**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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| CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,<br>Appellant,<br>vs.<br>180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,<br>Respondents. | No. 84345 |
| 180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,<br>Appellants/Cross-Respondents,<br>vs.<br>CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,<br>Respondent/Cross-Appellant. | No. 84640<br><br>**JOINT APPENDIX, VOLUME NO. 54** |



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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 TO REPLY IN SUPPORT OF 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**

The City of Las Vegas ("City") submits this Appendix of Exhibits to its Reply in Support of the City's Motion for Reconsideration of Order Granting in Part and Denying in Part the City's Motion to Compel Discovery Responses, Documents and Damages Calculations, and Related Documents.

| Exhibit | Exhibit Description | Bates No. |
|---|---|---|
| A | Declarations of Yohan Lowie | 001-010 |
| B | Declaration of Chris Kaempfer | 011-013 |
| C | April 1, 2021 letter to Developer's Counsel | 014-015 |

| Exhibit | Exhibit Description | Bates No. |
|---|---|---|
| D | April 6, 2021 Email from Elizabeth Ham | 016-018 |
| E | 2013 Consolidated Financial Statements | 019-026 |
| F | BGC Settlement Agreement | 027-032 |
| G | July 25, 2014 draft of purchase and sale agreement | 033-057 |
| H | August 25, 2014 Email from Henry Lichtenberger | 058-059 |
| I | August 26, 2014 Email from Henry Lichtenberger | 060-064 |
| J | December 1, 2014 Email re Stock Purchase Agreement signature pages | 065 |
| K | February 19, 2015 Email re: PSAs | 066-068 |
| L | February 19, 2015 Email from Todd Davis re: Clubhouse Improvements Agreement | 069 |
| M | Vegas Ventures Funding LLC loan documents | 070-104 |

DATED this 9th 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 9th day of April, 2021, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO REPLY IN SUPPORT OF 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** 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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# EXHIBIT “A”

**DECLARATION OF YOHAN LOWIE**

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. At all times, I have served as a manager of each of 180 Land Co LLC, Seventy Acres and Fore Stars, (collectively "the Landowners"). I make this declaration in support of Plaintiff Landowners Opposition to the City's Motion for Summary Judgment and Countermotions to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order. I have personal knowledge of the facts stated herein and, if called to testify as a witness, I could and would competently testify as set forth below.

2. I have constructed and developed properties both independently and with my partners, principals of the Landowners for over 25 years. My partners and I have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) the Nevada Supreme Court and Appellate Court building located in downtown Las Vegas at 408 East Clark Avenue to name a few. We all live in the Queensridge common interest community and One Queensridge Place and are the single largest owners within both developments having built over 40% of the custom homes within Queensridge. There is no other independent developer that has contributed more to, or had a larger impact on, the Queensridge CIC and the surrounding area than my partners and myself.

3. I began working with the Peccole family and developing lots within the Queensridge CIC in 1996 and consistently worked with them thereafter.

4. In or about 2001, I was informed by Peccole family members that the Badlands Golf Course was zoned R-PD7 and intended for residential development. I further learned that the original owners of the various parcels that comprised the Badlands Golf Course (sometimes referred to as "the Land" or the "250 Acre Residentially Zoned Property") had never imposed any restrictions on the use of the Land and that the Land would eventually be developed. I was further informed that the Land is "developable at any time" and "we're never going to put a deed restriction on the property." The Land abuts the common interest community commonly known as "Queensridge" (the "Queensridge CIC").

5. Thereafter in 2001, I retained counsel and learned that the Land is "Not A Part" of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop the Land, the Land was intended for residential development and that as a homeowner within the Queensridge CIC, according to the Covenants, Conditions and Restrictions (the "CC&Rs") I had no right to interfere with the development of the Land.

6. In or around 2006, I met with the head planner at the City of Las Vegas, Mr. Robert Ginzer, and was advised that the Land was zoned R-PD7 and that there were no restrictions that would prevent development of that zoning on the Land. Thereafter, in or around 2007 through various other transactions with the Peccole family, I obtained the right to purchase all five parcels that encompassed the Badlands Golf Course. Thereafter, I continued my due diligence on the Land.

7. In or around June of 2014, the Peccole family gave me six months' notice to exercise the right to purchase the entire 250 Acres of Residentially Zoned Land. In doing so, we conducted further due diligence which included meeting with the City Planning Department including Mr. Tom Perrigo and Mr. Peter Lowenstein, the highest ranking planners at the City

of Las Vegas, to confirm whether the Land was developable and if there was anything that would otherwise prevent development. The City Planning Department agreed to do a "study" which took approximately three weeks.

8. After three weeks the City Planning Department reported that: 1) the 250 Acre Residential Zoned Land had hard zoning and vested rights to develop up to 7 units an acre; 2) "the zoning trumps everything;" and, 3) any owner of the 250 Acre Residential Zoned Land can develop the property.

9. My team and I requested that the City adopt its three-week study in writing as the City's official position in order to conclusively establish the developability of the property prior to closing on the property sale. The City agreed and provided the City's official position through a "Zoning Verification Letter" issued by the City Planning & Development Department on December 30, 2014, stating: 1) "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) "The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.);" and, 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." The Zoning Verification Letter is the way in which a potential buyer can confirm the zoning of land and is a standard item lenders and title companies request. Lenders and title companies do not and have not in my experience ever inquired about land use designations.

10. Thereafter, I also obtained information that the entire 250 Acre Residential Zoned Land had been zoned R-PD7 since at least 1990. This zoning was reconfirmed in subsequent research by the City through Ordinance 5353 that was passed in 2001.

11. In all my years of developing in the City of Las Vegas, the process involves meeting with the Planning Department to discuss conceptual plans wherein the City directs what applications are required in order to develop that plan. Thus, we began meeting with the City officials and Planning Department officials in or around September of 2014.

12. In March 2015, my partners and I acquired the membership interests of Fore Stars which at that time owned the entirety of the parcels (then five parcels) that comprise the 250 Residentially Zoned Land. Immediately after acquiring Fore Stars, we began the process with the City of Las Vegas Planning Department for development of the land.

13. In June 2015, Fore Stars re-drew the boundaries of the various parcels that comprised the 250 Acre Residentially Zoned Land pursuant to the City's request and direction. The City required the filing of parcel maps to separate the land for every area of development.

14. In November 2015 ownership of approximately 178.27 acres of the property was transferred to 180 Land Co and approximately 70.52 acres of the property was transferred to Seventy Acres. Fore Stars retained ownership of approximately 4.5 acres of the Property.

15. Today, 180 Land Co owns the parcels with the following Clark County Assessor Parcel Numbers ("APNs"): APNs 138-31-201-005 (totaling 34.07 acres), 138-31-601-008 (totaling 22.19 acres), 138-31-702-003 (totaling 76.93 acres), 138-31-702-004 (totaling 33.8 acres), and 138-31-801-002 (totaling 11.28 acres).

16. Today, Seventy Acres owns the parcels more particularly described by the Clark County Assessor as APNs 138-31-801-003 (totaling 5.44 acres), 138-32-301-007 (totaling 47.59 acres), and 138-32-301-005 (totaling 17.49 acres).

17. Today, Fore Stars owns the parcels more particularly described by the Clark County Assessor as APNs 138-32-210-008 (totaling 2.37 acres); and 138-32-202-001 (totaling 2.13 acres).

18. In 2015 the Las Vegas residential real estate market was booming and there was a great demand for single-family and multi-family residential. Additionally, the golf course operations on the Land were failing. Thus, it was our intent to develop as quickly as possible to not only meet market demands, but to reduce the substantial carrying costs. We started with Seventy Acres because developing Seventy Acres was the most financially feasible way to commence development of the Land.

19. On or around December 16, 2015, I attended a meeting at City Hall with Mayor Caroline Goodman, Councilman Beers, Chris Kaempfer, Frank Pankratz, City Attorney Brad Jerbic, Planning Director Tom Perrigo and others from my office. During that meeting Mayor Goodman informed that due to neighbors' concerns the City would not allow "piecemeal development" of the Land and that one application for the entirety of the 250 Acre Residentially Zoned Land was necessary by way of a Master Development Agreement ("MDA").

20. Initially we acquiesced to the City's requirement of a development agreement, but as the process continued we strongly opposed this City mandated MDA, because it was significantly increasing the time and cost to develop the entire 250 Acre Residential Zoned Land. Additionally, the City was imposing extraordinary requirements causing further delay and costs. Every single time we agreed to the MDA, which included how the 65 Acre Property would be developed, the City would change the requirements demanding more from us. In an effort to comply so that development could occur, we agreed to the City's demands.

21. These demands include, but are not limited to detailed architectural drawings including 3d digital models for Seventy Acres for topography, elevations, etc., regional traffic studies, complete civil engineering packages, master detailed sewer studies, drainage studies, school district studies. These additional demands caused us to incur more than an additional 1 million dollars in fees and costs. In all my years of development and experience such costly and timely requirements are never required prior to the application approval because no developer would make such an extraordinary investment prior to entitlements, ie. approval of the application by the City.

22. The MDA was drafted almost entirely by the City of Las Vegas and included all of the requirements the City demanded.

23. After the City delayed the MDA, in late 2016 we met with the City Planning Department regarding development of the 35 Acre Property as a stand-alone parcel and asked the City Planning Department to set forth all requirements the City could impose to develop the 35 Acre Property as an individual parcel, rather than as part of the MDA.

24. The City Planning Department worked closely with us to prepare the residential development applications for the 35 Acre Property and submitted a Staff Report recommending approval of the applications to develop the 35 Acre Property. The City Planning Commission unanimously approved the development of the 35 Acre Property, but the City Council denied those applications citing at the time of the hearing that they did not want "piecemeal development" and over my objections refused to consider the MDA which was on the agenda for consideration. Thereafter, the City continued to make it clear to us that it would not allow development of individual parcels, but demanded that development only occur by way of the MDA. Therefore, we continued our work with the City on the MDA.

25. On August 2, 2017, the MDA was presented to the City Council for approval. Despite offering the MDA as the only application the City would accept to develop the 65 Acre Property, the City's own Planning Staff and Planning Commission recommending approval, repeated assurances from the City, and the fact that the City itself almost entirely drafted the MDA, the City denied the MDA altogether.

26. The City did not ask us to make more concessions, like increasing the setbacks or reducing the units per acre, it just simply rejected the MDA altogether.

Dated this 23rd day of November 2020.

*/s/ Yohan Lowie*

_____

Yohan Lowie

# Exhibit 35

**DECLARATION OF YOHAN LOWIE**

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. I Make this Declaration in support of Plaintiff Landowners' Motion for a New Trial and to Amend Related to: Judge Herndon's Findings of Fact and Conclusions of Law Granting City of Las Vegas Motion for Summary Judgment, Entered on December 30, 2020. This Declaration supplements my previous Declaration submitted in this matter, dated November 23, 2020, and identified as Exhibit 22.

2. The consideration for the acquisition of the membership interest of Fore Stars Ltd comprised of all the assets and liabilities which included five parcels of land amounting to approximately 250 acres of residentially zoned land "250 Acre Residential Zoned Land" or "Land" which was being leased by a third party golf course operator at the time. This acquisition was significant and included : 1) approximately 15 years of work, resources, sacrifice and effort; 2) entering into an approximately $100 million deal with Peccole (the original owner of the Land) and a third party that involved complex land transactions related to large tracts of land, including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the 250 Acre Residential Zoned Land. Within this complex deal, $45 million was directly allocated to the acquisition of Fore Stars which included the 250 Acre Residential Zoned Land.

3. Additionally, the acquisition of Fore Stars Ltd., which owned the 250 Acre Residential Zoned Land, comprised all of its assets and liabilities, which included the Land, which the golf course was operating on at a substantial loss; the post-closing obligation to resolve a lot line dispute wherein the Queensridge Towers were constructed on part of the 250 Acre Residential Zoned Land; any liabilities of Fore Stars, Ltd.; all existing contracts with suppliers and vendors; and, all leases and agreements associated with any equipment on the land.

4. In all my years of dealings with the Peccoles and with the surrounding properties (since 1996 to the present) that involved a multitude of real estate transactions, the Peccole Ranch Master Plan north of Charleston Blvd. was never mentioned; it never appeared on any document, never appeared on any title to land, never in any CC&Rs, never on any entitlement package, and never on any lenders document. The Peccole Ranch Master Plan was then later used by the

representatives of the Queensridge Community to hold up development on the 250 Acre Residential Zoned Land after we purchased it.

5. Within months of acquiring the 250 Acre Residential Zoned Land, then-councilman Bob Coffin informed me that a few of the homeowners in the Queensridge Community were demanding that no development occur on the 250 Acre Residential Zoned Land, but that Councilman Coffin would "allow" me to build "anything I wanted" on 70 of the 250 acres if we handed over to these few homeowners 180 Acres of land with the water rights for free.

6. Several months later, in April 2016, Councilman Coffin told me that he would get me 1,000 more units on the 70 acres if I would "hand over" the 180 acres, and all water rights, to these a Queensridge homeowner in perpetuity, for free. I offered the 180 acres for a one dollar per year lease as long as it included a deed restriction to operate as a golf course. Coffin responded it's not going to work and I needed to hand it over for free without the restriction.

7. In 2018, Councilman Seroka told me that I should have negotiated with the Queensridge Community and if I had given them what they wanted, I could have already been building. He suggested that if I negotiated with Frank Schreck, a Queensridge representative, all the lawsuits would go away.

DATED this 27th day of January, 2021.

*/s/ Yohan Lowie*

_____

Yohan Lowie

# EXHIBIT “B”

## DECLARATION OF CHRISTOPHER L. KAEMPFER

I, Christopher L. Kaempfer, declare under penalty of perjury that the following is correct:

1. I am an attorney licensed to practice law in both California and Nevada.

2. I have been licensed to practice law in California since 1975 and in Nevada since 1976.

3. Since 1978, the principal area of my practice in the State of Nevada has been governmental affairs with an emphasis on land use and zoning.

4. Over the past 40 plus years, I have represented, and secured zoning for, a wide variety of developments, including various hotel/resorts, athletic stadiums and arenas, commercial developments of all kinds and sizes, school sites, and numerous single family and multifamily residential developments, including several master planned residential communities such as Southern Highlands and Rhodes Ranch.

5. My wife and I have resided in the Queensridge residential community since 2009.

6. In the summer of 2015, I was contacted by Jay Brown, Esq. on behalf of the landowner to ascertain whether I would be willing to assist in a high end residential development on what was then the Badlands Golf Course ("Badlands"). Since I live on the Badlands, any development of that property for other than a golf course was obviously very important and very personal to me.

7. Before I would agree to assist in any development of the Badlands, it was important for me to ascertain what development rights, if any, actually existed on the Badlands. In this regard, I checked the Clark County website for the zoning of the Badlands and discovered that the property is zoned "Residential Planned Development District (R-PD7)." I was provided with, and reviewed, a copy of a zoning letter provided to the landowner by the City of Las Vegas confirming this R-PD7 zoning on the Badlands. I checked with Peter Lowenstein of the City of Las Vegas Planning Department who advised me that the Badlands could be developed in accordance with the R-PD7 zoning. Later, in a meeting with then City Attorney, Brad Jerbic, I was informed that the City of Las Vegas would "honor the zoning letter" provided to the landowner by the City of Las Vegas.

8. Based on the above, and the fact that the landowner was proposing an overall density on the vast majority of the Badlands well below the existing and allowed R-PD7 zoning, I agreed to assist in the representation of the Badlands development.

9. An important step in any development, especially one where you anticipate some neighborhood pushback, is to conduct detailed neighborhood meetings designed to both inform neighbors of any proposed plan(s) and to seek neighborhood input. At the same time, it is important to meet regularly with City representatives (or County representatives depending on the jurisdiction in which your proposed development is located) to gain their knowledge and perspectives. At the conclusion of both of these tasks are the public hearings. The information contained in the following paragraphs is given to the best of my knowledge.

10. Between February, 2016 and April, 2017, I participated in a series of neighborhood meetings to discuss the landowner's proposed plan(s) and to secure neighborhood input—and hopefully some neighborhood support—for the proposed development. Some of those meetings were smaller meetings designed to discuss potential impacts on different portions of the Badlands community. For example, several meetings were held at the Badlands' clubhouse, the Queensridge Towers and at neighborhood homes. Additionally, there was one large meeting held for the entire community at the Sun Coast Hotel on October 7, 2016.

11. Between February, 2016 and July, 2017, I attended no less than seventeen (17) meetings with Planning Department representatives and/or representatives of the City Attorney's office to discuss, among other things, the creation of a Development Agreement to cover the development of the entire Badlands. These 17 meetings do not include the numerous telephone calls with, and e-mail exchanges between, City representatives and me. These discussions as to an overall Development Agreement for Badlands were a consequence of, and were necessitated by, public and private comments made to me by both elected and non-elected officials that they wanted to see a plan—via a Development Agreement—for the development of the entire Badlands and not just portions of it.

12. The above being said, it became clear that despite our best efforts, and despite the merits of our application(s), no Development Agreement was going to be approved by the City of Las Vegas unless virtually all of the Badlands neighborhood supported such a Development Agreement; and it was equally clear that this neighborhood support was not going to be achieved because, as the leader of the neighborhood opposition exclaimed to me and others, "I would rather see the golf course a desert than a single home built on it."

13. This expression essentially of we either get an approved Development Agreement for the entirety of the Badlands or we get nothing is borne out by the fact that every single family residential development proposed by the landowner on portions of the Badlands including the 65 acre property—regardless of the fact that these proposed single family developments conformed completely both to the existing R-PD7 zoning and to the

surrounding residential densities—were all either denied by the Las Vegas City Council or struck prior to consideration.

Executed this 23rd day of November, 2020.

CHRISTOPHER L. KAEMPFER

# EXHIBIT *"C"*

McDONALD CARANO

George F. Ogilvie III Reply to Las Vegas

April 1, 2021

***VIA ELECTRONIC MAIL***
***AND ELECTRONIC SERVICE***

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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.
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Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
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Christopher Molina, Esq.

# EXHIBIT “D”

| | |
|---|---|
| **From:** | Elizabeth Ham (EHB Companies) |
| **To:** | George F. Ogilvie III; Amanda Yen; Christopher Molina |
| **Cc:** | Autumn Waters; James Leavitt; pbyrnes@lasvegasnevada.gov; sfloyd@lasvegasnevada.gov; bscott@lasvegasnevada.gov; Andrew W. Schwartz; Lauren Tarpey |
| **Subject:** | RE: 180 Land Co, LLC, et al. v. The City of Las Vegas (Case No. A-17-758528-J) |
| **Date:** | Tuesday, April 6, 2021 5:15:10 PM |

Dear Mr. Ogilvie,

In response to your letter dated April 1, 2021, regarding production of documents, please note that the Landowner has fully complied with the Court Order. You are correct that Mr. Lowie has worked with the Peccole family for over 20 years and that there have been many transactions between them. As it relates to the 250 acres however, those documents are in your possession. Your attempt to bootstrap portions of counsel's argument/position during the hearing as evidence that more exists does not make it so. Moreover, contrary to your assertion, the complete transcript you reference (not the cut and paste portions you provide) along with the Mr. Lowie's declaration, and his previous deposition testimony as referenced at that hearing, are supported by those documents. As I stated in the hearing, "They support the 20-year history that from those transactions was born this right to purchase it . . ."

The only other clarification I can provide is that the "binders" I referenced are bound books that, again if you read the transcript, I had yet to fully review. In my review I found that those bound books contain construction and loan documents for the various projects referenced and in which you identify in your letter. Again, you are in possession of all of the documents relating to the transactions that in your own words "support your contention that you paid $45 million."

Best,

***Elizabeth Ghanem Ham, Esq.***
Counsel
EHB Companies
(702) 940-6936 (Direct)
(702) 610-5652 (Cellular)
eham@ehbcompanies.com



**From:** James Leavitt <jim@kermittwaters.com>
**Sent:** Friday, April 2, 2021 10:52 AM
**To:** Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>; Autumn Waters <autumn@kermittwaters.com>; Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>
**Cc:** PByrnes@LasVegasNevada.GOV; Seth Floyd <sfloyd@LasVegasNevada.GOV>;

bscott@lasvegasnevada.gov; schwartz@smwlaw.com; LTarpey@smwlaw.com; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
**Subject:** RE: 180 Land Co, LLC, et al. v. The City of Las Vegas (Case No. A-17-758528-J)

George:

Thank you for your letter. Elizabeth is out of town and will respond on Monday.

Have a great weekend.

Jim

Jim Leavitt, Esq.
***Law Offices of Kermitt L. Waters***
704 South Ninth Street
Las Vegas Nevada 89101
tel: (702) 733-8877
fax: (702) 731-1964



---

**From:** Jelena Jovanovic <jjovanovic@mcdonaldcarano.com>
**Sent:** Thursday, April 1, 2021 4:34 PM
**To:** James Leavitt <jim@kermittwaters.com>; Autumn Waters <autumn@kermittwaters.com>; EHam@ehbcompanies.com
**Cc:** PByrnes@LasVegasNevada.GOV; Seth Floyd <sfloyd@LasVegasNevada.GOV>; bscott@lasvegasnevada.gov; schwartz@smwlaw.com; LTarpey@smwlaw.com; George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Amanda Yen <ayen@mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
**Subject:** 180 Land Co, LLC, et al. v. The City of Las Vegas (Case No. A-17-758528-J)

Please find attached correspondence *sent on behalf of George F. Ogilvie III, Esq*., with respect to the above-referenced matter. Should you have any questions, please contact Mr. Ogilvie directly.

Thank you,
**Jelena Jovanovic** | Legal Secretary to George F. Ogilvie III, Esq.,
and Amanda C. Yen Esq.

**McDONALD CARANO**

2300 West Sahara Avenue | Suite 1200
Las Vegas, NV 89102

**P:** 702.873.4100 | **D:** 702.257.4522

WEBSITE | V-CARD

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# EXHIBIT “E”

**QUEENSRIDGE TOWERS, LLC**

**INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**AS OF JUNE 30, 2013**

**UNAUDITED**

**IN U.S DOLLARS**

**I N D E X**



- - - - - - - - - - - - - - - - - -

Kost Forer Gabbay & Kasierer
3 Aminadav St.
Tel-Aviv 6706703, Israel

Tel: +972-3-6232525
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ey.com

**AUDITORS' REVIEW REPORT**

**To the members of**

**QUEENSRIDGE TOWERS, LLC**

**Introduction**

We have reviewed the accompanying financial information of QUEENSRIDGE TOWERS, LLC ("the Company"), which comprises the condensed consolidated statement of financial position as of June 30, 2013 and the related condensed consolidated statements of comprehensive income, changes in equity and cash flows for the six and three months then ended. The Company's board of directors and management are responsible for the preparation and presentation of interim financial information for these periods in accordance with IAS 34, "Interim Financial Reporting". Our responsibility is to express a conclusion on this interim financial information based on our review.

**Scope of review**

We conducted our review in accordance with Review Standard 1 of the Institute of Certified Public Accountants in Israel, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity." A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with generally accepted auditing standards in Israel and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

**Conclusion**

Based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information is not prepared, in all material respects, in accordance with IAS 34.

Tel-Aviv, Israel
August 7, 2013

KOST FORER GABBAY & KASIERER
A Member of Ernst & Young Global



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**9583**

## CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

**U.S. dollars**

| | Notes | June 30, 2013 (Unaudited) | December 31, 2012 (Audited) |
|---|---|---|---|
| **ASSETS** | | | |
| Cash and cash equivalents | | 23,289,486 | 23,016,954 |
| Restricted cash – letters of credit | | 5,000,000 | 5,000,000 |
| Restricted cash – bonds | | 225,328 | 225,328 |
| Purchasers' deposits in escrow | | 279,919 | 279,919 |
| Other assets | | 560,279 | 627,067 |
| Notes receivable | | 1,700,000 | 1,700,000 |
| Condominium inventory | 3 | 65,516,190 | 108,637,811 |
| Land held for development | | 2,930,000 | 2,930,000 |
| Total assets | | 99,501,202 | 142,417,079 |
| **MEMBERS' DEFICIT AND LIABILITIES** | | | |
| Queensridge Towers Investments, LP | | (9,504,345) | (8,471,929) |
| Lyton US Partnership | | (62,462,928) | (55,677,839) |
| IDB Group USA Investments, Inc. | | (108,483,192) | (96,699,111) |
| QT SPE Member Inc. | | (906,786) | (808,286) |
| Total Members' deficit | | (181,357,251) | (161,657,165) |
| Liabilities: | | | |
| Accounts payable and accrued liabilities | | 2,948,489 | 8,346,377 |
| Interest payable to affiliates and Members | | 130,951,525 | 113,296,114 |
| Advances payable to affiliates | | 15,000,002 | 15,000,002 |
| Letter of Credit advances | | 50,000,000 | 50,000,000 |
| Loans payable to Members | | 54,358,441 | 64,478,441 |
| Construction loan payable to Member | | 14,665,143 | 14,665,143 |
| Mortgage loan | | 12,850,426 | 37,787,166 |
| Purchasers' deposits | | - | 279,919 |
| Rental deposits | | 84,427 | 221,082 |
| Total liabilities | | 280,858,453 | 304,074,244 |
| Total Members' deficit and liabilities | | 99,501,202 | 142,417,079 |

The accompanying notes are an integral part of the interim consolidated financial statements.

| August 7, 2013 | | | |
|---|---|---|---|
| Date of approval of the financial statements | Noam Ziv<br>Chief Executive Officer | Matthew Bunin<br>Chief Financial Officer | John Lucero<br>Corporate Controller |

## CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

**U.S. dollars**

| | Notes | Six Months Ended June 30, 2013 | Six Months Ended June 30, 2012 | Three Months Ended June 30, 2013 | Three Months Ended June 30, 2012 |
|---|---|---|---|---|---|
| | | (Unaudited) | | | |
| **Revenue** | | | | | |
| Condominium sales | 3 | 41,340,290 | 10,767,286 | 21,646,341 | 6,308,541 |
| Unit leasing revenue | | 317,300 | 242,636 | 123,100 | 169,500 |
| Rental revenue | | 26,225 | 26,667 | 11,848 | 13,850 |
| | | 41,683,815 | 11,036,589 | 21,781,289 | 6,491,891 |
| **Expenses** | | | | | |
| Cost of condominium sales | 3 | 40,417,645 | 12,117,883 | 21,005,936 | 7,112,359 |
| Building expense | | 813,976 | 200,591 | 622,110 | 144,426 |
| Sales and marketing | | 650,654 | 158,177 | 404,189 | 129,230 |
| Homeowners association dues | | 587,964 | 828,250 | 256,320 | 406,130 |
| General and administrative | | 471,401 | 371,032 | 246,486 | 247,778 |
| Property taxes | | 247,138 | 405,283 | 118,377 | 211,491 |
| Legal expense | | 187,322 | 3,911,972 | 59,412 | 1,727,673 |
| Insurance | | 67,731 | 218,234 | 37,521 | 92,683 |
| Depreciation expense | | 1,912 | 6,866 | 926 | 3,134 |
| Provision for potential future claims | | - | 14,000,000 | - | 4,000,000 |
| Total expenses | | 43,445,743 | 32,218,288 | 22,751,277 | 14,074,904 |
| **Other** | | | | | |
| Interest income | | 62,809 | 35 | 31,920 | 18 |
| Interest expense | | (19,669,537) | (16,984,999) | (9,605,175) | (8,407,247) |
| Other income | | 1,668,570 | - | 1,532,413 | - |
| Net loss | | (19,700,086) | (38,166,663) | (9,010,830) | (15,990,242) |
| Other comprehensive loss | | - | - | - | - |
| Total comprehensive loss | | (19,700,086) | (38,166,663) | (9,010,830) | (15,990,242) |

The accompanying notes are an integral part of the interim consolidated financial statements.

## CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY

**U.S. dollars**

| | Queensridge Towers Investments, LP | Lyton US Partnership | IDB Group USA Investments, Inc. | QT SPE Member, Inc. | Total |
|---|---|---|---|---|---|
| Balance at January 1, 2013 | (8,471,929) | (55,677,839) | (96,699,111) | (808,286) | (161,657,165) |
| Comprehensive loss | **(1,032,416)** | **(6,785,089)** | **(11,784,081)** | **(98,500)** | **(19,700,086)** |
| Balance at June 30, 2013 (Unaudited) | **(9,504,345)** | **(62,462,928)** | **(108,483,192)** | **(906,786)** | **(181,357,251)** |
| Balance at January 1, 2012 | (4,801,589) | (31,556,170) | (54,805,524) | (458,107) | (91,621,390) |
| Comprehensive loss | (2,000,187) | (13,145,333) | (22,830,310) | (190,833) | (38,166,663) |
| Balance at June 30, 2012 (Unaudited) | (6,801,776) | (44,701,503) | (77,635,834) | (648,940) | (129,788,053) |

| | Queensridge Towers Investments, LP | Lyton US Partnership | IDB Group USA Investments, Inc. | QT SPE Member, Inc. | Total |
|---|---|---|---|---|---|
| Balance at April 1, 2013 | (9,032,117) | (59,359,425) | (103,093,147) | (861,732) | (172,346,421) |
| Comprehensive loss | **(472,228)** | **(3,103,503)** | **(5,390,045)** | **(45,054)** | **(9,010,830)** |
| Balance at June 30, 2013 (Unaudited) | **(9,504,345)** | **(62,462,928)** | **(108,483,192)** | **(906,786)** | **(181,357,251)** |
| Balance at April 1, 2012 | (5,963,781) | (39,194,156) | (68,070,885) | (568,989) | (113,797,811) |
| Comprehensive loss | (837,995) | (5,507,347) | (9,564,949) | (79,951) | (15,990,242) |
| Balance at June 30, 2012 (Unaudited) | (6,801,776) | (44,701,503) | (77,635,834) | (648,940) | (129,788,053) |

The accompanying notes are an integral part of the interim consolidated financial statements.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

**U.S. dollars**

| | Six Months Ended June 30, | |
|---|---|---|
| | **2013** | **2012** |
| **Operating activities** | | |
| Net loss | (19,700,086) | (38,166,663) |
| Adjustments to reconcile net loss to net cash provided by (used in) operating activities: | | |
| Depreciation | 1,912 | 6,866 |
| Gain on sale of assets | (1,312,589) | - |
| Changes in operating assets and liabilities: | | |
| Condominium inventory | 38,767,124 | 11,594,618 |
| Other assets | 64,876 | (1,297) |
| Note Receivable | - | (1,700,000) |
| Accounts payable and accrued liabilities | 218,601 | 264,095 |
| Provision for potential future claims | - | 14,000,000 |
| Sales contract deposits | - | 744,000 |
| Rental deposits | (136,655) | 259,950 |
| Working capital adjustments: | | |
| Interest expense | 19,669,537 | 16,984,999 |
| Interest income | (62,809) | (35) |
| Net cash provided by operating activities | 37,509,911 | 3,986,533 |
| **Financing activities** | | |
| Loans from Members | - | 1,414,500 |
| Repayment of loans from Members | (10,120,000) | (5,221,000) |
| Repayment of mortgage loan | (25,077,614) | - |
| Payment of financing fees | (176,521) | - |
| Interest paid | (1,926,053) | - |
| Interest received | 62,809 | 35 |
| Net cash used in financing activities | (37,237,379) | (3,806,465) |
| Net change in cash and cash equivalents | 272,532 | 180,068 |
| Cash and cash equivalents, beginning of period | 23,016,954 | 250,565 |
| Cash and cash equivalents, end of period | 23,289,486 | 430,633 |

The accompanying notes are an integral part of the interim consolidated financial statements.

## NOTES TO INTERIM CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 1:- GENERAL

Queensridge Towers, LLC (the "Company"), a Nevada limited liability company formed on January 4, 2004, is located in Las Vegas, Nevada. The Company is in operation for perpetuity subject to earlier termination under provisions of the Operating Agreement. The Members' liability is limited pursuant to the Nevada limited liability laws.

The Company is developing a residential condominium project, which is approved for 385 units in three 18-story towers and one 14-story tower (the "Project"). Phase 1, consisting of 219 units in two 18-story towers, was substantially complete as at June 30, 2008.

These financial statements have been prepared in a condensed format as of June 30, 2013 and for the three and six month periods then ended ("interim financial statements"). These financial statements should be read in conjunction with the Company's annual financial statements as of December 31, 2012 and for the year then ended and the accompanying notes ("annual financial statements").

These interim consolidated financial statements have been prepared assuming the Company will continue as a going concern. On November 15, 2012, the Company secured $40 million in financing from WRT-Queensridge Lender LLC (WRT). Of the proceeds, $11.5 million was used for closing costs and current obligations of the Company and affiliates of the Company, Sahara Hualapai LLC and Great Wash Park LLC (Related Companies) and another $5.0 million was used to secure a letter of credit given in connection with the loan. The remaining $23.5 million will be used to cover interest payments on the loan and operating expenses of the Company as needed, along with those of the Related Companies. In addition, as condominium units are sold at the Company, 70% of the gross proceeds are required to be paid to the lender as a reduction in principal. The remaining 30% of gross proceeds will be used to cover expenses of the Company and Related Companies. Funding of the Related Companies will occur as the Company repays Member loans to common Member IDBG, and IDBG provides additional Member loans to the Related Companies. The Members have agreed to defer repayment of the balance of all related-party advances and loans to after September 30, 2014. Taking into consideration the aforementioned, the Company believes it will have sufficient funds available through at least June 30, 2014, to meet its obligations as they become due.

### NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES

The interim consolidated financial statements for the six months ended June 30, 2013 have been prepared in accordance with IAS 34, "Interim Financial Reporting". The significant accounting policies and methods of computation adopted in the preparation of the interim consolidated financial statements are consistent with those followed in the preparation of the annual financial statements.

**NOTE 3:- CONDOMINIUM INVENTORY**

As at June 30, 2013, the Company had closed 183 condominium units in Phase 1 of the Project. The Company has a total of 36 units remaining, 1 unit of which was under contract as at June 30, 2013. The Company closed 4 additional units, and has 3 additional units under contract through August 7, 2013, bringing total units closed to 187 and leaving 32 units remaining, none of which are under contract.

**NOTE 3:- RELATED PARTY TRANSACTIONS**

On September 6, 2005, additional land was purchased from an affiliate of Queensridge Highrise, LLC (QH), the original managing Member. The additional land contained a clubhouse. In lieu of a cash payment, the Company entered into a contract with the affiliate of QH to construct a new clubhouse on the adjacent golf course owned by the affiliate of QH for an amount not to exceed $3,150,000 and to make improvements to the golf course in an amount of $850,000. In addition, the Company agreed to convey four condominium units to certain affiliates of QH. The value of these condominium units, totaling $5,387,167, had previously been recorded as an accrued liability.

On June 28, 2013, the Company entered into a settlement and mutual release agreement with QH. The agreement allowed for the following changes to the conveyed condominium units: the termination of a purchase agreement for one of the condominium units (which included a purchase price of $1,866,127); the release of the existing deposit on that unit of $279,919; the exchange of one unit for a new unit, and the scheduled closing of the new unit and the remaining two units. This transaction closed on June 28, 2013 and resulted in a gain of $1,312,589 for the quarter-ended and six months ended June 30, 2013. The liability related to these units was zero and $5,387,167 as at June 30, 2013 and December 31, 2012, respectively. As the release of the existing deposit did not occur until July 1, 2013, the purchasers' deposit balance was $279,919 as at June 30, 2013 and December 31, 2012.

Additionally, the agreement included an option whereas the Company can terminate its obligation to reimburse for existing improvements made to the golf course and future construction of a new clubhouse in exchange for the additional land that contained the clubhouse. The Company has the ability to exercise this option at any time within 18 months of the date of agreement. As at June 30, 2013 and December 31, 2012, the Company has accrued $850,000 for liability associated with the completed golf course improvements. The Company has not exercised this option as at August 7, 2013.

- - - - - - - - - - - - - - - - - -

# EXHIBIT “F”

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made by and between Plaintiff/Counter-Defendant BGC HOLDINGS LLC ("BGC") and Defendant/Counterclaimant FORE STARS, LTD., a Nevada limited liability company, ("Fore Stars") sometimes referred to herein singularly as a "Party" and collectively as the "Parties").

WITNESSETH:

WIIEREAS, the BGC and Fore Stars are parties to a lawsuit titled "BGC Holdings LLC v. Fore Stars, Ltd.", Case No. A-546847 pending in the Eighth Judicial District Court, Clark County, Nevada (the "Lawsuit") concerning the real property known as the "Badlands Golf Course" located at 9119 Alta Drive, Las Vegas, Nevada, more particularly described as Clark County Assessors Parcel Numbers 138-31-610-002, 138-31-212-002 and 138-31-713-002 (the "Real Property"). ; and

WHEREAS, the BGC and Fore Stars are desirous of settling and resolving the Lawsuit on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the BGC and Fore Stars agree as follows:

### SECTION 1

**Dismissal of the Lawsuit**

The Lawsuit shall be dismissed with prejudice within five (5) business days after the delivery of the Restrictive Covenant (defined in Section 2) to BGC.

### SECTION 2

**Restrictive Covenant**

Fore Stars has agreed that the Real Property will remain a golf course or open space and have no development activities upon it, other than those activities expressly permitted by this Agreement, unless consented to in writing by Queensridge Towers LLC (the "Restrictive Covenant"). The Restrictive Covenant shall remain in effect until the such time as Phase II of the Queensridge Towers Development is completed and all units offered to the public for sale are sold and have closed escrow. Fore Stars will further memorialize this commitment by providing Queensridge Towers LLC with an instrument in recordable form setting forth the Restrictive Covenant in favor of Queensbridge Towers LLC. The Restrictive Covenant may be transferred, assigned, cancelled, released or waived at the option of Queensridge Towers LLC in its sole and absolute discretion. Queensridge Towers LLC may, at its option, record the Restrictive Covenant with the Clark County Recorder's Office. The foregoing notwithstanding, the Restrictive

Covenant shall expire ten (10) years after its ~~recordation with the Clark County Recorder's Office by~~ delivery to Queensridge Towers LLC.

## SECTION 3

### Right of First Refusal

For a period ending the earlier of (i) ~~the expiration of~~ [Seven years after the delivery of] the Restrictive Covenant or (ii) such time as Phase II of the Queensridge Towers Development is completed and seventy-five percent (75%) of all units offered to the public for sale are sold and have closed escrow, BGC shall have the right of first refusal to purchase the Real Property, ~~ending the earlier of (i)~~. Upon receipt of any bonafide offer to purchase the Real Property on terms acceptable to Fore Stars for cash and/or cash and financing (the "Offer to Purchase"), Fore Stars shall provide written notice of the Offer to Purchase to BGC (the "First Refusal Notice"). BGC shall then have seven (7) business days after receipt of the First Refusal Notice to exercise its right of first refusal by giving written notice of its intention to purchase the Real Property on the same terms and conditions as set forth in the Offer to Purchase. In the event BGC declines an Offer to Purchase and a sale does not occur, Fore Stars shall so notify BGC promptly in writing and the Right of First Refusal shall be deemed fully reinstated in accordance with its terms.

## SECTION 4

### Permissible Development

The Parties agree that the following development on the Real Property will be permitted:

4.1 Fore Stars may replace the existing golf clubhouse in accordance with the terms of that certain Badlands Golf Course Clubhouse Improvements Agreement or as the Parties may otherwise agree in writing.

4.2 Fore Stars may construct up to thirty (30) single story, one bedroom, one bathroom casitas to be used solely for short term rental purposes. The casitas shall not exceed twenty (20) feet in height. To the extent the casitas are located west of Phase II of the Queensridge Towers Development, the location, architecture, size, color, construction materials and overall design of the casitas will not require the prior written approval of BGC. If any of the casitas are located anywhere else on the Real Property, construction on any casita shall not commence until BGC has given its prior written approval of the location, architecture, size, color, construction materials and overall design of each casita.

4.3 BGC shall cause Fore Stars to be granted a permanent easement for golf cart path (~~not to exceed width of~~ five (5) feet wide) over the Queensridge Towers property where cart path exist as of the date hereof or at other locations determined by BGC. In the event BGC elects to move any cart path from its current location, it shall do so at its sole cost and expense.

## SECTION 5

### Representations, Covenants and Warranties by the Parties

5.1 Each Party represents, covenants and warrants to each of the other Parties, which representations, covenants and warranties shall survive the dismissal of the Lawsuit, that it shall not bring any claim or cause of action arising from the facts underlying the Lawsuit against any other person or entity, known or unknown.

5.2 Each Party represents, covenants and warrants to each of the other Parties that it has not heretofore assigned or transferred to any person not a party hereto any released matter or any part or portion thereof, and each Party shall indemnify and hold harmless every other Party from and against any claims (including the payment of attorney's fees and costs actually incurred whether or not litigation is commenced), based on or in connection with or arising out of any assignment or transfer, purported or claimed.

## SECTION 6

### Purpose of Compromise and Settlement

The Parties have each entered into this Agreement solely for the purpose of settling and compromising the dispute ("Dispute") giving rise to the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgement of liability, the existence of damages, or the amount of any damages relating to the Dispute or Lawsuit.

## SECTION 7

### Binding Effect

This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns. Except as specifically provided in Sections 2 and 4 of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

## SECTION 8

### Time of the Essence

Time is of the essence of this Agreement and all of its terms, provisions, conditions and covenants.

## SECTION 9

**Entire Agreement**

This Agreement contains the entire agreement between the Parties and may not be changed or terminated orally but only by a written instrument executed by the Parties after the date of this Agreement.

## SECTION 10

**Construction**

The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The Parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their respective attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

## SECTION 11

**Partial Invalidity**

If any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

## SECTION 12

**Attorneys' Fees**

In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all issues.

## SECTION 13

**Governing Law and Forum**

The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or

enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in the State of Nevada.

## SECTION 14

**Necessary Action**

Each of the Parties shall do any act or thing and execute any and all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

## SECTION 15

**Counterparts**

This Agreement may be executed in any number of counterparts, each of which when duly 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, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), which facsimile signatures shall be as binding and effective as original signatures.

## SECTION 16

**Effective Date of Agreement**

The effective date of this Agreement shall be the date on which the last party who is to sign this Agreement signs the Agreement.

## SECTION 17

**Authority to Execute**

Each Party represents, covenants and warrants to the others that it has all the necessary and required power and authority to enter into this Agreement, and that each individual executing this Agreement on behalf of any entity specifically warrants that he or she has the authority to bind that entity by his or her signature.

**[SIGNATURE PAGE FOLLOWS]**

"BGC"

BGC HOLDINGS LLC

Executed this 28th day of January, 2008

By: _____

Its: Manager

"Fore Stars"

FORE STARS, LTD.

Executed this 28th day of January, 2008

By: _____

By: _____

APPROVED AS TO FORM AND CONTENT:

LIONEL SAWYER & COLLINS

By _____

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KOLESAR & ~~LEAVITT~~ LEATHAM, CHTD.

By _____

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# EXHIBIT “G”

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is entered into effective as of the _____ day of August 2014 (the "Effective Date"), by and between **FORE STARS, LTD.**, a Nevada limited liability company ("Seller"), and **YOHAN LOWIE**, a resident of the State of Nevada or his permitted assigns ("Purchaser").

## RECITALS

A. Seller is the owner of (i) that certain real property and improvements consisting of a golf course, driving range, clubhouse 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 "Golf Course"), which Golf Course, together with all easements, rights-of-way, privileges, appurtenances, entitlements and rights to the same belonging or inuring to the benefit thereof, if any, and all of Seller's right, title and interest in and to those water rights described on **Exhibit A-1**, which is incorporated herein by reference ("Water Rights"), which shall be collectively referred to herein as the "Property", and (ii) certain Assets, as defined below, related to the operation of the Golf Course (the Property and the Assets collectively referred to herein as the "Business").

B. Seller desires to sell and Purchaser desires to purchase the Business upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

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

1.1 "Assets" shall mean the following assets of Seller: (1) all of the Seller's fixtures, fittings and equipment associated or used with the Business (the "Equipment"); (2) all of Seller's right, title and interest in and to the use of the name "Badlands Golf Course" in connection with the Business and any derivatives or combinations thereof (the "Name"); (3) Seller's vendor lists and business records relating to the Business (the "Records"); (4) all of the Business' stock of goods owned by Seller, including without limitation any pro shop, clubhouse, office, and kitchen goods (the "Inventory"); (5) all of Seller's goodwill, if any, with respect to the Business (the "Goodwill"); (6) Seller's existing contracts with its suppliers and vendors (the "Contracts"); (7) all leases and agreements to which Seller is a party with respect to machinery, equipment, vehicles, and other tangible personal property used in connection with the Business that are listed or described on **Exhibit B** attached hereto (collectively, the "Equipment Leases"), and all claims and rights arising under or pursuant to the Equipment Leases, and (8) all other licenses and permits issued to the Seller (not Par 4) related to the operation of the Business. Assets shall not include the Excluded Assets (as defined below), or any and all goods or rights owned by Par 4 as it relates to the Golf Course or the Business.

1.2 "Assumed Liabilities" means all liabilities and obligations of Seller listed on **Exhibit C**.

1.3 "Excluded Assets" shall mean cash on hand or on deposit with Seller's bankers and those assets to be retained by Seller (including the existing liquor license) as set forth on **Exhibit D**.

1.4 "Golf Course Lease" shall mean that certain Golf Course Ground Lease dated as of June 1, 2010 with Par 4 Golf Management, Inc., a Nevada corporation (the "Par 4") that will terminate in full at the Closing.

2. Purchase and Sale. Seller hereby agrees to sell, assign, convey, transfer and deliver the Business to Purchaser, and Purchaser agrees to purchase and acquire the Business from Seller, subject to the terms and conditions of this Agreement.

3. Purchase Price. The purchase price ("Purchase Price") for the Business shall be FIFTEEN MILLION DOLLARS AND NO/100 CENTS ($15,000,000). Purchaser shall pay the Purchase Price as follows:

3.1 $200,000 as an earnest money deposit (the "Initial Deposit"), by wire transfer to _____ (the "Title Company") delivered concurrently herewith. Within ten (10) days after the Effective Date, Purchaser shall deposit an additional $300,000 (the "Additional Earnest Money Deposit" and along with the Initial Deposit, collectively, the "Deposit"). Within 24 hours of the Title Company receiving the Initial Deposit or the Deposit, it shall be authorized without any further instructions from either the Seller or Purchaser to release the applicable Deposit to the Seller. At the Closing, the Deposit shall be credited towards the Purchase Price.

3.2 The balance of the Purchase Price, as adjusted for closing prorations and adjustments as hereinafter provided, shall be paid as follows: (i) $12,000,000 of the Purchase Price to be paid at the Closing (the "Cash Payment") by wire transfer through the U.S. Federal Reserve System to a bank designated by Seller, on or before the Closing Date; and (ii) the remaining $3,000,000 to be paid in the form a Deed of Trust Secured Promissory Note (the "Note") with full payment due in 14 months from the date of the Note with an annual interest rate of six percent (6%) with Purchaser to deliver monthly interest only payments of $12,857.14, a form of the Note is attached here to as **Exhibit E**. In addition to the Note, the Purchaser will also grant to Seller a first priority deed of trust on the Property, a form of which is attached hereto as **Exhibit F** (the "Deed of Trust") with an agreement by Purchaser that no liens of any type will be placed on the Property.

3.3 The Purchase Price shall be allocated in the manner set forth on **Exhibit G** attached hereto (the "Allocation"). Any excess amount shall be allocated to goodwill. The parties to this Agreement expressly agree that the Allocation shall be used by them for all purposes including tax, reimbursement and other purposes. Each party to this Agreement agrees that it will report the transaction contemplated pursuant to this Agreement in accordance with the Allocation, and that no such party will take a position inconsistent with the Allocation except with the prior written consent of the other parties hereto.

4. Title Insurance. Within ten (10) days after the Effective Date of this Agreement, Seller shall, at Seller's expense, cause the Title Company to procure and deliver to Purchaser, a title commitment for title insurance covering the Property, issued by the Title Company (the "Commitment"). Pursuant to the Commitment, the Title Company shall agree to issue to Purchaser, upon recording the deed for the Property, an extended ALTA owner's policy in the amount of the full Purchase Price ("Title Policy"), without exception for any matters other than the Permitted Exceptions (as defined below). Seller does not a survey for the Property in their possession and Purchaser shall have the obligation to obtain and pay for a survey.

5. Delivery of Documents. On or before ten (10) business days after the Effective Date, 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"):

5.1 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 City of Las Vegas, Nevada or any special district, quasi-municipality or municipality having jurisdiction over the Property, if any;

5.2 Copies of all operations, maintenance, management, service and other contracts and agreements relating to operation of the Business or Property as a golf course or otherwise that has Par 4 was a party to pursuant to the Golf Course Lease (which agreements may be assumed in full by the Purchaser is required) and copies of any and all subleases and license agreements relating to the Property, if any;

5.3 Copy of that Certain Settlement Agreement and Mutual Release dated June 28, 2013 by and among Queensridge Towers, LLC, Queensridge Highrise, LLC and Seller which agreement covers certain agreements covering the Property and obligations, events or decisions that would be triggered after the Closing and assumed in full by the Purchaser;

5.4 Recent statements to the Seller or Par 4 for water, storm and sanitation sewer, gas, electric, and other utilities connected to or serving the Property, including availability and standby charges;

5.5 Real property tax bills and notices of assessed valuation, including any special assessments, pertaining to the Property 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;

5.6 Any governmental and utility permits, licenses, permits and approvals relating to the Property or the Business issued to either the Seller or Par 4, if any;

5.7 List of personal property owned by Seller together with any security interest or encumbrances thereon;

5.8 List of personal property leased by Seller, together with (i) lease agreements and (ii) if available, a summary of date, term and termination rights, and rent;

5.9 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; and

5.10 A summary of all pending and threatened legal claims related to the Property or involving the Business and/or use and operation of the Property.

Purchaser shall retain in strict confidence all information gained thereby, 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, 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. "Proprietary Information" shall mean all confidential business information concerning the pricing, costs, profits and plans for the future development of the Business, 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, Purchaser shall return to Seller all Documents and Records received by 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 Business. Seller hereby grants Purchaser, from the date hereof until Closing or earlier termination of this Agreement, upon twenty-four (24) hours' notice to Seller and consent of Par 4, the right, license, permission and consent for Purchaser and Purchaser's agents or independent contractors to enter upon the 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 Business operations on the Property and impact upon Par 4 and their employees. Purchaser shall indemnify and hold Seller harmless from and against any damages that may be incurred by Seller 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 as 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 Property. The Seller's rights and Purchaser's obligations set forth in this section shall expressly survive any termination of this Agreement.

This Agreement is expressly contingent on Purchaser's approval and acceptance, in its sole discretion, of the feasibility of this transaction after review of the Commitment and Due Diligence Items. Purchaser shall have until 5:00 p.m. PST on the day that is thirty (30) days after the Effective Date of this Agreement (the "Feasibility Period") to cause Seller to receive written notice of its disapproval of the feasibility of this transaction. If Seller has not received such notice of disapproval within said time 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, the parties shall instruct the Title Company to deliver the Deposit to Seller and this Agreement shall be deemed terminated and shall be of no further force or effect.

6. Indemnification; No Mechanic's Liens. Purchaser hereby acknowledges that the preparation and submission of any plans, and the making of investigations, tests and surveys prior to the Closing hereunder, is for the benefit of and at the instance of Purchaser. Purchaser expressly acknowledges that nothing in this Agreement shall authorize Purchaser, or any person dealing with, through or under Purchaser to subject the Property to mechanic's liens. Purchaser agrees to indemnify, hold harmless and defend Seller and Par 4 from any claim, liability, loss, damage, cost or expense, including attorneys' fees, which Seller may incur or which may be asserted by reason of any liens filed against the Property for work performed through or under Purchaser or the preparation of any plans, or the making of investigations, tests and surveys ordered or conducted by Purchaser. 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 Property, or preparation of plans with respect thereto as aforesaid by, through or under Purchaser.

7. Golf Course Lease; Settlement Agreement.

7.1 A condition to the Closing is that the Seller cause the Golf Course Lease to terminate in full. Notwithstanding such termination, Purchaser may elect to contract directly with Par 4 to operate the Golf Course post-closing on terms and conditions that will be deemed outside the provisions of this Agreement and as mutually agreed upon by Purchaser and Par 4. The Seller assumes no obligation of any type to cause Par 4 to agree to any post-closing agreement with the Purchaser.

7.2 Effective as of the Closing, the Settlement Agreement dated January 28, 2008 between the Seller and BGC Holdings LLC, a Nevada limited liability and an affiliate of the Purchaser shall be deemed terminated in full and of no further force or effect at the Closing as it relates to any direct or indirect obligations of the Seller or any affiliates of the Seller.

8. Closing. The purchase and sale transaction contemplated by this Agreement shall be consummated by a closing through the Title Company (the "Closing") which shall occur no later than five (5) days after the expiration of the Feasibility Period, 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:

8.1 All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company in escrow to hold, deliver, record and disburse in accordance with instructions set forth in this Section 8.

8.2 At the Closing or sooner as otherwise stated in the escrow instructions, the following shall occur:

8.2.1 Seller shall deliver or cause to be delivered in accordance with the escrow instructions:

a. A Grant Bargain Sale Deed (the "Deed") acceptable to Purchaser conveying the Property to Purchaser, duly executed and acknowledged by Seller, free and clear of all liens and encumbrances except only the Permitted Exceptions;

b. An executed Bill of Sale and transfer documents vesting in Purchaser good and marketable title to the Assets;

c. An executed Assignment and Assumption of Contracts;

d. An executed Assignment and Assumption of Equipment Leases, if any;

e. Confirmation that the Golf Course Lease will terminate at the Closing;

f. A Quitclaim Deed (or other appropriate instrument of conveyance, in Seller's reasonable discretion) conveying the Water Rights to Purchaser (the "Quitclaim Deed");

g. An executed general assignment of any Permits, warranties or other items related to the operation of the Business issued in the name of the Seller; and

h. Such other documents as are reasonable or necessary to consummate the transactions contemplated by this Agreement.

8.2.2 Purchaser shall deliver or cause to be delivered in accordance with the escrow instructions:

a. The Cash Payment to be paid as provided in Section 3.2 hereof;

b. An executed original Note and executed and notarized Deed of Trust;

c. An assumption agreement whereby Purchaser expressly assumes all liabilities and obligations of Seller with respect to the Business;

d. An executed Assignment and Assumption of Contracts;

e. An executed Assignment and Assumption of Equipment Leases, if any;

f. All other documents required to be executed by Purchaser pursuant to the terms of this Agreement.

8.3 Fees and Costs. The Seller and Purchaser shall each pay and be responsible for half of the Title Company's charges in connection with the Closing. Seller shall pay (i) the fee for the standard form Title Policy on the Property, (ii) the fees for any extended title coverage or endorsements to the Title Policy, and (iii) its attorney's fees related to the sale of the Property and the Business, and (iv) one-half of the real property transfer tax imposed on the Deed or Quitclaim Deed pursuant to Nevada Revised Statutes ("NRS") Chapter 375. Purchaser shall pay (i) any and all fees associated with obtaining a survey of the Property; (ii) the costs of any endorsements to the Title policy deemed required by Purchaser, (iii) all of Purchaser's attorneys fees associated with its purchase of the Business, (iv) one-half of the real property transfer tax imposed on the Deed or Quitclaim Deed pursuant to NRS Chapter 375; and (v) any and all sales taxes, use taxes and all other taxes due as a result of Purchaser's purchase of the Business. Possession of the Property shall be delivered to Purchaser concurrently with the Closing, subject to the provisions of the agreement by Seller and Par 4 to terminate the Golf Course Lease.

8.4 Title Company Instructions. At such time as the conditions precedent to the Closing set forth in Sections 8.1 and 8.2 have been satisfied or waived, Title Company shall perform the acts set forth below in the following order:

8.4.1 Date as of the date of the Closing, all instruments calling for a date.

8.4.2 Prepare a Declaration of Value in such form as required by NRS Chapter 375.060 (the "Real Property Transfer Tax Declaration").

8.4.3. Record the Deed, Quitclaim and Deed of Trust in the Office of the County Recorder of Clark County, Nevada (the "Recorder"), with instructions to deliver the Deed and Quitclaim Deed when recorded to Purchaser and the Deed of Trust to the Seller. The Quitclaim Deed may also be required to recorded with another governmental agencies and if so, the Title Company will undertake the obligation to complete such recording(s) as well.

8.4.4. Deliver to Seller by cashier's check or by wire transfer to an account identified by the Seller in an amount equal to the Cash Balance Due less Seller's share of costs and pro-rations as described in Section 9.1.

8.4.5. Deliver to Purchaser the Title Policy as described in Section 4.

8.4.6 Prepare and submit to the Internal Revenue Service the information return and statement concerning the closing of the Escrow (the "Information Return") required by Section 6045(e) of the Internal Revenue Code of 1986, unless the Information Return is not required under the regulations promulgated under Section 6045(e).

8.5 Post-Closing Matters. The instruments required to be recorded under this Agreement shall provide that the Recorder shall return them to the Title Company after recordation, and upon receipt thereof, Title Company shall deliver the following:

8.5.1 To Seller:

a. A copy of the Deed and Quit Claim Deed as recorded;
b. The originally executed Note;
c. A copy of the recorded Deed of Trust; and
d. Plain copies of the Real Property Transfer Tax Declaration.
e. An executed Assignment and Assumption of Contracts; and
f. The mutually executed Assignment and Assumption of Equipment Leases, if any;

8.5.2 To Purchaser:

a. The original of Deed and Quit Claim Deed, each as recorded;
b. Plain copies of the Real Property Transfer Tax Declaration;
c. The mutually executed Assignment and Assumption of Contracts; and
d. The mutually executed Assignment and Assumption of Equipment Leases, if any;

9. Prorations.

9.1 Credits and Prorations.

9.1.1 The following shall be apportioned with respect to the Property, as set forth in greater detail in Section 9.1.2 below, as of 12:01 a.m., on the day of Closing (the "Cut-Off Time"), as if Purchaser were vested with title to the 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: (a) taxes (including personal property taxes on all personal property and Inventory) and assessments levied against the Property; (b) gas, electricity and other utility charges for the Business, if any; (c) charges and fees paid or payable for licenses and permits transferred by Seller to Purchaser; (d) water and sewer charges; and (e) any other operating expenses or other items pertaining to the 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.

9.1.2 Notwithstanding anything contained in the foregoing provisions and subject to the terms of the Golf Course Lease:

a. At Closing, Purchaser shall credit to the account of Seller all deposits posted with utility companies serving the Property, or, at Seller's option, Seller shall be entitled to receive and retain such refundable cash and deposits, if applicable.

b. 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 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.

c. As to gas, electricity and other utility charges referred to in Section 9.1.1(b) above, 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).

9.1.3 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.

10. Seller's Representations and Warranties. Seller represents and warrants to Purchaser that:

10.1 Seller has the right, power and authority to enter into this Agreement, and this Agreement and the transactions contemplated by this Agreement have been duly authorized and approved by Seller, and this Agreement constitutes the valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms. At Closing, the Seller's closing documents will be duly acknowledged, executed and delivered by Seller. When so acknowledged, executed and delivered, the Seller's closing documents will constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

10.2 Seller is duly organized, existing and in good standing under the laws of Nevada.

10.3 The person signing below on behalf of Seller represents that he is duly authorized to execute this Agreement and to bind Seller.

10.4 No non-resident foreign taxpayers, or domestic corporations owned by non-resident foreign taxpayers, or any other similar person or entity will be entitled to all or any of the proceeds from the sale of Property hereunder such that the withholding requirements set forth in Sections 1445 of the Internal Revenue Code are or will be applicable to all or a portion of the Purchase Price to be paid pursuant to this Agreement.

10.5 To the best of Seller's Knowledge, there is no pending or threatened condemnation or similar proceeding with respect to the Property or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.

10.6 As of the Closing Date, Seller will have or shall cause to be transferred to Purchaser, good fee simple title to the Assets, free and clear of any liens or encumbrances or other defects of title except for such items that are owned by Par 4 and will be taken by them upon termination of the Golf Course Lease.

10.7 To the best of Seller's Knowledge, the schedule of Contracts attached to this Agreement as **Exhibit H** constitutes a list of all of the material Contracts affecting the Business as of the date hereof.

10.8 To the best of Seller's Knowledge, (i) there is no litigation, including any arbitration, investigation or other proceeding by or before any court, arbitrator or governmental or regulatory official, body or authority which is pending or threatened against Seller relating to the Property or the transactions contemplated herein, (ii) there are no unsatisfied arbitration awards or judicial orders against Seller and, (iii) there is no basis for any such arbitration, investigation or other proceeding.

10.9 To the best of Seller's Knowledge, no approval, consent, waiver, filing, registration or qualification with any third party, including, but not limited to, any governmental bodies, agencies or instrumentalities, is required to be made, obtained or given for the execution, delivery and performance of this Agreement or any of the Seller's closing documents by Seller.

10.10 To the best of Seller's Knowledge, Seller has not received any written notice of any violation of any restriction, condition or agreement contained in any easement, restrictive covenant or any similar instrument or agreement affecting the Property or any portion thereof.

10.11 To the best of Seller's Knowledge, Seller has not received (i) any written notice from any governmental authority having jurisdiction over the Property of (A) any violation of any law, ordinance, order or regulation (including, without limitation, the Americans with Disabilities Act) affecting the Property, or any portion thereof, which has not heretofore been complied with or (B) any other obligation to any such governmental authority for the performance of any capital improvements or other work to be performed by Seller in or about the Property or donations of monies or land (other than general real property taxes) which has not been completely performed and paid for; or (ii) any written notice from any insurance company, insurance rating organization or Board of Fire Underwriters requiring any alterations, improvements or changes at the Property, or any portion thereof, which have not heretofore been complied with.

10.12 Except for the Golf Course Lease which will terminate at the Closing, to the best of Seller's Knowledge, there are no leases or licenses affecting the Property in which the Seller is a party.

10.13 To the best of Seller's Knowledge, Seller has not received any notice from any governmental unit that (i) the Property are not in compliance with any Environmental Law (ii) there are any administrative, regulatory or judicial proceedings pending or threatened with respect to the 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.

10.14 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 or the Property is a party or by which Seller or the Property is bound, or (iv) violate or conflict with any law, ordinance or governmental regulation or permit applicable to Seller.

10.15 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.

10.16 Seller does not directly employ any employees in connection with the Business.

10.17 To the best of Seller's Knowledge, Seller has not received any written 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 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.

11. Representations, Warranties and Covenants of Purchaser. Purchaser represents and warrants to Seller as follows:

11.1 Purchaser has the right, power and authority to enter into this Agreement, and this Agreement and the transactions contemplated by this Agreement have been authorized and approved by Purchaser, and this Agreement constitutes the valid and binding obligation of Purchaser and is enforceable against Purchaser in accordance with its terms.

11.2 Purchaser is duly organized, existing and in good standing under the laws of _____, is duly qualified to transact business in Nevada, and has not filed, voluntarily or involuntarily for bankruptcy relief within the last year under the laws of the United States Bankruptcy Code, nor has any petition for bankruptcy or receivership been filed against Purchaser within the last year.

11.3 The person signing below on behalf of Purchaser represents that he is duly authorized to execute this Agreement and to bind Purchaser.

11.4 No filings with, notices to, or approvals of any governmental or regulatory body are required to be obtained or made by Purchaser for the consummation by Purchaser of the transactions contemplated hereby.

11.5 Purchaser has made or shall make all reasonable efforts to obtain all licenses and permits which are necessary for the conduct of the Business on or before the Closing Date in order for the Golf Course and Business to operate with interruption to its customers.

11.6 The Settlement Agreement dated January 28, 2008 between the Seller and BGC Holdings LLC, a Nevada limited liability and an affiliate of the Purchaser is not in default and effective as the Closing shall be deemed terminated in full and of no further force or effect at the Closing.

12. Affirmative Covenants of Both Seller and Purchaser.

12.1 Corporate Action. The parties shall each take or cause to be taken all necessary corporate action required to carry out the transactions contemplated in this Agreement.

12.2 Further Assurances. The parties agree that, from time to time, whether prior to, at or after the Closing, they will execute and deliver such further instruments of conveyance and transfer and take such other actions as may reasonably be expected to consummate the transactions contemplated hereby.

12.3 Information to be Held in Confidence. The parties agree that, until the Closing has occurred, the parties and their agents, employees, contractors, directors and other representatives will hold in strict confidence, and will not use to the detriment of the other party, all data and information obtained in connection with this Agreement.

13. Purchaser's Default. Notwithstanding anything to the contrary contained in this Agreement, Purchaser shall not be in breach or default hereunder unless Seller is not in default hereunder, and within five (5) business days after the Purchaser's receipt of notice Purchaser fails to cure any material breach of any obligation of Purchaser under this Agreement which is set forth in such notice; provided, however, that the foregoing notice and cure period shall be inapplicable to Purchaser if Purchaser simply fails to acquire the Business on or before the Closing Date, in which event this Agreement shall automatically terminate, the Deposit shall be retained by Seller and both parties shall be relieved of all obligations under this Agreement except for those which expressly survive the expiration or termination of this Agreement. Subject to the foregoing, if any such failure continues beyond such cure period, Seller may retain the Deposit as the agreed upon liquidated damages as Seller's sole and exclusive remedy. The parties agree and stipulate that as of the Effective Date, the exact amount of damages would be extremely difficult to ascertain and that the Deposit constitutes a reasonable and fair approximation of such damages and is not a penalty**.**

14. Seller's Default. Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be in default hereunder and Purchaser shall not be entitled to exercise any remedies hereunder unless Purchaser is not in default hereunder, and Seller fails to cure its breach of a material covenant or obligation made or undertaken by Seller hereunder within five (5) business days of Seller's receipt of a reasonably detailed notice specifying such breach or refuses to convey the Business in accordance herewith, within thirty (30) days of Seller's receipt of notice of such breach. Any Closing shall automatically be extended to allow Seller to effect the above referenced cures. After the expiration of the cure period provided above, if Seller shall not have cured Seller's default, Purchaser shall give Seller written notice of Purchaser's election of one of the following remedies: (a) to seek specific performance of Seller's obligations hereunder, or (b) to terminate this Agreement and thereupon receive a return of the Deposit from the Seller directly and not the Title Company.

If Purchaser fails to cause Seller to receive notice of such election within three (3) business days after the expiration of the above cure period, Purchaser shall have no further right to demand specific performance. Purchaser agrees that it irrevocably waives any right to damages. Notwithstanding the foregoing rights, if following a Seller default, Seller has cured the breach prior to Purchaser's exercise of any remedy provided in this Agreement, Purchaser shall have no further right to exercise any remedy for the cured default.

15. Disclaimer of Warranties/As-Is.

15.1 Property. Except as expressly set forth in this Agreement, Seller has not made and does not make any warranty or representation, express or implied as to the merchantability, quantity, quality, physical condition or operation of the Property, zoning, the suitability or fitness of the Property or any other matter affecting or relating to the Property. Neither party is relying on any statement or representations made by the other not embodied herein. Purchaser hereby expressly acknowledges that no such warranties and representations have been made, except as expressly set forth in the Agreement. Purchaser acknowledges that the provisions of this Agreement for inspection and investigation of the

Property are adequate to enable Purchaser to make Purchaser's own determination with respect to merchantability, quantity, quality, physical condition or operation of the Property, soil, zoning, suitability or fitness of the Property or any improvements thereon, if any, for any specific or general use or purpose, the availability of water, sewer or other utility service or any other matter affecting or relating to the Property, its development or use, including without limitation, the Property's compliance with any environmental laws. PURCHASER FURTHER ACKNOWLEDGES IT HAS INSPECTED THE PROPERTY OR HAS CAUSED SUCH INSPECTION TO BE MADE AND IS THOROUGHLY FAMILIAR AND SATISFIED THEREWITH, AND AGREES TO TAKE THE PROPERTY IN ITS PHYSICAL CONDITION, "AS IS, WHERE IS, WITH ALL FAULTS" AS OF THE DATE OF CLOSING, SUBJECT TO THE EXPRESS REPRESENTATIONS, WARRANTIES AND CONDITIONS SET FORTH IN THIS AGREEMENT. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT, REPRESENTATION OR INFORMATION MADE OR GIVEN BY ANYONE PERTAINING TO THE PROPERTY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

In particular, but without in any way limiting the foregoing, Purchaser hereby releases Seller from any and all responsibility, liability and claims for or arising out of the presence on or about the Property (including in the soil, air, structures and surface and subsurface water) of materials, wastes or substances that are or become regulated under or that are or become classified as toxic or hazardous, under any Environmental Law, including without limitation, petroleum, oil, gasoline or other petroleum products, byproducts or waste.

15.2 Business and Assets. THE BUSINESS AND ASSETS ARE BEING SOLD IN THEIR "AS IS" CONDITION, AND NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THIS AGREEMENT, RELATING TO SUCH ASSETS, INCLUDING ANY REPRESENTATION OR WARRANTY (A) AS TO THE FUTURE SALES OR PROFITABILITY OF THE BUSINESS AS IT WILL BE CONDUCTED BY PURCHASER, (B) AS TO THE SUFFICIENCY OF THE INVENTORY AS OF THE DATE OF CLOSING, (C) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR (D) ARISING BY STATUTE OR OTHERWISE IN LAW, FROM A COURSE OF DEALING OR USAGE OF TRADE. ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY SELLER.

PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES THAT THE PURCHASE PRICE FOR THE GOLF COURSE AND BUSINESS REFLECTS ONLY A SMALL PORTION OF THE COST OF OWNING AND CAUSING THE OPERATION OF THE GOLF COURSE AND THE BUSINESS, AND PURCHASER (I) UNDERSTANDS AND ACKNOWLEDGES THAT IT IS EXPRESSLY ASSUMING RISKS THAT MAY NOT NORMALLY BE ASSUMED BY A PURCHASER IN CONNECTION WITH THE PURCHASE OF A GOLF COURSE AND RELATED BUSINESS, AND (II) PURCHASER HEREBY AGREES TO ASSUME ALL SUCH RISKS RELATED TO THE GOLF COURSE AND BUSINESS ACCRUING PRIOR TO OR AFTER THE DATE OF THE SALE OF THE GOLF COURSE AND BUSINESS FROM SELLER TO PURCHASER.

16. Seller's Indemnity. Notwithstanding anything to the contrary contained herein, if Purchaser is made a party to any litigation in which Seller is a party and (i) the subject of the litigation was not disclosed to Purchaser by Seller in this Agreement or otherwise, and (ii) the litigation does not involve the operation or ownership of the Property, the Golf Course or the Business, directly or indirectly, then Seller shall indemnify, defend and hold Purchaser harmless from all costs and expenses incurred by Purchaser related to such litigation.

17. Purchaser's Indemnity. Notwithstanding anything to the contrary contained herein, if Seller is made a party to any litigation in which Purchaser is a party for any matters related to the Property, the Golf Course, Par 4, the Golf Course Lease, the Business or the development of all or any portion of the Property, directly or indirectly, for matters occurring after Closing Date, then Purchaser shall indemnify, defend and hold Seller harmless from all costs and expenses incurred by Seller related to such litigation. To the extent this Agreement is assigned prior the Closing Date, then before the Closing, this Section 17 may be amended to add additional parties that affiliates of the Purchaser and/or the assignee under this Agreement.

18. Broker's Commissions. Seller and Purchaser warrant and represent to each other that no real estate broker was involved in this transaction on Seller's or Purchaser's behalf. Seller shall indemnify Purchaser against any claim of any broker claiming by, through or under Seller. Purchaser shall indemnify Seller against any claim of any broker claiming by, through or under Purchaser. These warranties and representations shall survive delivery of the deed and closing of this transaction.

19. Notices. Unless otherwise specifically permitted by this Agreement, all notices or other communications required or permitted under this Agreement or any contract or agreement executed pursuant to this Agreement shall be in writing, and shall be (i) personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or (ii) sent by reputable overnight delivery service and shall be deemed received: (i) if personally delivered, upon the date of delivery to the address of the person to receive such notice, (ii) if mailed in accordance with the provisions of this Section, two (2) business days after the date placed in the United States mail, or (iii) if sent by overnight delivery service, one day after deposit with such reputable overnight delivery service. Notices shall be given at the following addresses:

| | |
|---|---|
| To Seller: | c/o Peccole-Nevada Corporation<br>851 South Rampart Boulevard, Suite 105<br>Las Vegas, Nevada 89145<br>Attn: William Bayne |
| To Purchaser: | 9755 West Charleston Boulevard<br>Las Vegas, Nevada 89117 |

20. Condemnation. If prior to the Closing Date a condemnation proceeding (involving the power of eminent domain or the police power as expressed by any governmental or quasi-governmental entity, including but not limited to any fire or building department) is instituted with respect to all or any portion of the Property, or if prior to the Closing Date, Seller has notice or knowledge that there is a reasonable likelihood of some such proceeding being instituted, or if there is then pending a threat of the exercise thereof, Seller shall promptly notify Purchaser of such fact, setting forth in writing the terms and conditions with respect to such proceeding and the parties' names, addresses, and telephone numbers with whom to deal on behalf of such condemning or potentially condemning governmental entity. In this instance, Purchaser shall have a period of fourteen (14) days following the receipt of such written notice to terminate this Agreement. If Purchaser does not timely make such election, this Agreement shall continue in full force and effect; but Purchaser shall be entitled to all proceeds received in such condemnation proceedings and shall be solely in charge of conducting all settlement negotiations or defending such action, as the case may be.

21. Damage to Property. If the Property is substantially damaged by fire, flood or other casualty between the date of this Agreement and the date of Closing, Purchaser may elect (i) to terminate this Agreement upon written notice to Seller, in which event this Agreement shall be of no further force or effect, and the Deposit shall be returned to Purchaser, or (ii) to proceed with the Closing (subject to the

other provisions of this Agreement) by delivering notice thereof to Seller within 5 business days after receipt of Seller's notice respecting the damage, destruction, or taking, in which event Purchaser shall be entitled to all insurance proceeds or condemnation awards payable as a result of such damage or taking and, to the extent the same may be necessary or appropriate, Seller shall assign to Purchaser at Closing Seller's rights to such proceeds or awards.

22. Severability. If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law if enforcement would not frustrate the overall intent of the parties (as such intent is manifested by all provisions of the Agreement, including such invalid, void or otherwise unenforceable portion).

23. Complete Agreement; Modifications. This Agreement and written agreements, if any, entered into concurrently herewith (i) constitute the parties' entire agreement, including all terms, conditions, definitions, warranties, representations, and covenants, with respect to the subject matter hereof, (ii) merge all prior discussions and negotiations between or among any or all of them as to the subject matter hereof, and (iii) supersede and replace all terms, conditions, definitions, warranties, representations, covenants, agreements, promises and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may not be amended, altered or modified except by a writing signed by the party to be bound.

24. Further Actions. Each party agrees to perform any further acts and execute and deliver any further documents reasonably necessary to carry out the provisions of this Agreement.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada.

26. Headings. The headings of the various sections of this Agreement have been inserted only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

27. Interpretation. Whenever the context so requires, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate or any other entity. A reference to a particular section of this Agreement shall be deemed to include references to all subordinate sections, if any.

28. Assignment. Purchaser shall not have the right to assign this Agreement or any of its rights or obligations hereunder to a corporation, limited liability company, limited partnership or other entity in which Purchaser has a controlling ownership interest without the approval of Seller. Any other assignment beyond what is provided for in the prior sentence shall require the written consent of the Seller, which consent shall be in the sole and absolute discretion of the Seller.

29. Successors-in-Interest and Assigns. Subject to any restriction(s) on transferability contained in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of each party to this Agreement, but nothing in this section shall create any rights enforceable by any persons not a party to this Agreement, unless such rights are expressly granted in this Agreement to identified persons not a party to this Agreement and unless such person is an assignee.

30. Effectiveness. This Agreement shall become effective when it has been signed by, and delivered to, all of the parties to this Agreement.

31. Waiver. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act. Any waiver of a default under this Agreement must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

32. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

33. Counterparts. This Agreement may be executed in counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event this Agreement is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**SELLER:**

FORESTARS, LTD.,
a Nevada limited liability company

By: Peccole-Nevada Corporation
a Nevada corporation, Manager

By:_____
Its:_____

**PURCHASER:**

_____
YOHAN LOWIE, Personally

Exhibits**:**

EXHIBIT A
Legal Description for Property

EXHIBIT A-1
Water Rights

EXHIBIT B
Equipment Leases

EXHIBIT C
Assumed Liabilities

EXHIBIT D
Excluded Assets

EXHIBIT E
Deed of Trust Promissory Note

EXHIBIT F
Deed of Trust

EXHIBIT G
Allocation

EXHIBIT H
Contracts

# EXHIBIT “H”

**From:** Henry Lichtenberger <hlichtenberger@sklar-law.com>
**To:** Todd Davis <tdavis@ehbcompanies.com>, Yohan Lowie <yohan@ehbcompanies.com>, William Bayne <william.bayne@gmail.com>
**Subject:** RE: Golf Course Purchase Agreement
**Date:** Mon, 25 Aug 2014 17:15:25 +0000
**Importance:** Normal

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Thanks and tomorrow works for me as well.

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**From:** Todd Davis [mailto:tdavis@ehbcompanies.com]
**Sent:** Monday, August 25, 2014 10:11 AM
**To:** Henry Lichtenberger; Yohan Lowie; William Bayne
**Subject:** RE: Golf Course Purchase Agreement

Henry,

Good morning. Yes, I am working on the redline and will have back to you hopefully by eod today (at latest tomorrow am).

Thanks, td

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**From:** Henry Lichtenberger [mailto:hlichtenberger@sklar-law.com]
**Sent:** Monday, August 25, 2014 10:08 AM
**To:** Yohan Lowie; William Bayne
**Cc:** Todd Davis
**Subject:** Golf Course Purchase Agreement

I have received consent from the Peccole Family for the revised purchase terms as it relates to the $3 million that was initial drafted as a term note. Please advise if you will be circulating a revised agreement, which Yohan advised me was in process last Friday. I have no problem revising the agreement to reflect these new terms, but I would prefer to receive any other comments you have to the initial draft of the purchase agreement so I can handle them at the same time.

Thanks

*Henry Lichtenberger*


**SKLAR WILLIAMS**

**—— PLLC ——**

**LAW OFFICES**

**410 South Rampart Boulevard, Suite 350**

**Las Vegas, Nevada 89145**

**(702) 360-6000 ¶ Fax: (702) 360-0000**

**E-Mail: hlichtenberger@sklar-law.com**

# EXHIBIT “I”

**From:** Billy Bayne <william.bayne@gmail.com>
**To:** Personal Evernote <maccabees.c49cd@m.evernote.com>
**Subject:** Fwd: PSA
**Date:** Sat, 9 Jul 2016 07:15:56 -0700
**Importance:** Normal

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---------- Forwarded message ----------
From: **Henry Lichtenberger** <hlichtenberger@sklar-law.com>
Date: Wednesday, August 27, 2014
Subject: PSA
To: Todd Davis <tdavis@ehbcompanies.com>, Billy Bayne <william.bayne@gmail.com>
Cc: Yohan Lowie <yohan@ehbcompanies.com>

Here are my additional comments to the revised agreement, beyond what Billy already provided. In the interest of time, I am circulating to all parties so Billy may have further comment or changes.

1. The Purchaser needs to be Yohan or an existing EHB entity with Section 28, which was deleted, remaining in place which allows for the agreement to be assigned as provided for. A TO BE FORMED ENTITY will not work in this instance.

2. In Recital A – please remove clubhouse as part of the definition of real property. The agreement when revised will grant Purchaser the option to purchase the property underlying the existing clubhouse, depending on the actions of IDB. Remove "and" before (ii) and fix the typo from (ii) to (iii) before "certain Assets."

3. In Section 1.1, if an Asset is owned by Par 4 – it will not be conveyed. We will obtain a list of those items so there are no surprises with respect to that issue. The liquor license will be part of the Assets being acquired, we just need to reach agreement with respect to Par 4 or who will be operating the golf course at the time of the closing so that facility can be operated without interruption.

4. Section 3 – reference the additional payments obligations that may result as described in Section 7.

5. Section 3.1 – Please insert Linda J. Jones, EVP / Commercial Escrow Officer / Commercial Title Officer, Stewart Title Company, 376 East Warm Springs Road, Suite 190, Las Vegas, NV 89119, (702) 316-5807 phone, (866) 652-5315 fax and ljones@stewart.com email.

6. Renumber the Exhibit references as Exhibit's E and F are deleted. – See Section 3.3

7. Section 5.4 – change 24 to 6 months and for Seller owner. Seller will attempt to obtain from Par 4, but not be contractually obligated.

8. Section 5.10 – should be for a period limited to 12 months before the Effective Date.

9. Section 5.11 and 5.12 – we need to confirm if this exists or if Seller has the right to receive that information.

10. Section 5.13 – replace the 24 month limitation with 5 years.

11. Section 8.2.1 f., the Seller will receive confirmation from their water rights consultant before it will agree to a Warranty Deed. The Real Property will be under a Grant Bargain Sale Deed.

12. Section 8.2.1. i., Buyer should discuss with Seller the request for a license to use the Queensridge name.

13. Section 8.3 – should be the management agreement in effect as of the Closing.

14. Section 10.6 – As stated above, Seller will deliver to you a list of Par 4 assets that are not being conveyed.

15. Section 10.8 – remove “adverse claims.”

16. Sections 10.10 and 10.11 – reinsert “written.”

17. Section 10.17 – remove the added language “except for affirmative inquiry to Par 4.” Purchaser can meet with representatives of Par 4 during the diligence period.

18. Section 11.5 should not be deleted unless Purchaser has plans to shut down the golf course, which Seller believes is not the case.

19. Section 11.6 – Buyer should assume in full the obligations set forth in that agreement absent the right of first refusal which effectively terminates at the closing and agree to indemnify in full Seller and its affiliates for any obligations or agreements set forth therein.

20. Sections 15.1 and 15.2, reinsert in full the deleted second paragraphs from both sections.

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**From:** Todd Davis [mailto:tdavis@ehbcompanies.com]
**Sent:** Wednesday, August 27, 2014 12:38 PM
**To:** Billy Bayne; Henry Lichtenberger
**Cc:** Yohan Lowie
**Subject:** RE: PSA

Thanks Billy, I will incorporate the changes.

**From:** Billy Bayne [mailto:william.bayne@gmail.com]
**Sent:** Wednesday, August 27, 2014 11:03 AM
**To:** Henry Lichtenberger
**Cc:** Todd Davis; Yohan Lowie
**Subject:** Re: PSA

I just texted Yohan and told him we would make the changes to the document. However, after speaking with Henry for a minute, we feel it is more expeditious to send you a list of our changes and simply have you incorporate those into the document, along with what Yohan and I agreed to in our meeting yesterday. To clarify from our meeting, we agreed to the following:

1. A full blanket indemnification from Yohan to us.

2. That 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.

3. 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.

4. Yohan will put into an escrow account 200k in the next few days which will be non-refundable in the next 30 calendar days. Provided Yohan would like another 30 calendar days of due diligence he will pledge 300k 31 calendar days from now which will be non-refundable upon its pledge, and then if he would like another 30 calendar days he may pledge another non-refundable 100k 62 calendar days from now. Once money is pledged I will stop discussing selling the course to other individuals.

5. There will be a management agreement in place on the course after Nov. 1, 2014 with Par 4 golf. That management agreement will be assumed by Yohan and may be canceled with 30 days notice to Par 4 golf. I of course will provide a copy of the management agreement once we get it.

Henry will have a list of items as well that will be coming over as we finish reviewing the document.

We look forward to successfully concluding this transaction.

Thanks Billy Bayne

On Tue, Aug 26, 2014 at 12:12 PM, Henry Lichtenberger <hlichtenberger@sklar-law.com> wrote:

I have reviewed the revised agreement. The changes to both Sections 16 and 17 of the Agreement make further review or comment unnecessary. For any transaction to proceed to a definitive agreement and ultimate closing, the Seller must receive from the Purchaser (or an affiliate of the Purchaser with sufficient financial resources) a full and complete indemnification (with no qualifications) as it relates to the Real Property, Water Rights and the golf course covering, without limitation, any proposed or planned development activities that may occur on the Real Property by the Purchaser.

Absent this type of language, we should simply terminate this transaction. My client understands that all rights granted to BGC Holdings LLC (an affiliate of the Purchaser) under the Settlement Agreement dated January 28, 2008 – namely the right of first refusal -- remains in effect in accordance with the express terms as set forth in the Settlement Agreement.

If you wish to discuss, please contact Billy or me.

Thanks

---

**From:** Todd Davis [mailto:tdavis@ehbcompanies.com]
**Sent:** Tuesday, August 26, 2014 9:54 AM
**To:** Henry Lichtenberger
**Cc:** Yohan Lowie; William Bayne
**Subject:** PSA

Henry,

Attached is a redlined draft of the PSA.

I am concurrently sending to Yohan prior to his final review.

Thx, td

Todd D. Davis

General Counsel

For the EHB Companies

9755 West Charleston

Las Vegas, NV 89117

702.940.6930 office

702.940.6931 fax

702.940.6938 direct

TDavis@EHBCompanies.com

www.EHBCompanies.com

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Email william.bayne@gmail.com

--
Email william.bayne@gmail.com

# EXHIBIT “J”

**From:** "William Bayne" <william.bayne@gmail.com>
**Sent:** Mon, 1 Dec 2014 20:38:13 -0800
**To:** "Lowie Yohan" <yohan@ehbcompanies.com>;"Todd Davis" <tdavis@ehbcompanies.com>;"Henry Lichtenberger" <hlichtenberger@sklar-law.com>
**Subject:** 20141201 - Stock Purchase Agreement - signature page (Px).pdf
**Attachments:** 20141201 - Stock Purchase Agreement - signature page (Px).pdf

Thanks
William Bayne

# EXHIBIT “K”

**From:** Yohan Lowie <yohan@ehbcompanies.com>
**To:** Billy Bayne <william.bayne@gmail.com>
**Subject:** Re: PSAs
**Date:** Thu, 19 Feb 2015 18:43:43 +0000
**Importance:** Normal

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Why are you doing this?

Yohan Lowie
EHB companies.

On Feb 19, 2015, at 10:41 AM, Billy Bayne <william.bayne@gmail.com> wrote:

In the email string below you will find the last set of notes and clarifications to our PSA.

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.

We do acknowledge that the indemnification in the PSA is limited to development on the golf course.

At this stage, I've been directed to respond to you in writing and work toward the closing on March 2nd. Consequently, I've directed Henry to work toward the closing on March 2nd as well.

Thank you and we look forward to closing on March 2nd.

Billy Bayne

On Thu, Feb 5, 2015 at 10:00 AM, Henry Lichtenberger <hlichtenberger@sklar-law.com> wrote:

> I have reviewed the revised documents and see my notes below in CAPS
>
> ---
>
> **From:** Todd Davis [mailto:tdavis@ehbcompanies.com]
> **Sent:** Wednesday, February 04, 2015 4:54 PM
> **To:** Henry Lichtenberger
> **Cc:** Yohan Lowie; William Bayne; Frank Pankratz
> **Subject:** PSAs
>
> Henry,
>
> Attached are the PSAs, redlined to your original 123014 version.

The revisions were part of a discussion between Yohan, Frank and Billy. Billy asked that we prepare redlines and tender them for consideration. The substantive changes are:

(1) Indemnification limited to matters "relating to the development of the Real Property" AGREED AS THAT WAS THE DEAL FROM THE BEGINNING.

(2) Seller's R&W limitation to 6 months post-closing deleted; NO – THE REPS/WARRANTIES WERE EXPRESSLY LIMITED TO 6 MONTHS FROM THE CLOSING IN THE INITIAL DRAFT OF THE DOCUMENT AND IT WILL REMAIN LIMITED TO SIX MONTHS.

(3) Arbitration changed from 1 arbitrator to 3 arbitrators; FINE

(4) Closing date set at March 2, 2105. AGREED

Also, some minor exhibit clean-up. BILLY IS REVIEWING THAT INFORMATION RIGHT NOW AND I THINK WE NEED TO ADD LANGUAGE ABOUT THE PENDING TRANSFER OF THE CLUBHOUSE PROPERTY. ATTACHED TO THIS EMAIL IS THE SIGNED DOCUMENTS FROM IDB WITH THE ONLY ITEM MISSING WOULD BE A DELCARATION OF VALUE THAT WOULD NEED TO BE DELIVERED WHEN THE DEED IS RECORDED.

The side letter looks good. Minor revisions attached. AGREED

Please let me know if the changes are acceptable, in which case we will execute.

Thx, td

Todd D. Davis

General Counsel

For the EHB Companies

9755 West Charleston

Las Vegas, NV 89117

702.940.6930 office

702.940.6931 fax

702.940.6938 direct

TDavis@EHBCompanies.com

www.EHBCompanies.com

--
Email william.bayne@gmail.com

# EXHIBIT “L”

**From:** "Todd Davis" <tdavis@ehbcompanies.com>
**Sent:** Thu, 19 Feb 2015 11:46:14 -0800
**To:** "Brett Harrison" <BHarrison@ehbcompanies.com>
**Subject:** Clubhouse Improvements Agreement
**Attachments:** Badlands Golf Course Clubhouse Improvements Agreement 09.06.05 - searchable.pdf, Fully Executed First Amendment Clubhouse Improvements Agreement.pdf

Underlying documents re office collateral. Of course, by virtue of our purchasing Fore Stars Ltd. the encumbrance would have gone away anyway.

Todd D. Davis
General Counsel
For the EHB Companies
9755 West Charleston
Las Vegas, NV 89117
702.940.6930 office
702.940.6931 fax
702.940.6938 direct
TDavis@EHBCompanies.com
www.EHBCompanies.com

# EXHIBIT “M”

**LOAN AGREEMENT**

THIS AGREEMENT ("Agreement") is made on July 5, 2016 by and between Vegas Venture Funding, LLC, a Nevada limited liability company [redacted] ("the Lender"), [redacted], 180 Land Co LLC ("180"), [redacted] and Fore Stars Ltd. ("Fore Stars"), each being a Nevada limited liability company having its principal office at 1215 S. Fort Apache Rd, Suite 120, Las Vegas, NV 89117 (collectively, "the Borrowers").

WHEREAS:

[redacted]

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Lender and the Borrowers agree as follows:

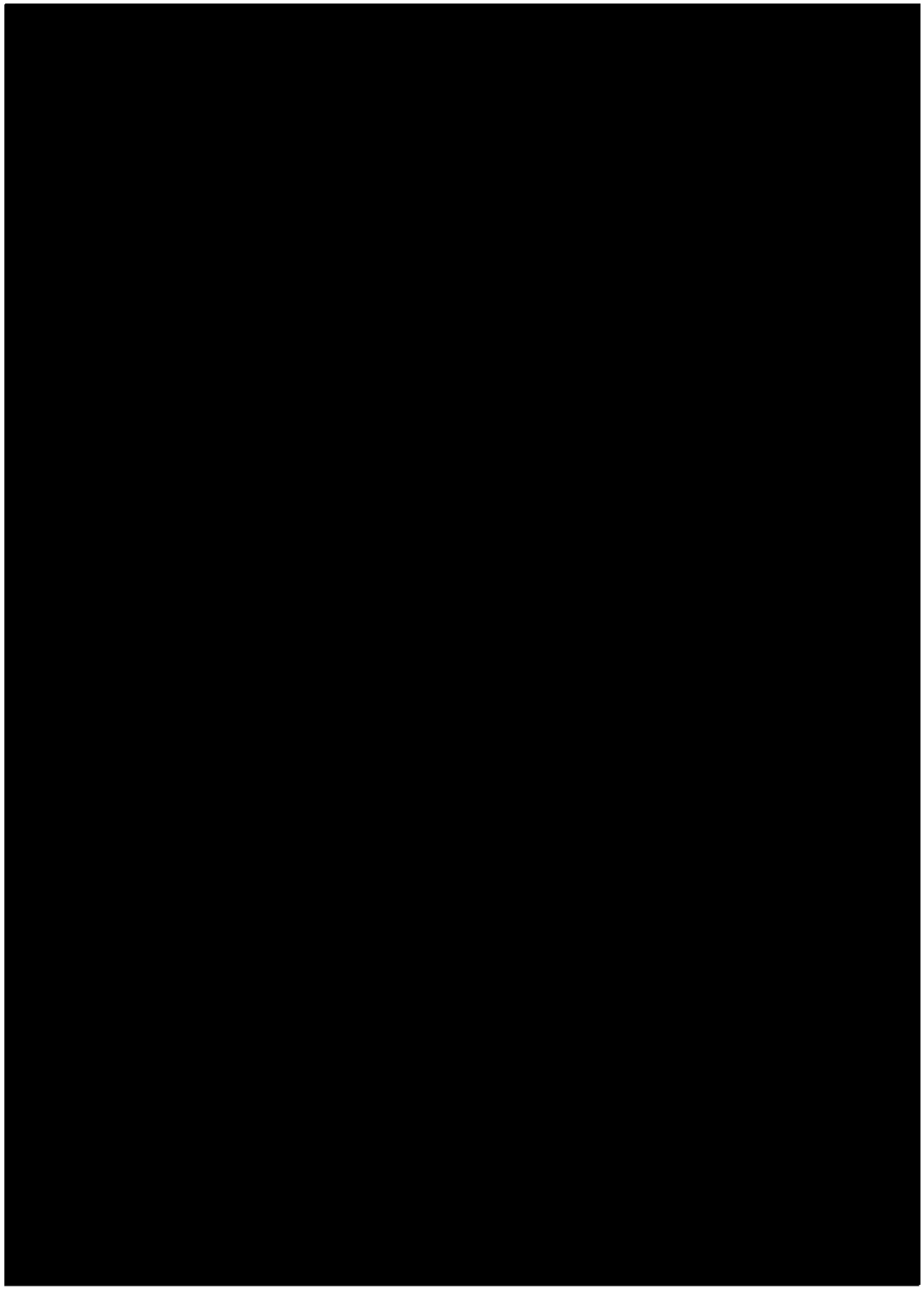
1. Loan. The Lender will advance to the Borrowers the total principal sum of Fifteen Million Dollars ($15,000,000). The Loan shall be evidenced by a promissory note in the form of Exhibit 2 attached hereto ("the Note")

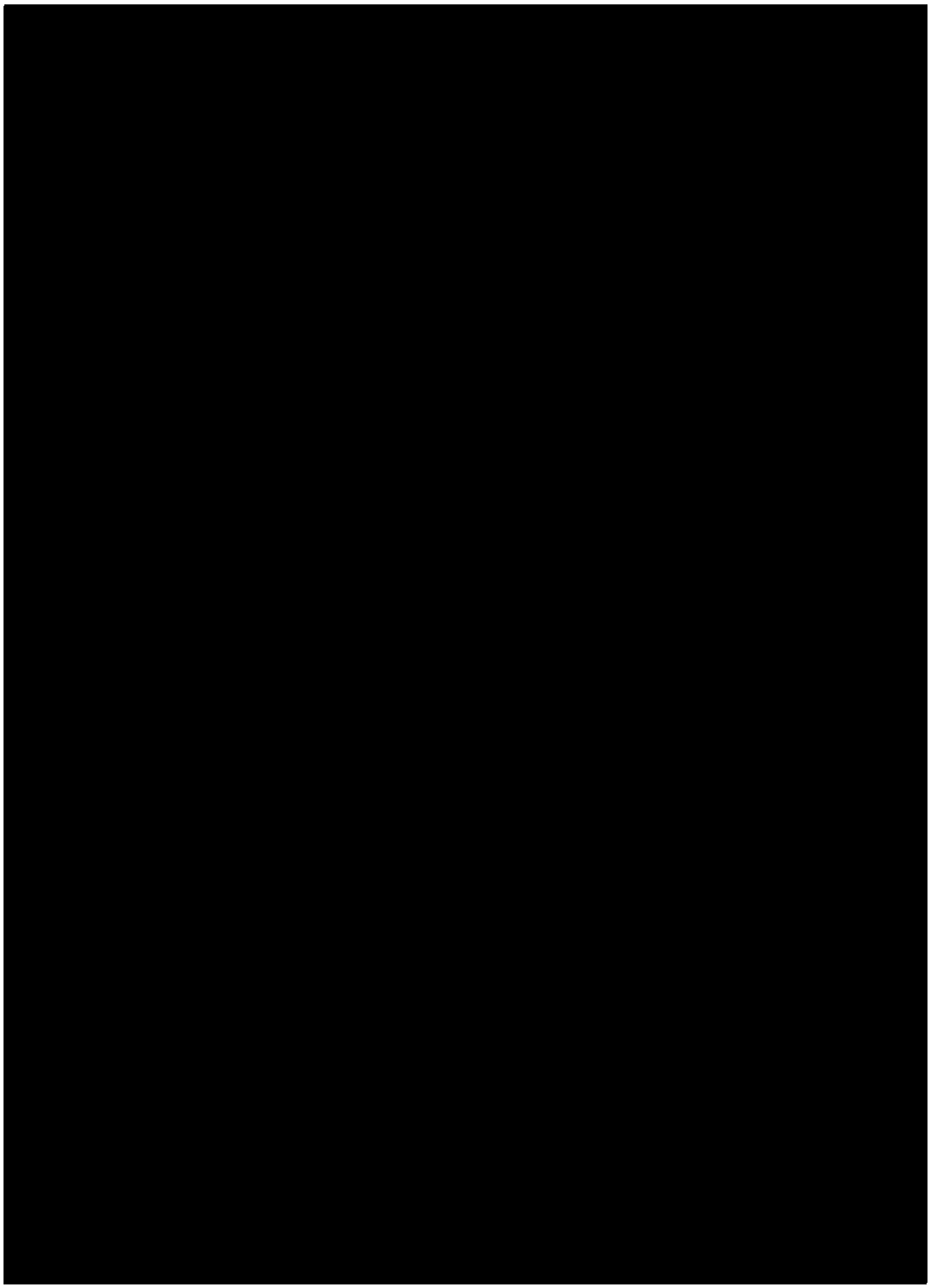
[redacted]

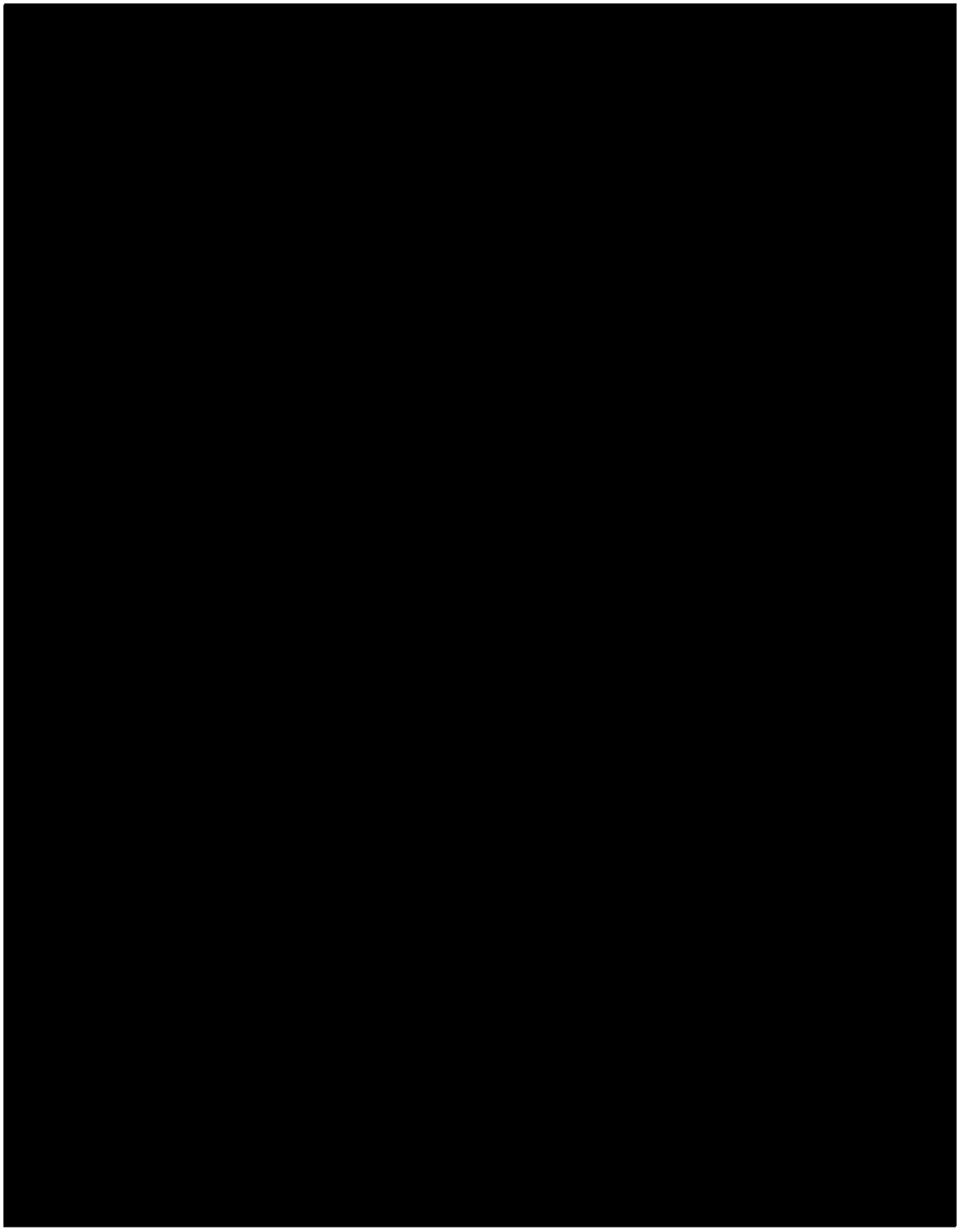
3. Interest. The Borrowers shall pay interest on the principal amount of the Loan, from the date of each advance of funds hereunder, at the rate of four percent (4%) per annum. Interest shall be payable monthly, provided, however that at the Borrowers' option interest may be deferred and accrued. Any accrued and unpaid interest shall be added to principal at the Maturity Date.

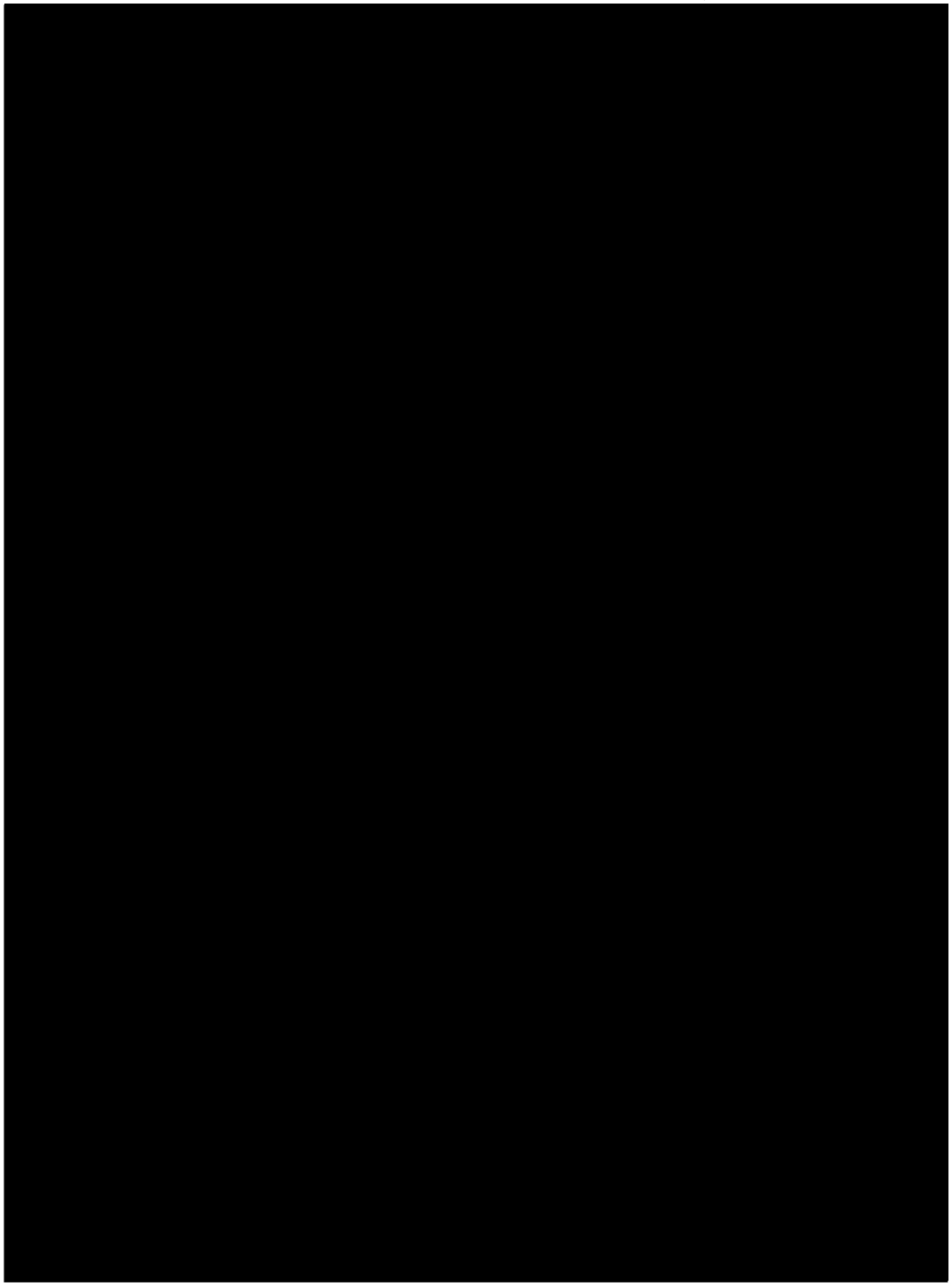
[redacted]

[redacted]









[redacted]

IN WITNESS WHEREOF, the parties have executed this Agreement as a contract under seal.

[redacted]

180 Land Co LLC
By: EHB Companies LLC, its Manager

By: _____
Yohan Lowie, Manager

[redacted]

Fore Stars Ltd.
By: EHB Companies LLC, its Manager

By: _____
Yohan Lowie, Manager

[redacted]

[redacted]

[redacted]

IN WITNESS WHEREOF, the parties have executed this Agreement as a contract under seal.

[redacted]

180 Land Co LLC
By: EHB Companies LLC, its Manager

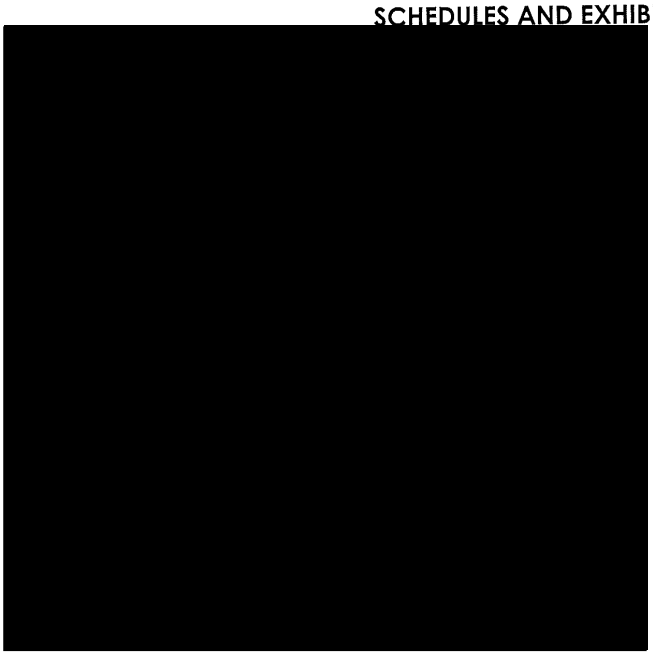
By: _____
Yohan Lowie, Manager

[redacted]

Fore Stars Ltd.
By: EHB Companies LLC, its Manager

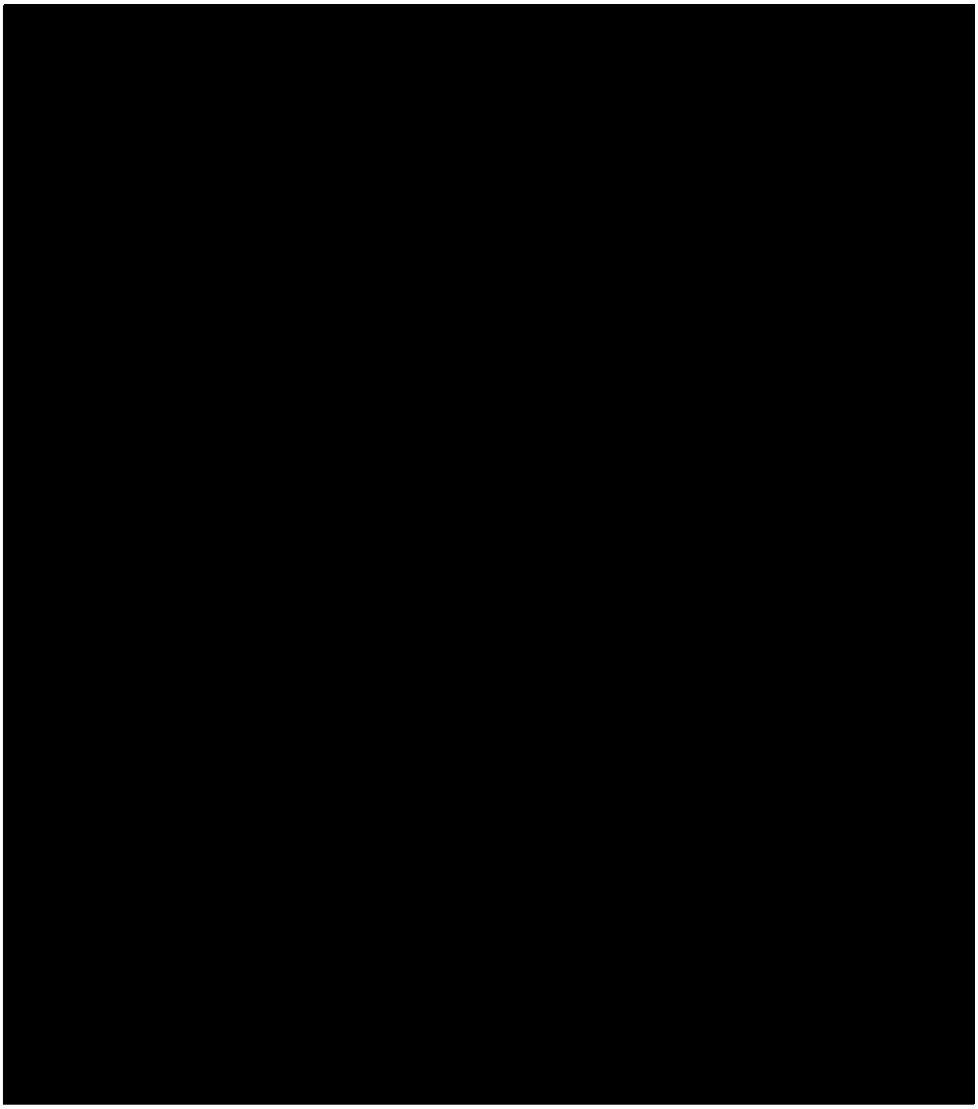
By: _____
Yohan Lowie, Manager

[redacted]



SCHEDULE A
Properties

| Parcel Numbers | Acreage | Owner |
|---|---|---|
| [redacted] | | |
| APN # - 138-31-702-002 | 166.99 | 180 Land Co. LLC |
| [redacted] | | |

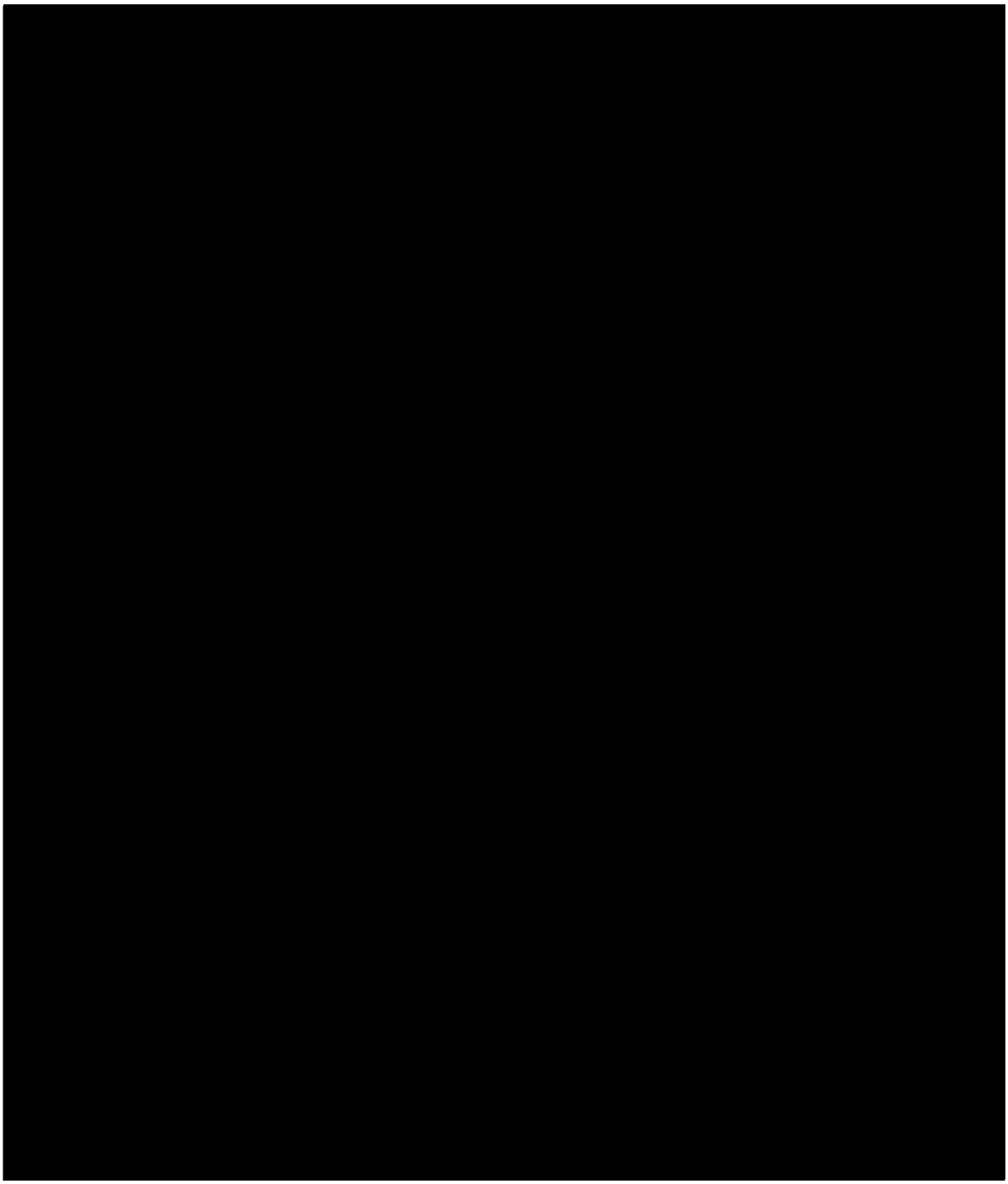


**PROMISSORY NOTE**

$15,000,000 July 5, 2016

For valuable consideration, **FORE STARS LTD.**, a Nevada limited-liability company ("**Fore Stars**"), **180 LAND CO LLC**, a Nevada limited-liability company ("**180 Land Co**"), [redacted] order of **VEGAS VENTURE FUNDING, LLC**, a Nevada limited-liability company ("**Lender**"), the principal sum of Fifteen Million Dollars ($15,000,000), together with interest thereon, from the date hereof, at the rate of four percent (4%) per annum. Borrower shall pay this Promissory Note (this "**Note**") as follows: The entire unpaid balance of this Note, together with unpaid interest thereon, shall be due and payable in full on the date one (1) year after the date of this Note. All payments on this Note shall be applied first to interest on the unpaid principal and then to principal.

[redacted]



[redacted]

**FORE STARS LTD.**, a Nevada limited-liability company

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By:_____
Name: Yohan Lowie
Title: Manager

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

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By:_____
Name: Yohan Lowie
Title: Manager

[redacted]

**Amendment of Loan Agreement and Extension of Promissory Note**

[redacted]

1. Amount of Loan. The Promissory Note, in the original principal sum of $15,000,000 became due and payable on July 5, 2017. On that date the accrued interest amounted to $600,000. As of July 5, 2017, the accrued interest shall be added to the outstanding unpaid principal balance and the amount of the loan shall be $15,600,000.

[redacted]

3. Interest Rate. The interest rate on the note shall remain unchanged at an annual rate of four percent (4%).

4. Extension Fee. In consideration of the extension and the maintenance of the interest rate, the Borrowers shall pay to the Lender, contemporaneous with the execution hereof, an extension fee of $156,000.

[redacted]

Executed this 8th day of August, 2017 and effective as of July 5, 2017.

[redacted]

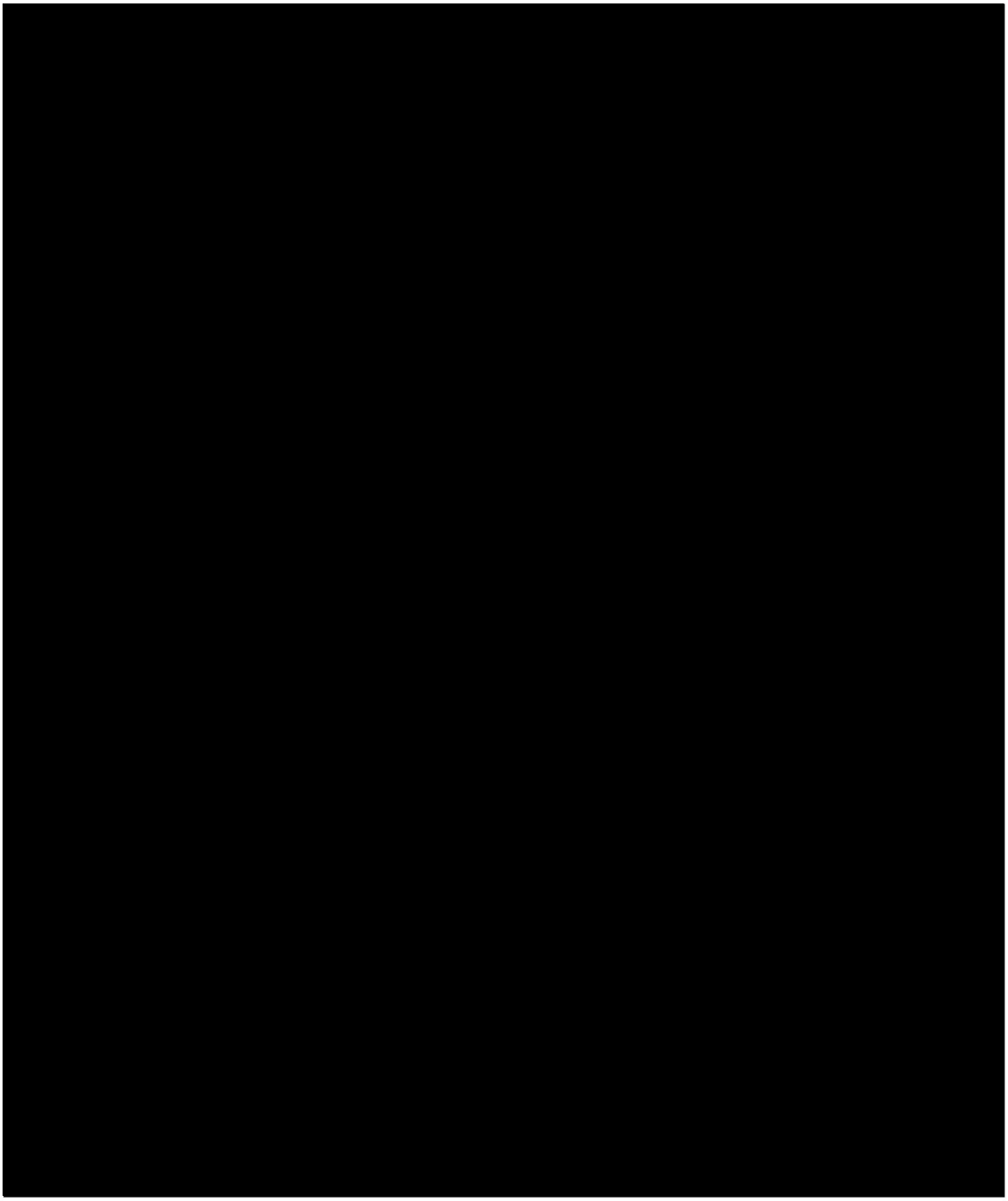
180 Land Co LLC

By: _____

Fore Stars Ltd.

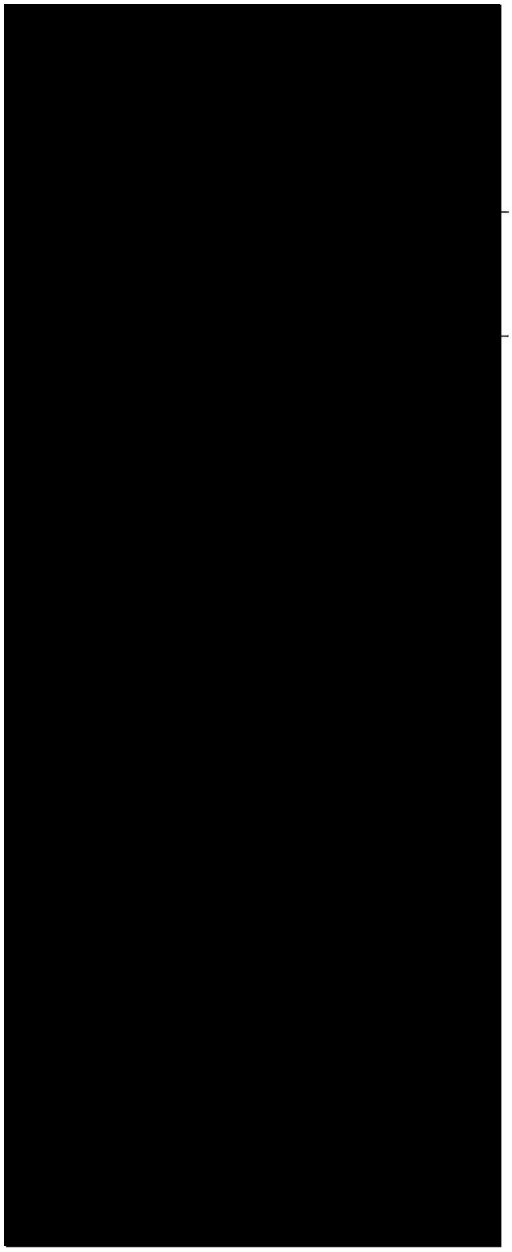
By: Yohan Lowie

1





IDD



[redacted]

1. Amount of Loan. The Promissory Note, as amended, has an outstanding principal sum in the amount of $15,600,000 that is due and payable on July 5, 2018 ("Maturity Date"). On the Maturity Date the then accrued interest amount will be $624,000. ("Accrued Interest").

   On the Maturity Date:

   (i) The Accrued Interest will be added to the outstanding unpaid principal balance resulting in an unpaid principal balance under the loan being $16,224,000; and

   (ii) Borrowers will then make a principal reduction payment in the amount of $5,000,000, resulting in a then unpaid principal balance under the loan being $11,224,000.

[redacted]

3. Interest Rate. The interest rate on the note shall remain unchanged at an annual rate of four percent (4%).

4. Extension Fee. In consideration of the extension and the maintenance of the interest rate, the Borrowers shall pay to the Lender, contemporaneous with the execution hereof, an extension fee of $100,000.

[redacted]

[redacted]

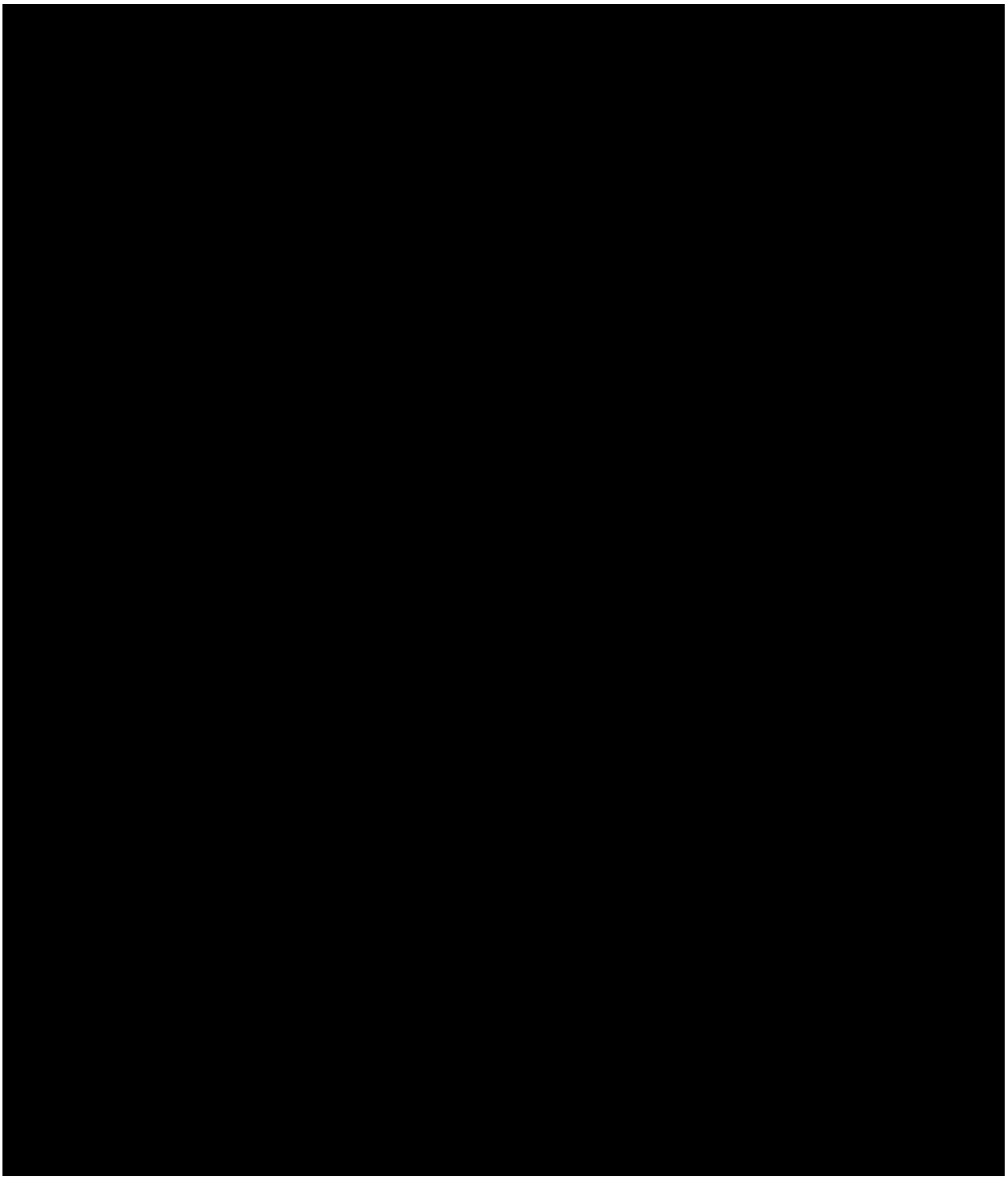
**Fore Stars Ltd**

By: _____
By: EHB Companies LLC
Its Manager

**180 Land Co LLC**

By: _____
By: EHB Companies LLC
Its Manager

[Guarantor Consent Page Follows]



**3rd Amendment of Loan Agreement and Extension of Promissory Note**

[redacted]

1. Amount of Loan. The Promissory Note, as amended, has an outstanding principal balance of $11,224,000 that became due and payable on July 5, 2019 ("Maturity Date"). On the Maturity Date the accrued interest amounted to $411,546.67 ("Accrued Interest").

   On the Maturity Date:

   i. The Accrued Interest will be added to the outstanding unpaid principal balance resulting in total unpaid principal balance under the loan of $11,635,546.67; and

   ii. Borrowers will then make a principal reduction payment in the amount of $5,000,000 resulting in an unpaid principal balance of $6,635,546.67

[redacted]

3. Interest Rate. The interest rate on the note shall remain unchanged at an annual rate of four percent (4%).

4. Extension Fee. In consideration of the extension and the maintenance of the interest rate, the Borrowers shall pay to the Lender, contemporaneous with the execution hereof, an extension fee of $100,000.

[redacted]

[Signature and Guarantor Consent Pages Follow]

1

Executed this ___ day of July, 2019 and effective as of July 5, 2019.

[redacted]

[redacted]

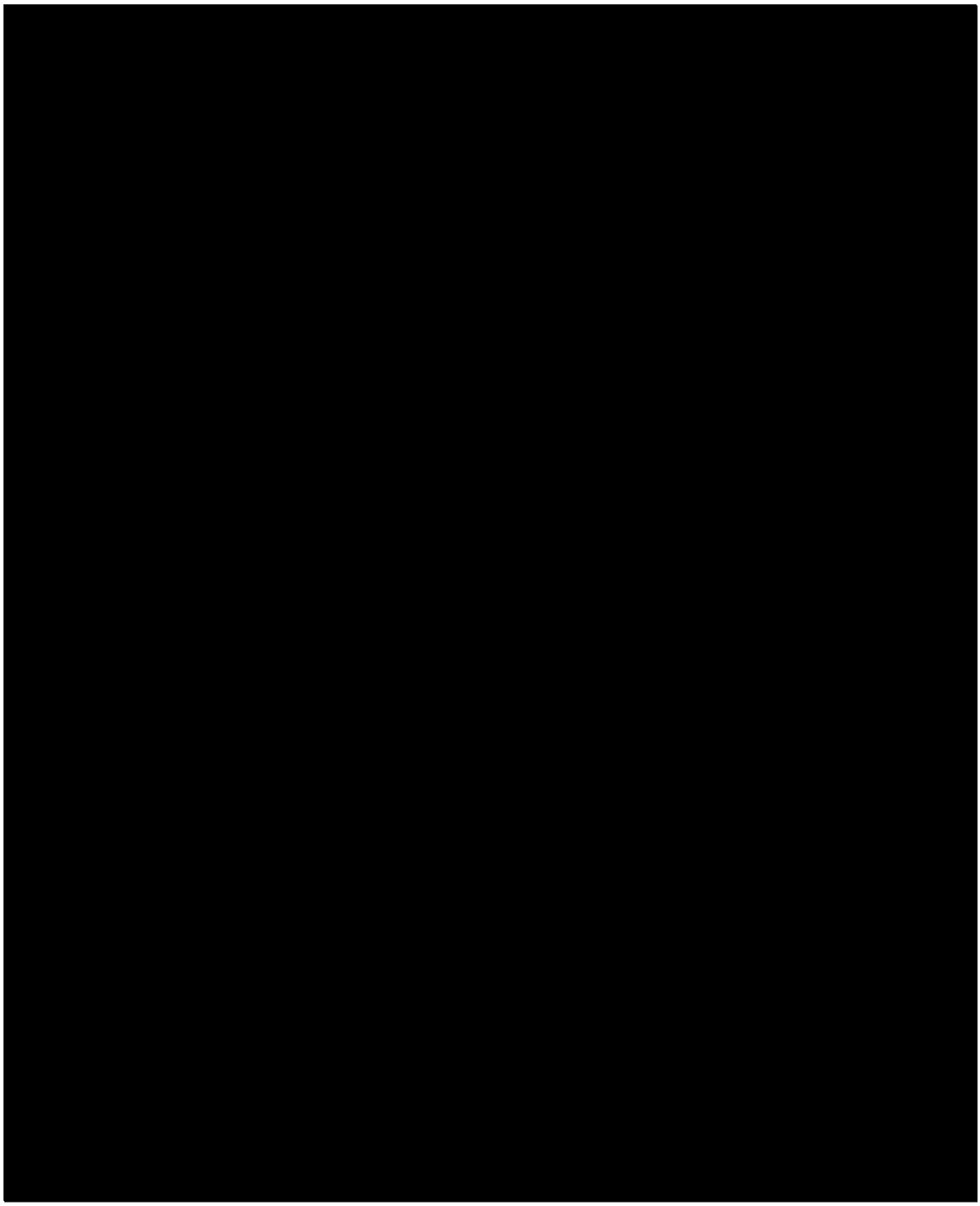
180 Land Co LLC

By: _____

Fore Stars Ltd.

By: _____

[Guarantor Consent Page Follows]



**4th Amendment of Loan Agreement and Extension of Promissory Note**

[redacted]

1. Amount of Loan. The Promissory Note, as amended, has an outstanding principal balance as of February 5, 2020 (the "Effective Paydown Date") of $6,635,546.67. On the Effective Paydown Date the accrued interest amounted to $192,242.76 ("Accrued Interest").

   As of the Effective Paydown Date:

   i. The Accrued Interest will be added to the outstanding unpaid principal balance resulting in total unpaid principal balance under the loan of $6,827,789.43; and

   ii. Borrowers will then make a principal reduction payment in the amount of $3,500,000 resulting in an unpaid principal balance of $3,327,789.43

[redacted]

3. Interest Rate. The interest rate on the note shall remain unchanged at an annual rate of four percent (4%).

4. Extension Fee. In consideration of the extension and the maintenance of the interest rate, the Borrowers shall pay to the Lender, contemporaneous with the execution hereof, an extension fee of $33,277.89.

[redacted]

[Signature and Guarantor Consent Pages Follow]

1

[redacted]

180 Land Co LLC

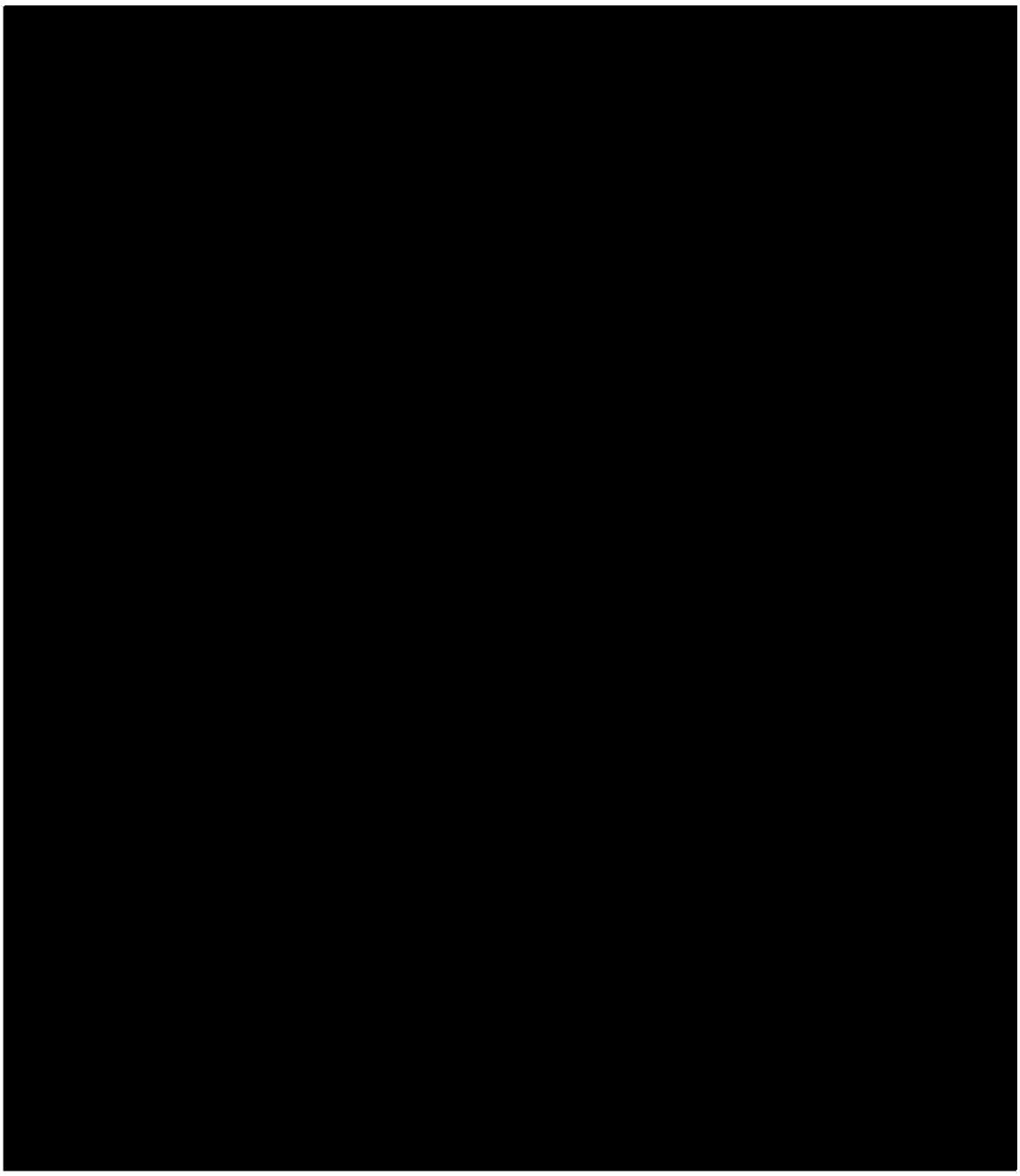
By: _____

Fore Stars Ltd.

By: _____

[Guarantor Consent Page Follows]

TDD



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704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
***Attorneys for Plaintiffs Landowner***

DISTRICT COURT

CLARK COUNTY, NEVADA

| | |
|---|---|
| 180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X,<br><br>Plaintiffs,<br><br>*vs.*<br><br>CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,<br><br>Defendant. | Case No.: A-17-758528-J<br>Dept. No.: XVI<br><br>**PLAINTIFFS' OPPOSITION TO CITY OF LAS VEGAS' RULE 56(d) MOTION ON ORDER SHORTENING TIME**<br><br>**Hearing Date: April 21, 2021**<br><br>**Hearing Time: 9:30 AM** |

Plaintiffs 180 Land Co LLC ("180 Land") and Fore Stars, LTD. ("Fore Stars") (collectively "Landowners") hereby oppose Defendant City of Las Vegas' ("City") Rule 56(d) Motion on Order Shortening Time (the "City's Motion"). This Opposition is made and based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court may entertain on the matter.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. The Facts on Which the City Claims it Needs Discovery Cannot Be Essential to the City's Opposition As Those Facts Are Only Relevant (if at all) to the Landowners Second Claim for Relief Which is NOT the Subject of the Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief

As clearly stated in the Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief (filed on March 26, 2021) the Landowners have only moved this Court for a determination of their First, Third and Fourth Claims for Relief. Importantly, the Landowners have **NOT** moved this Court for a determination of their Second Claim for Relief, which is their Penn Central[1] regulatory taking claim. Yet, the requests that the City makes for discovery in its Rule 56(d) Motion are solely related to the Landowners' Second Claim for Relief (regulatory taking). The Landowners' First, Third and Fourth Claims for Relief deal only with the City's actions. The Landowners' action, how much the Landowners paid for the property, communications the Landowners may have had with their lender and communications the Landowners may have had with their land use attorneys **have absolutely no relevance or import to *liability*[2] for the Landowners' First, Third and Fourth Claims for Relief**.[3] Accordingly, the City's Rule 56(d) Motion should be denied in its entirety as the discovery the City seeks cannot be essential to the City's Opposition. It must also be noted that the City has

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[1] Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

[2] In some cases, the amount paid for property may be relevant in the just compensation phase, but that is a separate issue and is not relevant to liability here.

[3] The City admits at page 8 of its recent "Motion for Reconsideration of Order Granting in Part and Denying in Part the City's Motion to Compel Discovery Responses, Document and Damages Calculation and Related Documents" filed in this Court on March 11, 2021, that the discovery it seeks is ***only*** related to the Landowners' Penn Central regulatory taking claim which is not at issue in the Landowners' pending Motion for Summary Judgment on the First, Third and Fourth Claims for Relief.

moved for Summary Judgment in the 65 Acre Case[4] and the 17 Acre Case. Thus, the fact that the City is now claiming in this 35 Acre Case that it needs discovery is not only a red herring it demonstrates what the Landowner has expressed to this Court from the inception of this case; the City seeks to delay this case through its continued abusive discovery tactics in order to prevent the Landowners from having their day in court.[5]

The City has already wasted a tremendous amount of judicial resources misrepresenting the Landowners' takings claims. The City's current Rule 56(d) Motion is no different. The City argues in its Motion, as it has in nearly every single pleading it has filed with this Court, that the Landowners are only pursuing a regulatory taking: "[i]n this case, the Developer alleges that in 2017, the City effected a regulatory taking…Regulatory takings are concerned with the economic impact of regulation on property." City Mot. at 4:16-18. However, no matter how many times the City burdens this Court and the Landowners with false representations asserting that the Landowners only have a regulatory taking claim, the City cannot rewrite the Landowners' Complaint (nor its pending Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief). The Landowners have moved this Court under their First, Third and Fourth Claims for Relief. Those claims, in order, are a **categorical taking**, a **p*er se***

---

[4] Both Mr. Lowie and Mr. Kaempfer's affidavits were attached to the Landowners' Opposition to the City Motion for Summary Judgment in the 65 Acre case which was filed on November 23, 2020. (See Case No. A-18-780184-C *Appendix of Exhibits in Support of Plaintiff Landowners' Opposition to the City's Motion for Summary Judgement* Vol 1 Ex. 22 and Vol 3 Ex. 59). Accordingly, the City has been in possession of those affidavits for nearly 5 months now and has not sought any additional discovery related to those affidavits and did not believe fact questions were raised such that it could not proceed with its own summary judgment on <u>all</u> of the Landowners' claims.

[5] The City is desperate to keep its outrageous actions out of the Court's consideration, from adding language in Court orders dismissing this case in the petition for judicial review phase, to filing multiple motions to dismiss.

**regulatory taking** and a **non-regulatory / de facto taking**. The Landowners have **NOT** moved this Court under their Second Claim for Relief, which is their Penn Central *regulatory* taking claim.

As this Court may recall from the previous briefings on this matter, a Penn Central regulatory taking analysis provides for a complex factual inquiry to determine whether the government action went "too far," considering three guideposts: (1) the regulation's [government action] economic impact on the property owner, (2) the regulation's [government action] interference with property owners investment-backed expectations, and (3) the character of the government action. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 663-664, 137 P.3d 1110, 1119 (2006). This is the claim under which the City seeks its discovery into the price the Landowners paid for the property, the communications the Landowner had with the prior owner, the communications the Landowner had with his land use consultant, and the communications the Landowners had with their lenders.[6] Since the Landowners are not moving under this claim, the City's Rule 56(d) Motion must be denied. As fully briefed in the Landowners' Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief, these claims focus entirely on the City's actions. The question is whether the City's action have amounted to a taking. Accordingly, the focus is on the City's action, not the Landowners' actions. *See Landowners Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief, see also footnote 11 below, see also Sisolak at 1122, 1124-1125*. Therefore, the City's efforts to delay this matter further to obtain discovery that has no bearing on the claims at issue must be rejected.

To follow is a brief outline of the claims the Landowners have moved under in their Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief

[6] This Court has already ruled on these specific discovery requests and the documents in relation to the purchase price, although irrelevant to this motion have likewise been produced. *See Exhibit 1, attached hereto,* Order dated February 24, 2021.

which illustrate that the standard to find a taking under each of these claims focuses entirely on the government's actions.

### A. The Landowners' First Claim for Relief – Categorical Taking and the City's Claims About the Uneconomic Golf Course Use

#### 1. First Claim for Relief – Categorical Taking

The Landowners first claim for relief is a categorical taking. The Nevada Supreme Court holds that a categorical taking occurs where government action "completely deprives an owner of all economical beneficial use of her property," and, in these circumstances, ***just compensation is automatically warranted, meaning there is no defense to the taking***. Sisolak, supra, at 662. A categorical taking does not require a physical invasion. This Court has previously held this claim is a "valid claim in the State of Nevada" and has been properly pled. *LO Appx., Ex. 8, May 15, 2019 Order Denying the City's Motion for Judgment on the Pleadings, pp. 4-5.*[7]

Nevada's categorical taking standard is met here. As detailed in the Landowners' Motion to Determine Taking and for Summary Judgment on the First, Third and Fourth Claims for Relief, it is undisputed that the City has **denied 100%** of the Landowners' repeated attempts to use the 35 Acre Property - the City denied the 35 Acre stand-alone applications, denied the MDA application, denied the access application, and denied the fence application. It is further undisputed that the City then adopted ordinances to make it impossible to use the Property for any purpose so that the property could be preserved in a vacant state for the benefit of the surrounding neighbors (the public). *LO Appx., Ex. 107, 108, 48, 136, 150*. As a result, the property lies vacant and useless, all while the Landowners are paying $205,227.22 per year in real estate taxes and significant other carrying costs. Not only have the City actions "completely deprive[d] [the Landowners] of all

[7] Unless stated as *attached hereto*, all Exhibits referenced herein are Exhibits to the Landowners' Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief *filed on March 26, 2021.*

economical beneficial use of [their] property," the actions have caused a negative value, as the Landowners are paying maintenance and holding costs for land the City has preserved for public use.

Accordingly, the Landowners' categorical taking claim focuses entirely on the City's actions to deny all economical beneficial use of the Landowners' Property and the City's claims that it needs to delay the summary judgment on this claim is without merit.

**2. Uneconomic and Illegal Golf Course Use**

The City claims that the Landowners have "not produced evidence to support its claim that the golf course could not be operated profitably…" (City Mot. 10:28-11:1). **This is false.** As detailed in the Landowners' Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief, the Landowners have produced significant evidence to show that the golf course was both an illegal use of the property, it was an economic loss. Specifically, the Landowners' Motion to Determine Take and For Summary Judgment maintains that, "after the acquisition, the golf course operator terminated operations due to an inability to be profitable (*LO Appx., Ex. 45, Golf Course Closure, September, 2015 & May, 2016, Par 4 Letter to Fore Star; Ex. 46, Golf Course Closure, December 1, 2016, Elite Golf Letter to Yohan Lowie; Ex. 47, Golf Course Closure, Keith Flatt Depo, Fore Stars v. Nel)."* See Landowners' Mot. to Determine Taking at 13. "In addition to the golf course operations being a financial loss, the golf course was not a legal or economic use. A golf course use is one "that is not allowed," in any residential zoned land, such as the 250 Acre Residential Zoned Land. *See LVMC 19.12.010 (showing a golf course use prohibited on any residential zoned land).* The City Assessor issued a "Notice of Decision" that as of December 1, 2016, prior to the filing of this case, the golf course was not the "lawful" use of the property. *LO Appx., Ex. 120, Tax Assessor Notice of Decision, submitted with 133 Acre Applications.* While only an interim use, the golf course was shuttered over four years ago,

because it was a financial failure, even when the Landowners leased the land for ***free*** to the operator. *LO Appx., Ex. 45, Golf Course Closure, September, 2015 & May, 2016, Par 4 Letter to Fore Star; Ex. 46, Golf Course Closure, December 1, 2016, Elite Golf Letter to Yohan Lowie; Ex. 47, Golf Course Closure, Keith Flatt Depo, Fore Stars v. Nel."* (See Landowners' Mot. to Determine Taking at fn. 48). Accordingly, the City's allegation that the Landowners have "not produced evidence to support its claim that the golf course could not be operated profitably…" (City Mot. 10:28-11:1) **is a patently false statement**. To the extent the City has wasted the last 4 years and not collected the *publicly available* data on how the golf industry has been contracting for over a decade, with hundreds of courses closing around the country, is no reason to delay the Landowners' timely filed motion. But, more likely, the City cannot prove otherwise and is thus avoiding this inevitable and obvious conclusion. [8]

### B. Third Claim for Relief - *Per Se* Regulatory Taking and The City's Complaints About Donald Richards and a Site Visit

#### 1. Third Claim for Relief – Per Se Regulatory Taking

The Landowners' third claim for relief is a *per se* regulatory taking. The Nevada Supreme Court holds that a *per se* regulatory taking occurs where government action "authorizes" the public to use private property or "preserves" private property for public use. Sisolak, supra, at 1124-25 and Hsu, supra, at 634-635. When this occurs, ***just compensation is automatically warranted, meaning there is no defense to the taking***. Sisolak, supra, at 662.[9] This Court has previously

[8] The City has already acknowledged "through their separate and independent research, that the golf course industry is struggling resulting in significant numbers of golf course closures across the country" *See Exhibit 2, attached hereto*, MDA Recitals, pg. 1 paragraph E.

[9] *See also,* Knick v. Twp. of Scott, Pennsylvania, 139 S. Ct. 2162, 2170 (2019) ("The Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner.").

held this claim is a "valid claim in the State of Nevada" and has been properly pled. *LO Appx., Ex. 8, May 15, 2019 Order Denying the City's Motion for Judgment on the Pleadings, pp. 4-5.*

The City has continually argued that a Nevada *per se* regulatory taking requires the public to actually physically enter and use the private property rather than just having the government authorize the use or preserve the property for such use. However, this argument belies the law in Nevada. In a companion airspace taking case, the Supreme Court held that whether the planes were actually using Mr. Sisolak's and Mr. Hsu's airspace was "inconsequential" to the liability determination; rather the Court focused on how the County "preserved" the landowners' airspace for the public's use. *LO Appx., Ex. 95, Johnson v. McCarran Int'l Airport, Supreme Court Case No. 53677, unpublished, pp. 5-6.* The Landowners understand that the Johnson case is unpublished, however, the case is critical to rebut the City's consistent misrepresentation of the Sisolak and Hsu cases. Because the law is clear in Nevada, the Landowners did not disclose Mr. Richards in their initial disclosures as his testimony regarding the public's actual use of the property should not be necessary. However, the City continued to pursue the false legal theory that the public's actual use is necessary to prove a *per se* taking, therefore, the Landowners, in response to this false legal theory produced the testimony of Mr. Richards. The City cannot claim it needs or is entitled to discovery based on a false theory it created.

As can be seen in Mr. Richards affidavit he attests that when he has confronted the trespassers who are "largely neighbors from the abutting community of Queensridge" that they have informed him that they are not trespassing as "it is our open space" and that they learned this from an HOA meeting. *LO Appx., Ex. 150.* None of this is new information to the City. The City already knows that Councilman Seroka informed the neighbors at a Queensridge HOA meeting (in June of 2018) that, according to Councilman Seroka, the Landowners' 250 Acre property belonged to the neighbors and is for their recreation and open space. Councilman Seroka stated at

the HOA meeting, "[n]ow that we have the documentation clear, ***that is open space for this part of our community. It is the recreation space for this part of it***. It is not me, it is what the law says. ***It is what the contracts say between the city and the community, and that is what you all are living on right now***." *LO Appx., Ex. 136*, 20:23-21:3, HOA meeting (emphasis added). The City has the transcript and recording of Councilman Seroka making these statements that occurred three years ago in June of 2018. (*LO Appx., Ex. 136).* Indeed, the City is still telling the neighbors that the Landowners' 250 Acres is their open space as that is the City's position in this very case by way of their PR-OS argument. Accordingly, the City can have no objection to Mr. Richards' testimony as it provides nothing new to the City and only serves to refute legally inaccurate positions maintained by the City.

**2. Site Visit**

The City's request for a site visit is another red herring and Further Attempt at Delay.

**a. COVID Only Prevented the City's California Counsel from Conducting a Site Visit, NOT the Remaining Army of Attorneys the City Has on This Case**

The Landowners have invited the City to conduct a site visit on numerous occasions. The City's California counsel did not want to travel during COVID, which is understandable, but **nothing stopped** the remaining army of local attorneys the City has on this case from doing a site visit. The visit would have been outside, the Property is 35 acres so there is more than enough room to be socially distant. There are at least 5 local counsel representing the City in this case, they all could have safely conducted a site visit at any time during the last 4 years. As stated, the

Landowners extended the invitation numerous times and the City's failure to conduct the site visit, inside of four years, is no reason to delay these proceedings further.[10]

**b. The City Already Knows the Landowners' Property**

*Second*, the City is apparently familiar enough with the Property, to be able to ascertain which pictures of its *per se* regulatory taking occurred on the 17 Acre Property versus the 35 Acre Property. City Mot. at 12:16-18. This in and of itself is a stunning admission by the City. If the City knows that it has authorized the public's use of the 17 Acre Property, then it has admitted liability for a *per se* regulatory taking. The City seems to think that because it approved development on the 17 Acre Property that this relieves it of liability for a *per se* taking. City Mot. 12:16-18. The City is wrong. As a point of reference for the Court. One of the first airspace takings cases was the location of the old Vacation Village hotel. Vacation Village, Inc. v. Clark County, 497 F.3d 902 (9th Cir. 2007). The County effectuated a *per se* regulatory taking of Vacation Village's airspace and today Town Square is built on that location. Accordingly, no alleged development approvals or even development will protect the City from its liability for a *per se* regulatory taking of the Landowners' Property. And frankly, it shows a major crack in the City's defense that it would try to distinguish the public's invasion of the 17 Acre Property (which the City authorized) from the public's invasion of the 35 Acre Property (which the City also authorized) as the City has continually argued to this Court that the 250 Acre should be viewed as one parcel.

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[10] The City continues to play fast and loose with the rules attempting to force an in person out of state deposition *in April of 2020* refusing to vacate it until threatened with court intervention and now uses COVID a year later as an excuse for not conducting discovery. *See Exhibit 3, attached hereto,* Email to City's Counsel regarding Weed deposition.

### c. The City Knows the Landowners Have Sufficient Access and that it Denied the Landowners the Use of that Access, the City Is Just Grasping at Straws to Delay this Matter

The City's claim that "a site inspection is also necessary to rebut the Developer's claim that the City took action to deny the Developer access to the Badlands Property and to gather evidence to demonstrate that the existing access was sufficient." City Mot. 12:20-22. The City is merely grasping at straws here. The Landowners submitted applications to use their access and the City denied it, not because the Landowners had sufficient access otherwise, but because "any development on this site has the potential to have significant impact on the ***surrounding property***." *LO Appx., Ex. 88 and 89 at 2816*. The City was preserving the 35 Acre Property for these "surrounding properties." Accordingly, the City's access argument is a farce and has no relevance to a liability determination on the Landowners' First, Third and Fourth Claims for Relief.

## C. Fourth Claim for Relief - Non-Regulatory De Facto Taking

The Landowners' fourth claim for relief is a non-regulatory / de facto taking. The Nevada Supreme Court holds that a non-regulatory / de facto taking occurs where, there is ***no physical invasion***, but the government has "taken steps that directly and substantially interfere[ ] with [an] owner's property rights to the extent of rendering the property **unusable or valueless to the owner**." State v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). The Court relied on Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. 1977), where the Ninth Circuit held that "[t]o constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a **direct interference with or disturbance of property rights**." Emphasis added. And, in Sloat v. Turner, 93 Nev. 263, 268-269 (1977), the Supreme Court held a taking occurs where there is "**some derogation** of a right appurtenant to that property which is compensable" or "if some property

right which is directly connected to the ownership or use of the property is **substantially impaired or extinguished.**" Nevada is not alone in adopting this de facto taking law as the great majority of other jurisdictions have adopted a similar rule.[11] Nichols on Eminent Domain summarily describes this non-regulatory / de facto taking claim as follows: "[c]ontrary to prevalent earlier views, it is now clear that **a de facto taking does not require a physical invasion or appropriation of property**. Rather, a **substantial deprivation of a property owner's use and enjoyment of his property** may, in appropriate circumstances, be found to constitute a 'taking' of that property or of a compensable interest in the property..." 3A Nichols on Eminent Domain §6.05[2], 6-65 (3rd rev. ed. 2002). This is especially true for vacant and unimproved land where the Nevada Supreme Court recognizes the use of vacant and unimproved land is only for investment or development purposes and takings actions by the Government "operate to destroy the only value such property offers." Manke v. Airport Authority of Washoe County, 101 Nev. 755, 758 (1985). Therefore, a Nevada non-regulatory / de facto taking occurs where government action renders property unusable or valueless to the owner, substantially impairs or extinguishes some right directly connected to the property or damages the property. And this is particularly true for vacant property like the 35 Acres. This Court has previously held this claim is a "valid claim

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[11] *See e.g.* McCracken v. City of Philadelphia, 451 A.2d 1046 (Pa.Cmwlth. 1982) (holding that a court should focus on the "cumulative effect" of government action and "[a] de facto taking occurs when an entity clothed with eminent domain power **substantially deprives** an owner of the use and enjoyment of his property" or where there is an 'adverse interim consequence' which deprives an owner of the use and enjoyment of the property." Id., at 1050. Emphasis added.); Robinson v. City of Ashdown, 783 S.W.2d 53 (Ark. 1990) (when government **"substantially diminishes** the value of a landowner's land" just compensation is required. Id., at 56. Emphasis added.). Mentzel v. City of Oshkosh, 146 Wis.2d 804, 812-813, 432 N.W.2d 609, 613 (1988) (taking occurred when the City of Oshkosh denied the landowner's established liquor license because the City of Oshkosh desired to acquire the landowner's property and it sought to reduce the value of its acquisition.); City of Houston v. Kolb, 982 S.W.2d 949 (1999) (taking found where the City of Houston denied a subdivision plat submitted by the Kolbs for the sole purpose of keeping the right-of-way for a planned highway clear to reduce the cost for the State in acquiring the properties for the highway.). *See also LO Appx., Ex. 96, Summary of Other Jurisdiction's De Facto Taking Law.*

in the State of Nevada" and has been properly pled. *LO Appx., Ex. 8, May 15, 2019 Order Denying the City's Motion for Judgment on the Pleadings, pp. 4-5.*

Nevada's nonregulatory / de facto taking standard is met here. Although the Landowners have the "right" to develop residential units on the 35 Acre Property, **the City has denied 100%** of the Landowners' repeated attempts to use the 35 Acre Property for that purpose. The City has taken action to preserve the 35 Acre Property for use by the surrounding property owners. And, the City has mandated that the Landowners pay $205,227.22 per year in real estate taxes based on the exact same residential use the City will not allow. As a result of the City's actions, the 35 Acre Property has been rendered "useless and valueless" to the Landowners, there has been a "direct interference with or disturbance of" the 35 Acre Property, there has been "some derogation of a right appurtenant to [the 35 Acre Property] which is compensable," there has been a "property right which is directly connected to the ownership or use of the [35 Acre Property which has been] substantially impaired or extinguished," *and* there has been "damage" to the 35 Acre Property. Therefore, summary judgment should be granted on the Landowners' Fourth Claim for Relief – Non-regulatory / De Facto Taking.

As this Court can see, the Landowners' non-regulatory / de facto taking claim again focuses entirely on the City's actions toward the 35 Acre Property. These City actions are known at this time and there is no reason to further delay this matter.

**D. Rebuttal of the City's False Claims Regarding the Landowners Discovery Responses.**

To date, the Landowners have produced over 38,000 pages of documents in response to the City's discovery requests in this case including all documents that support "the aggregate of consideration given to the Peccole family for the former Badlands golf course property was

approximately $45 million, which portions of the exchange occurred more than a decade ago."[12] Notwithstanding this comprehensive production, the City once again distorts and manufactures their version of the Landowners' course of dealings, as well as the existence of additional documents, without any good faith, evidentiary basis for doing so.

In their quest to find nonexistent provisions reciting a $45 million purchase price for the Land, the City spends much of its opposition falsely accusing the Landowners of not complying with the Order to produce the documents related to the transactions between the principals of the Landowners and the Peccole family.[13] In support of this false contention, the City provides nothing more than semantics, distortion and blatantly false facts and law while ignoring court orders. As stated by Landowners counsel during the Court hearing "there are no documents that state that the landowner paid the 45 million for the golf course. There simply are no documents that state that. . . . They support the 20-year history that from those transactions was born this right to purchase it for the –for the 15 million . . . " So it is simply gamesmanship that the City now feigns surprise that there are no documents that state the Landowner paid $45 million. Accordingly, the City's claim that the Landowners have more documents to produce is not only false, it is likewise a red herring and attempt to cause further delay and damage to the Landowner.

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[12] On March 2, 2021 via a Court ordered Protective Order, the Landowners produced 381 pages of documents bates LO 37280 – LO 37661 in response. Nine days after production, the City violated the Protective Order and publicly filed those documents, just as the Landowners counsel feared they would and articulated that concern to the Court. "And through the City's actions 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 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, . . . So we are highly guarded over here, more than usual, because of what's gone on for the past five years." *See Exhibit 4, attached hereto,* Transcript dated November 17, 2020, pg. 48:19-49:5.

[13] The City also complains of not receiving documents this Court already ruled they were not entitled to receive.

## II. CONCLUSION

For the foregoing reasons, the City's motion should be denied in its entirety. The Landowners commenced this matter in 2017, nearly four years ago. The City has sought to dismiss this matter four times (all denied), sought a Writ to the Nevada Supreme Court (also denied) and improperly removed the matter to federal court, causing more than a year's delay. Nothing the City argues justifies allowing the City to further delay this matter. The law and facts necessary to establish a taking under the Landowners First, Third and Fourth Claims for Relief are properly before this Court and there is no just reason to delay this matter further.

DATED this 16th day of April, 2021.

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***Attorneys for Plaintiffs Landowners***

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 16th day of April, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO CITY OF LAS VEGAS' RULE 56(d) MOTION ON ORDER SHORTENING TIME** to be submitted electronically for filing and service via the Court's 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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# Exhibit 1

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2/24/2021 11:42 AM

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02/24/2021 11:42 AM
CLERK OF THE COURT

**ORDR**

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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,<br><br>Plaintiff,<br><br>v.<br><br>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,<br><br>Defendants. | Case No. A-17-758528-J<br>Dept. No. XVI<br><br>**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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Content Reviewed and Approved By:

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By: /s/ George F. Ogilvie

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## Evelyn Washington

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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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**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,

*Elizabeth Ghanem Ham, Esq.*
Counsel
EHB Companies
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eham@ehbcompanies.com

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| 180 Land Company LLC,<br>Petitioner(s)<br><br>vs.<br><br>Las Vegas City of,<br>Respondent(s) | CASE NO: A-17-758528-J<br><br>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:

Service Date: 2/24/2021

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# Exhibit 2

PRJ-63491
07/12/16

# MOD-63600, GPA-63599, ZON-63601 and DIR-63602

## Table of Contents

PRJ-63491
07/12/16

# MOD-63600, GPA-63599, ZON-63601 and DIR-63602

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this _____ day of _____, 2016 by and between the **CITY OF LAS VEGAS**, a municipal corporation of the State of Nevada ("City") and **180 LAND COMPANY LLC,** a Nevada limited liability company ("Master Developer"). The City and Master Developer are sometimes individually referred to as a "Party" and collectively as the "Parties".

## RECITALS

A. City has authority, pursuant to NRS Chapter 278 and Title 19 of the Code, to enter into development agreements such as this Agreement, with persons having a legal or equitable interest in real property to establish long-range plans for the development of such property.

B. The City has taken no actions to cause, nor has ever intended to cause NRS 278A to apply to the Property as defined herein. As such, this Agreement is not subject to NRS 278A.

C. Seventy Acres LLC, a Nevada limited liability company ("Seventy Acres"), Fore Stars, LTD., a Nevada limited liability company ("Fore Stars") and 180 Land Co LLC, a Nevada limited liability company ("180 Land") are the owners (Seventy Acres, Fore Stars and 180 Land each individually an "Owner" and collectively the "Owners") of the Property described on **Exhibit "A"** attached hereto (collectively the "Property").

D. The Property is the land on which the golf course, known as the Badlands, is currently operated.

E. The Parties have concluded, each through their separate and independent research, that the golf course industry is struggling resulting in significant numbers of golf course closures across the country.

F. The golf course located on the Property can be closed and the land is planned to be repurposed in a manner that is complementary and compatible to the adjacent uses with very large estate lots with custom homes, with luxury multifamily development and assisted living units.

G. The Property is divided into four (4) development areas, totaling two hundred fifty and ninety-two hundredths (250.92) acres (hereinafter referred to as “The Two Fifty”), as shown on **Exhibit "B"** attached hereto.

Community is based

in accordance with

PRJ-63491
07/12/16

# MOD-63600, GPA-63599, ZON-63601 and DIR-63602

CLV086932

Agreement and the Applicable Rules.

P. Master Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the City Council and that Master Developer agrees without protest to the requirements, limitations, and conditions imposed by this Agreement.

Q. The City Council, having determined that this Agreement is in conformance with the 2016 Major Modification and the Las Vegas 2020 Master Plan, and that all other substantive and procedural requirements for approval of this Agreement have been satisfied, and after giving notice as required by the relevant law, and after introducing this Agreement by ordinance at a public hearing on _____, 2016, and after a subsequent public hearing to consider the substance of this Agreement on _____, 2016, the City Council found this Agreement to be in the public interest and lawful in all respects, and approved the execution of this Agreement by the Mayor of the City of Las Vegas.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## SECTION ONE

### DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

"Affiliate" means (a) any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with another entity and (b) any other entity that beneficially owns at least fifty percent (50%) of the voting common stock or partnership interest or limited liability company interest, as applicable, of another entity. For the purposes of this definition, "control" when used with respect to any entity, means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, partnership interests, by contract or otherwise; and the terms "controlling" or "controlled" have meanings correlative to the foregoing.

"Agreement" means this development agreement and at any given time includes all addenda and



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## SECTION TWO

### APPLICABLE RULES AND CONFLICTING LAWS

2.01 Reliance on the Applicable Rules. City and Master Developer agree that Master Developer will be permitted to carry out and complete the development of the Community in accordance with the terms of this Agreement and the Applicable Rules. The terms of this Agreement shall supersede any conflicting provision of the City Code except as provided in Section 2.02 below.

2.02. Application of Subsequently Enacted Rules by the City. The City shall not amend, alter or change any Applicable Rule as applied to the development of the Community, or apply a new fee, rule regulation, resolution, policy or ordinance to the development of the Community, except as follows:

(a) The development of the Community shall be subject to the Building Codes and fire codes in effect at the time of issuance of the permit for the particular development activity.

(b) The application of a new uniformly-applied rule, regulation, resolution, policy or ordinance to the development of the Community is permitted, provided that such action is necessary to protect the health, safety and welfare of City residents, and provided that City gives Master Developer written notice thirty (30) days prior to implementing a new policy.

(c) Nothing in this Agreement shall preclude the application to the Community of new or changed rules, regulations, policies, resolutions or ordinances specifically mandated and required by changes in state or federal laws or regulations. In such event, the provisions of Section 2.03 through 2.05 of this Agreement are applicable.

(d) Should the City adopt or amend rules, regulations, policies, resolutions or ordinances and apply such rules to the development of the Community, other than pursuant to one of the above Sections 2.02(a), 2.02(b) or 2.02(c), the Master Developer shall have the option, in its sole discretion, of accepting such new or amended rules by giving written notice of such acceptance to City. City and the Master Developer shall subsequently execute an amendment to this Agreement evidencing the Master Developer's acceptance of the new or amended ordinance, rule, regulation or policy within a reasonable time.

2.03 Conflicting Federal or State Rules. In the event that any federal or state laws or



federal or state laws

regulations prevent or preclude compliance by City or Master Developer with one or more provisions of this Agreement or require changes to any approval given by City, this Agreement shall remain in full force and effect as to those provisions not affected, and:

(a) Notice of Conflict. Either Party, upon learning of any such matter, will provide the other Party with written notice thereof and provide a copy of any such law, rule, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and

(b) Modification Conferences. The Parties shall, within thirty (30) calendar days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law, rule, regulation or policy.

2.04 City Council Hearings. In the event either Party believes that an amendment to this Agreement is necessary due to the effect of any federal or state law, rule, regulation or policy, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal or state law or regulation. Master Developer shall have the right to offer oral and written testimony at the hearing. Any amendment ordered by the City Council pursuant to a hearing contemplated by this Section is subject to judicial review. The Parties agree that any matter submitted for judicial review shall be subject to expedited review in accordance with Rule 2.15 of the Eighth Judicial District Court of the State of Nevada.

2.05 City Cooperation.

(a) City shall cooperate with Master Developer in securing any City permits, licenses or other authorizations that may be required as a result of any amendment resulting from actions initiated under Section 2.04.

(b) As required by the Applicable Rules, Master Developer shall be responsible to pay all applicable fees in connection with securing of such permits, licenses or other authorizations.

(c) Permits issued to Master Developer shall not expire so long as work progresses as determined by the City's Director of Building and Safety.

## SECTION THREE

### PLANNING AND DEVELOPMENT OF THE COMMUNITY

3.01 Permitted Uses, Density, and Height of Structures. Pursuant to NRS Chapter 278, this Agreement sets forth the permitted uses, density and maximum height of structures to be constructed in the Community for each Development Area within the Community.

(a) Maximum Units Permitted. The maximum number of residential dwelling units allowed within the Community, as shown on **Exhibit B**, is two thousand four hundred seventy-five (2,475) units, with seven hundred twenty (720) multifamily residential units in Development Area 1, one thousand six hundred eighty (1,680) multifamily residential units in Development Area 2 and Development Area 3 combined, and a maximum of seventy-five (75) estate lots in Development Area 4. An assisted living facility, as defined by Code, may be developed within Development Area 2 or Development Area 3 with up to two hundred (200) assisted living units allowed in addition to the maximum residential dwelling units permitted herein. Should the assisted living units not be constructed, the two hundred (200) assisted living units may not be built as residential dwelling units.

(b) Permitted Uses and Unit Types.

(i) The Community is planned for a mix of single family residential homes and multi-family residential homes including mid-rise tower residential homes.

(ii) To promote a pedestrian friendly environment, in Development Areas 2 and 3, commercial uses that are ancillary to multifamily residential uses shall be permitted. Ancillary commercial uses shall be similar to, but not limited to, general retail uses and restaurant uses (café, coffee shop, sandwich shops, etc.). The number and size of ancillary commercial uses shall be evaluated at the time of submittal for a Site Development Plan Review. Ancillary commercial uses shall be limited to Development Areas 2 and 3, and shall be limited to a total of seven thousand five hundred (7,500) square feet across Development Areas 2 and 3 with no single use greater than two thousand five hundred (2,500) square feet. It is the intent that the ancillary commercial will largely cater to the residences of Development Areas 1, 2 and 3 to be consistent with an environment that helps promote a walkable community.

(iii) Water Features shall be allowed in the Community, even if City enacts a future ordinance or law contrary to this Agreement.

(iv) Uses allowed within the Community are listed in the Design Guidelines attached as **Exhibit "D".** Additionally, the permissible uses in the UDC shall apply within each respective zoning district.

(v) The Parties acknowledge that golf course operations may be continued or discontinued, on any portion or on all of the Property, at and for any period of time, or permanently, at the discretion of the Master Developer. If discontinued, Master Developer shall comply with all City Code requirements relating to the maintenance of the Property and comply with Clark County Health District regulations and requirements relating to the maintenance of the Property, which may necessitate Master Developer's watering and rough mowing the Property, or at Master Developer's election to apply for and acquire a clear and grub permit for the Property outside of FEMA designated flood areas and/or demolition permits, subject to all City laws and regulations.

(vi) Pursuant to its general authority to regulate the sale of alcoholic beverages, the City Council declares that the public health, safety and general welfare of the Community are best promoted and protected by requiring that a Special Use Permit be obtained for all Alcohol Related Uses. Alcohol Related Uses shall be subject to a Special Use Permit in accordance with the requirements of this Section and Las Vegas Municipal Code Section 19.16.0110. The Parties agree that Master Developer may apply for Alcohol Related Uses and that Alcohol Related Uses, as defined herein, may be permitted adjacent to a private park open for public access.

(c) Density. Master Developer shall have the right to determine the number of residential dwelling units to be developed on any Development Parcel up to the maximum density permitted in each Development Area. Notwithstanding the foregoing, the maximum density permitted in Development Area 1 shall be a maximum of seven hundred twenty (720) multifamily residential units; Development Areas 2 and 3 combined shall be a maximum of one thousand six hundred eighty (1,680) multifamily residential units plus up to two hundred (200) assisted living units; and Development Area 4 shall be a maximum of seventy-five (75) residential estate lots as a result of the Master Developer's decision to keep much of Development Area 4 preserved for enhanced landscaped areas.



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ed areas.

(d) Maximum Height and Setbacks. The maximum height and setbacks shall be governed by the Code except as otherwise provided for in the Design Guidelines attached as **Exhibit "D".**

(e) Residential Mid-Rise Towers in Development Area 2. Master Developer shall have the right to develop two (2) residential mid-rise towers within Development Area 2. The mid-rise tower locations shall be placed so as to minimize the impact on the view corridors to the prominent portions of the Spring Mountain Range from the existing residences in One Queensridge Place. As provided in the Design Guidelines attached as **Exhibit "D"**, each of the two (2) mid-rise towers may be up to one hundred fifty (150) feet in height.

(f) Phasing.

(i) The Community shall be developed as outlined in the Development Phasing **Exhibit "F".**

(ii) The Development Areas' numerical designations are not intended and should not be construed to be the numerical sequence or phase of development within the Community.

(iii) Development Area 4's Sections A-G are not intended and should not be construed to be the alphabetical sequence or phase of development within Development Area 4.

(iv) The Property shall be developed as the market demands, in accordance with this Agreement, and at the sole discretion of Master Developer.

(v) Portions of the Property are located within the Federal Emergency Management Agency ("FEMA") Flood Zone.

(1) Following receipt from FEMA of a Conditional Letter of Map Revision ("CLOMR") and receipt of necessary City approvals and permits, Master Developer may begin construction in Development Areas 1, 2 and 3, including but not limited to, the mass grading, the drainage improvements, including but not limited to the installation of the open drainage channels and/or box culverts, and the installation of utilities. Notwithstanding, Master Developer may begin and complete any construction prior to receipt of the CLOMR in areas outside of the



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FEMA Flood Zone, following receipt of the necessary permits and approvals from City.

(2) In Development Area 4 in areas outside of the FEMA Flood Zone, Master Developer may begin and complete any construction, as the market demands, following receipt of necessary City approvals and permits.

(3) In Development Area 4 in areas within the FEMA Flood Zone, construction, including but not limited to, mass grading, drainage improvements, including but not limited to the installation of the open drainage channels and/or box culverts, and the sewer and water mains may commence only after receipt of the CLOMR related to these areas and receipt of necessary City approvals and permits.

(vi) Master Developer and City agree that prior to the approval for construction of the seventeen hundredth (1,700$^{th}$) residential unit, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the seventeen hundredth (1,700$^{th}$) residential unit, Master Developer shall have substantially completed the drainage infrastructure required in Development Area 4. For clarification, the completion of the aforementioned drainage infrastructure required in Development Area 4 is not a prerequisite to approval for construction, by way of building permit issuance, of the first sixteen hundred ninety-nine (1,699) residential units. For purposes of this subsection, substantial completion of the drainage infrastructure shall mean the installation of the open drainage channels and/or box culverts required pursuant to the City-approved Master Drainage Study or Technical Drainage Study for Development Area 4.

(vii) The Two Fifty Drive Extension, being a new roadway between Development Areas 2 and 3 that will connect Alta Drive and South Rampart Boulevard, shall be completed in accordance with the approved Master Traffic Study and prior to the approval for construction of the fifteen hundredth (1,500$^{th}$) residential unit, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the fourteen hundred and ninety-ninth (1,499$^{th}$) residential unit. For clarification, the completion of The Two Fifty Drive Extension is not a



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prerequisite to approval for construction, by way of building permit issuance, of the first fourteen hundred and ninety-ninth (1,499th) residential units.

(viii) The Open Space, Parks and Recreation Space phasing shall be constructed incrementally with development as outlined below in subsection (g).

(ix) In Development Areas 1-3, prior to the commencement of grading and/or commencement of a new phase of building construction, Master Developer shall provide ten (10) days' written notice to adjacent HOAs.

(x) In Development Area 4, prior to the commencement of grading, Master Developer shall provide ten (10) days' written notice to adjacent HOAs.

(g) Open Space, Parks, Recreation, and Landscaped Space. The Property consists of two hundred fifty and ninety-two hundredths (250.92) acres. Master Developer shall amenitize and/or landscape (or cause the same to occur) approximately fifty percent (50%) of the Property (approximately one hundred twenty-five (125) acres) in excess of the Code requirements. Master Developer shall construct, or cause the construction of the following:

(i) Development Areas 1, 2 and 3. A minimum of 12.7 acres of public and private open space, parks, and recreation space shall be provided throughout the 67.21 acres of Development Areas 1, 2 and 3. The 12.7 acres of public and private open space, parks, and recreation space will include a minimum of: 2.5 acres of privately-owned park areas open to the public; 6.2 acres of privately-owned park and open space not open to the public; 4.0 acres of privately-owned recreational amenities not open to the public, including outdoor and indoor areas; and a 1 mile walking loop, and pedestrian walkways throughout (hereinafter referred to as "The Seventy Open Space"). The layout(s), location(s) and size(s) of the Seventy Open Space shall be determined pursuant to Site Development Plan Review(s) and shall be constructed incrementally in conjunction with the construction of the multifamily units located in Development Areas 1, 2 and 3. The 2.5 acres of privately-owned park area(s) open to the public shall be completed prior to the approval for construction of the fifteen hundredth (1,500th) residential unit, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the fourteen hundred and ninety-ninth (1,499th) residential unit. For clarification, the completion of 2.5 acres of privately-owned park area(s) open to the public is not a



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prerequisite to approval for construction, by way of building permit issuance, of the first fourteen hundred and ninety-nine (1,499) residential units, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the fourteen hundred and ninety-ninth ($1,499^{th}$) residential unit. The Seventy Open Space shall be maintained by Master Developer's Authorized Designee, the respective HOAs, Sub-HOA or Similar Entity.

(ii) Development Area 4. Because Master Developer has chosen to limit Developer Area 4 to a maximum of seventy-five (75) estate lots in Development Area 4, approximately one hundred twelve (112) acres of the landscaped area is anticipated to be located within Development Area 4 and shall be preserved, by easement or deed restriction, for natural areas, trees, shrubs, ponds, grasses and private access ways. The landscaped area, although not required pursuant to the UDC, is being created to maintain a landscaped environment in Development Area 4 and not in exchange for higher density in Development Areas 1, 2 or 3. The landscaped area will be maintained by individual estate lot owners, an HOA, sub-HOA or Similar Entity, or a combination thereof, pursuant to Section 4 of this Agreement.

(h) Development Area 3 No Building Structures Zone and Transition Zone. In Development Area 3, there will be a wall, up to ten (10) feet in height, to serve to separate Development Areas 1, 2 and 3 from Development Area 4. The wall will provide gated access points to Development Area 4. Additionally, there will be a seventy-five (75) foot "No Building Structures Zone" along the western boundary of Development Area 3 within seventy-five (75) feet of the property line of existing homes adjacent to the Property as of the Effective Date, as shown on Exhibit "B", to help buffer Development Area 3's development from these existing homes adjacent to the Property. The No Building Structures Zone will contain landscaping, an emergency vehicle access way that will also act as a pathway, and access drive lanes for passage to Development Area 4 through Development Area 3. An additional seventy-five (75) foot "Transition Zone" will be adjacent to the No Building Structures Zone, as shown on Exhibit "B", wherein buildings of various heights are permitted but the heights of the buildings in the Transition Zone cannot exceed thirty-five (35) feet above the finished floor of the adjacent existing residences as of the Effective Date, in no instance in excess of the parameters of the Design Guidelines. For example, if the finished floor of an adjacent existing residence, as of the Effective Date, is 2,800 feet



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ective Date, is 2,800

in elevation, the maximum building height allowed in the adjacent Transition Zone would be 2,835 feet. Along the western edge of the Transition Zone, architectural design will pay particular attention to the building exterior elevations to take into consideration architectural massing reliefs, both vertical and horizontal, building articulation, building colors, building materials and landscaping. A Site Development Plan Review(s) is required prior to development in Development Areas 1, 2 and 3.

(i) Grading and Earth Movement.

(i) Master Developer understands that it must obtain Federal Emergency Management Agency's ("FEMA") CLOMR approval prior to any mass grading on the FEMA designated areas of the Property. Master Developer may commence construction, and proceed through completion, subject to receipt of the appropriate grading and/or building permits, on the portions of the Property located outside the FEMA designated areas prior to obtaining FEMA CLOMR approval.

(ii) Master Developer's intention is that the Property's mass grading cut and fill earth work will balance, thereby mitigating the need for the import and export of fill material. However, there will be a need to import dirt for landscape fill.

(iii) In order to minimize earth movement to and from the Property, Master Developer shall be authorized to process the cut materials on site to create the needed fill materials, therefore eliminating or significantly reducing the need to take cut and fill materials to and from the Property. After approval of the Master Rough Grading Plan, other than the necessary Clark County Department of Air Quality Management approvals needed, Master Developer shall not be required to obtain further approval for rock crushing, earth processing and stockpiling on the Property; provided, however, that no product produced as a result of such rock crushing, earth processing and/or stockpiling on the Property may be sold off-site. The rock crushing shall be located no less than five hundred (500) feet from existing residential homes and, except as otherwise outlined herein, shall be subject to Las Vegas Municipal Code Section 9.16.

(iv) In conjunction with its grading permit submittal(s)/application(s), Master Developer shall submit the location(s) and height(s) of stockpiles.

(j) Gated Accesses to Development Area 4. Gated accesses to Development Area 4 shall be on Hualapai Way and through Development Area 3 unless otherwise specified in an approved



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tentative map(s).

3.02. Entitlement Requests.

(a) Generally. City agrees to reasonably cooperate with Master Developer to:

(i) Expeditiously process all Entitlement Requests in connection with the Property that are in compliance with the Applicable Rules and Master Studies; and

(ii) Promptly consider the approval of Entitlement Requests, subject to reasonable conditions not otherwise in conflict with the Applicable Rules or the Master Studies.

(b) Zoning Entitlement for Property. The Parties acknowledge and agree that the Property will be rezoned for development in accordance with the 2016 Major Modification to allow for the development of the densities provided for herein.

(c) Other Entitlement Requests. Except as provided herein, all other Entitlement Request applications shall be processed by City according to the Applicable Rules. The Parties acknowledge that the procedures for processing such Entitlement Request applications are governed by this Agreement, and if not covered by this Agreement, then by the Code. In addition, any additional application requirements delineated herein shall be supplemental and in addition to such Code requirements.

(i) Site Development Plan Review. Unless otherwise provided for herein, Master Developer shall satisfy the requirements of Las Vegas Municipal Code Section 19.16.100 for the filing of an application for a Site Development Plan Review, except:

(1) No Site Development Plan Review will be required for any of the up to seventy-five (75) residential units in Development Area 4. Master Developer shall be responsible for the approval of the residential units in Development Area 4.

(2) As part of this Agreement, specifically Section 3.01(e), Master Developer shall have the right to develop two (2) residential mid-rise towers within Development Area 2. The two (2) residential mid-rise towers' maximum heights and setbacks have been established as part of the Design Guidelines attached as **Exhibit "D"** to this Agreement, so with respect to the two (2) residential mid-rise towers, the Site Development Plan Review shall be subject to the requirements of a Site Development Plan Review except the two (2) residential mid-rise towers' maximum heights and



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setbacks. Because **Exhibit "E"** is conceptual, the remainder of the development in Development Areas 1, 2 and 3 shall be subject to all of the requirements of a Site Development Plan Review.

(ii) Special Use Permits. Master Developer and/or Designated Builders shall satisfy all Code requirements for the filing of an application for a special use permit.

3.03. Dedicated Staff and the Processing of Applications.

(a) Processing Fees, Generally. All Entitlement Requests, Major Modification Requests and Major Deviation Requests and all other requests related to the development of the Community shall pay the fees as provided by the UDC.

(b) Inspection Fees. Construction documents and plans that are prepared on behalf of Master Developer for water facilities that are reviewed by City for approval shall not require payment of inspection fees to City unless the water service provider will not provide those inspection services.

(c) Dedicated Inspection Staff. Upon written request from Master Developer to City, City shall provide within thirty (30) days from written notice, if staff is available, and Master Developer shall pay for a full-time building inspector dedicated only to the development of the Community.

3.04 Modification of Design Guidelines. Parties agree that the only proper entity to request a modification or deviation to the Design Guidelines is the Master Developer entity. A modification or deviation to the Design Guidelines shall not be permitted by any other purchaser of real property within the Community, the HOA, Sub-HOA or Similar Entity.

(a) Applicant. Requests for all modifications of the Design Guidelines may be made only by Master Developer.

(b) Major Modifications.

(i) Any application for a modification to the Design Guidelines is a Major Modification. All applications for Major Modifications shall be scheduled for a hearing at the next available Planning Commission meeting after the City's receipt of the application.

(ii) All actions by the Planning Commission on Major Modifications shall be scheduled for a hearing at the next available City Council meeting.

3.05 Deviation to Design Guidelines. A deviation is an adjustment to a particular requirement of the Design Guidelines for a particular Development Parcel or lot.



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(a) Major Deviation. Any application for a modification to the Design Guidelines for a particular Development Parcel or lot is a Major Deviation. A Major Deviation must not have a material and adverse impact on the overall development of the Community.

(i) City Council Approval Required. An application for a Major Deviation may be filed by the Master Developer or an Authorized Designee as provided herein. Any application by an Authorized Designee must include a written statement from the Master Developer that it either approves or has no objection to the request. Major Deviations shall be submitted to the Planning Commission for recommendation to the City Council, wherein the City Council shall have final action on all Major Deviations.

(ii) Submittal, Review and Approval.

(1) All applications for Major Deviations shall be scheduled for a hearing at the next available Planning Commission meeting after the City's receipt of the application.

(2) All actions by the Planning Commission on Major Deviations shall be scheduled for a hearing by the City Council within thirty (30) days of such action.

(b) If Master Developer or an Authorized Designee requests a deviation from adopted City Infrastructure Improvement Standards, an application for said deviation shall be submitted to the Land Development Section of the Department of Building and Safety and related fees paid for consideration by the City Engineer pursuant to the Applicable Rules.

(c) Any request for deviation other than those specifically provided shall be processed pursuant to Section 3.04 (Modifications of Design Guidelines).

3.06 Anti-Moratorium. The Parties agree that no moratorium or future ordinance, resolution or other land use rule or regulation imposing a limitation on the construction, rate, timing or sequencing of the development of property including those that affect parcel or subdivision maps, building permits, occupancy permits or other entitlements to use land that are issued or granted by City shall apply to the development of the Community or portion thereof. Notwithstanding the foregoing, City may adopt ordinances, resolutions or rules or regulations that are necessary to:

(a) comply with any state or federal laws or regulations as provided by Section 2.04, above;

(b) alleviate or otherwise contain a legitimate, bona fide harmful and/or noxious use of the Property, except for construction-related operations contemplated herein, in which event the ordinance shall contain the most minimal and least intrusive alternative possible, and shall not, in any event, be imposed arbitrarily; or

(c) maintain City's compliance with non-City and state sewerage, water system and utility regulations. However, the City as the provider of wastewater collection and treatment for this development shall make all reasonable best efforts to insure that the wastewater facilities are adequately sized and of the proper technology so as to avoid any sewage caused moratorium.

In the event of any such moratorium, future ordinance, resolution, rule or regulation, unless taken pursuant to the three exceptions contained above, Master Developer shall continue to be entitled to apply for and receive consideration of Entitlement Requests and other applications contemplated in Section 3 in accordance with the Applicable Rules.

3.07. Property Dedications to City. Except as provided in herein, any real property (and fixtures thereupon) transferred or dedicated to City or any other public entity shall be free and clear of any mortgages, deeds of trust, liens or encumbrances (except for any encumbrances that existed on the patent, at the time the Property was delivered to Master Developer, from the United States of America).

## SECTION FOUR

### MAINTENANCE OF THE COMMUNITY

4.01 Maintenance of Public and Common Areas.

(a) Community HOAs. Master Developer shall establish Master HOAs, Sub-HOAs or Similar Entities to manage and maintain sidewalk, common landscape areas, any landscaping within the street rights-of-way including median islands, private sewer facilities, private drainage facilities located within common elements, including but not limited to, grassed and/or rip-rap lined channels and natural arroyos as determined by the Master Drainage Study or applicable Technical Drainage Studies, but excluding public streets, curbs, gutters, sidewalks and streetlights upon City-dedicated public streets, City owned traffic control devices and traffic control signage and permanent flood control facilities.



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trol facilities.

(b) Maintenance Obligations of the Master HOAs and Sub-HOAs. The Master HOAs or Similar Entities and the Sub-HOAs (which hereinafter may be referred to collectively as the "HOAs") shall be responsible to maintain in good condition and repair all common areas that are transferred to them for repair and maintenance (the "Maintained Facilities"), including, but not limited to sidewalks, walkways, private streets, private alleys, private drives, landscaped areas, signage and water features, parks and park facilities, trails, amenity zones, flood control facilities not meeting the criteria for public maintained facilities as defined in Title 20 of the Code, and any landscaping in, on and around medians and public rights-of-way. Maintenance of the drainage facilities, which do not meet the criteria for public maintained facilities as defined in Title 20 of the Code, shall be the responsibility of an HOA or Similar Entity that encompasses a sufficient number of properties subject to this Agreement to financially support such maintenance, which may include such HOAs or Similar Entities posting a maintenance bond in an amount to be mutually agreed upon by the Director of Public Works and Master Developer prior to the City's issuance of any grading or building permits within Development Area 4, excluding any grub and clear permits outside of FEMA designated flood areas and/or demolition permits.

Master Developer acknowledges and agrees that the HOAs are common-interest communities created and governed by declarations ("Declarations") as such term is defined in NRS 116.037. The Declarations will be recorded by Master Developer or Designated Builders as an encumbrance against the property to be governed by the appropriate HOA. In each case, the HOA shall have the power to assess the encumbered property to pay the cost of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Master Developer further agrees that such Declarations will contain a covenant running to the benefit of City, and enforceable by City, that such facilities will be maintained in good condition and repair. Such HOAs will be Nevada not-for-profit corporations with a board of directors elected by the subject owners, provided, however, that Master Developer may control the board of directors of such HOA for as long as permitted by applicable law.

(c) The Declaration for the HOAs, when it has been fully executed and recorded with the office of the Clark County Recorder, shall contain (or effectively contain) the following provisions:

(i) that the governing board of the HOAs must have the power to maintain the Maintained Facilities;



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(ii) that the plan described in Section 4.02 can only be materially amended by the HOAs;

(iii) that the powers under the Declaration cannot be exercised in a manner that would defeat or materially and adversely affect the implementation of the Maintenance Plan defined below; and

(iv) that in the event the HOAs fail to maintain the Maintained Facilities in accordance with the provisions of the plan described in Section 4.02, City may exercise its rights under the Declaration, including the right of City to levy assessments on the property owners for costs incurred by City in maintaining the Maintained Facilities, which assessments shall constitute liens against the land and the individual lots within the subdivision which may be executed upon. Upon request, City shall have the right to review the Declaration for the sole purpose of determining compliance with the provisions of this Section.

(d) City's right to enforce any HOA maintenance provisions are at the sole discretion of the City.

4.02 Maintenance Plan. For park and common areas, maintained by the HOAs the corresponding Declaration pursuant to this Section shall provide for a plan of maintenance. In Development Area 4, there will be a landscape maintenance plan with reasonable sensitivities for fire prevention provided to the City Fire Department for review.

4.03 Release of Master Developer. Following Master Developer's creation of HOAs to maintain the Maintained Facilities, and approval of the maintenance plan with respect to each HOA, City will hold each HOA responsible for the maintenance of the Maintained Facilities in each particular development covered by each Declaration and Master Developer shall have no further liability in connection with the maintenance and operation of such particular Maintained Facilities. Notwithstanding the preceding sentence, Master Developer shall be responsible for the plants, trees, grass, irrigation systems, and any other botanicals or mechanical appurtenances related in any way to the Maintained Facilities pursuant to any and all express or implied warranties provided by Master Developer to the HOA under NRS Chapter 116.

4.04 City Maintenance Obligation Acknowledged. City acknowledges and agrees that all of



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the following will be maintained by City in good condition and repair at the City's sole cost and expense: (i) permanent flood control facilities meeting the criteria for public maintenance defined in Title 20 of the Code as identified in the Master Drainage Study or applicable Technical Drainage Studies and (ii) all City dedicated public streets (excluding any landscape within the right-of-way), associated curbs, gutters, City-owned traffic control devices, signage, and streetlights upon City-dedicated right-of-ways within the Community and accepted by the City. City reserves the rights to modify existing sidewalks and the installation of sidewalk ramps and install or modify traffic control devices on common lots abutting public streets at the discretion of the Director of Public Works.

Master Developer will maintain all temporary detention basins or interim facilities identified in the Master Drainage Study or applicable Technical Drainage Studies. The City agrees to cooperate with the Master Developer and will diligently work with Master Developer to obtain acceptance of all permanent drainage facilities.

## SECTION FIVE

### PROJECT INFRASTRUCTURE IMPROVEMENTS

5.01. Conformance to Master Studies. Master Developer agrees to construct and dedicate to City or other governmental or quasi-governmental entity or appropriate utility company, all infrastructure to be publicly maintained that is necessary for the development of the Community as required by the Master Studies and this Agreement.

5.02 Sanitary Sewer.

(a) Design and Construction of Sanitary Sewer Facilities Shall Conform to the Master Sanitary Sewer Study. Master Developer shall design, using City's sewer planning criteria, and construct all sanitary sewer main facilities that are identified as Master Developer's responsibility in the Master Sanitary Sewer Study. Master Developer acknowledges and agrees that this obligation shall not be delegated or transferred to any other party.

(b) Off-Property Sewer Capacity. The Master Developer and the City have analyzed the effect of the build out of the Community on Off-Property sewer pipelines. Master Sanitary Sewer Study indicates that sufficient offsite capacity in the offsite sewer pipelines exists fro the development of



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the project contemplated herein. Master Developer and the City agree that the analysis may need to be revised as exact development patterns in the Community become known. All future offsite sewer analysis for the Community will consider a pipe to be at full capacity if it reaches a d/D ratio of 0.90 or greater. The sizing of new On-Property and Off-Property sewer pipe will be based on peak dry-weather flow d/D ratio of 0.50 for pipes between eight (8) and twelve (12) inches in diameter, and 0.60 for pipes larger than fifteen (15) inches in diameter.

5.03 Traffic Improvements.

(a) Legal Access. As a condition of approval to the Master Traffic Study and any updates thereto, Master Developer shall establish legal access to all public and private rights-of-way within the Community.

(b) Additional Right Turn Lane on Rampart Boulevard Northbound at Summerlin Parkway. At such time as City awards a bid for the construction of a second right turn lane on Rampart Boulevard northbound and the related Summerlin Parkway eastbound on-ramp, Master Developer will contribute twenty eight and three-tenths percent (28.3%) of the awarded bid amount, unless this percentage is amended in a future update to the Master Traffic Study ("Right Turn Lane Contribution"). The Right Turn Land Contribution is calculated based on a numerator of the number of AM peak trips from the Property, making a second right turn lane on Rampart Boulevard northbound and the related Summerlin Parkway eastbound on-ramp necessary, divided by a denominator of the total number of AM peak trips that changes the traffic count from a D level of service to an E level of service necessitating a second right turn lane on Rampart Boulevard northbound and the related Summerlin Parkway eastbound on-ramp. If the building permits for less than eight hundred (800) residential units have been issued, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the eight hundredth ($800^{th}$) residential unit, on the Property at the time the City awards a bid for this second right turn lane, the Right Turn Lane Contribution may be deferred until the issuance of the building permit for the eight hundredth ($800^{th}$) residential unit, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the eight hundredth ($800^{th}$) residential unit, or a date mutually agreed upon by the Parties. If the City has not awarded a bid for the construction of the second right turn lane by the issuance of the building permit for the sixteen hundred



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and ninety ninth (1699th) residential unit, a dollar amount based on the approved percentage in the updated Master Traffic Study shall be paid prior to the issuance of the seventeen hundredth (1,700th) residential unit, by way of a building permit issuance or group of building permit issuance that would encapsulate the construction of the seventeen hundredth (1,700th) residential unit, based on the preliminary cost estimate. At the time the work is bid, if the bid amount is less than the preliminary cost estimate, Master Developer shall be refunded proportionately. At the time the work is bid, if the bid amount is more than the preliminary cost estimate, Master Developer shall contribute up to a maximum of ten percent (10%) more than the cost estimate already paid to the City.

(c) Dedication of Additional Lane on Rampart Boulevard.

(i) Prior to the issuance of the 1st building permit for a residential unit in Development Areas 1, 2 or 3, Master Developer shall dedicate a maximum of 16 feet of a right-of-way for an auxiliary lane with right-of-way in accordance with Standard Drawing #201 on Rampart Boulevard along the Property's Rampart Boulevard frontage which extends from Alta Drive south through the Property's southern boundary on Rampart Boulevard. City shall pursue funding for construction of this additional lane as part of a larger traffic capacity public improvement project, however no guarantee can be made as to when and if such a project occurs.

(ii) On the aforementioned dedicated right-of-way, from the Property's first Rampart Boulevard entry north two hundred fifty (250) feet, Master Developer will construct a right hand turn lane into the Property in conjunction with Development Area 1's site improvements.

(d) Traffic Signal Improvements.

(i) Master Developer shall comply with Ordinance 5644 (Bill 2003-94), as amended from time to time by the City. The Master Developer shall construct or re-construct any traffic signal that is identified in the Master Traffic Study as the Master Developer's responsibility and shall provide appropriate easements and/or additional rights-of-way, as necessary.

(ii) The Master Traffic Study proposes the installation of a new traffic signal located on Rampart Boulevard at the first driveway located south of Alta Drive to Development Area 1. The Master Traffic Study indicates that this proposed signalized driveway on Rampart Boulevard operates at an acceptable level of service without a signal at this time. The installation of this proposed



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traffic signal is dependent on additional traffic improvements as described in Sections 5.03 (b) and (c), and therefore, is not approved by the City at this time. The City agrees to accept in the future an update to the Master Traffic Study to re-evaluate the proposed traffic signal. Any such updated Master Traffic Study shall be submitted six (6) months after the issuance of the last building permit for Development Area 1 and at such subsequent times as mutually agreed to by the City and Master Developer. If construction of a traffic signal is approved at Rampart Boulevard at this first driveway to Development Area 1, the Master Developer shall, concurrently with such traffic signal, construct that portion of the additional lane dedicated pursuant to Section 5.03(c)(i) to the extent determined by the updated Master Traffic Study, unless such construction has already been performed as part of a public improvement project.

(e) Updates. The Director of Public Works may require an update to the Master Traffic Study as a condition of approval of the following land use applications: tentative map; site development plan review; or special use permit, but only if the applications propose land use, density, or entrances that substantially deviate from the approved Master Study or the development differs substantially in the opinion of the City Traffic Engineer from the assumptions of the approved Master Traffic Study. Additional public right-of-way may be required to accommodate such changes.

(f) Development Phasing. See Development Phasing plan attached hereto as **Exhibit "F".**

5.04 Flood Control.

(a) Prior to the issuance of any permits in portions of the Property which do not overlie the regional drainage facilities on the Property, Master Developer shall increase the existing $75,000 flood maintenance bond for the existing public drainage ways on the Property to $125,000. Prior to the issuance of any permits in portions of the Property which overlie the regional drainage facilities on the Property, Master Developer shall have in place a bond amount of $250,000.

(b) Obligation to Construct Flood Control Facilities solely on Master Developer. Master Developer shall design and construct flood control facilities that are identified as Master Developer's responsibility in the Master Drainage Study or applicable Technical Drainage Studies. Except as provided for herein, Master Developer acknowledges and agrees that this obligation shall not



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t this obligation shall

be delegated to or transferred to any other party.

(c) Other Governmental Approvals. The Clark County Regional Flood Control and any other state or federal agencies, as required, shall approve the Master Drainage Study prior to final approval from City.

(d) Updates. The Director of Public Works may require an update to the Master Drainage Study or Master Technical Study as a condition of approval of the following land use applications: tentative map (residential or commercial); site development plan review (multifamily or commercial); or parcel map (except Parcel Map 64285) if those applications are not in substantial conformance with the approved Master Land Use Plan or Master Drainage Study. The update must be approved prior to the approval of any construction drawings and the issuance of any final grading permits, excluding any grub and clear permits outside of FEMA designated flood areas and/or demolition permits. An update to the exhibit in the approved Master Drainage Study depicting proposed development phasing in accordance with the Development Agreement shall be submitted for approval by the Flood Control Section.

(e) Regional Flood Control Facility Construction by Master Developer. The Master Developer agrees to design and substantially complete the Clark County Regional Flood Control District facilities as defined in the Master Drainage Study pursuant to an amendment to the Regional Flood Control District 2008 Master Plan Update prior to the issuance of any permits for units located within the flood zone.

(f) Construction Phasing. Master Developer shall submit a phasing and sequencing plan for all drainage improvements within the Community as a part of the Master Drainage Study. The phasing plan and schedule must clearly identify drainage facilities (interim or permanent) necessary prior to permitting any downstream units for construction. Notwithstanding the above, building permit issuance is governed by section 3.01(f).

## SECTION SIX

### DEFAULT

6.01 Opportunity to Cure; Default. In the event of any noncompliance with any provision of this Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail a ten (10) day notice of default and opportunity to cure. The time of notice shall be measured from the date of receipt of the certified mailing. The notice of noncompliance shall specify the nature of the alleged noncompliance and the manner in which it may be satisfactorily corrected, during which ten (10) day period the party alleged to be in noncompliance shall not be considered in default for the purposes of termination or institution of legal proceedings.

If the noncompliance cannot reasonably be cured within the ten (10) day cure period, the non-compliant Party may timely cure the noncompliance for purposes of this Section 4 if it commences the appropriate remedial action with the ten (10) day cure period and thereafter diligently prosecutes such action to completion within a period of time acceptable to the non-breaching Party. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than ninety (90) days from the date the ten (10) day notice of noncompliance and opportunity to cure was mailed to the non-compliant Party.

If the noncompliance is corrected, then no default shall exist and the noticing Party shall take no further action. If the noncompliance is not corrected within the relevant cure period, the non-complaint Party is in default, and the Party alleging non-compliance may declare the breaching Party in default and elect any one or more of the following courses.

(a) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged noncompliance, the Party alleging the default may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend or terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the City Council.

(b) Amendment or Termination by City. Following consideration of the evidence



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presented before the City Council and a finding that a substantial default has occurred by Master Developer and remains uncorrected, City may amend or terminate this Agreement pursuant to NRS 278. Termination shall not in any manner rescind, modify, or terminate any vested right in favor of Master Developer, as determined under the Applicable Rules, existing or received as of the date of the termination. Master Developer shall have twenty-five (25) days after receipt of written notice of termination to institute legal action pursuant to this Section to determine whether a default existed and whether City was entitled to terminate this Agreement.

(c) Termination by Master Developer. In the event City substantially defaults under this Agreement, Master Developer shall have the right to terminate this Agreement after the hearing set forth in this Section. Master Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of City's obligations by pursuing an action pursuant to this Section 6.01(a).

6.02. Unavoidable Delay; Extension of Time. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, national disasters, terrorist attacks, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, third-party lawsuits, or acts of God. If written notice of any such delay is given to one Party or the other within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by the party in receipt of the notice within thirty (30) days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between City and Master Developer.

6.03. Limitation on Monetary Damages. City and the Master Developer agree that they would not have entered into this Agreement if either were to be liable for monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement. Accordingly, City and Master Developer (or its permitted assigns) may pursue any course of action at law or in equity available for breach of contract, except that neither Party shall be liable to the other or to any other person for any monetary damages based upon a breach of this Agreement.

6.04. Venue. Jurisdiction for judicial review under this Agreement shall rest exclusively with the Eighth Judicial District Court, County of Clark, State of Nevada or the United States District Court,



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District of Nevada. The parties agree to mediate any and all disputes prior to filing of an action in the Eighth Judicial District Court unless seeking specific performance or injunctive relief.

6.05. Waiver. Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

6.06. Applicable Laws; Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

## SECTION SEVEN

### GENERAL PROVISIONS

7.01. Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the thirtieth (30) anniversary of the Effective Date, unless terminated earlier pursuant to the terms hereof. City agrees that the Master Developer shall have the right to request extension of the Term of this Agreement for an additional five (5) years upon the following conditions:

(a) Master Developer provides written notice of such extension to City at least one hundred-eighty (180) days prior to the expiration of the original Term of this Agreement; and

(b) Master Developer is not then in default of this Agreement;

Upon such extension, Master Developer and City shall enter into an amendment to this Agreement memorializing the extension of the Term.

7.02. Assignment. The Parties acknowledge that the intent of this Agreement is that there is a Master Developer responsible for all of the obligations in this Agreement throughout the Term of this Agreement.

(a) At any time during the Term, Master Developer and its successors-in-interest shall have the right to sell, assign or transfer all of its rights, title and interests to this Agreement (a "Transfer") to any person or entity (a "Transferee"). Except in regard to Transfers to Pre-Approved Transferees (which does not require any consent by the City as provided in Section 5.02(b) below), prior to consummating any Transfer, Master Developer shall obtain from the City written consent to the Transfer as provided for in this Agreement, which consent shall not be unreasonably withheld, delayed or conditioned. Master Developer's written request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City to consider and respond to Master Developer's request. Master Developer shall provide information to the City that Transferee, its employees, consultants and agents (collectively "Transferee Team") has: (i) the financial resources necessary to develop the Community, in accordance with the terms and conditions of this Agreement, or (ii) experience and expertise in developing projects similar in scope to the Community. The Master Developer's request, including approval of the Assignment and Assumption Agreement reasonably acceptable to the City, shall be promptly considered by the City Council for their approval or denial within forty-five (45) days from the date the City receives Master Developer's written request. Upon City's approval and the full execution of an Assignment and Assumption Agreement by City, Master Developer and Transferee, the Transferee shall thenceforth be deemed to be the Master Developer and responsible for all of the obligations in this Agreement and Master Developer shall be fully released from the obligations in this Agreement.

(b) Pre-Approved Transferees. Notwithstanding anything in this Agreement to the contrary, the following Transferees constitute "Pre-Approved Transferees," for which no City consent shall be required provided that such Pre-Approved Transferees shall assume in writing all obligations of the Master Developer hereunder by way of an Assignment and Assumption Agreement. The Assignment and Assumption Agreement shall be approved by the City Manager, whose approval shall not be unreasonably withheld, delayed or conditioned. The Assignment and Assumption Agreement shall be executed by the Master Developer and Pre-Approved Transferee and acknowledged by the City Manager. The Pre-Approved Transferee shall thenceforth be deemed to be the Master Developer and be



Master Developer an

responsible for all of the obligations in this Agreement and Master Developer shall be fully released from the obligations in this Agreement.

1) An entity owned or controlled by Master Developer or its Affiliates;

2) Any Investment Firm that does not plan to develop the Property. If Investment Firm desires to: (i) develop the Property, or (ii) Transfer the Property to a subsequent Transferee that intends to develop the Property, the Investment Firm shall obtain from the City written consent to: (i) commence development, or (ii) Transfer the Property to a subsequent Transferee that intends to develop the Property, which consent shall not be unreasonably withheld, delayed or conditioned. Investment Firm's written request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City Council to consider. Investment Firm shall provide information to the City that Investment Firm or Transferee and their employees, consultants and agents (collectively "Investment Firm Team" and "Transferee Team", respectively) that intends to develop the Property has: (i) the financial resources necessary to develop the Community, in accordance with the terms and conditions of this Agreement, or (ii) experience and expertise in developing projects similar in scope to the Community. The Investment Firm's request, including approval of the Assignment and Assumption Agreement reasonably acceptable to the City, shall be promptly considered by the City Council for their approval or denial within forty-five (45) days from the date the City receives Master Developer's written request. Upon City's approval and full execution of an Assignment and Assumption Agreement by City, Investment Firm and Transferee, the Transferee shall thenceforth be deemed to be the Master Developer and responsible for the all of the obligations in this Agreement.

(c) In Connection with Financing Transactions. Master Developer has full and sole discretion and authority to encumber the Property or portions thereof, or any improvements thereon, in connection with financing transactions, without limitation to the size or nature of any such transaction, the amount of land involved or the use of the proceeds therefrom, and may enter into such transactions at any time and from time to time without permission of or notice to City. All such financing transactions shall be subject to the terms and conditions of this Agreement.

7.03. Sale or Other Transfer Not to Relieve the Master Developer of its Obligation. Except as



its Obligation. Excep

expressly provided herein in this Agreement, no sale or other transfer of the Property or any subdivided development parcel shall relieve Master Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement, provided, however, that no such purchaser shall be deemed to be the Master Developer hereunder. This Section shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.

7.04 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, the Master Developer shall hold City, its officers, agents, employees, and representatives harmless from liability for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect development operations or activities of Master Developer, or those of its contractors, subcontractors, agents, employees, or other persons acting on Master Developer's behalf. Master Developer agrees to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused by reason of Master Developer's activities in connection with the development of the Community other than any challenges to the validly of this Agreement or City's approval of related entitlements or City's issuance of permits on the Property. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of City, its officers, agent, employees, or representatives. This section shall survive any termination of this Agreement.

7.05. Binding Effect of Agreement. Subject to this Agreement, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties' respective assigns and successors-in-interest and the property which is the subject of this Agreement.

7.06 Relationship of Parties. It is understood that the contractual relationship between City and Master Developer is such that Master Developer is not an agent of City for any purpose and City is not an agent of Master Developer for any capacity.

7.07 Counterparts. This Agreement may be executed at different times and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect to any signatures thereon, and may be attached to another counterpart,



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identical in form thereto, but having attached to it one or more additional signature pages. Delivery of a counterpart by facsimile or portable document format (pdf) through electronic mail transmission shall be as binding an execution and delivery of this Agreement by such Party as if the Party had delivered an actual physical original of this Agreement with an ink signature from such Party. Any Party delivering by facsimile or electronic mail transmission shall promptly thereafter deliver an executed counterpart original hereof to the other Party.

7.08 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing. Delivery may be accomplished in person, by certified mail (postage prepaid return receipt requested), or via electronic mail transmission. Mail notices shall be addressed as follows:

| | |
|---|---|
| To City: | City of Las Vegas<br>495 South Main Street<br>Las Vegas, Nevada 89101<br>Attention: City Manager<br>Attention: Director of the Department of Planning |
| To Master Developer: | 180 LAND COMPANY LLC<br>1215 Fort Apache Road, Suite 120<br>Las Vegas, NV 89117 |
| Copy to: | Chris Kaempfer<br>Kaempfer Crowell<br>1980 Festival Plaza Drive, Suite 650<br>Las Vegas, Nevada 89135 |

Either Party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

7.09 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all of any part of the subject matter hereof.

7.10 Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by



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the appropriate officers of Master Developer or approved by the City Council, as the case may be.

7.11 Recording; Amendments. Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Clark County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of City and Master Developer in a form suitable for recordation in the Official Records of Clark County, Nevada. No amendment of this Agreement shall in and of itself amend the 2016 Major Modification attached hereto as **Exhibit "C"** unless that is the expressed intention of the Parties to do so as it relates to the Property. Upon completion of the performance of this Agreement, a statement evidencing said completion, shall be signed by the appropriate officers of the City and Master Developer and shall be recorded in the Official Records of Clark County, Nevada. A revocation or termination shall be signed by the appropriate officers of the City and/or Master Developer and shall be recorded in the Official Records of Clark County, Nevada.

7.12 Headings; Exhibits; Cross References. The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

7.13 Release. Each residential lot shown on a recorded Subdivision Map within the Community shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of a building permit for the construction of a residence thereon.

7.14 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.



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7.15 Exercise of Discretion. Wherever a Party to this Agreement has discretion to make a decision, it shall be required that such discretion be exercised reasonably unless otherwise explicitly provided in the particular instance that such decision may be made in the Party's "sole" or "absolute" discretion or where otherwise allowed by applicable law.

7.16 No Third Party Beneficiary. This Agreement is intended to be for the exclusive benefit of the Parties hereto and their permitted assignees. No third party beneficiary to this Agreement is contemplated and none shall be construed or inferred from the terms hereof. In particular, no person purchasing or acquiring title to land within the Community, residing in the Community, or residing outside the Community shall, as a result of such purchase, acquisition or residence, have any right to enforce any obligation of Master Developer or City nor any right or cause of action for any alleged breach of any obligation hereunder by either party hereto.

7.17 Gender Neutral. In this Agreement (unless the context requires otherwise), the masculine, feminine and neutral genders and the singular and the plural include one another.

## SECTION EIGHT

### REVIEW OF DEVELOPMENT

8.01 Frequency of Reviews. As provided by NRS Chapter 278, Master Developer shall appear before the City Council to review the development of the Community. The Parties agree that the first review occur no later than twenty-four (24) months after the Effective Date of this Agreement, and again every twenty-four (24) months on the anniversary date of that first review thereafter or as otherwise requested by City upon fourteen (14) days written notice to Master Developer. For any such review, Master Developer shall provide, and City shall review, a report submitted by Master Developer documenting the extent of Master Developer's and City's material compliance with the terms of this Agreement during the preceding period.

**[Signatures on following pages]**

By:

_____

Mayor

Approved as to Form:

_____

City Attorney

Attest:

City Clerk

By:

_____

LuAnn Holmes, City Clerk

PRJ-63491
07/12/16

# MOD-63600, GPA-63599, ZON-63601 and DIR-63602

**180 LAND COMPANY LLC,**

a Nevada limited liability company

By: _____

Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me

on this _____ day of _____,

2015.

_____

Notary Public in and for said County and State

PRJ-63491
07/12/16

# MOD-63600, GPA-63599, ZON-63601 and DIR-63602

**ADDENDUM**

THIS ADDENDUM ("Addendum") is hereby attached to and made a part of the Development Agreement ("Agreement") between the City of Las Vegas ("City") and 180 Land Company LLC, a Nevada limited liability company ("Master Developer").

WHEREAS:

A. The City and Master Developer have negotiated the Agreement in good faith, pursuant to NRS 278 and Title 19, to establish long-range plans for the development of the Property as defined in the Agreement.

B. Upon City's request, the City and Master Developer wish to clarify certain topics in the Agreement as outlined herein.

C. The City staff has recommended approval of the Agreement identified as Director's Business Item (DIR-63602) and reaffirms its recommendation for approval as amended herein.

NOW, THEREFORE, the parties do hereby agree as follows:

1. In Development Area 4, the minimum one-half (1/2) acre lots allowed under the Design Guidelines, as defined in the Agreement as Exhibit D, shall be limited to Section A on Exhibit B. All other Sections on Exhibit B will have lots larger than one-half (1/2) acre and up to five (5) acres or more. No lot will be smaller than the adjacent existing lot(s) located outside the Property.

2. The following shall be added to Section 3.01(g)(ii) of the Agreement pertaining to the landscaped space in Development Area 4: "Upon completion of Development Area 4, there shall be a minimum of seven thousand five hundred (7,500) trees in Development Area 4".

3. There shall be no blasting on the Property during the term of the Agreement.

4. The Development Phasing, Exhibit F to the Agreement, shall be clarified under Development Area 4 to define "access ways" as rough roads within Development Area 4 without paving.

5. The Development Phasing, Exhibit F to the Agreement, shall be clarified under the Notes Section to state that the "clear and grub" option may only apply to the green space or turf space on the existing golf course and not to the existing desert portions of the golf course.

All other terms of the Agreement remain unchanged.

(SIGNATURES OF FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on this _____day of _____, 2016.

**CITY:**

**City Council, City of Las Vegas**

By: _____
Mayor

Approved as to Form:

_____
City Attorney

Attest:

City Clerk

By: _____
LuAnn Holmes, City Clerk



PRJ-63491
09/22/16

DIR-63602 - REVISED

**Master Developer**

**180 LAND COMPANY LLC,**

a Nevada limited liability company

By: _____

Name: _____
Title: _____

SUBSCRIBED AND SWORN TO before me

on this _____ day of _____, 2016.

_____
Notary Public in and for said County and State

# Exhibit 3

## Sandy Guerra

**From:** Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>
**Sent:** Tuesday, April 21, 2020 11:34 PM
**To:** George F. Ogilvie III
**Cc:** Todd Davis (EHB Companies); James Leavitt; Autumn Waters; sfloyd@lasvegasnevada.gov; pbyrnes@lasvegasnevada.gov; schwartz@smwlaw.com; bjerbic@lasvegasnevada.gov
**Subject:** Re: Bobby Weed Deposition

Mr. Ogilvie,

I am puzzled by your odd responses and unwillingness to take appropriate action and respond in kind.

I must assume you are unwilling to vacate as is your obligation and not mine to facilitate anything.

Unfortunately, you have left me with no choice but to move forward with court intervention.

Sincerely,
Elizabeth Ghanem Ham

Sent from my iPhone

> On Apr 21, 2020, at 10:17 PM, George F. Ogilvie III <gogilvie@mcdonaldcarano.com> wrote:
>
> Since Jim offered to communicate whether the deposition is going forward or not, I just figured that you may either represent him for purposes of the deposition or you may have contact with his counsel. I am willing to reach an accommodation with either Mr. Weed or his counsel if you could facilitate that. Thank you.
>
> **George F. Ogilvie III** | Partner
>
> **McDONALD CARANO**
>
> **P:** 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com
>
> ---
>
> **From:** Elizabeth Ham (EHB Companies) [mailto:EHam@ehbcompanies.com]
> **Sent:** Tuesday, April 21, 2020 8:34 PM
> **To:** George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
> **Cc:** Todd Davis (EHB Companies) <tdavis@ehbcompanies.com>; James Leavitt <jim@kermittwaters.com>; Autumn Waters <autumn@kermittwaters.com>; sfloyd@lasvegasnevada.gov; pbyrnes@lasvegasnevada.gov; schwartz@smwlaw.com; bjerbic@lasvegasnevada.gov
> **Subject:** Re: Bobby Weed Deposition
>
> Mr. Ogilvie,
>
> No, I cannot.

Please respond as to how you intend on proceeding.

Sincerely,
Elizabeth Ghanem Ham

Sent from my iPhone

On Apr 21, 2020, at 7:30 PM, George F. Ogilvie III <gogilvie@mcdonaldcarano.com> wrote:

Could you provide me with the contact information for his counsel?

**George F. Ogilvie III** | Partner

**McDONALD CARANO**

**P:** 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

---

**From:** Elizabeth Ham (EHB Companies) [mailto:EHam@ehbcompanies.com]
**Sent:** Tuesday, April 21, 2020 6:30 PM
**To:** George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
**Cc:** Todd Davis (EHB Companies) <tdavis@ehbcompanies.com>; James Leavitt <jim@kermittwaters.com>; Autumn Waters <autumn@kermittwaters.com>; sfloyd@lasvegasnevada.gov; pbyrnes@lasvegasnevada.gov; schwartz@smwlaw.com
**Subject:** Re: Bobby Weed Deposition

Mr. Ogilvie,

No, I do not represent Mr. Weed as you assuredly know.

Again, I request a response to my email below.

Sincerely,
Elizabeth Ghanem Ham

Sent from my iPhone

On Apr 21, 2020, at 6:06 PM, George F. Ogilvie III <gogilvie@mcdonaldcarano.com> wrote:

Do you represent Mr. Weed?

**George F. Ogilvie III** | Partner

**McDONALD CARANO**

**P:** 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

**From:** Elizabeth Ham (EHB Companies) [mailto:EHam@ehbcompanies.com]
**Sent:** Tuesday, April 21, 2020 5:46 PM
**To:** George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
**Cc:** Todd Davis (EHB Companies) <tdavis@ehbcompanies.com>; James Leavitt <jim@kermittwaters.com>; Autumn Waters <autumn@kermittwaters.com>; sfloyd@lasvegasnevada.gov; pbyrnes@lasvegasnevada.gov; schwartz@smwlaw.com
**Subject:** RE: Bobby Weed Deposition

Dear Mr. Ogilvie,

As you know, pursuant to the Admin. Order 20-13, no in person depositions shall proceed without a stipulation and order and after a filing of a motion demonstrating good cause. Likewise, document production pursuant to a subpoena duces tecum is tolled as are all discovery deadlines. This is consistent with Judge Williams order during the status check conference.

This our second request that you voluntarily vacate the out-of-state deposition of Mr. Robert C. Weed Jr. set for April 27, 2020. Your failure to respond to the first request and/or advise Mr. Weed of the same given the state of affairs during these unprecedented times is unacceptable to say the least. Thus, if you do not vacate the deposition immediately or advise me in writing that you intend on doing so, I will have no choice but to file a motion on order shortening time before the Court requesting the same. At that time, I will ask for attorneys fees and costs for having to do so.

I understand that we are all attempting to adjust how we work during these times, so I sincerely hope that I will not have to file anything with the Court and that you will respond immediately.

Best,

Hol}dehwk#Jkdqhp#K dp/#Ivt1
Counsel
EHB Companies
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(702) 610-5652 (Cellular)
eham@ehbcompanies.com

**From:** James Leavitt <jim@kermittwaters.com>
**Sent:** Friday, April 17, 2020 4:52 PM
**To:** George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
**Cc:** Autumn Waters <autumn@kermittwaters.com>; Michael Schneider <michael@kermittwaters.com>; Elizabeth Ham (EHB Companies) <EHam@ehbcompanies.com>
**Subject:** Bobby Weed Deposition

George:

I see there is a deposition for Bobby Weed on April 27 in Florida. I am assuming this deposition is not going forward.

Did you let Mr. Weed know the deposition is not going forward? If not, we can do that.

Have a great weekend.

Jim

Jim Leavitt, Esq.
***Law Offices of Kermitt L. Waters***
704 South Ninth Street
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tel: (702) 733-8877
fax: (702) 731-1964

# Exhibit 4

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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* * * * *

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.

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 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 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 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 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