

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**AMENDED
JOINT APPENDIX
VOLUME 69**

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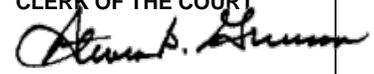
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9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 180 LAND CO LLC, a Nevada limited liability
company, FORE STARS, LTD., a Nevada
13 limited liability company and SEVENTY
ACRES, LLC, a Nevada limited liability
14 company, DOE INDIVIDUALS I-X, DOE
CORPORATIONS I-X, and DOE LIMITED
LIABILITY COMPANIES I-X,

15 Plaintiffs,

16 v.

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

20 Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**APPENDIX OF EXHIBITS IN
SUPPORT OF CITY'S OPPOSITION
TO PLAINTIFF'S MOTION TO
DETERMINE TAKE AND FOR
SUMMARY JUDGMENT ON THE
FIRST, THIRD, AND FOURTH
CLAIMS FOR RELIEF AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

VOLUME 11

22 The City of Las Vegas ("City") submits this Appendix of Exhibits in Support of the City's
23 Opposition to Plaintiff's Motion to Determine Take and For Summary Judgment on the First, Third,
24 and Fourth Claims for Relief and its Countermotion for Summary Judgment.

Exhibit	Exhibit Description	Vol.	Bates No.
A	City records regarding Ordinance No. 2136 (Annexing 2,246 acres to the City of Las Vegas)	1	0001-0011
B	City records regarding Peccole Land Use Plan and Z-34-81 rezoning application	1	0012-0030

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Exhibit	Exhibit Description	Vol.	Bates No.
C	City records regarding Venetian Foothills Master Plan and Z-30-86 rezoning application	1	0031-0050
D	Excerpts of the 1985 City of Las Vegas General Plan	1	0051-0061
E	City records regarding Peccole Ranch Master Plan and Z-139-88 phase I rezoning application	1	0062-0106
F	City records regarding Z-40-89 rezoning application	1	0107-0113
G	Ordinance No. 3472 and related records	1	0114-0137
H	City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application	1	0138-0194
I	Excerpts of 1992 City of Las Vegas General Plan	2	0195-0248
J	City records related to Badlands Golf Course expansion	2	0249-0254
K	Excerpt of land use case files for GPA-24-98 and GPA-6199	2	0255-0257
L	Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan	2	0258-0273
M	Miscellaneous Southwest Sector Land Use Maps from 2002-2005	2	0274-0277
N	Ordinance No. 5787 and Excerpts of 2005 Land Use Element	2	0278-0291
O	Ordinance No. 6056 and Excerpts of 2009 Land Use & Rural Neighborhoods Preservation Element	2	0292-0301
P	Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element	2	0302-0317
Q	Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element	2	0318-0332
R	Ordinance No. 1582	2	0333-0339
S	Ordinance No. 4073 and Excerpt of the 1997 City of Las Vegas Zoning Code	2	0340-0341
T	Ordinance No. 5353	2	0342-0361
U	Ordinance No. 6135 and Excerpts of City of Las Vegas Unified Development Code adopted March 16, 2011	2	0362-0364
V	Deeds transferring ownership of the Badlands Golf Course	2	0365-0377
W	Third Revised Justification Letter regarding the Major Modification to the 1990 Conceptual Peccole Ranch Master Plan	2	0378-0381
X	Parcel maps recorded by the Developer subdividing the Badlands Golf Course	3	0382-0410
Y	EHB Companies promotional materials	3	0411-0445
Z	General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications	3	0446-0466
AA	Staff Report regarding 17-Acre Applications	3	0467-0482

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Exhibit	Exhibit Description	Vol.	Bates No.
BB	Major Modification (MOD-63600), Rezoning (ZON-63601), General Plan Amendment (GPA-63599), and Development Agreement (DIR-63602) applications	3	0483-0582
CC	Letter requesting withdrawal of MOD-63600, GPA-63599, ZON-63601, DIR-63602 applications	4	0583
DD	Transcript of February 15, 2017 City Council meeting	4	0584-0597
EE	Judge Crockett's March 5, 2018 order granting Queensridge homeowners' petition for judicial review, Case No. A-17-752344-J	4	0598-0611
FF	Docket for NSC Case No. 75481	4	0612-0623
GG	Complaint filed by Fore Stars Ltd. and Seventy Acres LLC, Case No. A-18-773268-C	4	0624-0643
HH	General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications	4	0644-0671
II	June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480.	4	0672-0679
JJ	Docket for Case No. A-17-758528-J	4	0680-0768
KK	Judge Williams' Findings of Fact and Conclusions of Law, Case No. A-17-758528-J	5	0769-0793
LL	Development Agreement (DIR-70539) application	5	0794-0879
MM	August 2, 2017 City Council minutes regarding DIR-70539	5	0880-0882
NN	Judge Sturman's February 15, 2019 minute order granting City's motion to dismiss, Case No. A-18-775804-J	5	0883
OO	Excerpts of August 2, 2017 City Council meeting transcript	5	0884-0932
PP	Final maps for Amended Peccole West and Peccole West Lot 10	5	0933-0941
QQ	Excerpt of the 1983 Edition of the Las Vegas Municipal Code	5	0942-0951
RR	Ordinance No. 2185	5	0952-0956
SS	1990 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0957
TT	1996 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0958
UU	1998 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0959

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Exhibit	Exhibit Description	Vol.	Bates No.
VV	2015 aerial photograph identifying Phase I and Phase II boundaries, retail development, hotel/casino, and Developer projects, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0960
WW	2015 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0961
XX	2019 aerial photograph identifying Phase I and Phase II boundaries, and current assessor parcel numbers for the Badlands property, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0962
YY	2019 aerial photograph identifying Phase I and Phase II boundaries, and areas subject to inverse condemnation litigation, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0963
ZZ	2019 aerial photograph identifying areas subject to proposed development agreement (DIR-70539), produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)	5	0964
AAA	Membership Interest Purchase and Sale Agreement	6	0965-0981
BBB	Transcript of May 16, 2018 City Council meeting	6	0982-0998
CCC	City of Las Vegas' Amicus Curiae Brief, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481	6	0999-1009
DDD	Nevada Supreme Court March 5, 2020 Order of Reversal, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481	6	1010-1016
EEE	Nevada Supreme Court August 24, 2020 Remittitur, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481	6	1017-1018
FFF	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlements on 17 Acres	6	1019-1020
GGG	September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435-Unit Housing Development Project in Badlands	6	1021-1026
HHH	Complaint Pursuant to 42 U.S.C. § 1983, <i>180 Land Co. LLC et al. v. City of Las Vegas, et al.</i> , 18-cv-00547 (2018)	6	1027-1122
III	9th Circuit Order in <i>180 Land Co. LLC; et al v. City of Las Vegas, et al.</i> , 18-cv-0547 (Oct. 19, 2020)	6	1123-1127
JJJ	Plaintiff Landowners' Second Supplement to Initial Disclosures Pursuant to NRCP 16.1 in 65-Acre case	6	1128-1137
LLL	Bill No. 2019-48: Ordinance No. 6720	7	1138-1142

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Exhibit	Exhibit Description	Vol.	Bates No.
MMM	Bill No. 2019-51: Ordinance No. 6722	7	1143-1150
NNN	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 65 Acres	7	1151-1152
OOO	March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres	7	1153-1155
PPP	April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres	7	1156-1157
QQQ	Valbridge Property Advisors, Lubawy & Associates Inc., Appraisal Report (Aug. 26, 2015)	7	1158-1247
RRR	Notice of Entry of Order Adopting the Order of the Nevada Supreme Court and Denying Petition for Judicial Review	7	1248-1281
SSS	Letters from City of Las Vegas Approval Letters for 17-Acre Property (Feb. 16, 2017)	8	1282-1287
TTT	Reply Brief of Appellants 180 Land Co. LLC, Fore Stars, LTD, Seventy Acres LLC, and Yohan Lowie in <i>180 Land Co LLC et al v. City of Las Vegas</i> , Court of Appeals for the Ninth Circuit Case No. 19-16114 (June 23, 2020)	8	1288-1294
UUU	Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020)	8	1295-1306
VVV	Plaintiff Landowners' Sixteenth Supplement to Initial Disclosures in <i>180 Land Co., LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 10, 2020)	8	1307-1321
WWW	Excerpt of Transcript of Las Vegas City Council Meeting (Aug. 2, 2017)	8	1322-1371
XXX	Notice of Entry of Findings of Facts and Conclusions of Law on Petition for Judicial Review in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-17-758528-J (Nov. 26, 2018)	8	1372-1399
YYY	Notice of Entry of Order <i>Nunc Pro Tunc</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019 in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-17-758528 (Feb. 6, 2019)	8	1400-1405
ZZZ	City of Las Vegas Agenda Memo – Planning, for City Council Meeting June 21, 2017, Re: GPA-68385, WVR-68480, SDR-68481, and TMP-68482 [PRJ-67184]	8	1406-1432

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Exhibit	Exhibit Description	Vol.	Bates No.
AAAA	Excerpts from the Land Use and Rural Neighborhoods Preservation Element of the City's 2020 Master Plan adopted by the City Council of the City on September 2, 2009	8	1433-1439
BBBB	Summons and Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-18-780184-C	8	1440-1477
CCCC	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020)	8	1478-1515
DDDD	Peter Lowenstein Declaration	9	1516-1522
DDDD-1	Exhibit 1 to Peter Lowenstein Declaration: Diagram of Existing Access Points	9	1523-1526
DDDD-2	Exhibit 2 to Peter Lowenstein Declaration: July 5, 2017 Email from Mark Colloton	9	1527-1531
DDDD-3	Exhibit 3 to Peter Lowenstein Declaration: June 28, 2017 Permit application	9	1532-1533
DDDD-4	Exhibit 4 to Peter Lowenstein Declaration: June 29, 2017 Email from Mark Colloton re Rampart and Hualapai	9	1534-1536
DDDD-5	Exhibit 5 to Peter Lowenstein Declaration: August 24, 2017 Letter from City Department of Planning	9	1537
DDDD-6	Exhibit 6 to Peter Lowenstein Declaration: July 26, 2017 Email from Peter Lowenstein re Wall Fence	9	1538
DDDD-7	Exhibit 7 to Peter Lowenstein Declaration: August 10, 2017 Application for Walls, Fences, or Retaining Walls; related materials	9	1539-1546
DDDD-8	Exhibit 8 to Peter Lowenstein Declaration: August 24, 2017 Email from Steve Gebeke	9	1547-1553
DDDD-9	Exhibit 9 to Peter Lowenstein Declaration: Bill No. 2018-24	9	1554-1569
DDDD-10	Exhibit 10 to Peter Lowenstein Declaration: Las Vegas City Council Ordinance No. 6056 and excerpts from Land Use & Rural Neighborhoods Preservation Element	9	1570-1577
DDDD-11	Exhibit 11 to Peter Lowenstein Declaration: documents submitted to Las Vegas Planning Commission by Jim Jimmerson at February 14, 2017 Planning Commission meeting	9	1578-1587
EEEE	GPA-72220 application form	9	1588-1590
FFFF	Chris Molina Declaration	9	1591-1605
FFFF-1	Fully Executed Copy of Membership Interest Purchase and Sale Agreement for Fore Stars Ltd.	9	1606-1622

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-2	Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property	9	1623-1629
FFFF-3	Reference map of properties involved in transactions between Developer and Peccole family	9	1630
FFFF-4	Excerpt of appraisal for One Queensridge place dated October 13, 2005	9	1631-1632
FFFF-5	Site Plan Approval for One Queensridge Place (SDR-4206)	9	1633-1636
FFFF-6	Securities Redemption Agreement dated September 14, 2005	9	1637-1654
FFFF-7	Securities Purchase Agreement dated September 14, 2005	9	1655-1692
FFFF-8	Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005	9	1693-1730
FFFF-9	Settlement Agreement and Mutual Release dated June 28, 2013	10	1731-1782
FFFF-10	June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course	10	1783-1786
FFFF-11	July 25, 2014 email and initial draft of Golf Course Purchase Agreement	10	1787-1813
FFFF-12	August 26, 2014 email from Todd Davis and revised purchase agreement	10	1814-1843
FFFF-13	August 27, 2014 email from Billy Bayne regarding purchase agreement	10	1844-1846
FFFF-14	September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal	10	1847-1848
FFFF-15	November 3, 2014 email regarding BGC Holdings LLC	10	1849-1851
FFFF-16	November 26, 2014 email and initial draft of stock purchase and sale agreement	10	1852-1870
FFFF-17	December 1, 2015 emails regarding stock purchase agreement	10	1871-1872
FFFF-18	December 1, 2015 email and fully executed signature page for stock purchase agreement	10	1873-1874
FFFF-19	December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements	10	1875-1876
FFFF-20	February 19, 2015 emails regarding notes and clarifications to purchase agreement	10	1877-1879
FFFF-21	February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1880
FFFF-22	February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1881-1882
FFFF-23	Fully executed Membership Interest Purchase Agreement for WRL LLC	10	1883-1890

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-24	June 12, 2015 email regarding clubhouse parcel and recorded parcel map	10	1891-1895
FFFF-25	Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.	10	1896-1900
FFFF-26	Record of Survey for Hualapai Commons Ltd.	10	1901
FFFF-27	Deed from Hualapai Commons Ltd. to EHC Hualapai LLC	10	1902-1914
FFFF-28	Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC	10	1915-1931
FFFF-29	City of Las Vegas' First Set of Interrogatories to Plaintiff	10	1932-1945
FFFF-30	Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3 rd Supplement	10	1946-1973
FFFF-31	City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1974-1981
FFFF-32	Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1982-1989
FFFF-33	September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents	11	1990-1994
FFFF-34	First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1995-2002
FFFF-35	Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2003-2032
FFFF-36	Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2033-2109
FFFF-37	February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2110-2118
FFFF-38	April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order	11	2119-2120
FFFF-39	April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021	11	2121-2123
FFFF-40	Hydrologic Criteria and Drainage Design Manual, Section 200	11	2124-2142
FFFF-41	Hydrologic Criteria and Drainage Design Manual, Standard Form 1	11	2143
FFFF-42	Hydrologic Criteria and Drainage Design Manual, Standard Form 2	11	2144-2148
FFFF-43	Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study	11	2149-2152

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Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-44	Excerpts from Peccole Ranch Master Plan Phase II regarding drainage and open space	11	2153-2159
FFFF-45	Aerial photos and demonstrative aids showing Badlands open space and drainage system	11	2160-2163
FFFF-46	August 16, 2016 letter from City Streets & Sanitation Manager regarding Badlands Golf Course Drainage Maintenance	11	2164-2166
FFFF-47	Excerpt from EHB Companies promotional materials regarding security concerns and drainage culverts	11	2167
GGGG	Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims Etc. in <i>180 Land Co., LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (March 21, 2019)	11	2168-2178
HHHH	State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i> (Nov. 30, 2017)	11	2179-2183
IIII	Clark County Real Property Tax Values	11	2184-2199
JJJJ	Clark County Tax Assessor's Property Account Inquiry - Summary Screen	11	2200-2201
KKKK	February 22, 2017 Clark County Assessor Letter to 180 Land Co. LLC, re Assessor's Golf Course Assessment	11	2202
LLLL	Petitioner's Opening Brief, <i>In the matter of 180 Land Co. LLC</i> (Aug. 29, 2017), State Board of Equalization	12	2203-2240
MMMM	September 21, 2017 Clark County Assessor Stipulation for the State Board of Equalization	12	2241
NNNN	Excerpt of Reporter's Transcript of Hearing in <i>180 Land Co. v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Feb. 16, 2021)	12	2242-2293
OOOO	June 28, 2016 Letter from Mark Colloton re: Reasons for Access Points Off Hualapai Way and Rampart Blvd.	12	2294-2299
PPPP	Transcript of City Council Meeting (May 16, 2018)	12	2300-2375
QQQQ	Supplemental Declaration of Seth T. Floyd	13	2376-2379
QQQQ-1	1981 Peccole Property Land Use Plan	13	2380
QQQQ-2	1985 Las Vegas General Plan	13	2381-2462
QQQQ-3	1975 General Plan	13	2463-2558
QQQQ-4	Planning Commission meeting records regarding 1985 General Plan	14	2559-2786
QQQQ-5	1986 Venetian Foothills Master Plan	14	2787
QQQQ-6	1989 Peccole Ranch Master Plan	14	2788
QQQQ-7	1990 Master Development Plan Amendment	14	2789
QQQQ-8	Citizen's Advisory Committee records regarding 1992 General Plan	14	2790-2807

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Exhibit	Exhibit Description	Vol.	Bates No.
QQQQ-9	1992 Las Vegas General Plan	15-16	2808-3257
QQQQ-10	1992 Southwest Sector Map	17	3258
QQQQ-11	Ordinance No. 5250 (Adopting 2020 Master Plan)	17	3259-3266
QQQQ-12	Las Vegas 2020 Master Plan	17	3267-3349
QQQQ-13	Ordinance No. 5787 (Adopting 2005 Land Use Element)	17	3350-3416
QQQQ-14	2005 Land Use Element	17	3417-3474
QQQQ-15	Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)	17	3475-3479
QQQQ-16	2009 Land Use and Rural Neighborhoods Preservation Element	18	3480-3579
QQQQ-17	Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element)	18	3580-3589
QQQQ-18	Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)	18	3590-3600
QQQQ-19	2018 Land Use & Rural Neighborhoods Preservation Element	18	3601-3700

DATED this 25th day of August 2021.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
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 Christopher Molina (NV Bar No. 14092)
 2300 W. Sahara Avenue, Suite 1200
 Las Vegas, Nevada 89102

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SHUTE, MIHALY & WEINBERGER, LLP
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 (Admitted *pro hac vice*)
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 (Admitted *pro hac vice*)
 396 Hayes Street
 San Francisco, California 94102

Attorneys for City of Las Vegas

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 25th day of August, 2020, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF CITY’S OPPOSITION TO PLAINTIFF’S MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF AND COUNTERMOTION FOR SUMMARY JUDGMENT – VOLUME 11** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “FFFF-31”

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Philip R. Byrnes (NV Bar No. 166)
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6 sfloyd@lasvegasnevada.gov

7 (Additional Counsel Identified on Signature Page)

8 *Attorneys for City of Las Vegas*

9
10 **DISTRICT COURT**
CLARK COUNTY, NEVADA

11 180 LAND CO LLC, a Nevada limited liability
company, FORE STARS, LTD., a Nevada limited
12 liability company and SEVENTY ACRES, LLC, a
Nevada limited liability company, DOE
13 INDIVIDUALS I-X, DOE CORPORATIONS I-X,
and DOE LIMITED LIABILITY COMPANIES I-X,

14 Plaintiffs,

15 v.

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

20 Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**CITY OF LAS VEGAS' SECOND
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
TO PLAINTIFF**

21
22 Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Defendant City of Las
23 Vegas (the "City") by and through its counsel of record, hereby serves the following First Set of
24 Requests for Production of Documents ("Document Requests") to 180 Land Co, LLC ("Plaintiff")
25 and asks that Plaintiff respond in writing within thirty (30) days of the date of service, to McDonald
26 Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. These Document
27 Requests are continuing in nature and Plaintiff must timely supplement the answers to them under
28 Nev. R. Civ. P. 26(e) whenever a response is in some material respect incomplete or incorrect.

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

DEFINITIONS

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1. The terms “Plaintiff,” “you,” “yours,” “the Developer,” and “the Landowner” mean and refer to 180 Land Co, LLC and includes, where applicable, any and all persons or entities that directly or indirectly controls, is controlled by, or is under common control with the foregoing entities, and each of their respective partners, members, managers, officers, directors, shareholders, agents, employees, consultants, inspectors, engineers, contractors, and any other persons under their direction or control or under the direction or control of any of the foregoing, or acting on their behalf or on behalf of any of the foregoing, regardless of affiliation or employment.

2. The term “Badlands Property” means and refers that certain real property consisting of approximately 250 acres located in Clark County, Nevada and commonly referred to as Assessor’s Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004, 138-31-201-005, 138-31-801-002, 138-31-801-003, 138-32-301-007, 138-32-301-005, 138-32-210-008, and 138-32-202-001.

3. The term “Queensridge Towers” means and refers to the luxury condominium towers also known as One Queensridge Place Condominium Subdivision located at 9101 & 9103 Alta Drive, Las Vegas, Nevada 89117.

4. The term “Queensridge Common Interest Community” means and refers to the real property subject to the Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge recorded May 30, 1996, in the Office of the County Recorder of Clark County Nevada as Document No. 960530-00241, as amended.

5. “Communication” means the transfer of information from a person or entity, place, location, format, or medium to another person or entity, place, location, format, or medium, without regard to the means employed to accomplish such transfer of information, but including without limitation oral, written and electronic information transfers; each such information transfer, if interrupted or otherwise separated in time, is a separate communication.

6. “Document” is defined to be synonymous in meaning and equal or exceeding in scope the usage of this term in NRCP 34(a). It includes images, words and symbols that are electronically stored and which, if printed on paper, would be the text of a document, as well as

1 metadata contained within particular electronic files. It also means all written or graphic matter of
2 every kind or description however produced or reproduced whether in draft, in final, original or
3 reproduction, signed or unsigned, whether or not now in existence, and regardless of whether
4 approved, sent, received, redrafted or executed, and includes without limiting the generality of its
5 meaning all correspondence, telegrams, notes, e-mail, video or sound recordings of any type of
6 communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings, memoranda,
7 interoffice communications, intra office communications, notations, correspondence, diaries, desk
8 calendars, appointment books, reports, studies, analyses, summaries, results of investigations or
9 tests, reviews, contracts, agreements, working papers, tax returns, statistical records, ledgers, books
10 of account, vouchers, bank checks, bank statements, invoices, receipts, records, business records,
11 photographs, tape or sound recordings, maps, charts, photographs, plats, drawings or other graphic
12 representations, logs, investigators' reports, stenographers' notebooks, manuals, directives,
13 bulletins, computer data, computer records, or data compilations of any type or kind of material
14 similar to any of the foregoing however denominated and to whomever addressed. "Document"
15 shall include, but is not limited to, all Electronically Stored Information ("ESI"), any electronically
16 stored data on magnetic or optical storage media as an "active" file (readily readable by one or more
17 computer applications or forensic software); any "deleted" but recoverable electronic files on said
18 media; any electronic file fragments (files that have been deleted and partially overwritten with new
19 data); and slack (data fragments stored randomly from random access memory on a hard drive
20 during the normal operation of a computer [RAM slack] or residual data left on the hard drive after
21 new data has overwritten some but not all of the previously stored data. "Document" shall exclude
22 exact duplicates when originals are available but shall include all copies made different from
23 originals by virtue of any writings, notations, symbols, characters, impressions or any marks
24 thereon.

25 **RULES OF CONSTRUCTION**

26 1. The terms "relate to," "related to," and "relating to" include "refer to," "summarize,"
27 "reflect," "constitute," "contain," "embody," "mention," "show," "comprise," "evidence,"
28 "discuss," "describe," or "pertaining to."

1 some other ground or privilege or immunity, each such document or piece of information shall be
2 identified with at least the following information:

- 3 a. A description of the general nature of the information or document, e.g.,
4 "letter," "memorandum," "report," "miscellaneous note," etc., and the
5 number of pages it comprises;
- 6 b. The date, and if no date appears thereon, the identification shall so state and
7 shall give the date or approximate date such document was prepared;
- 8 c. A brief description of the subject matter;
- 9 d. The name and address of each person who prepared or participated in the
10 preparation of such document or information and the organization, if any,
11 with which each such person was then affiliated;
- 12 e. The name and address of each recipient of such document or information and
13 the organization, if any, with which each such person was then affiliated;
- 14 f. The name and address of all other distributees or persons who have seen the
15 document or received the information and the organization, if any, with
16 which each such person was then affiliated;
- 17 g. All attorneys involved in the preparation or receipt of such document or
18 information, if the attorney-client privilege or work product protection is
19 claimed as to such document;
- 20 h. A statement of the grounds for refusal to produce such document or
21 information.

22 3. If you contend that only a portion of any document or information that is called for
23 by these requests is privileged or otherwise not subject to production, please provide all
24 information, deleting the privileged or objectionable portion. With respect to the deleted portion, to
25 the extent that the produced portion does not do so, provide the same information that would be
26 provided if the entire document were withheld as privileged, as set forth in the previous instruction.

27 4. These requests shall be deemed to be continuing, and any additional information or
28 documents relating in any way to these requests or your original responses that are acquired

1 subsequent to the date of responding to these requests, up to and including the time of trial, shall be
2 furnished promptly after such information or documents are acquired as supplemental responses to
3 these requests.

4 5. These requests call for all information (including information contained in
5 documents) known or reasonably available to you, your attorneys, investigators, representatives,
6 agents or others acting on your behalf or under your direction or control, not merely such
7 information as is known of your own personal knowledge. Each answer must be as complete and
8 straightforward as the information reasonably available to you permits.

9 6. All other requirements of Rules 26 and 34 of the Nevada Rules of Civil Procedure
10 are hereby incorporated by reference.

11 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

12 **REQUEST FOR PRODUCTION NO. 16:**

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

16 **REQUEST FOR PRODUCTION NO. 17:**

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

20 **REQUEST FOR PRODUCTION NO. 18:**

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

24 **REQUEST FOR PRODUCTION NO. 19:**

25 Produce all documents related to that certain Memorandum of Agreement recorded June 28,
26 2013 in the Official Records of Clark County as Document No. 201306280004173, including but
27 not limited to the Settlement Agreement referenced therein.

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REQUEST FOR PRODUCTION NO. 20:

Produce copies of all public offering statements and related disclosures furnished pursuant to NRS 116.4102 in connection with the purchase and sale of units in the Queensridge Towers, including but not limited any attachments or exhibits thereto.

REQUEST FOR PRODUCTION NO. 21:

Produce all public offering statements and related disclosures furnished pursuant to NRS 116.4102 in connection with the purchase and sale of custom lots in the Queensridge Common Interest Community, including but not limited to any attachments or exhibits thereto.

REQUEST FOR PRODUCTION NO. 22:

Produce all appraisals of the Badlands Property or any portion thereof that have been completed subsequent to January 1, 2014.

REQUEST FOR PRODUCTION NO. 23:

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

DATED: February 21, 2020. By: /s/ George F. Ogilvie III

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*Attorneys for Defendant
City of Las Vegas*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of February, 2020, I caused a true and correct copy of the foregoing **CITY OF LAS VEGAS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF** to be served, via U.S. Mail, to the following:

LAW OFFICES OF KERMIT L. WATERS
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James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.,
704 South Ninth Street
Las Vegas, Nevada 89101

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison
Joseph S. Kistler
Matthew K. Schriever
Peccole Professional Park
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Las Vegas, NV 89145

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “FFFF-32”

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6 Las Vegas, Nevada 89101
Telephone: (702) 733-8877
7 Facsimile: (702) 731-1964

8 *Attorneys for Plaintiff Landowners*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 180 LAND COMPANY, LLC, a Nevada limited liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED LIABILITY COMPANIES I through X,)
13) CASE NO.: A-17-758528-J
14) DEPT. NO. XVI
15)
16) Plaintiffs,)

15 vs.)

16 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,)
17) **PLAINTIFF 180 LAND COMPANY, LLC'S RESPONSE TO DEFENDANT CITY OF LAS VEGAS' SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF**
18)
19)
20) Defendants.)

21
22 TO: CITY OF LAS VEGAS, Defendants

23 TO: GEORGE F. OGILVIE III, its attorney

24 COMES NOW PLAINTIFF 180 LAND COMPANY, LLC, by and through its attorneys the
25 Law Offices of Kermitt L. Waters, and hereby responds to Defendant CITY OF LAS VEGAS'
26 Second Set of Requests for Production of Documents to Plaintiff as follows:
27
28

1 **DEFINITIONS AND GENERAL OBJECTIONS**

- 2 1. “Nondiscoverable/Irrelevant” - The request in question concerns a matter that is not relevant
3 to the subject matter of this litigation and is not reasonably calculated to lead to the discovery
4 of admissible evidence.
- 5 2. “Unduly burdensome” - The request in question seeks discovery that is unduly burdensome
6 or expensive, taking into account the needs of the case, limitation on the party’s resources, and
7 the importance of the issues at stake in the litigation.
- 8 3. “Vague” - The request in question contains a word or phrase that is not adequately defined,
9 or the overall request is confusing or ambiguous, and the Landowner is unable to reasonably
10 ascertain what documents City of Las Vegas (“City”) seeks in the request.
- 11 4. “Overbroad” and/or “Overly Broad” - The request in question seeks documents beyond the
12 scope of, or beyond the time period relevant to, the subject matter of this litigation and,
13 accordingly, seeks documents that are nondiscoverable/irrelevant and is unduly burdensome.
- 14 5. The Landowner objects to the City requests to the extent that they seek any information
15 protected by any absolute or qualified privilege or exemption, including, but not limited to,
16 the attorney-client privilege, common interest privilege, the attorney work-product exemption,
17 accountant-client privilege, and/or the consulting expert exemption.
- 18 6. The Landowner objects to the City’s requests on the grounds that they are excessively
19 burdensome and that many of the documents requested may be obtained by the City from
20 other sources more conveniently, less expensively, and with less burden.
- 21 7. Documents will be provided on the basis of documents available to and located by Landowner
22 at this time. There may be other and further documents respecting the requests propounded
23 by the City of which the Landowner, despite its reasonable investigation and inquiry, is
24 presently unaware. The Landowner therefore, reserves the right to modify, supplement,
25 amend, or enlarge any response with such pertinent additional documents as it may
26 subsequently discover.
- 27 8. No incidental or implied admissions will be made by the responses. The fact that the
28 Landowner may respond or object to any request, or part thereof, shall not be deemed an
admission that the Landowner accepts or admits the existence of any fact set forth or assumed

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by such request, or that such response constitutes admissible evidence. The fact that the Landowner responds to a part of any request is not to be deemed a waiver by it of its objections, including privilege, to other parts of the request in question.

9. The Landowner objects to any request to the extent that it would impose upon it greater duties than are set forth under the Nevada Rules of Civil Procedure. When necessary, the Landowner may supplement its responses to requests as required by the Nevada Rules of Civil Procedures.

10. Each response will be subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any ground that would require the exclusion from evidence of any statement herein if any such statements were made by a witness present and testifying at trial, all of which objections and grounds are expressly reserved and may be interposed at trial.

11. Any citation to a specific document or Bates-stamp range of documents is based on a reasonable review. Other individual documents, document duplicates, or other range of documents produced in this matter may additionally be responsive and shall not be deemed non responsive if not specifically indicated/identified.

12. The Landowner objects to the requests to the extent that they seek information that is unrelated and/or irrelevant to the value of the property City has taken through this action or property the Landowner alleges that City has taken prior to and through this action.

13. The Landowner objects to these requests because the requests impose an undue burden to the extent they ask the Landowner to identify documents already identified and produced in this action.

1 **REQUEST TO PRODUCE NO. 16:**

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

5 **RESPONSE TO REQUEST TO PRODUCE NO. 16:**

6 *OBJECTION:* This request is irrelevant having no application to the City’s taking of the
7 Subject Property nor the value of the Subject Property. Further this request is cumulative and/or
8 duplicative and therefore oppressive and burdensome to the Plaintiff as it seeks information already
9 requested pursuant to the City’s Request to Produce No. 1 and 2. This request also includes a request
10 for information that is confidential and privileged. **Without waiving said objections, there are no**
11 **documents within the Plaintiffs custody and control that state that the aggregate of**
12 **consideration given to the Peccole family for the former Badlands golf course property was \$45**
13 **million.**

14 **REQUEST TO PRODUCE NO. 17:**

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

18 **RESPONSE TO REQUEST TO PRODUCE NO. 17:**

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

27

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1 **REQUEST TO PRODUCE NO. 18:**

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

5 **RESPONSE TO REQUEST TO PRODUCE NO. 18:**

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

11 **REQUEST TO PRODUCE NO. 19:**

12 Produce all documents related to that certain Memorandum of Agreement recorded June 28,
13 2013 in the Official Records of Clark County as Document No. 201306280004173, including but not
14 limited to the Settlement Agreement referenced therein.

15 **RESPONSE TO REQUEST TO PRODUCE NO. 19:**

16 *OBJECTION.* This request seeks information which is equally available to all parties via
17 public filings, and is therefore oppressive and burdensome to Plaintiff. This request further seeks
18 information that is irrelevant to the subject matter of this action and is not reasonably related to any
19 claims or defenses in this matter having no application to the City's taking of the Subject Property
20 nor the value of the Subject Property. **Without waiving said objections, there are no documents
21 within Plaintiffs control responsive to this request.**

22 **REQUEST TO PRODUCE NO. 20:**

23 Produce copies of all public offering statements and related disclosures furnished pursuant to
24 NRS 116.4102 in connection with the purchase and sale of units in the Queensridge Towers,
25 including but not limited any attachments or exhibits thereto.

26 **RESPONSE TO REQUEST TO PRODUCE NO. 20:**

27 *OBJECTION:* This request seeks information which is public and available to all parties, and
28 is therefore oppressive and burdensome to request from Plaintiff. This request also requires a
laborious, time consuming search of incidental and/or secondary details.

1 **Without waiving said objections, see LO0035784 - LO0035819 a copy of a public offering**
2 **statement and related disclosure provided to a principal owner of a unit within Queensridge**
3 **Towers.**

4 **REQUEST TO PRODUCE NO. 21:**

5 Produce all public offering statements and related disclosures furnished pursuant to NRS
6 116.4102 in connection with the purchase and sale of custom lots in the Queensridge Common
7 Interest Community, including but not limited to any attachments or exhibits thereto.

8 **RESPONSE TO REQUEST TO PRODUCE NO. 21:**

9 *OBJECTION:* This request seeks documents that are public and available to all parties, and
10 is therefore oppressive and burdensome to request from Plaintiff. **Without waiving said objections,**
11 **see LO0034187-LO0034761 a copy of the referenced document provided to a principal owner**
12 **of a lot within the Queensridge Common Interest Community.**

13 **REQUEST TO PRODUCE NO. 22:**

14 Produce all appraisals of the Badlands Property or any portion thereof that have been
15 completed subsequent to January 1, 2014.

16 **RESPONSE TO REQUEST TO PRODUCE NO. 22:**

17 *OBJECTION:* This request seeks documents outside the scope of this case as it references
18 250 acres of land owned by other entities or part of other parcels and not a part of this case. **Without**
19 **waiving said objections, see LO0034762- LO0035783.**

20 **REQUEST TO PRODUCE NO. 23:**

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

24 **RESPONSE TO REQUEST TO PRODUCE NO. 23:**

25 *OBJECTION:* This request is cumulative and/or duplicative and therefore oppressive and
26 burdensome to the Plaintiff as it seeks information already requested pursuant to the City's Request
27 to Produce No 5. This request is also overly broad, indefinite as to time and without reasonable
28 limitation in its scope. This request also seeks information that is attorney / expert work product and
requests documents that are non-discoverable under Nevada's Discovery rules, namely, experts and

1 consultants that have been retained and may not be called to testify at trial. This request seeks expert
2 reports which are not currently due to be exchanged. Further, this request is outside the scope of this
3 case as it requests documents for 250 acres of land owned by other entities or part of other parcels and
4 not a part of this case.

5 **THE LANDOWNER RESERVES THE RIGHT TO SUPPLEMENT AND/OR AMEND**
6 **THESE RESPONSES AS DISCOVERY CONTINUES AND/OR AS DEEMED**
7 **NECESSARY IN THIS MATTER**

8 DATED this 4th day of September, 2020.

9 */s/ Elizabeth Ghanem Ham*

10 **ELIZABETH GHANEM HAM**

11 *In house counsel for the Landowners*

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

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14 Nevada Bar No. 2571

15 JAMES J. LEAVITT, ESQ.

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19 AUTUMN WATERS, ESQ.

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21 *Attorneys for Plaintiff Landowners*

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CERTIFICATE OF SERVICE

Pursuant to NRCP5(b), I certify that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 4th day of September, 2020, I caused to be served the foregoing document(s): **PLAINTIFF 180 LAND COMPANY, LLC’S RESPONSE TO DEFENDANT CITY OF LAS VEGAS’ SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF** via the Court’s electronic filing and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to the following:

MCDONALD CARANO LLP
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/s/ Evelyn Washington

Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters

EXHIBIT “FFFF-33”

George F. Ogilvie III

Reply to Las Vegas

September 14, 2020

VIA ELECTRONIC MAIL

James J. Leavitt, Esq.
Autumn Waters, Esq.
LAW OFFICES OF KERMIT L. WATERS
704 South Ninth Street
Las Vegas, Nevada 89101

EHB COMPANIES
Elizabeth Ham, Esq.
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117

**Re: 180 Land Co, LLC, et al. v. The City of Las Vegas (Case No. A-17-758528-J)
Responses to City's Second Set of Requests for Production of Documents**

Counsel,

This morning, I received an email from Jennifer Knighton advising that Elizabeth Ghanem Ham and Todd Davis are available at 1:30 p.m. on September 16, 2020 to conduct the meet and confer requested in my August 28, 2020 and September 9, 2020 letters. We are still available at that date and time, so please calendar it accordingly. You may access the meet and confer by dialing 702-589-2680, and using participant code 682-2983#.

In addition to confirming the scheduling of the meet and confer, this letter identifies deficiencies regarding (i) Plaintiff Landowners' Ninth Supplement to Initial Disclosures ("Ninth Supp."); and (ii) Plaintiff 180 Land Co, LLC's responses to the City's second set of requests for production of documents. The City requests that Plaintiffs 180 Land Co, LLC ("180 Land") and Fore Stars, Ltd. ("Fore Stars") (collectively "Developer") correct these deficiencies, which will be additional items discussed during the September 16 meet and confer.

The City served its second set of requests for production of documents to 180 Land on February 21, 2020 ("Second Set of RFPDs"). 180 Land finally responded with written answers and objections on September 4, 2020. Before responding, however, the Developer served its Eighth Supplement to Initial Disclosures on August 21, 2020 ("Eighth Supp."), which identified documents responsive to half of the Second Set of RFPDs. Please refer to my August 28 letter regarding the deficiencies with the Eighth Supp.

mcdonaldcarano.com

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James J. Leavitt, Esq.
Autumn Waters, Esq.
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September 14, 2020
Page 2

The Ninth Supp. lists only two documents (totaling seven pages), however, both of these documents are copies of documents already produced. *See* LO 0021152 and LO 0020357 (produced July 20, 2020 with Plaintiff Landowners’ Sixth Supplement to Initial Disclosures). There is no reason to “supplement” the Developer’s disclosures with documents that have already been disclosed. To avoid production of duplicative documents in the future, please identify responsive documents already produced by Bates number.

Request No. 16: Produce all documents that support your 1st Supplemental Answer to Interrogatory No. 19 stating that “the aggregate of consideration given to the Peccole family for the former Badlands golf course property was approximately \$45 million.”

In response to this request, the Developer claims “there are no documents within the Plaintiffs custody and control that *state* that the aggregate of consideration given to the Peccole family for the former Badlands golf course property was \$45 million.” (Emphasis added). This response deliberately misconstrues the request, which asks to produce documents that “support” its response to Interrogatory No. 19. The Developer’s evasive response to this request will be treated as a failure to respond. *See* NRCP 37(a)(4).

The Developer’s relevance objection is frivolous. Whether a taking has occurred depends largely upon the particular circumstances in each case. *See Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982) (courts “must engage in ‘essentially ad hoc, factual inquiries’” to determine whether a unique takings case has arisen). Courts weigh all relevant factors in determining whether a regulation deprived a plaintiff of all economically beneficial use of property and whether the regulation interferes with distinct investment-backed expectations. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992).

The Developer’s objection that this request is “cumulative and/or duplicative and therefore oppressive and burdensome” also lacks merit. The Membership Interest Purchase and Sale Agreement produced by Peccole-Nevada reflects that the Developer paid \$7.5 million to acquire Fore Stars, Ltd., the assets of which included the property and significant other assets. There are no documents that support the Developer’s contention that it paid \$45 million for the former Badlands golf course property.

The Developer’s objections as seeking privileged or confidential information are improper. If the Developer seeks to avoid disclosure based on privilege, it must provide a privilege log describing the documents withheld in sufficient detail to enable the City to assess the claim of privilege. *See* NRCP 26(b)(5)(A). If the Developer seeks to avoid disclosure of nonprivileged documents, it must seek a protective order. The Developer did not provide a privilege log or seek a protective order.

James J. Leavitt, Esq.
Autumn Waters, Esq.
Elizabeth Ham, Esq.
September 14, 2020
Page 3

Request No. 17: Produce all documents related to the dispute between BGC Holdings LLC and Fore Stars Ltd. regarding the acquisition of the Badlands Property, including but not limited to any settlement agreement reached in connection with Case No. A543847.

In response to this request, the Developer asserted objections only without producing any documents. Once again, the Developer's objections are entirely without merit.

The Developer's lawsuit against the Peccole family is obviously relevant to the Developer developer's motivations and expectations for developing the property, as well the Developer's understanding of the property's potential for development. Whether the Developer had "reasonable" investment backed expectations regarding the proposed development has particular significance to the takings analysis. See *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979).

The Developer's objections to this request as cumulative and duplicative also lack merit. Nonetheless, the City will agree to narrow this request to exclude documents filed with the District Court regarding Case No. A543847.

After failing to seek a protective order, the Developer cannot object to this request on grounds that it seeks documents protected from disclosure to third parties.

Request No. 18: Produce all documents related to that certain Restrictive Covenant recorded March 14, 2008 in the Official Records of Clark County as Document No. 20080314-0003100, including but not limited to the Badlands Golf Course Clubhouse Improvements Agreement referenced therein.

The only documents produced with the Ninth Supp. were in response to this request. As noted above, the Developer already produced those documents in July.

The restrictive covenant at issue provides that the Badlands property will remain a golf course or open space and have no development activities on it. This is obviously relevant to the Developer's expectations for developing the property. It also shows that the golf course/open space use of the Badlands property benefitted the surrounding development, which is relevant to the parcel as a whole. See *Penn Central*, 438 U.S. at 130 ("Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated).

Given the importance of the issues to this case, this request is not unduly burdensome. Nonetheless, the City will agree to limit the scope of this request to exclude any documents that have been recorded in the Clark County Recorder's Office.

James J. Leavitt, Esq.
Autumn Waters, Esq.
Elizabeth Ham, Esq.
September 14, 2020
Page 4

Request No. 19: Produce all documents related to that certain Memorandum of Agreement recorded June 28, 2013 in the Official Records of Clark County as Document No. 201306280004173, including but not limited to the Settlement Agreement referenced therein.

In response to this request, the Developer claims it has no responsive documents. This cannot possibly be true. The Developer already produced the settlement agreement referenced in the memorandum. *See* LO 0021093. The Developer also produced an email from the Peccole's attorney to the Developer with all the exhibits to the settlement agreement. *See* LO 0018038.

The settlement agreement required Queensridge Towers LLC ("QT") to transfer property to Fore Stars if, after eighteen months, QT elected not to build a new clubhouse on the property. During this eighteen-month period, the Developer began negotiating with the Peccole family to acquire Fore Stars. Less than four months after the Developer acquired Fore Stars, QT recorded a parcel map and transferred the property to Fore Stars. In fact, Frank Pankratz signed a parcel map application naming the map "EHB Badlands Golf Course Parcel Map" less than a month after the Developer acquired Fore Stars. *See* CLV204568.

The City will agree to limit the scope of this request to exclude documents filed with the City and documents recorded with the Clark County Recorder's Office, but the Developer must amend its response. If the Developer fails again to respond truthfully, the City will request appropriate sanctions. *See* NRCP 26(g)(3).

Request No. 22: Produce all appraisals of the Badlands Property or any portion thereof that have been completed subsequent to January 1, 2014.

The Developer produced one appraisal with the Eighth Supp. on August 21 before responding to the Second Set of Requests on September 4, 2020. In light of the Developer's objection to this request as seeking documents outside the scope of this case, I must repeat the request from my August 28 letter asking for confirmation that this is the only appraisal in the Developer's possession. *See* NRCP 34(b)(2)(C) ("An objection must state whether any responsive materials are being withheld on the basis of that objection").

The fact that the Developer made this objection in the first place is very concerning. Similar objections have been made by the Developer to other requests regarding the definition of "Badlands Property" as overbroad or as seeking discovery in other pending matters. We discussed those objections at length during the March 10 meet and confer without any meaningful resolution. The Developer refused to withdraw these objections despite being unable to confirm that no

James J. Leavitt, Esq.
Autumn Waters, Esq.
Elizabeth Ham, Esq.
September 14, 2020
Page 5

documents had been withheld because of the way the City defined the property. There is no justification for continuing to make this frivolous objection.

Request No. 23: Produce all estimates of the cost of construction of roadways, sanitary sewers, clean water delivery, electric power, internet cable, natural gas, flood control, drainage, earthwork, and other infrastructure for your proposed development of the Badlands Property or any portion thereof.

The Developer's response to this request does not identify any documents. It is not clear if the documents produced with the Eighth Supp. labeled "clear and grub permits" were intended to be produced in response to this request. Regardless, the Developer has failed to make any meaningful attempt to provide responsive documents.

The Developer clearly recognizes the importance of the requested document as it makes no attempt to object on relevance. Indeed, the Developer's responses suggest that the Developer is withholding these documents as trial-preparation materials. Any documents being withheld must be listed on a privilege log.

Again, these issues supplement my August 28, 2020 letter and will be included in the upcoming meet and confer that is now scheduled for Wednesday, September 16, 2020 at 1:30 p.m. At that time, please let us know whether you intend to supplement your productions to remedy the issues outlined in this letter.

Sincerely,

MCDONALD CARANO LLP


George F. Ogilvie III, Esq.

EXHIBIT “FFFF-34”

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

18 180 LAND COMPANY, LLC, a Nevada limited)
 19 liability company; FORE STARS, LTD. A Nevada)
 20 limited liability company; DOE INDIVIDUALS I)
 21 through X; DOE CORPORATIONS I through X;)
 22 and DOE LIMITED LIABILITY COMPANIES I)
 23 through X,)

Plaintiffs,

vs.

24 CITY OF LAS VEGAS, a political subdivision)
 25 of the State of Nevada; ROE GOVERNMENT)
 26 ENTITIES I through X; ROE CORPORATIONS I)
 27 through X; ROE INDIVIDUALS I through X;)
 28 ROE LIMITED-LIABILITY COMPANIES I)
 through X; ROE QUASI-GOVERNMENTAL)
 ENTITIES I through X,)

Defendants.

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

**FIRST SUPPLEMENT TO
PLAINTIFF LANDOWNERS
RESPONSE TO DEFENDANT
CITY OF LAS VEGAS' SECOND
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
TO PLAINTIFF**

1 TO: CITY OF LAS VEGAS, Defendants
2 TO: GEORGE F. OGILVIE III, its attorney
3 COMES NOW PLAINTIFF 180 LAND COMPANY, LLC, by and through its attorneys the
4 Law Offices of Kermitt L. Waters, and hereby responds to Defendant CITY OF LAS VEGAS'
5 Second Set of Requests for Production of Documents to Plaintiff as follows:

6 **DEFINITIONS AND GENERAL OBJECTIONS**

- 7 1. "Nondiscoverable/Irrelevant" - The request in question concerns a matter that is not relevant
8 to the subject matter of this litigation and is not reasonably calculated to lead to the discovery
9 of admissible evidence.
- 10 2. "Unduly burdensome" - The request in question seeks discovery that is unduly burdensome
11 or expensive, taking into account the needs of the case, limitation on the party's resources, and
12 the importance of the issues at stake in the litigation.
- 13 3. "Vague" - The request in question contains a word or phrase that is not adequately defined,
14 or the overall request is confusing or ambiguous, and the Landowner is unable to reasonably
15 ascertain what documents City of Las Vegas ("City") seeks in the request.
- 16 4. "Overbroad" and/or "Overly Broad" - The request in question seeks documents beyond the
17 scope of, or beyond the time period relevant to, the subject matter of this litigation and,
18 accordingly, seeks documents that are nondiscoverable/irrelevant and is unduly burdensome.
- 19 5. The Landowner objects to the City requests to the extent that they seek any information
20 protected by any absolute or qualified privilege or exemption, including, but not limited to,
21 the attorney-client privilege, common interest privilege, the attorney work-product exemption,
22 accountant-client privilege, and/or the consulting expert exemption.
- 23 6. The Landowner objects to the City's requests on the grounds that they are excessively
24 burdensome and that many of the documents requested may be obtained by the City from
25 other sources more conveniently, less expensively, and with less burden.
- 26 7. Documents will be provided on the basis of documents available to and located by Landowner
27 at this time. There may be other and further documents respecting the requests propounded
28 by the City of which the Landowner, despite its reasonable investigation and inquiry, is
presently unaware. The Landowner therefore, reserves the right to modify, supplement,

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amend, or enlarge any response with such pertinent additional documents as it may subsequently discover.

8. No incidental or implied admissions will be made by the responses. The fact that the Landowner may respond or object to any request, or part thereof, shall not be deemed an admission that the Landowner accepts or admits the existence of any fact set forth or assumed by such request, or that such response constitutes admissible evidence. The fact that the Landowner responds to a part of any request is not to be deemed a waiver by it of its objections, including privilege, to other parts of the request in question.

9. The Landowner objects to any request to the extent that it would impose upon it greater duties than are set forth under the Nevada Rules of Civil Procedure. When necessary, the Landowner may supplement its responses to requests as required by the Nevada Rules of Civil Procedures.

10. Each response will be subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any ground that would require the exclusion from evidence of any statement herein if any such statements were made by a witness present and testifying at trial, all of which objections and grounds are expressly reserved and may be interposed at trial.

11. Any citation to a specific document or Bates-stamp range of documents is based on a reasonable review. Other individual documents, document duplicates, or other range of documents produced in this matter may additionally be responsive and shall not be deemed non responsive if not specifically indicated/identified.

12. The Landowner objects to the requests to the extent that they seek information that is unrelated and/or irrelevant to the value of the property City has taken through this action or property the Landowner alleges that City has taken prior to and through this action.

13. The Landowner objects to these requests because the requests impose an undue burden to the extent they ask the Landowner to identify documents already identified and produced in this action.

1 **REQUEST TO PRODUCE NO. 16:**

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

5 **RESPONSE TO REQUEST TO PRODUCE NO. 16:**

6 *OBJECTION:* This request is irrelevant having no application to the City’s taking of the
7 Subject Property nor the value of the Subject Property. Further this request is cumulative and/or
8 duplicative and therefore oppressive and burdensome to the Plaintiff as it seeks information already
9 requested pursuant to the City’s Request to Produce No. 1 and 2. This request also includes a request
10 for information that is confidential and privileged. Without waiving said objections, there are no
11 documents within the Plaintiffs custody and control that state that the aggregate of consideration
12 given to the Peccole family for the former Badlands golf course property was \$45 million.

13 **1st Supplemental Response to Request No. 16:**

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

17 **REQUEST TO PRODUCE NO. 17:**

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

21 **RESPONSE TO REQUEST TO PRODUCE NO. 17:**

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

1 **REQUEST TO PRODUCE NO. 18:**

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

5 **RESPONSE TO REQUEST TO PRODUCE NO. 18:**

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

11 **REQUEST TO PRODUCE NO. 19:**

12 Produce all documents related to that certain Memorandum of Agreement recorded June 28,
13 2013 in the Official Records of Clark County as Document No. 201306280004173, including but not
14 limited to the Settlement Agreement referenced therein.

15 **RESPONSE TO REQUEST TO PRODUCE NO. 19:**

16 *OBJECTION.* This request seeks information which is equally available to all parties via
17 public filings, and is therefore oppressive and burdensome to Plaintiff. This request further seeks
18 information that is irrelevant to the subject matter of this action and is not reasonably related to any
19 claims or defenses in this matter having no application to the City's taking of the Subject Property
20 nor the value of the Subject Property. **Without waiving said objections, there are no documents
21 within Plaintiffs control responsive to this request.**

22 **REQUEST TO PRODUCE NO. 20:**

23 Produce copies of all public offering statements and related disclosures furnished pursuant to
24 NRS 116.4102 in connection with the purchase and sale of units in the Queensridge Towers,
25 including but not limited any attachments or exhibits thereto.

26 **RESPONSE TO REQUEST TO PRODUCE NO. 20:**

27 *OBJECTION:* This request seeks information which is public and available to all parties, and
28 is therefore oppressive and burdensome to request from Plaintiff. This request also requires a
laborious, time consuming search of incidental and/or secondary details.

1 **Without waiving said objections, see LO0035784 - LO0035819 a copy of a public offering**
2 **statement and related disclosure provided to a principal owner of a unit within Queensridge**
3 **Towers.**

4 **REQUEST TO PRODUCE NO. 21:**

5 Produce all public offering statements and related disclosures furnished pursuant to NRS
6 116.4102 in connection with the purchase and sale of custom lots in the Queensridge Common
7 Interest Community, including but not limited to any attachments or exhibits thereto.

8 **RESPONSE TO REQUEST TO PRODUCE NO. 21:**

9 *OBJECTION:* This request seeks documents that are public and available to all parties, and
10 is therefore oppressive and burdensome to request from Plaintiff. **Without waiving said objections,**
11 **see LO0034187-LO0034761 a copy of the referenced document provided to a principal owner**
12 **of a lot within the Queensridge Common Interest Community.**

13 **REQUEST TO PRODUCE NO. 22:**

14 Produce all appraisals of the Badlands Property or any portion thereof that have been
15 completed subsequent to January 1, 2014.

16 **RESPONSE TO REQUEST TO PRODUCE NO. 22:**

17 *OBJECTION:* This request seeks documents outside the scope of this case as it references
18 250 acres of land owned by other entities or part of other parcels and not a part of this case. **Without**
19 **waiving said objections, see LO0034762- LO0035783.**

20 **REQUEST TO PRODUCE NO. 23:**

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

24 **RESPONSE TO REQUEST TO PRODUCE NO. 23:**

25 *OBJECTION:* This request is cumulative and/or duplicative and therefore oppressive and
26 burdensome to the Plaintiff as it seeks information already requested pursuant to the City's Request
27 to Produce No 5. This request is also overly broad, indefinite as to time and without reasonable
28 limitation in its scope. This request also seeks information that is attorney / expert work product and
requests documents that are non-discoverable under Nevada's Discovery rules, namely, experts and

1 consultants that have been retained and may not be called to testify at trial. This request seeks expert
2 reports which are not currently due to be exchanged. Further, this request is outside the scope of this
3 case as it requests documents for 250 acres of land owned by other entities or part of other parcels and
4 not a part of this case.

5 ***1st Supplemental Response to Request No. 23:***

6 To the extent this request seeks cost estimates for properties other than the Subject Property
7 (35 acre property) at issue here, then this request is also irrelevant having no application to the City's
8 taking of the Subject Property nor the value of the Subject Property. Further, this request is outside
9 the scope of this case as it requests documents for land owned by other entities or part of other parcels
10 and not a part of this case

11 **THE LANDOWNER RESERVES THE RIGHT TO SUPPLEMENT AND/OR AMEND**
12 **THESE RESPONSES AS DISCOVERY CONTINUES AND/OR AS DEEMED**
13 **NECESSARY IN THIS MATTER**

14 DATED this 6th day of October, 2020.

15 */s/ Elizabeth Ghanem Ham*

16 **ELIZABETH GHANEM HAM**

17 *In house counsel for the Landowners*

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

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26 Nevada Bar No. 8917

27 *Attorneys for Plaintiff Landowners*

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CERTIFICATE OF SERVICE

Pursuant to NRCP5(b), I certify that I am an employee of the Law Offices of Kerritt L. Waters, and that on the 6th day of October, 2020, I caused to be served the foregoing document(s):
FIRST SUPPLEMENT TO PLAINTIFF LANDOWNERS' RESPONSE TO DEFENDANT CITY OF LAS VEGAS' SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF
via the Court's electronic filing and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to the following:

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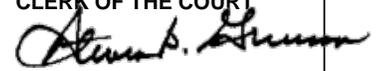
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/s/ Evelyn Washington

Evelyn Washington, an Employee of the
Law Offices of Kerritt L. Waters

EXHIBIT “FFFF-35”



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12 sfloyd@lasvegasnevada.gov

13 (Additional Counsel Identified on Signature Page)

14 *Attorneys for City of Las Vegas*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

HEARING DATE(S)
ENTERED IN
ODYSSEY

17 180 LAND CO LLC, a Nevada limited liability
18 company, FORE STARS, LTD., a Nevada limited
19 liability company and SEVENTY ACRES, LLC, a
20 Nevada limited liability company, DOE
21 INDIVIDUALS I-X, DOE CORPORATIONS I-X,
22 and DOE LIMITED LIABILITY COMPANIES I-X,

23 Plaintiffs,

24 v.

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

Defendants.

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

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

OST HEARING REQUESTED

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

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

29 Pursuant to Rules 16.1, 26, 34 and 37 of the Nevada Rules of Civil Procedure, EDCR 2.26,
30 2.34 and 2.40 and the Declaration of George F. Ogilvie III, Esq. ("Ogilvie Decl."), attached as
31 **Exhibit A**, the City of Las Vegas (the "City") moves this Court for an Order (i) compelling Plaintiff
32 180 Land Co. LLC ("180 Land") to produce all documents responsive to the City's requests for
33
34

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

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

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

25 _____
26
27 ¹ The City served a first set of requests for production of documents on 180 Land on July 2,
28 2019 (“First Set of Requests”) and a second set of requests for production of documents on February
21, 2020 (“Second Set of Requests”). The First Set of Requests and Second Set of Requests are
collectively referred to herein as “Requests for Documents” and are the subject of this Motion.

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

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

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

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

26 ...
27 ...
28 ...

ORDER SHORTENING TIME

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

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

DATED this 21st day of October, 2020.


DISTRICT COURT JUDGE ZJ

Submitted By:

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III
George F. Ogilvie III (NV Bar No. 3552)
Amanda C. Yen (NV Bar No. 9726)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

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

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

i. *The First Set of Requests*

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

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

6 Because 180 Land’s responses were deficient and 180 Land withheld responsive documents,
7 the City requested a meet and confer with 180 Land’s counsel. *See* Ogilvie Decl., ¶ 5, **Ex. A**. To
8 that end, and to make the meet and confer productive, on December 12, 2019, the City sent a letter
9 specifically identifying the deficiencies with 180 Land’s responses to the First Set of Requests. *See*
10 December 12, 2019 Letter, attached as **Exhibit E**. In sum, 180 Land withheld documents and
11 provided a privilege log; however, the log did not provide the requisite information to allow the
12 City to confirm that the documents withheld fell into a protected category. *Id.* at 1. In addition,
13 180 Land refused to produce documents that go directly to the issues in this case, including: (i)
14 communications between itself and its identified consultants and/or prior owners of the Badlands
15 Property regarding 180 Land’s expectations for developing the Badlands Property (which is an
16 essential element of its *Penn Central* taking claim); (ii) documents related to any damages
17 calculation or monetary calculations; and (iii) documents related to the maintenance and/or
18 operation of the Badlands golf course. *Id.* at 2-3.

19 *ii. The December 19, 2019 Meet and Confer*

20 On December 19, 2019, the City’s counsel and Developer’s counsel conducted a telephonic
21 meet and confer. *See* Ogilvie Decl., ¶ 6, **Ex. A**. During that meet and confer, the parties reached an
22 agreement on several issues. *See* December 19, 2019 email chain, attached as **Exhibit F**. Despite
23 the agreement, however, it still took a reminder from the City’s counsel to the Developer’s counsel
24

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

1 that 180 Land was to supplement its responses and provide follow-up answers to several inquiries.
2 See January 16, 2020 Email, attached as **Exhibit G**. Accordingly, over a month after the December
3 19, 2019 meet and confer, on January 23, 2020, 180 Land served its Amended Response to
4 Defendant City of Las Vegas’ First Requests for Production to Plaintiff (“Amended Response to
5 First Set of Requests”). See Amended Response to First Set of Requests, attached as **Exhibit H**.

6 180 Land’s Amended Response to First Set of Requests did not correct all of the issues with
7 180 Land’s production, so, on February 6, 2020, the City’s counsel sent another letter to the
8 Developer’s counsel regarding the deficient responses and production. See February 6, 2020 Letter
9 (“Feb. Letter”), attached as **Exhibit I**. In addition, during the December 19, 2020 meet and confer,
10 the parties did not meet and confer regarding all of the Developer’s responses to the First Set of
11 Requests or its documents because 180 Land had not yet produced all responsive documents it
12 represented were in its possession. See December 12, 2019 Letter, **Ex. E** (“Because 180 Land has
13 not produced all documents responsive to the Requests pending an approved Stipulated Protective
14 Order,³ the City reserves its right to address any deficiencies with the actual documents produced
15 and/or 180 Land’s failure to produce responsive documents at a later date.”).

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

17 The remaining issues from the December 19, 2019 meet and confer were, in brief, failing to
18 produce: (i) communications with all of 180 Land’s identified consultants; (ii) communications
19 with its sometimes consultants/sometimes counsel Stephanie Allen and Chris Kaempfer or identify
20 such communications on a privilege log; (iii) communications with prior owners of the Badlands
21 Property; (iv) communications involving the Developer’s principals, Yohan Lowie and Vicki
22

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

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

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

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

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

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

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

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

14 *iv. The March 10, 2020 Meet and Confer*

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

20 By way of example only, during the March 10 meet and confer, Mr. Davis represented that
21 all communications with Stephanie Allen and Chris Kaempfer that should be listed on a privilege
22 log would be listed. *Id.* On April 15, Mr. Davis reversed this position stating that 180 Land would
23 only produce emails between Ms. Allen and Mr. Kaempfer that involved the City. *Id.* Ultimately,
24 180 Land produced 77 unique emails (the rest were duplicates) of which 57 were exchanged with
25 the City and the remaining were exchanged with the Developer’s other consultants. See August 28,
26

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

1 2020 Letter (“Aug. Letter”) at 2, attached as **Exhibit L**. 180 Land only added two emails to its
2 privilege log for Ms. Allen and/or Mr. Kaempfer.

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

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

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

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

4 v. *The Second Set of Requests*

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

12 vi. *The September 16, 2020 Meet and Confer*

13 On August 28, 2020, the City’s counsel sent another letter regarding the Developer’s
14 outstanding discovery obligations and discovery deficiencies. *See* Aug. Letter, **Ex. L**. The August
15 28 Letter identified remaining issues outstanding from the December 19, 2019 meet confer and
16 additional issues including, among other things, 180 Land’s failure to produce: (i) letters of intent
17 regarding offers to purchase the Badlands Property; (ii) communications with Stephanie Allen,
18 Chris Kaempfer, and other identified consultants; (iii) all communications, including text messages,
19 between the Developer and prior owners of the Badlands Property; (iv) attachments and other files
20 identified in emails but not produced; (v) communications with the Developer’s lenders; (vi)
21 documents related to damages, including non-privileged cost estimates; and (vii) communications
22 sent or received by Yohan Lowie, Vickie DeHart and Paul DeHart. *Id.* at 1-4 and 5-7.

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

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

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

18 *vii. 180 Land’s Second Supplement to its Amended Response to the*
19 *City’s First Set of Requests*

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

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

2 *viii. 180 Land’s First Supplement to Plaintiff Landowners Response to*
3 *Defendant City of Las Vegas’ Second Set of Requests for*
4 *Production of Documents to Plaintiff*

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

14 **2. 180 Land’s Deficient Response to Interrogatory No. 20**

15 On July 2, 2019, the City served Interrogatories on 180 Land. *See* Interrogatories, attached
16 as **Exhibit V**. Interrogatory No. 20 requested 180 Land identify in detail all water rights that have
17 been associated with or appurtenant to the Badlands Property and to state whether those rights had
18 been disposed of with the date, recorded document number and purpose of the conveyance. *Id.* at
19 12:25-27. 180 Land responded to the Interrogatories on August 1, 2019. *See* Plaintiff 180 Land
20 Company, LLC’s Responses to Defendant City of Las Vegas’ First Set of Interrogatories to Plaintiff
21 (“Responses to Interrogatories”). *See* Responses to Interrogatories, attached as **Exhibit W**. For
22 several interrogatories, including Interrogatory No. 20, 180 Land responded that the City had
23 exceeded its allowed number interrogatories and thus it was not required to provide a response to
24 the Interrogatory. *Id.* at 18:2-9. Ultimately, on February 7, 2020, 180 Land supplemented its
25 responses and provided a more substantive response to Interrogatory No. 20. *See* Plaintiff 180 Land
26 Company, LLC’s Responses to Defendant City of Las Vegas’ First Set of Interrogatories to
27 Plaintiff, Third Supplement (“Third Supp. to Interrogatory Responses”) at 21:10-21, attached as
28 part of **Exhibit X**.

...

1 As set forth in detail below, on February 21, 2020, the City identified deficiencies in 180
2 Land’s response to Interrogatory No. 20, including the fact that 180 Land’s response is contrary to
3 public records and testimony previously provided by Mr. Lowie in a separate matter. *See* February
4 21, 2020 Letter attached as **Exhibit Y**. During the March 10, 2020 meet and confer, counsel
5 discussed the lack of documentation and responses related to the water rights. *See* April 15 Email,
6 **Ex. K**. Mr. Davis agreed to provide the permit numbers for the water rights (which the City found
7 on its own) but refused to produce the WRL purchase and sale agreement or anything else related
8 to the water rights. *Id.*

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

11 In its Initial Disclosures through its fourth supplement to Initial Disclosures, the Developer
12 objected to any disclosure of its damages, arguing that the information “requires the preparation of
13 expert reports that will be produced in the normal course of discovery as provided in the Nevada
14 Discovery Rules [sic].” *See* Fourth Supplement to Initial Disclosures at 10:24-25, relevant portions
15 attached as **Exhibit Z**. The Developer further argued that “the computation of any category of
16 ‘damages’ may contain attorney work product, privileged information, and may require legal
17 instructions or court rulings, accordingly, the same cannot be produced at this time.” *Id.* at 10:25-
18 11:2.

19 During the March 10, 2020 meet and confer, the City’s counsel raised the lack of a
20 computation of each category of damages with the Developer’s counsel. *See* April 15 Email, **Ex.**
21 **K**. Per the Developer’s counsel, the City would receive a categorical identification of damages
22 with the expert disclosures and would not receive any computation prior to that time. *Id.* Based on
23 the Developer’s position, in the City’s Status Report Submitted in Advance of April 1, 2020 Status
24 Conference (“Status Report”), the City identified the Developer’s failure to comply with Rule
25 16.1(a)(1)(A)(iv) of the Nevada Rules of Civil Procedure. *See* Status Report at 9:12-10:4.
26 Accordingly, on May 13, 2020, the Developer amended its initial disclosures providing an
27 additional objection to its computation of categories of damages. *See* Fifth Supplement to Initial
28 Disclosures at 11:6-19, relevant portions attached as **Exhibit AA**.

1 Specifically, the Developer stated that it objected to “disclosing the computation of any
2 category of ‘damages’ at this time as the date of value has not be [sic] determined by the Court.”
3 *Id.* at 11:6-7. The Developer then provided that its “preliminary estimate of damages (just
4 compensation) for the total taking of the 35 Acre Property...is approximately \$54 Million.” *Id.* at
5 11:10-11. The Developer also stated that this amount was the average of the per acre value assigned
6 by an appraisal and offer to purchase 16-18 acres of the property and the sale of property. *Id.* at
7 11:11-16. The Developer’s objection and preliminary estimate did not provide any supporting
8 calculations and, based on the Developer’s responses to the City’s Requests for Production of
9 Documents, the Developer is admittedly withholding documents that allegedly support its damages
10 until it discloses its expert report. *See* Sept. 18 Email and Attachment, Ex. S.

11 **II. SPECIFIC WRITTEN DISCOVERY REQUESTS PURSUANT TO LR 2.40.**

12 **REQUEST FOR PRODUCTION NO. 1:**

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

16 **RESPONSE TO REQUEST TO PRODUCE NO. 1:**

17 The Landowner objects to this request as irrelevant, it has no application to
18 the City’s taking of the Subject Property nor the value of the Subject Property. The
19 Landowner further objects to this request because it is overbroad and unduly
20 burdensome in that it seeks “any document” as such request does not describe the
21 requested documents with reasonable particularity as required by Rule 34(b)(1).
22 The Landowner further objections to this request as it may include privileged,
23 proprietary and/or confidential information. Without waiving said objections, see
24 documents Bates-stamped *LO 00004045-00004091*. Documents Bates-stamped *LO*
25 *00004063-00004079*, have been withheld due to being confidential (see privilege
26 log).

23 **1st Supplemental Response to Request No. 1:**

24 Without waiving said objections, see documents Bates-stamped *LO*
25 *0018442-0022327*. Documents Bates-stamped *LO 0022328-0022899* have been
26 withheld (see privilege log).

25 **2nd Supplemental Response to Request No. 1:**

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

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REQUEST FOR PRODUCTION NO. 2:

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

RESPONSE TO REQUEST TO PRODUCE NO. 2:

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

1st Supplemental Response to Request No. 2:

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

REQUEST FOR PRODUCTION NO. 5:

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

RESPONSE TO REQUEST TO PRODUCE NO. 5:

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

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1st Supplemental Response to Request No. 5:

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

2nd Supplemental Response to Request No. 5:

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

REQUEST FOR PRODUCTION NO. 6:

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

RESPONSE TO REQUEST TO PRODUCE NO. 6:

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

1st Supplemental Response to Request No. 6:

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

2nd Supplemental Response to Request No. 6:

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

* * *

REQUEST FOR PRODUCTION NO. 16:

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

RESPONSE TO REQUEST TO PRODUCE NO. 16:

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

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

1st Supplemental Response to Request No. 16:

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

REQUEST FOR PRODUCTION NO. 17:

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

RESPONSE TO REQUEST TO PRODUCE NO. 17:

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

REQUEST FOR PRODUCTION NO. 18:

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

RESPONSE TO REQUEST TO PRODUCE NO. 18:

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

REQUEST FOR PRODUCTION NO. 19:

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

RESPONSE TO REQUEST TO PRODUCE NO. 19:

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

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

REQUEST FOR PRODUCTION NO. 23:

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

RESPONSE TO REQUEST TO PRODUCE NO. 23:

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

1st Supplemental Response to Request No. 23:

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

* * *

INTERROGATORY NO. 20:

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

ANSWER TO INTERROGATORY NO. 20:

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

1st Supplement to Answer to Interrogatory No. 20:

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

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

1 **III. LEGAL ARGUMENT**

2 **A. Legal Standard For A Motion To Compel.**

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

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

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

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

1 no ‘magic formula’ exists in every case for determining whether particular government interference
2 constitutes a taking under the U.S. Constitution.” *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419,
3 351 P.3d 736, 741 (2015) (quoting *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23,
4 31-32, 133 S. Ct. 511, 518 (2012)). “[M]ost takings claims turn on situation-specific factual
5 inquiries.” *Arkansas Game*, 568 U.S. at 32.

6 A “categorical taking” only occurs where the government has deprived a landowner of *all*
7 economically beneficial uses.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1017–18,
8 112 S. Ct. 2886 (1992). To establish this claim, the Developer must not only show that the approved
9 use of the Badlands Property (a golf course) is not an economically beneficial use, it must also show
10 that no other permitted use of the land would be economically beneficial. Outside of situations
11 where a regulation deprives property of all beneficial use, regulatory takings claims are guided
12 primarily by three factors: (1) “the economic impact of the regulation on the claimant”; (2) “the
13 extent to which the regulation has interfered with distinct investment backed expectations”; and (3)
14 “the character of the government action.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S.
15 104, 124, 98 S. Ct. 2646, 2659 (1978).

16 **C. The Developer Refused To Provide Responses And Documents To The City’s**
17 **Relevant Written Discovery And The Developer Must Be Compelled To**
18 **Supplement And Produce All Relevant Documents.**

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

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

1 The documents the City has been able to obtain thus far reveal that, in prior real estate
2 transactions, the Developer made substantial commitments to the Peccole family that the Developer
3 failed to fulfill. *See* Badlands Golf Course Clubhouse Improvements Agreement dated September
4 6, 2005 (“Improvements Agreement”) attached as **Exhibit BB**; Settlement Agreement and Mutual
5 Release dated June 28, 2013 (“2013 Settlement Agreement”) attached as **Exhibit CC**. At one point,
6 the Developer sued the Peccole family in an attempt to takeover of the golf course and unwind those
7 commitments. *See* Complaint, Eighth Judicial District Court Case No. A546847 attached as
8 **Exhibit DD**; *see also* Settlement Agreement between BGC Holdings LLC and Fore Stars dated
9 January 28, 2008 (“BGC Settlement Agreement”) attached as **Exhibit EE**.

10 In the year leading up to the Developer’s acquisition of the Badlands Property, these
11 unfulfilled commitments came to a head while the Developer was simultaneously negotiating the
12 purchase of the Badlands Property and an extension to an option to purchase the office building
13 that the Developer leased from the Peccole family for EHB’s corporate offices. *See* February 19,
14 2015 Email from Billy Bayne attached as **Exhibit FF** (“I discussed with the family for some time
15 yesterday and last night, the possibility of closing with 12M and extending the option on the end
16 cap at Hualapai for 1 year as you work to pay off the additional 3m. . .”). Ultimately, the Developer
17 paid \$7.5 million to acquire Fore Stars (which owned the entire Badlands Property at the time) and
18 \$7.5 million to acquire WRL, LLC (which owned the water rights for the golf course). *See*
19 Membership Interest Purchase and Sale Agreements, attached as **Exhibit GG**. However, \$3 million
20 was apparently intended to satisfy outstanding obligations the Developer owed the Peccole family
21 with respect to prior transactions. *See* August 27, 2014 Email from Billy Bayne, attached as **Exhibit**
22 **HH** (“We do not care how you value the different parts of the transaction, provided, that we get 12
23 million on closing and 3 million should you end up buying the phase 2 property if we obtain it.
24 Thus if you want to put more money toward the water rights than the land that will be up to you.”).

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

1 *see also* August 22, 2014 Draft, attached as **Exhibit JJ** (adding contingencies regarding the 2013
2 Settlement Agreement). The early drafts and emails also show how the Developer engineered a
3 windfall by acquiring Fore Stars at a time when it was guaranteed to receive either \$3.15 million or
4 2.37 acres. *See* August 27, 2014 Email from Billy Bayne, **Ex. HH** (“Should IDB give us money
5 instead of the land associated with their phase 2 we will give Yohan anything in excess of the 3
6 million dollars to help offset the cost of the clubhouse.”).

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

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

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

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

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

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

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

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1 In addition, the Developer may have sought to obtain developmental rights by acquiring
2 Nevada Legacy 14, LLC (“Nevada Legacy”).⁵ See March 5 Email from Henry Lichtenberger,
3 attached as **Exhibit MM**. But the Developer certainly did not acquire Nevada Legacy before the
4 Lubawy Appraisal was prepared. See October 1, 2015 Email from Todd Davis, attached as **Exhibit**
5 **NN** (“Yohan has asked to proceed with the reinstatement and purchase of Nevada Legacy 14
6 LLC.”) The Secretary of State’s website indicates that Nevada Legacy has been dissolved since
7 2007, which means that the Lubawy Appraisal is clearly based on false information. Despite this,
8 the Developer intends to use it to support its claim for damages. See Plaintiff Landowners’ Fifth
9 Supplement to Initial Disclosures, **Ex. AA** at 11:11-14. Communications with the Developer’s
10 lenders and cost estimates are therefore critical to evaluating whether the Developer’s proposed use
11 was an economical use of the Badlands Property and the reasonableness of Developer’s
12 expectations regarding such use. Accordingly, the Developer must be compelled to respond to:

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

17 3. *Failure to Comply with Request No. 5*

18 Based on the Lubawy Appraisal, the Badlands Property was worth \$700,510 per acre with
19 development rights; yet, the Peccole family sold it to the Developer for less than \$30,000 per acre.
20 The amount the Developer paid to acquire the Badlands Property demonstrates that the Developer
21 could not have possibly believed that the property had all necessary entitlements for residential
22 development or that R-PD7 zoning gives the Developer a “vested right” or a “property right” to
23 develop the Badlands Property. In fact, even the Developer’s own land use attorney recognized
24 that a zone change was necessary. See Lubawy Appraisal, **Ex. LL** at 30 (“In conversation with the
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26 ⁵ Nevada Legacy was the declarant under the Master Declaration of Covenants, Conditions
27 & Restrictions (“CC&Rs”) for the Queensridge Common Interest Community. Under the Uniform
28 Common-Interest Ownership Act, the developmental rights of a declarant include the right to add
real estate to a common-interest community and to subdivide and create new units. See NRS
116.039.

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

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

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

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

24 4. *Failure to Comply with Request No. 6*

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

1 *some* communications with the Peccole family. However, these communications contained
2 significant gaps and omitted critical facts. The most salient and noticeable omission is the lack of
3 communications sent by the Developer’s principals, Yohan Lowie and Vickie Dehart. After
4 excluding duplicates and emails forwarded without any text, the Developer only produced 12 emails
5 from Yohan Lowie and 5 emails from Vickie Dehart. *See* Ogilvie Decl., ¶ 14, **Ex. A**. In addition,
6 other communications produced by the Developer indicate that Yohan Lowie communicated with
7 the Peccole family via text in connection with negotiations for the Badlands Property. *See* August
8 27, 2014 Email from Billy Bayne, **Ex. HH**. The Developer must be compelled to produce these
9 text messages as well as all e-mail communications related to the subject matter.

10 5. *Failure to Response to Interrogatory No. 20.*

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

20 The Developer’s intentions in acquiring WRL LLC’s water rights are relevant to the
21 Developer’s expectations for the Badlands Property. Indeed, the water rights owned by the WRL
22 permit was to be used to irrigate the golf course, which suggests the Developer purchased the
23 Badlands Property expecting to use them for that purpose. *Penn Cent. Transp. Co.*, 438 U.S. at 124,
24 98 S. Ct. at 2659. 180 Land should be compelled to amend its response to provide a truthful and
25 accurate response.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

Dated this 20th day of October, 2020.

McDONALD CARANO LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the ____ day of October, 2020, a true and correct copy of the foregoing **THE CITY OF LAS VEGAS' MOTION TO COMPEL DISCOVERY RESPONSES, DOCUMENTS AND DAMAGES CALCULATION AND RELATED DOCUMENTS ON ORDER SHORTENING TIME** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification on the following:

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EXHIBIT “FFFF-36”

1 CASE NO. A-17-758528-J

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 180 LAND COMPANY LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS CITY OF,)

13 Defendant.)

14

15

REPORTER'S TRANSCRIPT
OF
HEARING
(TELEPHONIC HEARING)

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19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

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DATED TUESDAY, November 17, 2020

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

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1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 11, 2020

2 1:31 P.M.

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

4 * * * * *

5
6 THE COURT: All right. Thank you, CJ.

7 Good afternoon to everyone. This is the time
8 set for the Tuesday, November 17th, 2020, 1:30 law and
9 motion calendar. We only have one matter on this
10 afternoon, and that's 180 Land Company LLC versus the
11 City of Las Vegas.

01:31:40

12 And let's go ahead and set forth our
13 appearances on the record.

14 MR. LEAVITT: Good morning, your Honor. For
15 the plaintiff, 180 Land LLC, the landowner, James J.
16 Leavitt.

01:31:52

17 MS. HAM: Good morning, your Honor. Elizabeth
18 Ghanem Ham, also on behalf of the plaintiff landowners.

19 MR. OGILVIE: Good afternoon, your Honor.

20 This is George Ogilvie on behalf of the City of
21 Las Vegas. Also with me today is Phil Byrnes from the
22 City attorney's office.

01:32:09

23 MR. SCHWARTZ: This is Andrew Schwartz
24 representing the City.

25 THE COURT: All right. Does that cover

01:32:26

01:32:28 1 everyone's appearance?

2 MR. LEAVITT: It does on behalf of the
3 plaintiff landowner, your Honor.

4 MR. OGILVIE: On behalf of the City as well,
01:32:40 5 your Honor. This is George Ogilvie again. And I'd ask
6 that this hearing be reported.

7 THE COURT: And that was my next question,
8 Mr. Ogilvie.

9 And, for the record, Madam Reporter, did you
01:32:55 10 get all the appearances?

11 THE COURT REPORTER: I did. Thank you.

12 THE COURT: All right. I guess in light of
13 that, we can go ahead and proceed.

14 MR. OGILVIE: Thank you, your Honor. This is
01:33:03 15 George Ogilvie.

16 The briefing was extensive, and I'm confident
17 the Court has reviewed it, so I'm not going to go into
18 reiterating the positions set forth in the briefing.
19 But I do think it's important to take a step back and
01:33:28 20 put this all in context.

21 And that is -- that is this, your Honor. This
22 is an inverse condemnation matter in which the
23 developer, 180 Land Fore Stars, are contending that the
24 City took actions that wiped out the -- virtually all
01:33:48 25 of the value or use of the Badlands Golf Course, the

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01:33:53 1 250 acres that the developer purchased in 2015.

2 And, again, I know the Court understands this
3 and -- but I just want to take a moment to emphasize
4 that after purchasing the property -- and the purchase
01:34:12 5 of the property was achieved through the developer's
6 acquisition of a company, Fore Stars, which owned the
7 Badlands Golf Course and all of the assets that go
8 along with a golf course: The clubhouse, the equipment
9 barn, all of the equipment for maintaining the golf
01:34:39 10 course, and everything that goes along with that.

11 So in 2015, the developer purchased the
12 company Fore Stars. And the primary asset in that
13 acquisition was the 250 acres of the Badlands Golf
14 Course. The developer then split the golf course into
01:35:05 15 four parcels, one of which is this 35-acre parcel
16 that's before the Court in this lawsuit. As you know,
17 there are three other lawsuits relating to the other
18 three parcels that the developer subdivided the 250
19 acres into.

01:35:28 20 So the developer in -- as it relates to these
21 35 acres has to demonstrate that the City's actions
22 have virtually wiped out all of the use or value of the
23 35 acres. And actually that's for another day, your
24 Honor. But as has been briefed before this Court, the
01:35:55 25 City's position, which is supported by US Supreme

01:36:00 1 Court's opinions, is that it's not just 35 acres; the
2 Court has to view whether or not the City's actions
3 viewing the parcel as a whole, the entire 250 acres,
4 whether the City's actions wiped out virtually all of
01:36:25 5 the use or value of that 250 acres. Again, that's for
6 a different day, but I just don't want the record to be
7 unclear that the City -- that is the City's position
8 and supported by US Supreme Court precedent.

9 So as it relates to the 35 acres, if the --
01:36:48 10 the determination of a taking gets down to whether or
11 not the City's actions have wiped out -- virtually
12 wiped out all of the use or value of that property. So
13 in order to make that determination, the threshold
14 issue is: What did the developer pay for that parcel?
01:37:15 15 What did it pay for those 35 acres? So -- and then
16 once that's determined, there is a determination of
17 what the value of the -- what the value of that
18 property is after the City's actions.

19 So it's a comparison. And if -- if it's -- if
01:37:37 20 it's a wash, if the developer paid a million dollars
21 for these 35 acres and the property, those 35 acres are
22 worth \$1 million today after the City's actions, there
23 hasn't been a taking.

24 In fact, there hasn't been a taking even if
01:37:58 25 the value of the property has decreased as a result of

01:38:01 1 the City's actions by 50 percent because Supreme Court
2 precedent states that it has to be a wipeout. The
3 City's actions have to wipe out virtually all of the
4 use or value of the property.

01:38:20 5 So if the City's actions diminish the
6 property, it was 35 acres property -- if the 35-acre
7 property valued from a million to \$500,000, there's no
8 taking. But that's not before the Court today either.

9 What's before the Court today is the -- well,
01:38:38 10 I hope it's the culmination. I hope this -- we don't
11 have to continue going down these rabbit holes after
12 this hearing. But what's before the Court today
13 hopefully is the culmination of 16 months of effort by
14 the City to attempt to determine what the -- what

01:39:00 15 consideration the developer paid for the 250 acres as a
16 whole, but, you know, as it relates to this argument,
17 the 35 acres. And what we have -- what we've
18 determined after getting stonewalled at every turn,
19 including the City's attempts to obtain the purchase

01:39:27 20 price through -- the purchase and sale agreement from
21 the seller, which is Peccole-Nevada Corporation, which
22 owned the property from the 1970s -- the Peccole family
23 owned the property all that time -- and then sold these
24 250 acres to the developer in 2015 for a total of seven

01:39:52 25 and a half million dollars. That's reflected in the

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01:39:55 1 purchase and sale agreement that the City finally
2 obtained from Peccole-Nevada. Even though the
3 developer attempted to prevent the seller,
4 Peccole-Nevada, from producing those documents, we
01:40:10 5 finally obtained those -- that single purchase and sale
6 agreement from the -- from the seller four months ago.

7 And it is clear that the purchase price for
8 the entire 250 acres and all of the assets that went
9 along with it was a total of seven and a half million
01:40:29 10 dollars. So that works out to \$30,000 an acre, which,
11 if you apply that to 35 acres, comes out to a million
12 dollars. And, in fact, it's \$1,050,000.

13 But that also includes all of the other assets
14 that went along with the purchase of the golf course,
01:40:52 15 all the equipment, the equipment barn, et cetera. So
16 that is the basis of the City's contention that the
17 developer actually paid less than a million dollars for
18 these 35 acres.

19 So that's the City's position. And the City
01:41:10 20 is then going to demonstrate that the City's actions
21 did not wipe out virtually all of the value or use of
22 that 35 acres or of the 250 acres, that the value of
23 these 35 acres exceeds the million-dollar purchase
24 price that the developer paid for the 35 acres. That
01:41:39 25 is the threshold issue that this Court is going to be

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01:41:43 1 faced with is a comparison of the purchase price
2 against the appraised value after the City's actions.
3 So in response to the City's position, the
4 developer is now taking the position through an answer
01:42:03 5 to an interrogatory, no, no, no, City, you have it
6 wrong. We didn't pay seven and a half million dollars
7 for these 250 acres. We actually paid \$45 million
8 for -- for -- for the Badlands Golf Course and -- which
9 is essentially the 250 acres.

01:42:29 10 So the City, when faced with that, has gone
11 down that rabbit hole and attempted to determine what
12 documentation supports the developer's contention that
13 if it paid \$45 million, which is directly contrary to
14 the sole purchase and sale agreement that shows that it
01:42:58 15 was seven and a half million dollars.

16 And, again, the City has been stonewalled at
17 every turn attempting to obtain any documentation that
18 reflects that the developer actually paid \$45 million
19 or one dollar more than the seven and a half million
01:43:17 20 dollars that the purchase and sale agreement reflects.

21 So that brings us to today's hearing, your
22 Honor.

23 We have attempted now for 16 months to obtain
24 the documentation that will allow the City to
01:43:38 25 demonstrate the purchase price that the developer paid

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01:43:43 1 for these 35 acres.

2 And so we filed the motion to compel to obtain
3 specific documentation that the developer has failed to
4 produce. And I'll go through them one by one.

01:44:04 5 They are seeking the Court to compel the
6 developer to produce all documents, all agreements
7 between the developer and the Peccole family and their
8 respective affiliates related to or in connection with
9 the acquisition of Badlands property. Again, that's

01:44:25 10 clearly within the ambit of this litigation because we
11 need to know -- and the Court will need to know for
12 making a determination on the threshold issue

13 between -- or before it whether or not there's been a
14 taking by comparing the acquisition price with the

01:44:40 15 value of the property subsequent to the City's actions.

16 So any agreement between the developer and the
17 Peccole family that's related to or connected to the
18 acquisition of the Badlands' property, it's clearly
19 relevant and needs to be produced.

01:45:00 20 Secondly, we've been seeking and are
21 requesting an order compelling the developer to produce
22 all documents pertinent to the consideration paid by
23 the developer in connection with its acquisition of the
24 Badlands property. We're seeking all documents related

01:45:16 25 to the BGC settlement agreement -- BGC meaning Badlands

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01:45:24 1 Golf Course -- settlement agreement and attempted
2 takeover of the Badlands Golf Course by BGC Holdings
3 LLC because, again, that is relevant to the acquisition
4 price according to -- according to the developer. I
01:45:40 5 mean, according to the City, we had a document, a
6 purchase and sale agreement that says it was seven and
7 a half million dollars, but the developer is contending
8 that that is not the whole story.

9 So we need to get to the whole story.

01:45:54 10 We're also seeking an order compelling all
11 documents related to a restrictive covenant reported
12 against the Badlands property for the benefit of BGC
13 Holdings and Queensridge Towers LLC, Queensridge Towers
14 being on a parcel appurtenant to, adjacent to the
01:46:16 15 Badlands Golf Course. We're seeking all documents
16 related to the 2013 settlement agreement which
17 apparently is relevant because there was an election to
18 transfer 2.37 acres to Fore Stars which is, again,
19 the -- it's one of the plaintiffs, but it's the entity
01:46:42 20 that the developer purchased from the Peccoles in 2015.

21 We're also seeking all communications with the
22 developer's lenders which addressed the project
23 feasibility to make a determination as to the
24 reasonable investment-backed expectations of the
01:47:05 25 developer.

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01:47:05 1 We're seeking all cost estimates for
2 developing the Badlands property to determine whether
3 or not, in fact, there has been a taking.

4 We're seeking -- and the next category -- the
01:47:18 5 next few categories, the developer has not even
6 contested in its opposition to the City's motion to
7 compel. So the City contends that all of these,
8 because they are not contested, should automatically
9 summarily be ordered to be produced: All

01:47:41 10 communications with the land expert, Greg Wardle; all
11 communications with their lenders; all cost estimates;
12 all communications with -- between the developer's
13 principals through email or text exchanges; all
14 non-privileged communications with its consultants,
01:47:59 15 Chris Kaempfer and Stephanie Allen; all communications
16 with the Peccole family relative to the acquisition of
17 the Badlands property; all documents related to the BGC
18 Holdings lawsuit or the restrictive covenant; and all
19 documents related to the 2013 settlement agreement.

01:48:24 20 All those documents that I just identified,
21 beginning with the communications with the land expert,
22 Greg Wardle, have not been opposed by the developer,
23 and so they should be, as a matter of course, ordered
24 to be produced.

01:48:40 25 Additionally, we're seeking an order

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01:48:43 1 compelling the developer to produce all documents that
2 support its estimate of damages and its damage
3 calculation, which include all the documents related to
4 the 2015 offer to purchase and the August 2019 sale.

01:49:02 5 Also, we're seeking an order compelling the
6 developer to amend its response to interrogatory
7 number -- Interrogatory No. 20 in which the City has
8 requested that the developer identify all water rights
9 that are appurtenant to the Badlands property and
01:49:24 10 whether the developer has disposed of such water
11 rights.

12 That category also, your Honor, is not subject
13 to the developer's opposition. So, again, that
14 specific category identifying all water rights
01:49:46 15 appurtenant to Badlands property should be compelled as
16 a matter of course.

17 And, finally, your Honor, because we've been
18 chasing most of this documentation for 16 months, I
19 would submit to the Court that most of this
01:50:06 20 documentation, if the -- if the developer actually
21 intended to rely on the \$45 million contention --
22 contended purchase price of the property, all of this
23 documentation which would support that contention
24 should have been produced pursuant to NRCP 16.1 in the
01:50:34 25 developer's initial disclosures.

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01:50:37 1 They weren't produced then. They should have
2 been produced in response to the City's first set of
3 requests for production of documents which was served
4 16 months ago on July 2nd, 2019, and they should have
01:50:54 5 been produced in subsequent requests that are
6 identified in our briefing.

7 So, again, we submit that because -- I mean,
8 I -- I have not gone through the City billings to
9 determine how much time has been spent trying to obtain
01:51:15 10 the documentation that should have been produced over a
11 year and a half ago, but I -- it's tens of thousands of
12 dollars, if not in excess of \$100,000, just trying to
13 get the developer to produce the documents and
14 information related to the consideration that was paid
01:51:38 15 for the acquisition of the Badlands Golf Course.

16 And for that reason, your Honor, we submit
17 that the Court should grant the City's motion in all
18 respects including the City's request for attorney's
19 fees.

01:51:54 20 THE COURT: Thank you, sir.

21 We'll go ahead, and we'll hear from the
22 plaintiff.

23 MR. LEAVITT: Thank you, your Honor. James
24 Leavitt on behalf of the plaintiff, 180 Land.

01:52:10 25 Just two preliminary issues that Mr. Ogilvie

01:52:13 1 addressed is he stated that in this case the landowner
2 must demonstrate an absolute total wipeout of the
3 property, and even 50 percent of the value loss to the
4 property is not a taking.

01:52:25 5 The Nevada Supreme Court has expressly
6 rejected that rule. The United States Supreme Court
7 has stated that states can provide greater protections
8 for their landowners than what is provided by the
9 federal government. And what Mr. Ogilvie has cited to
01:52:40 10 you as the total wipeout rule is a rule which was
11 adopted by the federal government but has been rejected
12 by the State of Nevada. In fact, to quote from a
13 Nevada Supreme Court case, in 2015 the Nevada Supreme
14 Court stated, and I quote:

01:52:54 15 "To constitute a taking under the Fifth
16 Amendment, it is not necessary that the
17 property be absolutely taken in the narrow
18 sense of that word to come within the
19 protection of this constitutional provision."

01:53:06 20 It is sufficient if the action by the
21 government involved -- again, a quote -- "a direct
22 interference with or disturbance of property rights."

23 The Nevada Supreme Court also stated in a
24 previous decision that some property right which is
01:53:20 25 directly connected to the ownership of the use of

01:53:22 1 property, if that property right is substantially
2 impaired or extinguished, then there's a taking.

3 So this rule that Mr. Ogilvie has cited to you
4 about a total wipeout has been expressly rejected by
01:53:34 5 the Nevada Supreme Court. I know it's going to be
6 addressed at a later date, but I wanted that noted for
7 the Court.

8 The second argument that Mr. Ogilvie makes is
9 that if the landowner paid a million dollars for the
01:53:46 10 property and in the after condition, after all of the
11 government's actions, the property is still worth a
12 million dollars, that rule has also been rejected by
13 the Nevada Supreme Court.

14 The Nevada Supreme Court, again, has been very
01:53:57 15 clear. If a property has value, it doesn't matter how
16 much the landowner paid for the property. If a
17 property has value and the Nevada -- and the government
18 engages in actions that substantially impair that
19 value, then there's a taking, and the government has to
01:54:12 20 pay just compensation for that taking.

21 So with that background, your Honor, I'll move
22 to the government's request here.

23 I agree with Mr. Ogilvie. And, in fact, I
24 called Mr. Ogilvie last night, and we had a
01:54:23 25 conversation -- he graciously returned my phone call.

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01:54:26 1 We spoke at 5:00 o'clock. I said, I agree with you
2 that this is a very complicated case. It's not the
3 typical case where a landowner went out, and he
4 purchased a parcel of property and that purchase price
01:54:38 5 is very clear and that we have a deed and a declaration
6 of value setting out that value. That's not this case.
7 In fact, that's the opposite of this case.

8 Just by way of background, your Honor, this
9 acquisition of this 250-acre property which includes
01:54:56 10 the 35-acre property in this case involves a
11 complicated history. And Mr. Ogilvie and I discussed
12 this a little bit last night. But it involves an
13 extremely complicated history of approximately 20 years
14 of the principal, who's the principal of 180 Land in
01:55:16 15 this case -- his name is Yohan Lowie -- where he worked
16 with the Peccole family over a 20-year period to
17 acquire the rights to purchase this property.

18 So the right to acquire the 250-acre property,
19 the due diligence done to acquire that property, and
01:55:31 20 the consideration paid for the right to acquire the
21 property occurred over an approximately 20-year period.
22 It's over that approximately 20-year period that there
23 were several complicated transactions out of which was
24 born the right to acquire the 250-acre property.

01:55:49 25 And, your Honor, to complicate matters further

01:55:51 1 is at the end of that 20-year period, our client didn't
2 just purchase the 250-acre property; he purchased a
3 company that owned the 250-acre property, all of that
4 company's assets and accounts, and all of that
01:56:03 5 company's liabilities.

6 So I understand this issue. The City -- the
7 City wants two things. They want to fully understand
8 the complicated historical purchase of the property,
9 and they want to review the relevant documents
01:56:17 10 associated with that background.

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

13 Now, your Honor, we believe that it's not
14 relevant. And the reason we believe that it's not
01:56:32 15 relevant is because what happened 20 years ago, how
16 this transaction occurred over the past 20 years, the
17 consideration that was paid beginning in 2001 through
18 2005 and 2010, that consideration that was paid way
19 back then has absolutely nothing to do with the value
01:56:52 20 of this property in 2017. The statutory date of value
21 in this case is 2017.

22 What happened back in that time frame has
23 nothing to do with that -- with this value. What has
24 to do with this value today is to have an appraiser
01:57:05 25 identify the property, look at the comparable sales,

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01:57:07 1 and determine the value today.

2 It doesn't matter, again, what happened during
3 the past. However, the City has made it an issue, and
4 so we've been trying to comply as best as we can and to
01:57:19 5 explain this issue to Mr. Ogilvie and to the City of
6 Las Vegas.

7 It hasn't worked. I'll just tell you right
8 now, your Honor, it hasn't worked. And the reason it
9 hasn't worked is because this historical transaction
01:57:32 10 that occurred that Mr. Ogilvie wants to find out about
11 that we believe is irrelevant occurred over a 20-year
12 period. And the only individual that can tell this
13 story is Mr. Lowie.

14 And I -- I'll share this with you. I shared
01:57:49 15 it with Mr. Ogilvie last night. It took me four and a
16 half straight hours of listening to Mr. Lowie and
17 having him explain this to fully understand that
18 transaction. And so I'm going to make a proposal. And
19 I talked to Mr. Ogilvie a little bit about this last
01:58:04 20 night, is that I propose that Mr. Lowie's deposition
21 occur on this one issue, the historical background
22 associated with the acquisition of the property, and
23 that we reserve for a later time all of the related
24 valuation issues that Mr. Lowie may testify to as of
01:58:25 25 2017. Now, we don't typically offer up our clients for

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01:58:28 1 two depositions, but this is a unique circumstance that
2 warrants it.

3 Secondly, during that deposition there will be
4 several documents that are contracts that are
01:58:38 5 referenced. Your Honor, those contracts and those
6 documents do not include a purchase price for the
7 property. They do not include the consideration paid
8 for the property. Again, what happened is out of those
9 complicated land transaction deals was born the right
01:58:55 10 to purchase the property. **Just one of those**

11 **complicated transactions that Mr. Lowie entered into**
12 **with the Peccole family involved the Queensridge**
13 **Towers, Tivoli Village, which is built now, Hualapai**
14 **Commons, which is on the corner of Hualapai and Sahara**
01:59:12 15 **here in Las Vegas; two other partners; the prior golf**
16 **course operator. Just one of them.**

17 And so, your Honor, I believe that we can get
18 to the bottom of this. I believe we can resolve all of
19 Mr. Ogilvie's issues regarding this complicated
01:59:27 20 transaction, regarding these -- these contracts if
21 Mr. Lowie's deposition is taken.

22 And here's what I would recommend, your Honor,
23 is that within the next week, next two weeks -- I'll
24 double-check with our client. I believe it can happen.
01:59:40 25 Within the next two weeks we can schedule this

01:59:42 1 deposition. Again, limit it to this issue of this
2 complicated historical background.

3 At that time, some of these documents will be
4 referenced. I understand, from speaking with our
01:59:54 5 client, that there's some confidentiality issues that
6 involve individuals that were involved in those
7 transactions. We can work through those with
8 Mr. Ogilvie. If not with Mr. Ogilvie, then we can
9 submit them to this Court in camera, and we can work
02:00:06 10 those issues out with the Court in camera.

11 But here's my problem, your Honor, is that I
12 think in order to do this, and then to get this
13 information, the relevance of which Mr. Ogilvie thinks
14 is important, and also to provide it and for -- also
02:00:22 15 for our experts is we're going to need some time to cut
16 through this and then get it to the experts and -- and,
17 again, I spoke to Mr. Ogilvie about this last night. I
18 recommend that we continue everything for 45 days, we
19 allow this to occur, we work through these issues, we
02:00:39 20 give the parties time to get this information to their
21 experts, and then we defer these pending discovery
22 issues that are related to each one of these documents.

23 I wholeheartedly believe that if we do it this
24 way, your Honor, we're going to resolve this -- once
02:00:56 25 and for all these discovery issues, and at that point

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02:00:59 1 in time I think Mr. Ogilvie will be satisfied.

2 And I'll tell you, your Honor, I -- and I was
3 going to save this for the status check tomorrow. I
4 mean, a second reason for this 45-day continuance is
02:01:10 5 we've -- I mean, we've faced significant difficulties
6 obtaining the information and data necessary to
7 exchange our expert reports. I brought -- I expressed
8 some of that frustration at our last status check
9 hearing. We identified an issue just very recently
02:01:26 10 that may even require additional expert work to
11 address.

12 And, your Honor, our office has been doing
13 this eminent domain for about 30 years, and we rarely,
14 if ever -- it's extraordinarily rare that we ever ask
02:01:38 15 for a continuance because we're the plaintiff seeking
16 compensation. But due to the unique circumstances of
17 this case, we can't meet that -- the pending discovery
18 dates any way.

19 And I don't do it lightly, your Honor. I
02:01:52 20 mean, I spoke to our client last night who's not been
21 entirely happy with continuances, but I explained we
22 need to make this request so that the pending discovery
23 issues can be resolved once and for all, that
24 information can be given to the experts, and so that we
02:02:06 25 can have the adequate time to produce the expert

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02:02:09 1 reports.

2 So on that issue, your Honor, so there's
3 two -- I'd recommend we stay it -- or not stay but
4 continue everything for 45 days. I understand, your
02:02:20 5 Honor, that that would kick our trial date that we have
6 vehemently argued we need to keep, but I understand it
7 would kick that date.

8 First we'll -- and there's two reasons for
9 that. Number one, I think we can resolve most, if not
02:02:36 10 all, of the pending discovery issues.

11 And, second, it will allow us to prepare this
12 case adequately for trial. I mean, I went back and
13 read the COVID orders, the administrative order.

14 -- (telephonic audio glitch) -- So that's
02:02:58 15 where we're at. And so, your Honor, that's what we're
16 asking for here. And, your Honor --

17 THE COURT REPORTER: Mr. Leavitt, I'm sorry.
18 Mr. Leavitt, this is the court reporter. I didn't hear
19 for a while. Were you silent or did I miss something?

02:03:16 20 MR. LEAVITT: No, I'm speaking now.

21 THE COURT REPORTER: Okay.

22 MR. LEAVITT: Okay. And so, your Honor, and I
23 don't know if you heard my last part there, but there
24 is that COVID order 20-09 that states that judges are
02:03:27 25 encouraged to liberally grant continuances to allow

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02:03:30 1 time for preparation. And that's what we're asking for
2 here, is it would be a twofold benefit.

3 Number one, it would allow us time to have
4 Mr. Lowie's deposition taken so that this complicated
02:03:41 5 transaction can be explained fully to Mr. Ogilvie,
6 because I will tell you a lot of the things that he's
7 asking for are entirely irrelevant.

8 And I'll go through a handful of them. He's
9 asking for all documents related to the 2013 settlement
02:03:55 10 agreement including Queensridge Towers LLC's election
11 to transfer 2.37 acres to Fore Stars. In 2013, the
12 landowners were neither Queensridge Towers LLC nor Fore
13 Stars. They weren't involved in that transaction at
14 all.

02:04:09 15 And, see, Mr. Lowie can explain this
16 historical path to Mr. Ogilvie so that he can
17 understand it. And at that point in time, all of these
18 documents that -- and I'm assuming that during the
19 deposition, Mr. Ogilvie will say, Hey, well, what
02:04:24 20 document shows that transaction that occurred? And we
21 can discuss the confidentiality provision of that
22 document at that time.

23 But, your Honor, I will briefly go through
24 some -- the documents that the government has asked for
02:04:35 25 here, all agreements between the landowners and Peccole

02:04:38 1 related to or connected to the acquisition. --
2 (telephonic audio glitch) --
3 THE COURT REPORTER: I can't hear again. Can
4 anyone else hear?
02:04:40 5 THE COURT: Yeah, I can't --
6 MS. HAM: Well, no.
7 THE COURT: He faded. We'll see if he comes
8 back online.
9 MR. LEAVITT: Judge, can you hear me now, your
02:05:00 10 Honor?
11 THE COURT: Yes, I can.
12 MS. HAM: Yeah.
13 THE COURT: Here's --
14 MR. LEAVITT: Okay.
02:05:04 15 THE COURT: -- my thoughts. And I'll let you
16 continue. But here's my thoughts. And I do understand
17 this case is nuanced. And on some level it might be
18 complex. But there's a couple issues I'm concerned
19 about. And I do understand the potential tension
02:05:19 20 between Rule 16.1, computation of damages are required
21 early on in the case. I mean, I get that.
22 I do understand also this is an inverse
23 condemnation case. As a result, the experts will
24 ultimately testify as to the value. Just as important
02:05:44 25 too -- and what I mean by "value" is value of potential

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02:05:47 1 taking is whether there was one or not.

2 But just as important too, I think I have to
3 point this out: When it comes to issues regarding
4 relevancy or whether certain discovery is relevant,
02:05:57 5 there's a much broader brush as it relates to relevancy
6 for the purposes of discovery versus admissibility at
7 the time of trial. And so I have all these competing
8 tensions in this case, and I get that.

9 And so I'm looking at it from this
02:06:12 10 perspective: Whether or not the purchase price is
11 relevant or not or the amount of consideration paid is
12 relevant or not for the ultimate decision-making in
13 this case, I can't say.

14 But it seems to me, as a baseline, the
02:06:34 15 government probably has a right to find out, okay, how
16 did this transaction occur? Just as important too,
17 what was paid?

18 And last, but not least, and this is -- I just
19 look back at my time taking depositions of experts in
02:06:53 20 more complex cases, I would always like to have all
21 documents I need in front of me to prepare for that
22 deposition and documents that the witnesses potentially
23 will rely upon, because unless I have that complete
24 file history, I don't know what's important and
02:07:11 25 necessarily what's not important.

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02:07:12 1 And when it comes to depositions, typically
2 you get one bite, and that's all you get. We all
3 understand that.

4 And so I'm looking at that, and I understand
02:07:21 5 what Mr. Ogilvie's request is. And I -- and I have a
6 checklist of all the things that he's looking -- that
7 he's requesting. And so that's my -- that's kind of
8 how I see this.

9 And we have to come to some sort of resolution
02:07:41 10 on this so this case can move forward. As far as time
11 is concerned, I'm not really concerned about that, to
12 be candid with everyone. I want to get this case
13 moving in this regard.

14 We got -- we have to have a baseline upon
02:07:55 15 which both parties can prepare their case.

16 And I'm not saying whether I'll accept
17 Mr. Ogilvie's position at the end of the day, but I do
18 feel he has a right, like any party to a complex
19 litigation, to develop their case.

02:08:12 20 You know, and maybe he's right. Maybe he's
21 wrong. I don't know. But -- and ultimately I would
22 anticipate there will be some law and motion practice
23 at the end of the day regarding admissibility of
24 certain opinions from the experts.

02:08:30 25 On some level maybe I might have to perform a

02:08:34 1 Hallmark analysis as it pertains to the admissibility
2 of the expert opinions. Maybe I'll have to look at
3 qualification, maybe the assistance requirement and/or
4 limited in scope. I don't know. But I do know this:

02:08:50 5 We have to get this case moving. We just do.

6 And, once again, I'm not concerned about
7 continuances and the like. I'm concerned about making
8 sure both parties have a full and fair opportunity to
9 develop their case.

02:09:04 10 And, ultimately, someone will win. Someone
11 will lose. Maybe the case settles. I don't know. But
12 that's my overwhelming concern at this point. I don't
13 mind telling everybody what my thoughts are on that
14 specific issue.

02:09:18 15 But with that in mind, I don't want to cut you
16 off, Mr. Leavitt. I don't. And, of course, I want to
17 hear from Mr. Ogilvie once you're done.

18 And whether there's an agreement or not in
19 place, I don't know. But I do know this: We have to
02:09:31 20 get the case moving. We just do.

21 MS. HAM: Your Honor, this is -- this is
22 Elizabeth Ghanem Ham. I'm sorry.

23 I'm sorry, Mr. Leavitt.

24 I just want to address one of your statements
02:09:45 25 and so we're very clear as it relates to the purchase

02:09:50 1 price. And I think it's important so that you
2 understand we answered the question both as an
3 interrogatory, what did you pay, 45 million; and both
4 of the requests for production. And we had a 2.34
02:10:04 5 conference about it and responded again. There are no
6 documents that state that the landowner paid the
7 45 million for the golf course. There are simply no
8 documents that state that.

9 Having -- does that mean that that's not what
02:10:17 10 we paid for it? It certainly does not. Our position
11 will remain that that is what was paid for the course.
12 So we always say -- and how these 2.34 conferences go,
13 which I've been involved in, is that the government
14 will say, Well, we don't understand. But it's not --
02:10:31 15 I'm not being deposed at the 2.34 conferences, and it's
16 not my job to explain it. There are other tools
17 available.

18 I understand that when you take a deposition
19 that you want every document in front of you, but there
02:10:42 20 are simply none. So I just want it so you understand.
21 It's not that we're not answering. We are answering
22 very truthfully.

23 Are there documents that support eventually
24 this position through other transactions? Yes.

02:10:57 25 Do they relate to this? Not necessarily.

02:10:58 1 Which is why we offered this deposition so he can get
2 an understanding and then maybe hone in. We're
3 certainly not hiding anything. We're not refusing to
4 produce anything.

02:11:09 5 And so I just want you to understand that it's
6 not that we say we're not giving this to you. We are
7 saying there are no documents that exist that say, as
8 the request was asked, the landowner paid 45 million
9 for the golf course. No document states that.

02:11:26 10 So it is an involved 20-year history with the
11 sellers that I think is important. So we've offered
12 that. And I just want to be clear so that you
13 understand. And I certainly understand you want every
14 document that may exist that is involved in this case.

02:11:41 15 But it's been so far reaching and so beyond.

16 But our answers are all truthful. So, you
17 know, to say that we've not produced documents, they
18 simply don't exist. It doesn't mean that our -- that
19 our testimony is going to be any different.

02:11:57 20 And so if you want to understand that, which
21 is why we offered this, this sort of first layer: Take
22 the deposition. And we've said it over and over again
23 during the 2.34 conferences. There are other discovery
24 tools available to you then.

02:12:09 25 And so I just wanted that to be clear with

02:12:12 1 your position as to how it relates to discovery and how
2 this matter should proceed. But certainly Mr. Leavitt
3 can address all the other items that I think are sort
4 of in line with what happened with that particular
02:12:25 5 question.

6 THE COURT: All right. And, ma'am, wait,
7 wait. And I appreciate that. And for the record, I
8 never have a position. I just want to make sure I'm
9 really clear on that, because I don't.

02:12:36 10 And I do understand from time to time -- and
11 this happens sometimes in complex cases, sometimes in
12 simple cases -- sometimes documents that are being
13 requested do not exist. And so under those
14 circumstances -- and I don't know what the discovery
02:12:54 15 request was -- I mean, the discovery answer or response
16 was, but maybe as it relates to, I guess, one of the
17 items would be a purchase agreement or something of
18 that ilk, maybe the response should be it doesn't
19 exist; there is no such documentation, or something
02:13:16 20 like that. I mean, but -- I get that. I understand
21 that.

22 MS. HAM: Yeah.

23 MR. LEAVITT: And, your Honor, that's -- and I
24 appreciate Ms. Ghanem Ham's explanation there. And
02:13:28 25 that's what's happened during some of these responses

02:13:31 1 and during these 2.34 conferences -- and Ms. Ghanem Ham
2 has been handling them; I haven't been in most of
3 them -- is that there has been an explanation these
4 documents don't exist, and there's been a retort that,
02:13:42 5 well, they have to exist. And they don't, your Honor.

6 And that's why I believe that -- and I got to
7 take a step back. I agree wholeheartedly with what you
8 said, your Honor; although, that we are contesting that
9 these issues are not relevant, I understand that the
02:13:59 10 government is entitled to get these documents. I
11 understand that the issue of the purchase price will be
12 fully briefed for you at a later date.

13 And the questions that are really being
14 presented, that you presented here, your Honor, is how
02:14:12 15 did this transaction occur? What was paid? What
16 happened?

17 And the problem here is is that there is a
18 massive disconnect. And the massive disconnect is that
19 the government has not taken -- deposed Mr. Lowie yet.
02:14:29 20 And if they depose him, I think that all of these
21 issues, every single one of these pending issues that
22 are before you right now, I believe every single one of
23 them will be resolved through that process.

24 And we can take it in layers. I understand
02:14:43 25 that in complex litigation, sometimes we take it in

02:14:46 1 layers.

2 And so, your Honor, that's why we made the
3 proposal. Let's -- I don't want to call it a stay, but
4 let's continue everything for 45 days. Mr. Ogilvie and
02:14:57 5 I have been very good on agreeing to what those dates
6 would be. Again, the trial date is going to have to be
7 slid to the next stack or maybe the stack after that.
8 And then this issue can be once and for all resolved.

9 There's been these accusations that we somehow
02:15:14 10 hid documents or that we're hiding things from the
11 government. That's -- nothing could be further from
12 the truth. It's just a very complex transaction that
13 has to be explained.

14 And so, your Honor, if we -- again, if I can
02:15:27 15 go back to some of these requests, one of -- the second
16 request was all communications with the Peccole family.
17 There is no time limit on that request. There is no
18 parameters at all.

19 **Mr. Lowie began working with the Peccoles in**
02:15:44 20 **developing properties in Queensridge and in these**
21 **complicated transactions over 20 years ago. It would**
22 **be absolutely overly burdensome and impossible to get**
23 **every single communication there.**

24 **We have, however, provided everything from**
02:15:58 25 **2014 forward to the City.** So they have those

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02:16:01 1 documents.

2 All documents pertinent to the consideration
3 paid by developer in connection with the property.

4 Again, I believe that that will be resolved through a
02:16:11 5 deposition. The testimony will lay out what the
6 consideration was that was paid and if, during that
7 deposition, there are contracts that become relevant
8 that are discoverable, we can discuss that at that
9 time, your Honor.

02:16:26 10 The other request is all documents related to
11 BGC settlement agreement. BGC Holding is a defunct
12 LLC, and the landowners don't have the documents from
13 that company. We can't produce that.

14 All documents related to the restrictive
02:16:39 15 covenant reported against the 250-acre property. We
16 have produced that document. Now, there might be
17 another document, your Honor, that we discussed last
18 night that is a release of that restrictive covenant.

19 What happened is the Queensridge Towers which
02:16:56 20 was built adjacent to the 250-acre property knew that
21 the 250-acre property could be developed. And because
22 of that, they wanted a restrictive covenant during the
23 time they were selling their units. After they sold
24 their units, then they released the 250-acre property
02:17:12 25 for development. And I believe we have -- if that

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02:17:15 1 release has not been produced, we will produce that.

2 Again, all documents related to the 2013
3 settlement agreement, we were not a party to that, so
4 we don't have that document.

02:17:24 5 And all the communications between the lender
6 and the landowner, I believe that that's been addressed
7 at a 2.34 conference. We've produced the agreement.
8 We don't believe there are any further communications,
9 but we'll double-check.

02:17:41 10 The government also asked for all cost
11 estimates for the -- to develop the 250-acre property.
12 First of all, there are none. The way the landowners
13 work, your Honor, is they have in-house preliminary
14 estimates for their properties, for their drainage
02:17:57 15 issues. They don't go out and hire people to do that.

16 And I think, again, that can be explained
17 through Mr. Lowie's deposition where he talks about the
18 historical purchase of the property.

19 Now, I'll tell you -- I'll tell the Court
02:18:11 20 these cost estimates are being done for the 35-acre
21 property. Those will be produced as part of an
22 exchange. But they were never done for this specific
23 35-acre property, because this 35-acre property doesn't
24 have drainage issues.

02:18:25 25 Your Honor, they asked for communications

02:18:27 1 between Yohan Lowie and Vickie DeHart. We've given
2 them. They believe there's more. We don't have any
3 more.

4 They've asked for all communications between
02:18:37 5 Chris Kaempfer and Stephanie Allen and the landowner.
6 Your Honor, that is an incredibly overburdensome
7 request because it involves, again, five years of
8 attempting to develop the property where the landowners
9 met with their attorney almost daily during that
02:18:52 10 period. We -- at least weekly.

11 And if -- and we've produced to them -- to the
12 government all of the nonprivileged documents. But the
13 government said they want a privilege log. If they
14 want that privilege log, the government will have to
02:19:06 15 pay to have that done under NRCP Rule 34(d) which
16 requires a party asking for these type of documents to
17 pay for that.

18 I think they've abandoned that. I'm not sure.
19 But if they want that privilege log, we're happy to do
02:19:19 20 it, but we're not going to pay for it because that's
21 going to take weeks of work and thousands of pages of
22 documents, and a third party will have to be retained
23 to identify those documents and identify the ones that
24 are privileged under the attorney-client privilege.

02:19:35 25 The other documents they ask for that support

02:19:38 1 the estimate of damage calculations related to the 2015
2 offer and the August 2019 sale. And you mentioned
3 that, your Honor. The computation of damages, the
4 estimate.

02:19:49 5 A 2.34 conference was held yesterday and, from
6 what I understand, Ms. Ghanem Ham agreed to produce the
7 LOI and certain other agreements to further supplement
8 that response.

9 And, your Honor, in regards to the -- finally,
02:20:05 10 in regards to Interrogatory No. 20, your Honor, there
11 has been what we've -- approximately 24 interrogatories
12 have been issued on the landowner, which with the
13 subparts we believe it exceeds 40. But we responded to
14 them all. And the government has identified one out of
02:20:20 15 those 40 that it believes is deficient, and it's in
16 regards to the water. We have responded adequately,
17 the best that we can to that response. We stated that
18 there are -- (telephonic audio glitch) --

19 THE COURT REPORTER: Mr. Leavitt, we can't
02:20:36 20 hear you.

21 MR. LEAVITT: Okay. Can you hear me now?

22 THE COURT REPORTER: Yes.

23 MR. LEAVITT: Okay. And so we responded to
24 that Interrogatory No. 20 based upon information we
02:20:47 25 received from the state engineer, the highest authority

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02:20:50 1 on water rights in the state of Nevada. That's how we
2 responded to that request.

3 There are water documents that are public
4 documents that the government obtained -- (telephonic
02:20:58 5 audio glitch) --

6 THE COURT REPORTER: You're cutting out again.

7 MR. LEAVITT: I'm not sure what more we can
8 do, your Honor, with the Interrogatory No. 20 other
9 than respond to it the best that we can.

02:21:12 10 So, your Honor, again, if I can go back to my
11 original argument or my -- sorry -- my original
12 position was I think we can get this resolved through
13 layers, your Honor. And the first layer on the
14 historical background of the property would be to
02:21:30 15 conduct the deposition of Mr. Lowie. And then we can
16 move from there. Again, I believe that will resolve at
17 least ten of the pending issues that are before you
18 right now.

19 And just very briefly, on the issue of
02:21:43 20 attorney's fees, your Honor, we're in an unprecedented
21 time. It's been extraordinarily difficult to litigate
22 at this time. Everybody recognizes that. And --
23 (telephonic audio glitch) --

24 THE COURT REPORTER: You're cutting out again,
02:22:03 25 Mr. Leavitt.

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02:22:03 1 MR. LEAVITT: Let me try and speak into the
2 phone a little bit better.

3 The Rule 37 that says that attorney's fees
4 must be granted where a motion to compel is granted,
02:22:12 5 that rule also has an exception that says the Court
6 must not order that payment if the opposing party's
7 nondisclosure, response, or objection was substantially
8 justified or other circumstances makes an award of
9 expenses unjust.

02:22:29 10 Again, this is that case which involves
11 complex issues. We're at a very unique time. We're
12 doing our very best to respond to what the government
13 is asking for, but they're assuming certain facts that
14 don't exist. And we can resolve all of that right now
02:22:46 15 with Mr. Lowie's deposition, your Honor.

16 So with that, I'll submit, your Honor.

17 THE COURT: Thank you, sir.

18 Mr. Ogilvie.

19 MR. OGILVIE: Yes. Thank you, your Honor.

02:23:00 20 My argument would have been very different at
21 the outset. I made a determination to limit my
22 argument to the merits of the motion and omit the
23 conversation that I had with Mr. Leavitt yesterday,
24 because, as you know, your Honor, frequently counsel
02:23:26 25 have off-the-record communications, and Jim and I --

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02:23:32 1 Mr. Leavitt and I have, throughout this case, had
2 off-the-record communications. I believe that without
3 Mr. Leavitt expressly requesting that that conversation
4 be off the record, I believe that perhaps he intended
02:23:52 5 it to be off the record. So now that it's not, let me
6 address them. Let me address that conversation.

7 We very well may agree to the proposal, but I
8 thought the proposal was backwards. The proposal is
9 here if the developer will produce Mr. Lowie for a
02:24:26 10 deposition related to -- exclusively related to these
11 transactions, and then based on these transactions you
12 can make a request for documents that we may or may not
13 agree to.

14 As the Court recognized, when you take a
02:24:44 15 deposition, you want all of the documents in front of
16 you.

17 And the City's been wanting to take
18 Mr. Lowie's deposition now for over a year. But we
19 have continued to delay the taking of that deposition
02:25:02 20 for that very reason. And I think I probably said this
21 at a status conference: Before I take Mr. Lowie's
22 deposition, I want every document that the City is
23 entitled to relative to the transactions that the
24 developer believes support its position that it paid
02:25:25 25 \$45 million for this property.

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02:25:28 1 And I want to address a point that Ms. Ghanem
2 Ham made a few moments ago. And that is they said that
3 the developer responded that there are no documents
4 that state that the property was approximately -- the
02:25:50 5 property was acquired for \$45 million.

6 That was not the request.

7 The request was not provide us documents,
8 every document that state that the purchase price was
9 \$45 million. This is how that -- that -- to put that
02:26:10 10 in context, this is how that went down: The -- in
11 answer to Interrogatory 19 that the City served on
12 180 Land, 180 Land stated the aggregate of
13 consideration given to the Peccole family for the
14 former Badlands Golf Course was approximately
02:26:34 15 \$45 million.

16 That was the first that the City had heard of
17 this \$45 million.

18 So the City, upon receiving that
19 interrogatory, made the following request for
02:26:48 20 production of documents. Produce all documents that
21 support your first supplemental answer to Interrogatory
22 No. 19 stating that the aggregate consideration given
23 to the Peccole family for the former Badlands Golf
24 Course property was approximately \$45 million.

02:27:06 25 It did not say -- again, it did not say

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02:27:09 1 produce documents that state that you paid \$45 million.
2 It said produce all documents that support your
3 contention that you paid \$45 million.

4 And going to -- going to the universal
02:27:28 5 argument that I'm hearing from the developer today,
6 that, you know, these go back 20 years, very
7 sophisticated, complex transactions, going to take a
8 long time. That's fine. I mean, that's not -- that is
9 not the litmus test as to whether or not it should be
02:27:48 10 produced.

11 The litmus test is if it's requested, if it's
12 not overly burdensome, and if there's some relevance.
13 The relevance is that the developers claimed that it
14 did acquire the 250 acres for \$45 million, and the City
02:28:09 15 requested all documents that support that.

16 It doesn't have to -- it doesn't have to even
17 have a dollar figure in the document to be relevant and
18 responsive to that document request.

19 So my response is this, your Honor: Yes, I
02:28:28 20 would love to take Mr. Lowie's deposition, but I want
21 every document that relates to every one of these
22 transactions that support their contention of the
23 \$45 million purchase price. Which, from what I'm
24 listening to -- what I'm hearing from Mr. Leavitt is an
02:28:51 25 enormous number of contracts, and other documents

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02:28:57 1 relating to this complex series of transactions. The
2 City is entitled to them, and the City makes a request
3 of the Court today that it compel the developer to
4 produce all of those documents.

02:29:19 5 THE COURT: All right. Is there anything else
6 as far as that issue is concerned, Mr. Leavitt?
7 Because I don't mind sharing this with you, sir. I was
8 sitting here. Although I said it slightly different
9 than Mr. Ogilvie, but one of my notes reflected that
02:29:34 10 all documents relied upon by plaintiff to support their
11 \$45 million evaluation.

12 It seems to me that's a reasonable request,
13 whether it's checks or land transfers or fine art
14 transfer. I mean, there has to be a basis. And we
02:29:59 15 can't overlook this one fact. Ultimately, when it
16 comes to computation of damages, that's going to be the
17 plaintiff's burden in this case.

18 And so you can't -- you can't not produce it.
19 And just as important too, and I think everyone agrees
02:30:16 20 with this -- if you're going to take someone's
21 deposition, you don't want to go in and they testify as
22 to documents that you haven't had a chance to review.

23 You have to have the document.

24 MR. LEAVITT: And I understand that, your
02:30:31 25 Honor. And I'm going to let Ms. Ghanem Ham address

02:30:34 1 that issue in just one moment.

2 But I did want to address one issue that
3 Mr. Ogilvie brought up regarding our communication last
4 night. I did not intend to disclose anything that

02:30:43 5 Mr. Ogilvie told me that was intended to be off the
6 record, and I was very careful to make sure that I just
7 advised him that I would be making this request today.

8 It wasn't intended in any way to disclose any
9 conversations we had off the record. And I apologize

02:30:58 10 if that -- if it came off that way. That was not what
11 was intended.

12 But with that said -- I'm sorry. Go ahead.

13 MR. OGILVIE: I --

14 THE COURT: No. No, I'm not even concerned
02:31:11 15 about that, gentlemen, to be really candid with you.

16 MR. OGILVIE: Judge, this is George Ogilvie.
17 And that was not -- that was not the point that I was
18 trying to make. I was just advising the Court of the
19 reason for me not addressing Mr. Leavitt's proposal in

02:31:25 20 my initial argument. I just felt that if he may have
21 intended for the communications to be confidential.

22 I'm not -- I'm not -- I'm not suggesting otherwise.

23 THE COURT: Okay. I understand.

24 MR. LEAVITT: And I appreciate that.

02:31:38 25 All right. And I don't know if Ms. Ghanem Ham

02:31:40 1 is still on the phone here with us.

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

4 And so you wanted me to respond to
02:31:47 5 specifically in regard to our response to
6 interrogatory -- I forget which number it was -- where
7 we stated that the consideration given for the former
8 Badlands Golf Course property was 45 million. And our
9 response to that request for production was that -- and
02:32:07 10 we revised it, but the request of the government, the
11 defendant, that said that there are no documents,
12 again, as I stated to you earlier, your Honor, that
13 within the plaintiff's custody and control that states
14 that the aggregate of consideration given to the
02:32:24 15 Peccole family for the former Badlands Golf Course
16 property was 45 million.

17 There is a multitude in binders and binders of
18 documents that memorialize this complicated transaction
19 to ultimately finalize the dealings with -- that they
02:32:39 20 were already in process with the Peccoles, some of
21 which Mr. Leavitt has already referenced previously in
22 the different properties and different ventures whether
23 they were joint ventures or partnerships or whatever
24 they were in multitude of properties, and none of them
02:32:56 25 will address that.

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02:32:57 1 They have already requested the deposition of
2 Mr. Baines, who I believe is being put forward as
3 either the PMK or in some regard on the Peccole side
4 who can answer these questions as well.

02:33:14 5 There's already been deposition testimony
6 that's been provided that sort of confirms this sort of
7 out of this relationship and all other transactions
8 that was born in this right.

9 These are highly confidential documents that
02:33:28 10 involve several other parties. If the Court is going
11 to order that we -- that we produce them, they must be
12 produced under confidentiality provision. And I would
13 request that the Court review them first in camera
14 because we are in a position where the City has

02:33:45 15 continued and repeatedly continues to be in bed really
16 with the homeowners, for lack of a better term, who
17 started litigation with us before the year even
18 finished of owning this -- or this entity Fore Stars
19 that owned the land. And through the City's actions

02:34:01 20 which have been so egregious and outrageous, everything
21 stemming from intending to destroy the company beyond
22 even just the development of this property, but seeking
23 intel through a private investigator on some of our
24 principals. They have reached out to every

02:34:17 25 relationship that we have had one way or another,

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02:34:19 1 whether it's been the City directly through their
2 counsel members or the homeowners that they have worked
3 with to destroy relationships, to change positions. So
4 we are highly guarded over here, more than usual,
02:34:32 5 because of what's gone on for the past five years.

6 And they -- the City doesn't want you to know
7 what they have done. They don't want you to know what
8 they have said. They don't want -- they don't want to
9 get to that issue. They keep trying to dismiss our
02:34:45 10 case because what they have done is outrageous, and
11 they continue their outrageous conduct through this
12 discovery.

13 I take very great issue with how Mr. Ogilvie
14 has raised what has gone on here and that it's taken
02:34:58 15 all these months to get it. When he agreed to
16 extensions of time, he can't now complain about it when
17 we're in the middle of a pandemic complaining that we
18 didn't produce these documents. The minute we got the
19 protective order from the discovery commissioner, the
02:35:13 20 next day we produced documents. We have produced
21 thousands of pages of documents.

22 So, again, if you are going to order that
23 these documents be produced, I ask that you first
24 review them. They are binders and binders of
02:35:25 25 complicated, involved transactions that will never

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02:35:31 1 mention the transaction of the golf course. It was
2 honored for this price because of the family dealings
3 and because of these years -- years of dealings with
4 the Peccole family.

02:35:39 5 So this is why we thought it would be
6 important and we continue to offer up information and
7 go beyond what we think is -- is related to either the
8 claims for defenses of this case in order to appease
9 the City, but they keep digging deeper into other
02:35:57 10 things which have nothing to do with it.

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

02:36:07 15 So, again, if you're inclined to order it, I
16 would ask that it be 100 percent protected. We may
17 have to alert some other parties. I don't know how
18 they'll feel about this being produced in any other
19 manner beyond an in-camera review, and then you can
02:36:22 20 make the determination if at all it's relevant to this
21 case and this action.

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

02:36:37 25 And so, you know, I -- I -- we have continued

02:36:43 1 to offer up Mr. Lowie or anyone in the company should
2 they want that to ask that question. We are saying,
3 you know, we don't want it to be deposed twice, but if
4 this will help resolve these issues, we're willing to
02:36:56 5 do it.

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

02:37:06 10 THE COURT: Well, there's a lot there to
11 unwind. But, ultimately --

12 MS. HAM: Yes.

13 THE COURT: -- if the plaintiff is taking the
14 position that they paid \$45 million or they've paid \$45
02:37:20 15 million in consideration or that's the value of what
16 they paid for the 35 acres at issue, it's their burden
17 to produce reliable testimony and documentation to
18 support that claim. And, ultimately, that's what --
19 what -- what this aspect of the case, I would
02:37:39 20 anticipate, is about.

21 When it comes to confidentiality and the like,
22 I got to go back to -- I guess it's roman numeral
23 Rule VII or whatever it is from our Nevada Supreme
24 Court. They have specific rules as it relates to
02:37:55 25 confidentiality. Just as important too, when you use

02:38:00 1 the Court system, that's another avenue we have to look
2 at as to whether documents are confidential or not. I
3 just can't arbitrarily make that determination.

4 Any determination I make as to
02:38:14 5 confidentiality, I have to make specific findings of
6 fact as to why it's confidential pursuant to the rule.
7 That's another issue.

8 But at the end of the day -- and this is all I
9 can say is this: That if there's transactions and/or
02:38:33 10 documents out there that support the valuation property
11 by the plaintiff as to the purchase price, it seems to
12 me potentially those might be germane to the case.

13 MS. HAM: And, your Honor, this may be
14 splitting hairs. It's not that they support the
02:38:55 15 \$45 million answer that we provided in regard to this
16 request.

17 They support the 20-year history that from
18 those transactions was born this right to purchase it
19 for the -- for the 15 million, which included the water
02:39:16 20 rights. Then that was divided later.

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

23 It's -- it's, you know, again, I don't mean
24 to -- it is the testimony of Mr. Lowie what was given
02:39:35 25 over the years, but it is not -- these documents will

02:39:40 1 not state that. They will not support that. It will
2 only support what his testimony will ultimately be,
3 that, yes, all of these transactions took place; yes,
4 they have all developed these other properties and
02:39:54 5 parcels and the Towers and Tivoli and so on and so
6 forth. But they are not going to say anything about
7 the Badlands Golf Course property.

8 So that's the issue that we have. It's not
9 going to be relevant whatsoever beyond his testimony,
02:40:09 10 which was why we think -- I think that you're only
11 going to understand that once you see the testimony,
12 which he has testified to before.

13 So, you know, I -- I understand what -- it's
14 really difficult to understand without knowing the
02:40:26 15 story. And that's all I can say, which is why we
16 offered him up to tell the story.

17 THE COURT: Well, but, I mean, I kind of get
18 that. But I would anticipate that if it's a series of
19 transactions and relationships, as you go down the path
02:40:43 20 of each transaction, there has to be value and
21 consideration potentially that would couple with the
22 next transaction and the next transaction that would be
23 the basis for the valuation offered as to potentially
24 what the purchase price would be.

02:41:01 25 And that's kind of my point. Because at the

02:41:04 1 end of the day, it's going to be his burden to
2 establish that. And if he can't, then that's a
3 problem.

4 MS. HAM: Yeah, I understand what you're
02:41:14 5 saying.

6 THE COURT: Potentially.

7 MS. HAM: Yeah. Again, without knowing the
8 entire story, it's difficult to explain. The only
9 other thing that I can offer that may give them some
02:41:24 10 comfort -- I assume they have it already -- is
11 deposition testimony that was given in another case
12 that relates specifically to the consideration given.
13 Perhaps they want to review that and then determine if
14 the documents will be necessary or not.

02:41:42 15 But I don't -- I don't -- they're not going to
16 ever say this ultimately gives us the right of first
17 refusal on the property down the line for this amount
18 of money. It just doesn't exist. They only have to do
19 with all these other transactions that took place.

02:41:59 20 They never referenced the course in that manner. So I
21 don't know how to explain it without -- you know, I
22 can't speak for Mr. Lowie. I only know --

23 THE COURT: But ultimately --

24 (Unreportable cross-talk)

02:42:12 25 THE COURT: I would -- I would anticipate

02:42:14 1 ultimately in open court he's going to have to testify
2 to that and the basis of his evaluation; right?

3 MS. HAM: Yes.

4 THE COURT: And just as important too,
02:42:26 5 potentially he might have to produce documents that
6 support that and talk about transactions.

7 MR. LEAVITT: Sorry, your Honor. It's James
8 Leavitt again --

9 THE COURT: Yes.

02:42:36 10 MR. LEAVITT: -- on behalf of the landowner.

11 We don't anticipate producing that during
12 trial. His testimony will be what the value of the
13 property is as of 2017. As I stated previously, we
14 believe that the purchase price evidence is entirely
02:42:54 15 irrelevant, so we won't be producing that. He'll be
16 testifying based upon actual comparable sales, actual
17 transactions that occurred to compare to the property
18 in 2017 to arrive at his value. This whole purchase
19 price issue that the government is bringing up is
02:43:10 20 something that they are using as a basis to try and
21 show that there's no taking or to devalue the property.

22 So we will not --

23 THE COURT: And --

24 (Unreportable cross-talk).

02:43:19 25 MR. LEAVITT: -- this evidence.