is simply unconscionable that the City is not only ignoring this Court's order, but also ignoring the opinion of its own high ranking employees and the very Zoning Verification Letter the City issued to the Landowners as part of their due diligence.

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III. THE REMAINING REQUESTS FOR PRODUCTION OF ITEMS

A. Documents related to the maintenance and operation of the Badlands Golf Course.

RFP 10:

> Produce all documents related to the maintenance and operation of the Badlands Property as a golf course by Plaintiff and its predecessors, including but not limited to financial statement, financial projections, business plans, budgets, statements of operating expenses, gross revenues and capital expenditures, leases, insurance documents, advertising and promotional expenses, costs of purchasing operating inventory, compensation and expenses of management staff and other employees, and any similar documents pertaining to any amenities or other activities customarily associated with or incidental to the operation of a golf course (e.g., sale or rental of golf related merchandise at a golf professional's shop, furnishing of lessons by a golf professional, operation of a driving range, and sales of food and beverages, including liquor sales.)

RESPONSE TO RFP 10

> None, the Landowner never operated a Golf Course.

See Exhibit 9.

As the City is well aware, the Landowners did not operate the Badlands golf course and as such, do not have any documents related to the maintenance and operation beyond what has been produced which includes, a water lease for additional water rights, various lease agreements between the Landowner and the golf course operators, equipment and asset lists, communications between the operator and the Landowner, etc. In total there were over 600 pages of documents produced in relation to this request.

B. All communications between attorneys Chris Kaempfer and Stephanie Allen.

As the City has admitted itself, 57 documents were produced in relation to this request and the privilege log was updated. The City complains that most were a production of emails exchanged with the City and other consultants, but this is exactly what the City requested *after*

the Landowners objected based on seeking clearly privileged communications and that it seeks documents already in the possession of the City. *See* Exhibit 9.[8] It is accurate that the attorney client privilege communications were not produced to the City as they are privileged.[9] They City attempts to boot strap a legal argument of investment backed expectations to a distorted statement that Mr. Kaempfer and Stephanie Allen "likely advised the Developer that it had no vested right to develop the Badlands Property." This they say is the "linchpin" of our entire case and therefore, attorney client communications must be produced, or the inverse condemnation claims must be dismissed. Not only does this fail to rise to the level of requiring production of attorney client privileged documents, it is baseless as no opinions of any "advisors" were necessary since **the City itself informed prior to the purchase of Fore Stars that the property was zoned RPD 7 and continued to state during City Council hearings that the property was hard zoned RPD 7**.

IV. The Landowners – Not The City – Are Entitled To Attorney Fees Associated With Opposing Yet Another Frivolous Motion.

The City seeks attorneys' fees claiming that the Landowners have failed to produce documents. As provided above, the Landowners have not failed to produce documents. Rather, the City has filed a frivolous motion and has not been forthcoming with this Court as to what has been provided. For example, the City claims on page 9 of its motion that "180 Land omitted those Bates-stamped documents. *Id.* It was unclear to the City whether this omission was intentional. *Id.*" In support of this position the City provides Exhibit O – an email from attorney Chris Molina of McDonald Carrano and Ms. Waters of the Waters Law Firm. What the City fail to do is provide Ms. Waters response wherein she states "There should not have been any changes

[8] Interestingly, the City did not produce as evidence of the Landowners "failures" the actual responses, rather they produced their own self serving letters claiming production was insufficient.

[9] The City is claiming that the Landowners are required to provide a privilege log of all attorney client privileged documents. However, given over 2 ½ years of attempts to develop the property with the City, there are thousands of emails with counsel. If the City is insisting on a privilege log, then the City must be required to pay for this overly burdensome request.

to the "Amended Responses." An errata will be sent out shortly." *See* Exhibit 10. The City then feigns ignorance claiming they were unsure as to what was being supplemented "Due to this confusion, on July 15, 2020, 180 Land served an Errata . . ." City's Motion page 10 lines 1-2. This is just one example of the misleading statements the City has provided to this Court to support its frivolous motion. For these reasons, the City's request for attorney fees and costs should be denied, and the Landowners should be awarded reasonable expenses incurred in filing this opposition.

V. CONCLUSION.

For the foregoing reasons, the City's motion should be denied in its entirety.

Dated this 6th day of November, 2020.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 6th day of November, 2020, I caused a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES AND DAMAGE CALCULATIONS** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY'S MOTION FOR REHEARING AND RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RESPONSES TO INTERROGATORIES** **(HEARING REQUESTED)**

Pursuant to EDCR 2.24, Defendant City of Las Vegas ("City") moves the Court for rehearing and reconsideration of Plaintiffs' ("Developer") Motion to Compel the City to Answer Interrogatories ("Motion").

The Court previously rejected the City's argument that impressions and thought processes of a former City Councilmember with respect to his reasoning and state of mind in denying the Developer's applications to develop the 35-Acre Property. What wasn't made clear to the Court in prior argument is the fact that former Councilman Seroka, whose mental impressions are at issue

in the discovery propounded by the Developer, was not even a sitting Las Vegas City Councilman at the time the Developer's applications came before the City Council on June 21, 2017 and, therefore, did not participate in the City Council's vote to deny those applications. Thus, the Developer's discovery requests are even more irrelevant than the Court understood at the time it granted the Developer's Motion. As such, the City is compelled to clarify for the Court that former Councilman Seroka did not participate in the June 21, 2017 denial of the Developer's applications, which were the subject of the Developer's Petition for Judicial Review, and respectfully request that the Court reconsider its Order to the extent that it granted the Developer's Motion.

This Motion is based on the pleadings and papers on file herein and the following Memorandum of Points and Authorities in support hereof, and any argument entertained by the Court at the time of the hearing on this matter.

Respectfully submitted this 8th day of April, 2021.

McDONALD CARANO LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Developer's burden under the applicable regulatory takings tests is simple: it must show that the City Council's action imposed an extreme economic burden on its property. *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 648, 855 P.2d 1027, 1033 (1993) (takings claimant must show that regulation "'den[ies] all economically beneficial or productive use of land.'") (quoting *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992)); *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 245-46, 871 P.2d 320, 324-25 (1994) (denial of a building permit was not an unconstitutional taking because it "did not destroy all viable economic value of the prospective development property"); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978) (adopting three-factor test for taking: (1) economic impact of the regulation on the claimant, (2) extent the regulation interfered with distinct investment backed expectations, and (3) whether action is physical taking); *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle v. Chevron, U.S.A.*, 544 U.S. 528, 538 (2005)); *id*. 131 Nev. at 420, 351 P.3d at 742 (relying on *Penn Central* test).

In this case, the Developer challenges the City Council's decision to deny the Developer's four discretionary redevelopment applications that sought to convert a 35-acre portion of the Badlands golf course to houses (the "35 Acre Applications"). The Court's inquiry must therefore be limited to consideration of whether this decision imposed an extreme economic burden on the Badlands, i.e. by wiping out its value or rendering the property useless. Because the Takings Clause presumes the validity of the City Council's decision, inquiry into the *basis* of that decision—or any single Councilmember's vote—is therefore not only irrelevant, but improper. Even *if* the basis of the City Council's decision was relevant, the stray statements of Councilmember Seroka—including the basis of those statements—may not be imputed to the City Council as a whole. Furthermore, Councilmember Seroka's subjective considerations and motives, which the Interrogatories seek to probe, are protected by the mental and deliberative process privileges. Finally, to the extent the Developer intends to use the Interrogatories to advance an argument that

the City Council's decision was invalid or without legal basis, that argument has been litigated and dismissed in both federal and by this state court. The Developer is therefore precluded from using the Interrogatories to advance that argument here. For these reasons, the Order clearly erred in compelling the City to respond to the Interrogatories.

II. FACTUAL BACKGROUND

On July 18, 2017, the Developer filed a Petition for Judicial Review ("PJR") of the City Council's decision to deny the 35 Acre Applications (*180 Land Company, LLC v. City of Las Vegas*, Case No. A-17-758528-J). The PJR alleged that the City Council's denial was "not supported by substantial evidence and was arbitrary and capricious." PJR, ¶ 30. On November 26, 2018, this Court denied the PJR, finding that the City Council's decision was in fact supported by substantial evidence. Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review, ¶ 11. While awaiting the ruling on the PJR, the Developer filed the instant lawsuit, on February 23, 2018. The operative complaint, filed May 15, 2019, asserts five regulatory taking causes of action in connection with the City's denial of the 35-Acre Applications: (1) categorical; (2) *Penn Central*; (3) regulatory per se; (4) nonregulatory; and (5) temporary.

On June 12, 2020, the Developer served three interrogatories on the City seeking information related to statements made by former City Councilmember Steve Seroka at a meeting of homeowners on June 21, 2018, one year *after* the City Council denied the 35-Acre Applications. **Again, it is critical to note that former City Councilmember Steve Seroka was not even a sitting City Councilman at the time the City denied these applications and did not participate in that vote.** The Developer's Interrogatory No. 1 requested information related to "experts" Councilmember Seroka said he "learned from" prior to reaching a decision on the 35-Acre Applications. Interrogatories No. 2 and No. 3 requested information related to the existence and application of an unidentified "20 percent" open space dedication requirement in the City, which Councilmember Seroka referred to in his statement. The City objected to the three Interrogatories on numerous grounds, including that they sought the mental impressions of a City Councilmember acting in quasi-adjudicatory capacity, and that they sought information that was irrelevant to the resolution of the Developer's takings claims. The Developer filed a Motion to Compel, which the

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Court heard on February 16, 2021. On March 25, 2021, the Court issued an Order granting the Developer's Motion with respect to these three interrogatories ("Order").[1]

ARGUMENT

The Court has inherent authority to reconsider its prior orders. EDCR 2.24; *Trail v. Faretto*, 91 Nev. 401, 403 (Nev. 1975). In particular, a district court may reconsider a previously decided issue if the decision was clearly erroneous. *Masonry and Tile Contractors Ass'n of S. Nev. V. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). The Court may amend, correct, modify, or vacate an order previously made and entered on a motion. *Trail*, 91 Nev. at 403. The Court may rehear a motion that was previously denied even if the facts and law remain unchanged. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217 (Nev. 1980).

The City respectfully submits that the Order was clearly erroneous for four reasons. First, because the Takings Clause presumes the validity of the City Council's decision, inquiry into the basis of the decision is far outside the proper scope of the taking analysis, and is therefore irrelevant and improper. Second, even if the basis of the City Council's decision was relevant, the subjective motivations and reasoning of a single quasi-adjudicatory decision-maker are not discoverable. Third, former Councilmember Seroka was not even a sitting City Councilman on June 21, 2017 when the City Council denied the Developer's applications and did not participate in that vote. Fourth, by probing the purported basis of Councilmember Seroka's vote (again, a false premise since Seroka did not participate in the vote) and the City Council's decision, the Interrogatories seek to rehash and relitigate the Developer's due process claims, and its PJR, both of which have been litigated and denied. For these reasons, and as further explained below, the Order clearly erred in compelling the City to answer the Interrogatories. The City therefore respectfully requests that the Court grant its motion for rehearing and reconsideration of the Developer's Motion.

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[1] The Developer's Motion also sought to compel responses to a fourth interrogatory, Interrogatory No. 6, which requested information related to City funds available for the acquisition of private land for parks and open space. The Order denied the Developer's Motion with respect to Interrogatory No. 6, and the City does not challenge this portion of the Order.

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A. Because the Taking Clause presumes the validity of the City Council's decision, inquiry into the reasons for or basis of that decision is irrelevant and improper

The Taking Clause does not bar arbitrary or irrational regulations. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543-44 (2005). Rather, it requires compensation "in the event of *otherwise proper interference* amounting to a taking.'" *Id*. at 543 (emphasis in original) (citing *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 315 (1987)). Accordingly, the Taking Clause "presupposes that the government has acted in pursuit of a valid public purpose." *Id.* at 543. A proper taking analysis, therefore, does not probe the underlying validity of the government action, but rather considers "the *actual burden* imposed on property rights." *Id.* (emphasis added).

Contrary to this fundamental and well-established principle, the clear purpose of the Interrogatories is to probe the validity of the City Council's decision. The Developer's counsel freely admitted this at the Hearing: "[I]f, indeed, there were no facts to support the basis of [Councilmember Seroka's] statement then that would create a problem for the [City] . . ." (Reporter's Transcript of Hearing, Feb. 16, 2021, attached as Exhibit A ("Ex. A"), at 8:5-7); "So if there was no basis for [Councilmember Seroka's] statements, that causes a great concern for the [the Developer]" (Ex. A at 8:14-15); "[I]f there was no basis for [Councilmember Seroka's] statements . . . It would be more evidence to show that the City engaged in a conduct to deny the [the Developer] all use of their property" (Ex. A at 8:14-18); "*So, your Honor, that's the basis for our request on Interrogatory No. 1, 2, and 3*" (Ex. A at 8:25-9:1) (emphasis added). According to this reasoning, if Councilmember Seroka's statements were without basis, then the City Council's decision itself was irrational and/or arbitrary, and ergo the City has "taken" the 35-Acre Property.

However, as the Supreme Court made clear in *Lingle*, this line of inquiry—and the resulting conclusion—is irrelevant and improper, because it "tells us *nothing* about the actual burden imposed on" the Developer's property rights. *Lingle*, 544 U.S. at 543 (emphasis added). Indeed, an irrational regulation "may not significantly burden property rights at all." *Id.* "The notion that such a regulation nevertheless 'takes' private property for public use" by virtue of its invalidity is therefore "untenable." *Id.* In sum, a regulatory taking claim is not viable unless the regulation in

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question is valid. The claimant must show that the regulation imposes an extreme economic burden on the property owner. A challenge to the wisdom of the regulation mounted by the Developer is a due process claim, not appropriate for a taking claim.

Contrary to the Developer's misrepresentation, *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006) does not provide otherwise. In that case, the Nevada Supreme Court found that the challenged ordinances effected a taking because they allowed airplanes to invade the landowner's airspace. 122 Nev. at 666, 137 P.3d at 1124. At the Hearing, Developer's counsel told the Court that the *Sisolak* takings determination turned on statements made by a county planner, who told the landowner "not to bother" asking for a variance. Ex. A at 9:6-20; 32:6-12. This is false. While the opinion does reference the statements of the planner as part of the case's background facts, the statements in no way assisted the court with its takings determination, which was limited to a facial analysis of what the ordinances themselves allowed or authorized. 122 Nev. at 653, 666-67, 137 P.3d at 1116, 1124-25. *Sisolak* therefore provides *no* support for the Developer's contention that the basis or validity of either Councilmember Seroka's statements or the City Council's decision are relevant to the takings analysis, particularly since Seroka was not a sitting Councilmember at the time the City Council denied the Developer's applications.

Finally, though the Developer argues that the Interrogatories are relevant to the City's asserted defenses, this is untrue. *The City contends that the Developer's takings claims fail because the City Council's decision, made by a majority of the members, did not impose an extreme economic burden on the Badlands*. This defense in no way depends on Councilmember Seroka's state of mind, the identity of the "experts" Councilmember Seroka says he "learned from", nor the existence or application of any "20 percent" open space dedication requirement that may have existed during the time the Developer's predecessor owned the Badlands. The City Council (*sans* Seroka) as a whole made the decision at issue, and the Taking Clause presumes that the decision was both rational and proper. *Lingle*, 544 U.S. at 543-44. The Developer's claims, and the City's defenses, must therefore turn not on the reasons of individual legislators for making that decision, but on the decision's economic impact on the Developer's property.

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The Developer admits as much. The Developer cites Sisolak for the proposition that the City's liability for a regulatory taking is a question of law. *Sisolak*, 122 Nev. at 661, 137 P.3d at 1121. The Developer admits that liability for a taking must be established through official government records of official government action, not through discovery of the inner thoughts of individual City Council members:

> The question of whether a taking has occurred is based on Government action and can frequently be determined solely based on government documents (the truth and authenticity of the same are rarely in question). Therefore, this Court can review the facts as presented in the City's own documents and apply the law to those facts to make the judicial determination of a taking.

Landowners' Reply In Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims Etc., filed in this action on 3/21/2019 at 2.

In sum, the Court may not properly consider the basis or validity of the City Council's decision as part of its taking analysis. Because this is the admitted purpose of the Interrogatories, the Order clearly erred in compelling the City to respond to them.

B. Even if the basis of the City Council's decision was relevant, the mental impressions of Councilmember Seroka are not a proper subject of discovery

Even in the limited legal contexts in which the basis of a decision making body's decision is relevant, courts have repeatedly held that evidence of the subjective considerations and motivations of individual decision makers is irrelevant and that evaluating decisions on the basis of such motivations would be a "hazardous task." *City of Las Vegas v. Foley*, 747 F.2d 1294, 1297 (9th Cir. 1984). Courts have therefore recognized a privilege against discovery and introduction of evidence of decision makers' motives. Because the purpose of the Interrogatories is to inquire into Councilmember Seroka's subjective motives, they seek evidence that is completely irrelevant and barred by privilege. The Order therefore clearly erred in compelling the City respond to them.

1. Evidence of single decision maker's motivations may not be imputed to the City Council as a whole

Even if the Court could properly consider the basis or validity of the City Council's actions as part of its takings analysis, it may not consider a single decision maker's statement of opinion or

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motives to divine legislative intent. *A-NLV-Cab Co. v. State, Taxicab Auth.*, 108 Nev. 92, 95, 825 P.2d 585, 587 (1992). "The relevant governmental interest is determined by objective indicators as taken from the face of the statute, the effect of the statute, comparison to prior law, facts surrounding enactment of the statute, the stated purpose, and the record of proceedings." *City of Las Vegas*, 747 F.2d at 1297; *see also In re Kelly*, 841 F.2d 908, 912 n.3 (9th Cir. 1988) ("Stray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body that voted on the bill. The opposite inference is far more likely."); *S.C. Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1262 (4th Cir. 1989) ("[I]f motivation is pertinent, it is the motivation of the entire legislature, not the motivation of a handful of voluble members, that is relevant."). Accordingly, courts may only consider the "'text, legislative history, and implementation of the statute,' or comparable official act." *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 862 (2005) (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)). Where a claim turns on motivation or purpose, the court's assessment must be based solely on "openly available data." *Id.* at 863. "[J]udicial psychoanalysis of a drafter's heart of hearts" is off limits. *Id.* at 862.

As the Developer's counsel made clear at the Hearing, this is exactly what the Developer seeks to do: impugn the basis of Councilmember Seroka's vote (even though Seroka did not participate in that vote), and then impute that allegedly flawed basis to the City Council as a whole. For example, the Developer's counsel told the Court that "if there were no facts to support the basis of [Councilmember Seroka's] statement then that would create a problem for the City of Las Vegas because in these inverse condemnation cases, *if the government* engages in bad faith actions . . . that makes the inverse condemnation claim much more formidable." Ex. A at 8:5-13 (emphasis added); *see also* Ex. A at 8:14-18 ("So if there was no basis for [Councilmember Seroka's] statements . . . It would be more evidence to show that *the City* engaged in a conduct to deny all use of their property . . ."") (emphasis added). Setting aside that whether the government acts in "bad faith" is entirely irrelevant to the takings analysis, as described above, counsel's statements clearly equate Councilmember Seroka's actions with the actions of the City Council as a whole. This is improper. Even if the basis of the City Council's action was relevant to the takings analysis—it

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isn't—the Court may not consider former Councilmember Seroka's statements, including information about the basis of those statements, as evidence of the City Council's motivations or reasoning, particularly since the City Council denied the applications before Seroka sat on the City Council. Because the admitted purpose of the Interrogatories is to impute Councilmember Seroka's alleged motivations to the City Council as a whole, they are irrelevant and improper. The Order therefore clearly erred in compelling the City to respond to them.

2. The statements of individual City Councilmembers are not actions of the City

Similarly, actions of individual City Councilmembers that are not endorsed by a vote of a majority of the City Council are not actions of the City. As such, they do not have the force of law and cannot "directly and substantially interfere with [an] owner's property rights to the extent of rendering the property unusable or valueless to the owner." *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 421, 351 P.3d 736, 743 (2015). They are therefore irrelevant to the takings analysis.

Instead, the only relevant actions for determining whether the government is liable for a regulatory taking are government regulatory actions that have the force of law. *See Williamson Cty. Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191 (1985), overruled on other grounds by *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019). Under Nevada's Open Meeting Law, the City can only adopt regulations through the City Council at a properly noticed public meeting that meets all statutory requirements. *See* NRS 241.015, .020, .035, .036; *see also Pac. Tel. & Tel. Co. v. City of Seattle*, 14 F.2d 877, 880 (W.D. Wash. 1926) (A "city can speak only through its council"). A public body that must be composed of elected officials, such as the Las Vegas City Council, may not act except by vote of a majority of those elected officials. NRS 241.0355(1). Absent compliance with all statutory requirements, the City's action is void and therefore irrelevant to the taking analysis. NRS 241.036.

In this case, the Court's takings determination must turn solely on whether the City Council's action to deny the 35-Acre Applications imposed an extreme economic burden on the Badlands. Councilmember Seroka's statements a year after the June 21, 2017 denial of the Developer's applications about the "experts" he "learned from" and the "20 percent" open space dedication requirement were not endorsed by a majority vote of the City Council, nor do they

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constitute a regulatory action that has the force of law. Accordingly, the statements—including the source of or basis for the statements—are irrelevant to the Court's inquiry, which is necessarily limited to the effect of *the City Council's action* on the Developer's property.[2] Information related to the imposition of the "20 percent" dedication requirement on *other properties* in the City (the subject of Interrogatory 3), is similarly irrelevant. The issue here is *the Developer's* property interest, and the impact of a specific City Council decision on that property interest. Whether any particular regulation was applied to other property in the City has no bearing on the economic impact to the Developer in this particular instance.

a. The subjective considerations and motives of individual decision makers are privileged

The irrelevance of legislators' and quasi-adjudicative decision makers' subjective motivations has compelled the courts to recognize a "mental process privilege," which prohibits discovery of public agency decision makers' subjective motivations for or considerations in reaching a challenged decision. *See N. Pacifica LLC v. City of Pacifica*, 274 F. Supp. 2d 1118, 1122 (N.D. Cal. 2003) (citing, among other cases, *United States v. Morgan*, 313 U.S. 409 (1941), *City of Las Vegas*, 747 F.2d 1294 (9th Cir. 1984), and *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318 (D.D.C. 1966)); *Kay v. City of Rancho Palos Verdes*, No. CV 02-03922 MMM (RZ), 2003 U.S. Dist. LEXIS 27311 (C.D. Cal. Oct. 9, 2003) (granting protective order prohibiting deposition of city councilmembers and planning commissioners about their motivations in adopting ordinance); *Knights of Columbus v. Town of Lexington*, 138 F. Supp. 2d 136, 139 (D. Mass. 2001) (holding that "inquiry into each Selectman's personal motivation generally is not appropriate") (citing *City of Las Vegas*); *Miles-UN-Ltd. v. Town of New Shoreham*, 917 F. Supp. 91, 98 (D.N.H. 1996) (denying motion to compel testimony about local officials' motives for amending an ordinance to regulate mopeds); *Searingtown Corp. v. N. Hills*, 575 F. Supp. 1295, 1299 (E.D.N.Y.

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[2] Note also that Councilmember Seroka made the statements in question on June 21, 2018*, one year* after the City Council acted on the Project, and *four months* after the Developer filed its First Amended Complaint in this case. It is nonsensical to assert that Councilmember Seroka's statements evidence a taking that the Developer alleges to have occurred *prior to* the date the statements were made.

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1981) (refusing motion to compel local legislators to testify about their motives in rezoning property). The mental process privilege is based generally on the same rationales as expressed in the cases barring inquiries into the state of mind of legislators on relevance grounds, and applies to both legislative and quasi-adjudicative decisions. *N. Pacifica*, 274 F.Supp.2d at 1122.

Courts have also recognized a "deliberative process privilege," the purpose of which is to "allow agencies freely to explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny." *Assembly of Cal. v. United States Dep't of Commerce*, 968 F.2d 916, 920 (9th Cir. 1992). This privilege precludes the taking of testimony about policy and decision makers' deliberations, including their pre-decisional "opinions, recommendations, or advice about . . . policies" as well as facts that are "so interwoven with the deliberative material that [they] are not severable." *FTC v. Warner Commc'ns, Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *see also National Wildlife Federation v. U.S. Forest Service*, 861 F.2d 1114, 1119 (9th Cir. 1988) (deliberative process privilege protects facts that are "inextricably intertwined with policy-making processes") (citing *Ryan v. Department of Justice*, 617 F.2d 781, 790 (D.C. Cir. 1980), *Lead Industries Association, Inc. v. OSHA*, 610 F.2d 70, 83 (2d. Cir. 1979), and *Soucie v. David*, 448 F.2d 1067, 1078 (D.C. Cir. 1971)). Like the mental process privilege, the deliberative process privilege applies equally to legislative and quasi-adjudicative contexts. *See*, *e.g.*, *Dawson v. Sullivan*, 136 F.R.D. 621, 624 (S.D. Ohio 1991) (deliberative process privilege promotes "frank discussion of issues relating to the adoption of policies, or the making of specific adjudicative decisions.").

The Developer insists that the Interrogatories seek "facts," not mental impressions, and are therefore not protected by either privilege. But they plainly seek to probe Councilmember Seroka's subjective motivations and considerations. Again, the Developer's counsel admitted this at the Hearing, emphasizing to the Court not the importance of the facts themselves, but rather the importance of the facts as they reflect the "basis" of Councilmember Seroka's statements. Ex. A at 8:5-9:1.

Moreover, the facts that the Developer claims to be seeking are so interwoven with Councilmember Seroka's "deliberative material" that they are inseverable, and are therefore

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protected. *See FTC*, 742 F.2d at 1161. Interrogatory 1, for instance, requests a "summary" of what Councilmember Seroka "learned" from each "expert" he says he spoke to prior to the City Council's action. Such a summary cannot be disconnected from Councilmember Seroka's subjective motivations and deliberations. Similarly, Interrogatory 2 asks how Councilmember Seroka "came by" the "20 percent" open space dedication requirement. By inquiring into the very information that Councilmember Seroka says guided his thinking, the Interrogatories are therefore barred by both the mental and deliberative process privilege.

In sum, the Interrogatories are irrelevant because former Councilmember Seroka was not a sitting Councilmember at the time the City Council denied the Developer's applications, and any statements made a year after that denial is completely immaterial to the City Council's action, and is therefore far beyond the scope of the Court's takings determination. The Order therefore clearly erred in compelling the City to respond to the Interrogatories.

C. The Interrogatories are an improper attempt by the Developer to relitigate the PJR and its federal due process claims, both of which have been considered and denied

As described above, analysis of a regulation's underlying validity "has no proper place in takings jurisprudence." *Lingle*, 544 U.S. at 540. Instead, such an analysis "prescribes an inquiry in the nature of a *due process* . . . test," which considers whether a government action was so arbitrary or irrational as to violate due process rights. *Id.* at 540-41. As the Developer's counsel admitted at the Hearing, the alleged relevance of the Interrogatories turns on their ability to probe the basis, or lack thereof, for Councilmember Seroka's statements about the "experts" he spoke to and the "20 percent" open space dedication requirement. Indeed, counsel told the Court, "if there were no facts to support the basis of" Councilmember Seroka's statements, then that would "create a problem for the City." Ex. A at 8:5-7. Whatever the merits of that argument, "*it does not sound under the Takings Clause*." *Lingle*, 544 U.S. at 544 (emphasis added). Instead, this is a *due process* argument, i.e., there were no facts supporting Councilmember Seroka's statements—and the City Council's decision—was irrational and arbitrary. *See id*.

However, the Developer's due process claims against the City have already been litigated and dismissed in federal court. In a case brought before the U.S. District Court for the District of

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Nevada (*180 Land CO LLC et al v. City of Las Vegas et al*, Case 2:18-cv-00547), the Developer alleged that the City Council and Councilmember Seroka "had a duty to base their decisions on articulated standards and requirements," but "did not do so." Complaint Pursuant to 42 U.S.C § 1983, ¶¶ 97, 116 (attached as Exhibit B ("Ex. B")). The Developer further alleged that Councilmember Seroka "made [his] decision[] and engaged in [his] City Council discussions motivated by favoritism and partiality to [his] friends." Ex. B, ¶¶ 98, 116. The district court dismissed the Developer's claims, including its due process claims, and the Developer appealed to the 9th Circuit. In its opening appellate brief, the Developer argued that the Complaint pled a plausible due process claim in part because it alleged that the City Council's and Councilmember Seroka's opposition to the Project was not "motivated by . . . a valid regulatory reason." Brief of Appellants 180 Land Co. LLC et al., p. 57 (attached as Exhibit C).

The 9th Circuit affirmed the district court's dismissal of the Developer's due process claims, finding that the Developer failed to demonstrate that it was "deprived of a constitutionally protected interest." *180 Land Co. LLC v. City of Las Vegas*, 833 Fed.Appx. 48, 51 (9th Cir. 2020) (Memorandum Opinion attached as Exhibit D). The allegations made in the Developer's federal litigation are the same as those it attempts to advance here. Specifically, in federal court, the Developer alleged that Councilmember Seroka's decision was not based on "articulated standards and requirements," and that Councilmember Seroka and the City Council were not motivated by a "valid regulatory reason."

In this case, as evidenced by the Developer's arguments at the Hearing, the purpose of the Interrogatories is to allow the Developer to make the same argument, i.e., Councilmember Seroka's statements lack support, and therefore he was motivated not by a "valid regulatory reason," but by favoritism to adjoining landowners. *See*, *e.g.*, Ex. A at 8:14-24 ("So if there was no basis for these statements, that causes a great concern for the landowner. It would be more evidence to show that the City engaged in a conduct to deny the landowner all use of their property because these statements were made to the homeowners who were the adjoining landowner [sic] to the landowner's property. And if there were no basis for these statements, and they were not true statements, then we would have a councilman going to the adjoining landowner trying to rouse

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them up to oppose the landowner development on the property."). *This is a due process argument, using due process reasoning*. No amount of contorting or reframing can make it relevant to the Developer's takings claims in this case, which must necessarily focus on the economic impact of the City Council's decision on the Developer's property interests.

Moreover, the due process inquiry is foreclosed by the issue preclusion doctrine, which applies where "(1) the issue decided in the prior litigation [is] identical to the issue presented in the current action; (2) the initial ruling [was] on the merits and [] became final; . . . (3) the party against whom the judgment is asserted [was] a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (internal quotation omitted). All four elements are satisfied here. The issue in the federal litigation—whether the Developer's due process rights were violated—is identical to the issue the Developer attempts to present here, i.e., that Councilmember Seroka's vote and the City Council's decision on the Project were without basis.[3] The district court's dismissal of the due process claim was on the merits, became final, and was actually and necessarily litigated. Finally, the Developer and the City were parties to the federal action.

The same connection can be drawn between the arguments the Developer advanced at the Hearing and the arguments made in its PJR, which was denied by this Court. Specifically, the PJR rested entirely on allegations that the City Council's denial of the 35-Acre Applications lacked legal basis. For example, in its Memorandum of Points and Authorities in support of its Second Amended PJR ("MPA"), the Developer argued that "[t]he *basis of* the [] denial . . . has no support under the law" (p. 27, emphasis added), that certain "standards and criteria . . . must form the *basis of* the [City Council's] review and adjudication" (p. 32, emphasis added), and that the City Council abused

[3] The Developer's federal complaint alleged a violation of the Developer's procedural due process rights. Ex. B, ¶¶ 97, 98, 116. In its opening brief before the 9th Circuit, the Developer argued that "a claim for violation of substantive due process is indistinguishable from a claim for violation of procedural due process," and that therefore the Complaint plausibly alleged a substantive due process claim as well. Ex. C, p. 55. The 9th Circuit dismissed the procedural due process claim but declined to address the substantive due process claim because it was raised for the first time on appeal. Ex. D at 51.

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its discretion "[b]ecause no evidence on the applicable land use regulations and law was provided as *the basis for* the denial" (p. 33, emphasis added). In the context of the PJR, the Developer used these allegations to support its claim that the City Council's action was arbitrary, capricious, and not supported by "substantial evidence." The Developer made clear at the Hearing that the purpose of the Interrogatories is to allow it to advance the same argument here. Specifically, that Councilmember Seroka's statement were without basis, and the City Council's decision were invalid. Ex. A at 8:5-9:1. Again, however, this inquiry and argument are irrelevant to resolving the Developer's takings claims, because they tell the Court nothing about the economic impact of the City Council's decision on the Badlands. Moreover, even if they were relevant, this issue—whether there was substantial evidence to support the City Council's decision—has already been decided in the PJR litigation, and may not properly be revisited here.

In sum, the Interrogatories are irrelevant to resolving the Developer's takings claims, and the Developer clearly seeks to use them to advance due process and substantial evidence arguments. This is nothing more than an improper attempt to relitigate issues that have already been decided in two different forums. The Order therefore clearly erred in compelling the City to respond to the Interrogatories.

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CONCLUSION

For the reasons described above, the City respectfully requests that the Court grant its motion for rehearing and reconsideration of the Developer's Motion and sustain the City's objections to the Developer's Interrogatories Nos. 1, 2, and 3.

DATED this 8th day of April, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 8th day of April, 2021, a true and correct copy of the foregoing **CITY'S MOTION FOR REHEARING AND RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL RESPONSE TO INTERROGATORIES** 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 on the following:

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