IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Appellant, vs. 180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Respondents.	No. 84345
180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Appellants/Cross-Respondents, vs. CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent/Cross-Appellant.	No. 84640 **AMENDED JOINT APPENDIX VOLUME 119, PART 6**

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **PLAINTIFF LANDOWNERS' OPPOSITION TO CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION** **Hearing Date: February 8, 2022** **Hearing Time: 9:05 AM**

Plaintiff Landowners 180 Land Co LLC and Fore Stars, LTD. ("Landowners") hereby oppose Defendant City of Las Vegas' ("City") Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution. This Opposition is made and based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court may entertain on the matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City's continued attempts to circumvent the law in every form is alarming.[1] Existing Nevada statutory law addresses all of the City's spurious concerns. As has been the City's *modus operandi*, the City believes it is above the law and thus, is unwilling to admit that said statutory law exists and is applicable here. The City's unwillingness to acknowledge Nevada law is neither the Landowners', nor the Court's concern. Nevada has been a state since 1864 and has been steadfast in enacting statutory laws to address the government's use and abuse of eminent domain. The Court certainly does not need to abandon all rules and procedure to help the City advance its erroneous legal position that inverse condemnation actions are somehow not the constitutional equivalent to eminent domain, when longstanding Nevada law provides quite the opposite. And, the City's repeated citations to inapplicable California or federal law is an exhausting waste of judicial resources.

Frankly, the City's Motion to Amend Judgment should never have been filed. There is a specific statutory provision that addresses when title vests in the condemning agency's name. And, instead of following this statutory law (which even has "when title vests" in its title), the City asks the Court to invent a method wherein a landowner who has just been forcibly removed from their property, is then forced to stomach signing a deed over to the Government, deeding their land to the same body that took their land. That has never been the process (this is an unworkable process as these are action *in rem* not *in persona*) and the City's attempt to force such a distasteful process on the Landowners here is further evidence of the City's ill will and bad faith towards these Landowners. NRS Chapter 37 applies here, so the City must deposit the judgment and thereafter

[1] From disavowing its own code, to ignoring Nevada statutes and case law, to violating Court orders, the City seems to have no fidelity to the law.

will receive title by way of a Final Order of Condemnation. NRS 37.140, 37.150, 37.160 and 37.170.

II. LAW

A. NRS 37.160 Provides When and How Title Vests To The City

Since 1911 Nevada has had law that provides the process by which title vests in the government's name when the government has utilized its eminent domain powers, whether by following the proper procedures and filing a condemnation action, or by failing to follow the proper procedure and inversely condemning private property. NRS 37.160 is that statutory provision and specifically provides when and how title vests in the government's name, accordingly, nothing in the Judgment needs to be amended. Rather, the City must follow Nevada law.[2]

> **NRS 37.160 Entry of final order of condemnation on deposit of award; recording; when title vests**
>
> When the award has been deposited as required by NRS 37.150 … the court shall enter a final order of condemnation describing the property condemned and the purpose of such condemnation. A copy of the order shall be recorded in the office of the recorder of the county, and thereupon the title to the property described therein shall vest in the [defendant] for the purpose therein specified, except that when the State is the plaintiff, the property shall vest in the State for any public use.

As the Court is well aware, "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." *Clark County v. Alper*, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984). Accordingly, NRS 37.160 applies here and upon the City depositing the award in this matter, the Landowners will promptly prepare and submit a Final Order of Condemnation for the Court's review. Once said Final Order of Condemnation is signed and filed, the City is free to

[2] The fact that the City is arguing that the Landowners deed the property to the City while at the same time claiming that it does not have to pay for it is disturbing.

record it, like a deed, whereby vesting title to the City, subject, of course, to the Landowners' continued constitutional reversionary rights under Article 1 § 22 (1) and (6).

B. The City's Attempt to Limit the Holding of *Alper* is Contrary to *Alper's* Long Standing Precedence in Nevada Takings Jurisprudence - Having Been Cited 28 Times by the Nevada Supreme Court Since 1984

The Nevada Supreme Court has cited *Alper* 28 times in a wide range of takings cases from inverse condemnation to eminent domain to precondemnation damages cases. Accordingly, the City's attempt to limit or diminish *Alper's* holding is astonishing. *Alper* is a bedrock takings opinion in Nevada jurisprudence, dealing with specific takings doctrines, including without limitation, prejudgment interest, the project influence rule, standards of highest and best use, and the award of attorney fees.

Alper has been cited and affirmed repeatedly by the Nevada Supreme Court for nearly 40 years. *City of North Las Vegas v. Robinson*, 122 Nev. 527, 533, 134 P.3d 705, 709 (2006) (*Alper* and the impact of government dedication requirements on highest and best use); *McCarran Airport v. Sisolak*, 122 Nev. 645, 674-675, 137 P.3d 1110, 1129-1130 (2006) (expanding *Alper* to award attorney fees when the taking agency receives federal funds and relying on *Alper* to support award of prejudgment interest); *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 712, 718, 941 P.2d 971, 975 (1997) (overruled on unrelated grounds)(relies on *Alper* to support statutory rate of interest as the floor and should only be used if other evidence of a higher rate is not offered); ***City of Sparks v. Armstrong*, 103 Nev. 619, 621-622, 748 P.2d 7, 8-9 (1987) (cites *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings** and relies on *Alper* for the project influence rule even calling the project influence rule the "*Alper* doctrine"); *Vacation Village, Inc. v. Clark County*, 244 Fed.Appx. 785, 787-788, 2007 WL 2292716 (2007) (unpublished 9th Circuit opinion) (citing in approval to *Sisolak*'s expansion of *Alper,* holding that no nexus between federal funds and the taking project is needed for the award

of attorney fees under the relocation act instead if the entity that took the property receives federal funds then that is sufficient for awarding attorney fees pursuant to the URA); *Belle Vista Ranch Co., LLC v. RTC of Washoe*, 2021 WL 1713288 at *1 (2021) (unpublished opinion) (citing *Alper* for the project influence rule); ***City of North Las Vegas v. 5th and Centennial*, 2014 WL 1226443 at *7 (2014) (unpublished opinion) (cites *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings**); *Nevada Power co., v. 3 Kids. LLC*., 129 Nev. 436, 441, 302 P.3d 1155, 1158 (2013) (citing *Alper* for highest and best use and government dedication requirements as it relates to highest and best use); *Dvorchak v. McCarran Airport*, 2010 WL 4117257 at *2 (2010) (unpublished opinion)(citing *Alper* for the statute of limitations starting point); *Johnson v. McCarran Airport*, 2010 WL 4117218 at *2 (2010) (unpublished opinion) (citing *Alper* for the statute of limitations starting point); *Buzz Stew LLC v. City of North Las Vegas*, 124 Nev. 224, fn 20, 181 P.3d 670 (2008) (citing *Alper* for date of taking when considering prejudgment interest and severance damages); *ASAP Storage Inc., v. City of Sparks*, 123 Nev. 639, fn 8, 173 P.3d 734 (2007)(citing *Alper* that real property interest in land supports a takings claim); ***Nevadans for the Protection of Property Rights v. Heller*, 122 Nev. 894, fn 36, 141 P.3d 1235(2006) (citing *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings**); *City of Las Vegas v. Bustos*, 119 Nev. 360, fns 6, 8 and 9, 75 P.3d 351 (2003) (citing *Alper* for highest and best use and import of the property's zoning); *County of Clark v. Sun State Properties*, Ltd., 119 Nev. 329, fn 35, 72 P.3d 954 (2003) (citing *Alper* for prejudgment interest); *County of Clark v. Buckwalter*, 115 Nev. 58, 62, 974 P.2d 1162, 1164 (1999) (overturned by constitutional amendment and statute as to most probable price) (citing *Alper* that the determination of just compensation is exclusively a judicial function and may not be impaired by statute); ***Argier v. Nevada Power Co*., 114 Nev. 137, fn 2, 952 P.2d 1390 (1998) (*citing Alper* that inverse condemnation actions are the**

constitutional equivalent to formal condemnation proceedings to reject Nevada Power's argument that an eminent domain case was not applicable to an inverse condemnation action); *Stagecoach Utilities, Inc., v. Stagecoach General Imp. Dist*., 102 Nev. 363, 366, 724 P.2d 205, 207 (1986) (citing *Alper* for prejudgment interest); *Manke v. Airport Authorities of Washoe County*, 101 Nev. 755, 759, 710 P.2d 80, 82 (1985) (citing *Alper* for prejudgment interest); *Iliescu v. RTC of Washoe*, 2021 WL 4933429 at *5 (2021) (unpublished opinion) (citing *Alper* for highest and best use).

The Nevada Supreme Court has repeatedly held that inverse condemnation proceedings are the constitutional equivalent to direct condemnation proceedings and that the same rules and procedures apply to both. Accordingly, NRS Chapter 37 applies here and therefore, pursuant to NRS 37.140, the City must deposit the just compensation award within 30 days and then pursuant to NRS 37.160 title vests in the City by way of a Final Order in Condemnation (not a deed).

C. The City Is Not Entitled to a Stay

The Landowners have fully addressed the impropriety of the City's request for a stay in Plaintiff Landowners' Opposition to The City's Motion for Immediate Stay Of Judgment And Countermotion To Order The City To Pay The Just Compensation Award, filed on January 5, 2022 and scheduled to be heard on January 11, 2022 - prior to the date set for the hearing on the City's pending Motion to Amend. Accordingly, the Landowners hereby incorporate their Opposition to The City's Motion For Immediate Stay Of Judgment And Countermotion To Order The City To Pay The Just Compensation Award filed on January 5, 2022 herein.

D. Correction of City's False Claims and Attempts to Rewrite History

1) The Only Reason there was a 1-Day Bench Trial is Because the City Produced No Experts.

The City's attempt to diminish the validity of the bench trial in this matter is shocking. (City Mot. at 2:3). Yes, the Court conducted a 1-Day bench trial, *because the City failed to produce*

experts in this case and stipulated to admit the Landowners' evidence of value. This is a field dominated by expert opinion,[3] yet the City produced none. Accordingly, the City is the party responsible for the brevity of the bench trial, not the Court, and certainly not the Landowners.

2) The Landowners Paid More than $4.5 Million for the Subject Property

The Landowners paid more than $4.5 Million for the Subject Property. (City Mot. at 2:6). Despite the City's attempt to advance a false narrative about the purchase price, the evidence at the pretrial hearings established that the purchase price of the Subject Property was not $4.5 Million. Furthermore, the City had no expert to testify to any of the City's claims about the alleged purchase price, instead the City simply advanced arguments of counsel, none of which are evidence. Accordingly, the Court properly found as follows:

> 1. The purchase price/transaction does not reflect the highest and best use of the 35 Acre Property on the date of valuation, which is September 14, 2017, pursuant to NRS 37.120 and *Clark County v. Alper*, 100 Nev. 382, 391 (1984).
>
> 2. The City has not identified an expert witness that can testify to the relevance of the purchase price/transaction as relates to the value of the 35 Acre Property, as of the September 14, 2017, date of valuation and the only expert to analyze the purchase price/transaction, appraiser Tio DiFederico, determined that it had no relationship to the value of the 35 Acre Property as of September 14, 2017.
>
> 3. The City has also failed to identify an expert witness that has adjusted the purchase price/transaction to the relevant September 14, 2017, date of valuation.
>
> 4. The purchase/transaction was not for substantially the same property at issue in this matter as it was for approximately 250 acres of land with the acquisition of Fore Stars, Ltd. and all of the assets and liabilities thereof, not just the 35 Acre Property at issue in this case.
>
> 5. The purchase price/transaction beginning in 2005 is too remote to the date of value (September 14, 2017) with changes in market fluctuations in values having occurred since the transaction. In fact, the City's own tax assessor did not use the purchase price/transaction when deciding the value of the 35 Acre Property for purposes of imposing real estate taxes on the property in 2016.
>
> 6. The evidence presented at the hearings showed that the purchase price/transaction arose out of a series of "complicated" transactions that had "a lot

[3] *City of Sparks v. Armstrong*, 103 Nev. 619, 622, 748 P.2d 7, 9 (1987)

of hair" on them and elements of compulsion, because the Queensridge Towers were being constructed on part of the 250 Acre property causing the operator of the golf course to demand a large pay off; and, the predecessor owners could not meet other underlying obligations.

7. The Landowners presented evidence of the sales of other similar properties in the area of the 35 Acre Property that sold near the September 14, 2017, date of valuation, demonstrating there was no need to turn to the purchase price/transaction.

8. Any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. The sole issue in this case is the value of the 35 Acre Property as of September 14, 2017, and introducing the purchase price/transaction will confuse the jury as the jury is not tasked with unraveling the terms of the purchase price/transaction to decide what may or may not have been paid for the property.

9. Allowing the purchase price/transaction would allow the City to communicate to the jury that, since the Landowners paid a lower value for the property, they should not be entitled to their constitutional right to payment of just compensation based on the value of the 35 Acre Property as of the September 14, 2017, date of value, which would be improper. And, the City has indicated this purpose having previously argued in this case that the Landowners made a windfall on their investment. *See Order Granting Plaintiffs' Motions in Limine No. 1, 2 And 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land Was Dedicated as Open Space/City's PRMP And PROS Argument Filed November 16, 2021 at 2:13-5:9.*

The City continues to misrepresent the facts and the law to the Court. The City's repeated arguments about an alleged purchase price are no different. This litigation strategy by the City has resulted in a great waste of judicial resources and extensive litigation costs for the Landowners. The Landowners filed a motion for attorney fees which is scheduled to be heard by this Court on February 3, 2022. The City's tactic in the pending Motion to Amend further supports a full award of attorney fees to the Landowners.

3) The City Has Taken Possession of the Landowners' Property

The City seems to be advancing under the theory that if it says something enough times, then it becomes true, as the City states in its pending Motion that "[t]he Developer does not claim that the City took physical possession of the property…" (City Mot. at 5:14-15). After four years

of litigation and a bench trial wherein it was held that the City has effectuated a "per se" taking of the Landowners' Property, it is hard to imagine how the City justifies repeating such a claim. The City has taken possession of the Landowners' Property and it did so for the use and enjoyment of the surrounding neighbors. *See Finding of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and For Summary Judgment on the First, Third and Fourth Claims for Relief filed October 25, 2021 at § 114, 116-121, 131-136, 141-142, 154-175*.

III. CONCLUSION

The City's unwillingness to accept Nevada law deserves no favor from the Court. Accordingly, and for the foregoing reasons, the City's Motion to Amend must be denied in its entirety.

DATED this 4th day of January, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 4th day of January 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: PLAINTIFF LANDOWNERS' OPPOSITION TO CITY OF LAS VEGAS' MOTION TO AMEND JUDGMENT (Rules 59(e) and 60(b)) AND STAY OF EXECUTION was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **PLAINTIFF LANDOWNERS' OPPOSITION TO THE CITY'S MOTION FOR IMMEDIATE STAY OF JUDGMENT** **AND** **COUNTERMOTION TO ORDER THE CITY TO PAY THE JUST COMPENSATION ASSESSED** **Hearing date: January 13, 2022** **Hearing time: 9:30 am**

COMES NOW Plaintiff Landowners, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "the Landowners"), by and through their attorneys, the Law Offices of Kermitt L. Waters, and hereby files this Opposition to the City's Motion for Immediate Stay of Judgment and Countermotion to Order the City to Pay the Just Compensation Assessed immediately.

This Opposition and Countermotion is made and based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court may entertain on the matter.

DATED this 5th day of January, 2022.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a constitutional proceeding brought under Article 1, Section 8 of the Nevada State Constitution.[1] On November 24, 2021, an award of $34,135,000 was entered in favor of Plaintiff Landowners, 180 LAND CO., LLC and FORE STARS Ltd. (hereinafter "Landowners") and against the City of Las Vegas (hereinafter "City") as the value of the 35 Acre Property that was taken in inverse condemnation by the City in this case. *See* Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation, filed November 24, 2021 (hereinafter "FFCL Re: Just Compensation"). Very specific Nevada eminent domain and inverse condemnation law directly on point mandates that the City pay the $34,135,000 award within 30 days of final judgment and, if the City decides to appeal (rather than allow entry of final judgment), then it must pay the award as a precondition to appeal. There are no exceptions to this rule, meaning that no

[1] Nev. Const. art. I§§ 8, 22. *See also* U.S. Const. amend. V.

matter what course the City chooses in this case (to allow entry of final judgment or appeal), it must pay the award within 30 days. The City entirely ignores this eminent domain law directly on point in its motion to stay. Rather, the City has chosen to violate this specific law and, instead, has filed a motion to stay payment of the judgment – based on general civil procedure laws that do not trump the more specific eminent domain and inverse condemnation law directly on point. Accordingly, the City should be ordered to immediately comply with specific Nevada eminent domain and inverse condemnation law and pay the $34,135,000 award.

II. LAW APPLICABLE TO THE LANDOWNERS' COUNTERMOTION TO ORDER PAYMENT AND THE CITY'S MOTION TO STAY

A. Two sources of Nevada Law, directly on point, mandate that the City pay the $34,135,000 award within 30 days of final judgment

1. NRS 37.140

NRS 37.140 appears in Chapter 37 of the Nevada Revised Statutes. Chapter 37 contains Nevada's Eminent Domain statues, and, therefore, applies in the specific context of both eminent domain and inverse condemnation proceedings because "inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Clark County v. Alper, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984). NRS 37.140 provides that any "sum of money assessed" against the government in an eminent domain or inverse condemnation action must be paid within 30 days of the final judgment – "The [government] must, within 30 days after final judgment, pay the sum of money assessed." NRS 37.140. This statute uses the mandatory "must" language and provides no exceptions.

2. NRS 37.170 and State v. Second Judicial District Court

NRS 37.170 also appears in Chapter 37 of the Nevada Revised Statutes, which, again, is the Chapter that contains Nevada's eminent domain statutes, and, therefore, also applies in the

specific context of eminent domain and inverse condemnation proceedings. NRS 37.170 mandates that, as a precondition to an appeal in an eminent domain or inverse condemnation case, the government must pay the award. NRS 37.170. This statute was clearly passed to strengthen the applicability of NRS 37.140 by mandating payment of the just compensation award – as a precondition to an appeal.

The Nevada Supreme Court addressed the applicability of NRS 37.170 over sixty years ago in the case of State v. Second Judicial District Court, 75 Nev. 200 (1959). In that case, the State of Nevada made the same exact arguments the City is making to this Court – the State argued that it does not need to pay an award in an eminent domain case as a condition to appeal. The district court denied the State's request and ordered payment of the award. Id., at 202. The State appealed. The Nevada Supreme Court affirmed, flatly rejecting the State's arguments (which the City reiterates to this Court). "The deposit provided by NRS 37.170 is a condition to the condemnor's right to maintain an appeal while remaining in possession." Id., at 205.

The Nevada Supreme Court then gave strong public policy reasons for its decision – which rejects all of the City's arguments to stay payment of the $34,135,000 award. **First**, the Court held "payment should not be unduly delayed in those cases where the condemnee (landowner) has already lost possession and use of his property." Id., at 205. This Court entered two detailed findings of fact and conclusions of law that provide a detailed analysis of how the Landowners have already lost possession and use of their property. *See Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third, and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion for Summary Judgment on the Second Claim for Relief, filed October 25, 2021, specifically, pp. 10-29* (hereinafter **"FFCL Re: Take"**) and *Findings of Fact and Conclusions of law on Just Compensation, Bench Trial, October 27, 2021* (hereinafter **"FFCL Re: Just Compensation"**).

Second, the Supreme Court held "[t]he assurance of ultimate payment plus interest may not be sufficient to meet the immediate needs of a condemnee either to his property or to its cash equivalent." Id., at 205. This public policy reason rejects the City's argument that the promise of "interest" at the end of the litigation negates the duty to pay the funds within 30 days and prior to an appeal. *See City Motion, p. 16:21-26.* **Third,** the Court held that "[t]he power not only to take possession of another's property, but also to postpone indefinitely the payment of just compensation for it, is a power which may well have an oppressive effect." Id. The Court explained, "[i]t might well, through duress of circumstances, compel acceptance by a condemnee [landowner] of compensation felt not to be just." Id. This public policy reason rejects any other City arguments to delay payment.

In State v. Second Judicial District Court, the Nevada Supreme Court also rejected the argument that payment of the funds pending appeal would deprive the government of its right to appeal eminent domain and inverse condemnation awards – the same argument made by the City in this case. *See City Motion, p. 16:7-20.* In State v. Second Judicial District Court, the State claimed that mandating payment of the funds pending appeal "deprives it of its right to appeal," because this would amount to "a voluntary satisfaction of judgment which renders the appeal subject to dismissal as moot." Id., at 205. The Nevada Supreme Court disagreed, holding "[s]uch is not our view of the law" and reasoned that payment of the funds pending appeal is a "***condition to the condemnor's [government] right to maintain an appeal*** while remaining in possession. It is not an acceptance of the judgment rendered, but is the meeting of a condition by which that judgment may be disputed." Id., at 205, emphasis added.

In other words, all of the arguments the City is making now to stay payment of the funds were made by the State in the State v. Second Judicial District case, and the Nevada Supreme Court rejected every single argument and provided detailed policy reasons for rejecting the

arguments. Accordingly, the City "must" pay the $34,135,000 award within 30 day of final judgment and as a precondition to appeal pursuant to specific Nevada eminent domain and inverse condemnation law directly on point – NRS 37.140 an NRS 37.170.

B. The City Ignores NRS 37.140 and NRS 37.170 in its Opening Brief – And These Statutory Provisions Apply Equally to Direct Condemnation and Inverse Condemnation Actions.

The City clearly had an ethical duty to cite the Court to NRS 37.140, NRS 37.170, and State v. Second Judicial District as all three of these authorities are directly on point. It is anticipated, however, that the City will perpetuate the false argument it continually made to the Court during trial – that the statutes in Chapter 37 apply only to direct condemnation actions, not inverse condemnation actions, or, that eminent domain actions are different than inverse condemnation actions and are governed by a different set of rules. The Nevada Supreme Court has **repeatedly and consistently rejected** this City argument. In the inverse condemnation case of County of Clark v. Alper, 100 Nev 382 (1984), Clark County argued that NRS 37.120 does not apply to inverse condemnation actions and the Nevada Supreme Court rejected this argument, holding "[i]nverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the **same rules and principles that are applied to formal condemnation proceedings.**" Id., at 391. Emphasis added. In the direct condemnation case of Argier v. Nevada Power Co., 114 Nev. 137 (1998), Nevada Power argued that a rule adopted in an inverse condemnation case should not apply to its case, because, according to Nevada Power, there should be a different set of rules for inverse and direct condemnation cases. The Nevada Supreme Court rejected the argument, citing to the Rule in Alper, that the same rules and principles are applied to both direct condemnation and inverse condemnation cases. Argier, at fn.2. In the precondemnation action of City of North Las Vegas v. 5th & Centennial, LLC., 2014 WL 1226443 (2014)(unpublished), the Nevada Supreme Court again cited to Alper and held "inverse

condemnation proceedings are constitutionally equivalent to eminent domain actions." 5th & Centennial, at headnote 7. The 5th & Centennial Court then held that it was improper for the district court to apply the general NRS 17.130 interest calculation statute in that precondemnation action case rather than the interest calculation statute that applies specifically to eminent domain cases – NRS 37.175. *See also* City of Sparks v. Armstrong, 103 Nev. 619 (1987) and Nevadans for the Protection of Property Rights v. Heller, 122 Nev. 894 (2006) – both cases citing Alper for the rule that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings and are governed by the same rules and principles. Simply stated, the Nevada Supreme Court could not have been clearer – Chapter 37 statutes apply to all types of eminent domain actions – direct condemnation, inverse condemnation, and precondemnation type cases.

Moreover, the City's attempt to distinguish between eminent domain and inverse condemnation cases is troubling, at best. The City must admit that if this case was a direct eminent domain case – where the City complied with the Nevada Constitution and the NRS Chapter 37 requirements and properly filed an eminent domain action and properly paid just compensation for the taking of the Landowners' 35 Acre Property – the City would indeed be required to pay the $34,135,000 award within 30 days of final judgment and as a precondition to appeal under NRS 37.140 and NRS 37.170. But, the City essentially argues here that since the City violated the Nevada Constitution and violated the NRS Chapter 37 requirements and forced the Landowners to bring **and prevail** on an inverse condemnation case – the City is not required to pay the $34,135,000 award within 30 days under NRS 37.140 and NRS 37.170.

This makes no legal or common sense whatsoever. It rewards the government for violating the Nevada State Constitution and the NRS on eminent domain. There is no legal or public policy reasons for negating these mandatory deposit requirements where the government acts unconstitutionally and illegally. The inverse condemnation award is just as valid as a direct

eminent domain award. This Court held in the FFCL Re: Take and FFCL Re: Just Compensation that the City took the Landowners' 35 Acre Property, the effect of which is the same as if the City had filed a direct complaint in eminent domain. Accordingly, the mandatory 30 day payment statutes (NRS 37.140 and NRs 37.170) apply in this inverse condemnation case.

C. The More Specific Eminent Domain Statutes and Laws Apply Over the General Rules Cited by the City

The City's next attempt to avoid its constitutional duty to pay the $34,135,000 award is to cite to general rules that allow the Court to consider stays of judgments in other non-eminent domain and non-inverse condemnation cases – NRCP Rule 62 and NRAP Rule 8. These general rules have no application whatsoever in this inverse condemnation proceeding. As explained above, Nevada has adopted very specific rules that apply to the specific facts of this inverse condemnation case - NRS 37.140 and NRS 37.170. These statutes are unambiguous and, therefore, "must be given their ordinary meaning." City of Sparks v. Reno Newspapers, Inc., 133 Nev. 398 (2017) (when interpreting a statute, if the language is "facially clear," the Court will give that language its plain meaning. Id., at 400); State Dept. of Taxation v. Masco Builder Cabinet Group, 129 Nev. 775 (2013), the Court held statutory language that is unambiguous is given its "ordinary meaning." Id., at 778). The ordinary meaning of these statutes provide that all eminent domain and inverse condemnation awards "must" be paid within 30 days of final judgment and as a precondition to appeal – without exception. The Nevada Supreme Court has already applied the ordinary meaning of NRS 37.170 to mandate payment, rejecting every single one of the City's arguments it now makes to delay payment. *See* State v. Second Judicial District Court, supra.

And, the Nevada Supreme Court has been very clear that where there is a more specific rule adopted, the more specific rule will apply over the general rule. In Doe Dancer I v. La Fuente, Inc., 137 Nev. Adv. Op. 3, 431 P.3d 860, 871 (2021), the Nevada Supreme Court recognized the "general/specific canon" that when two statutes conflict, "the more specific statute will take

precedence, and is construed as an exception to the more general statute." In City of Sparks v. Reno Newspapers, Inc., 133 Nev. 398, 400, 401 (2017), the Court held, "it is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally." In State Dept. of Taxation v. Masco Builder Cabinet Group, 129 Nev. 775, 778 (2013), the Court held, "[a] specific statute controls over a general statute." Finally, in In Re Resort at Summerlin Litigation, 122 Nev. 177, 181, 185 (2006), the Court held, "[i]mportantly, where a general statutory provision and a specific one cover the same subject matter, the specific provisions controls."

Therefore, NRS 37.140, NRS 37.170, and the holding in State v. Second Judicial District Court, are the specific eminent domain and inverse condemnation rules that apply over the more general NRCP Rule 62 and NRAP Rule 8 stay rule. Meaning that the City's lengthy briefing on NRCP Rule 62 and NRAP Rule 8 from pages 14-30 of its motion to stay is entirely irrelevant and should not be considered by the Court.

III. FACTS AND LAW REBUTTING CITY'S IRRELEVANT NRCP RULE 62 AND NRAP RULE 8 ARGUMENTS FOR A STAY

If this Court is inclined to consider the City's entirely irrelevant arguments regarding NRDP Rule 62 and NRAP Rule 8, the following rebuts all of these City arguments.

A. Rebuttal of the City's Private Attorney's Declaration

The City's private attorney submits a 5 ½ page "Declaration" purporting to outline the facts of this case and the findings of fact and conclusions of law (FFCLs) entered by this Court. *See City Motion, pp. 5-9.* The Declaration is replete with inaccuracies that attempt to create a false narrative of the facts and even a false narrative of the Court's findings. This Declaration is unnecessary and irrelevant as the City could have cited to the record for the facts and the Court's FFCLs; rather than trying to invent facts and FFCLs. Accordingly, the City's private attorney's Declaration should be ignored by the Court.

B. Rebuttal of The City's "Introduction" that Follows the City's Private Attorney's Declaration

The City also includes a 5 ½ page "Introduction" that largely follows the "Declaration" by its private counsel. *See City Motion, pp. 9-14.* The following further shows why the City's "Declaration" and "Introduction" are baseless.

The City claims in the "Introduction" that the Court held "the City has 'taken' the 35-Acre Property by denying a single set of applications to build 61 houses on the property." *See City Motion, p. 9:21-22.* The City, the Court, and the Landowners know this is a false statement. After four days of extensive argument and presentation of evidence, the Court entered its FFCL Re: Take, referenced above. The FFCL Re: Take sets forth the City's taking actions, which include: **1)** the surrounding property owners' representative bragging that his group is "politically connected" and promising to get in the way of the Landowners use of their 35 Acre Property; **2)** a City Councilman testifying the surrounding property owner representative contacted him to "get in the way" of the landowners' development rights; **3)** the City then **DENIED** the Landowners' applications to develop 61 lots (even though the City's own planning department confirmed the applications met every single City and State requirement to develop and should be approved), on the grounds that the City would accept only one application to develop – a Master Development Agreement (MDA); **4)** the Landowners then worked with the City for over two years on the MDA, the City drafted almost the entire MDA application, the City Attorney's Office and the City Planning Department confirmed the MDA met every single City and State requirement and should be approved, and, when the MDA was presented for approval, the City **DENIED** the MDA altogether without equivocation; **5)** the City **DENIED** the Landowners fence application in violation of the City's own Code, which allowed the surrounding property owners to access the 35 Acre Property; **6)** the City **DENIED** the Landowners' access application in violation of Nevada Supreme Court precedent that the Landowners had an absolute right to access their property; **7)** a

City Councilman announced that the surrounding property owners had the right to use the Landowners' property for their recreation and the City then, in furtherance of this announcement, adopted two City Bills that: a) targeted only the Landowners' property; b) made it impracticable or impossible to develop the property; and, c) preserved the property for use by the public and authorized the public to use the property by specifically stating in the body of the Bills, that the Landowners must "provide documentation regarding ongoing public access … and plans to ensure that such access [to the property] is maintained;" **8)** the significant communications by the City and its employees and representatives outlining in detail the City's intent and reasons for denying any and all use by the Landowners of the property and the City's actions to preserve the property for use by the public, including the surrounding owners; **9)** an expert report stating that "before" the City's actions, the 35 Acre Property had a value of $34,135,000 and "after" the City's actions, the 35 Acre Property value "would be zero;" and, **10)** the City did not exchange an expert report or rebuttal report to challenge this expert analysis conceding to it instead. These taking actions are set forth in detail in the Court's FFCL Re: Take – pages 11-29. And, during the four day trial on the take issue, the City never even disputed that it engaged in these actions. Therefore, the "Declaration" by the City's private attorney and the "Introduction" in the City's motion claiming that the Court entered a take based on the City "denying a single set of applications to build 61 house" is plainly and manifestly false.

The City also claims in its "Introduction" that the Court's property interest holdings turns Nevada "land use law on its head" and finds "local agencies no longer have discretion in the approval of land use permit applications;" that the R-PD7 zoning should not govern; and that all law states the master plan should trump zoning. *See City Motion, pp. 9-11.* These are also false representations. **First,** this is an inverse condemnation case that is governed by inverse condemnation cases, not "land use" or petition for judicial review cases and the Court's

FFCL Re: Take lays out in detail why the City's land use petition for judicial review cases are inapplicable here. *See* FFCL Re: Take, pp. 41-43. **Second,** the Court's FFCL Re: Take lays out in detail the Nevada inverse condemnation law, including three direct condemnation and three inverse condemnation Nevada Supreme Court cases right on point, which provides that the 35 Acre Property residential zoning (R-PD7), not any alleged master plan, must be used to determine the property rights of a Nevada landowner in the context of an inverse condemnation case. FFCL Re: Take, pp. 8:13-10:6. **Third,** the Court's FFCL Re: Take lays out in detail the due diligence the Landowners did prior to purchasing the property wherein **all City departments** confirmed the 35 Acre Property was zoned residential, this residential zoning trumps everything, there are no restrictions that could prevent this residential development, and the owner has the right to develop the property residentially. FFCL RE: Take, p. 4:10-5:14. The City even put this in writing in a Zoning Verification Letter to the Landowners. FFCL Re: Take, p. 5:7-14. **Third**, after acquiring the 35 Acre Property **all City departments** continued to confirm the Landowners' property rights with the head City Planner testifying – "a zone district gives a property owner property rights." FFCL Re: Take, p. 5:23-24. **Fourth**, the City's Planning Department issued a recommendation of approval on the MDA (that would allow residential development on the 35 Acre Property), because it "conforms to the existing zoning district requirements." FFCL Re: Take, p. 6:1-6. **Fifth**, the County Tax Assessor, which is the City Tax Assessor, determined the "lawful" use of the 35 Acre Property is "Residential" and has collected taxes in the amount of $205,227.22 per year based on this "lawful" residential use. FFCL Re: Take, pp. 6:13-7:2. **Sixth**, the uncontested evidence at trial proved that the City Attorney and the City's head planner stated zoning is of the highest order and trumps the master plan and the City Attorney's Office submitted two affidavits in another inverse condemnation case that a master plan has "no legal effect" on the use of property. FFCL Re: Take, p. 7:5-24. **Seventh**, the Court's FFCL Re: Take cites to two other findings of fact and

conclusions of law in another case brought by the Queensridge owners that also held the R-PD7 gives the Landowners the "right to develop." FFCL Re: Take, p. 26:7-15. **Finally,** the Nevada Supreme Court plainly rejected this City argument in the seminal Sisolak case, holding that government agencies have discretion to apply "valid zoning and related regulations **which do not give rise to a takings** claim." McCarran Intern. Airport v. Sisolak, 122 Nev. 645, fn 25 (2006). Therefore, the City does not have absolute "discretion" to deny any and all uses of property without being subject to an inverse condemnation case, as baselessly argued by the City. The City may apply "valid" zoning regulations, but if its actions rise to a "taking," then just compensation must be paid.

The City also claims in the "Introduction" that: 1) the Nevada Supreme Court, Case No. 75481, held the Landowners "must first" get the City's discretionary approval of an amendment to the City's Master Plan to develop on their 35 Acre Property; and, 2) the City's Master Plan is PR-OS. *See City Motion, p. 11:13-23.* First, the Nevada Supreme Court, in case No. 75481, held the exact opposite of the City's representation – the Court flatly rejected the exact same PR-OS argument the City continuously and repeatedly makes in this case. *See Reply in Support of Plaintiff Landowners' Motion to Determine "Property Interest," filed September 9, 2020, pp. 8:4-9:8.* Second, in regard to a master plan amendment, the Nevada Supreme Court never held the Landowners needed to get an amendment to the City's master plan to develop; it merely held that, **if** the City changes the master plan, it must "make specific findings." Nevada Supreme Court case No. 75481. Again, the Court never held there is a PR-OS on the property nor that an amendment to the master plan is required to develop the 35 Acre Property. Third, this Court has heard this PR-OS argument repeatedly presented by the City in this case and rejected it **every time**. *See FFCL Re: Take, p. 10:1-3. See also FFLC Re: Just Compensation, filed November 18, 2021, p. 4:18-21, 12:9-13.* Fourth, this PR-OS argument has been rejected by every

single other court that has considered it, other than the Crockett Order, and the Crockett Order was reversed by the Nevada Supreme Court in Case No. 75481, referenced above. As this Court will recall, the Landowners presented an outline of the 11 orders that rejected the City's PR-OS argument. *See e.g Landowners' Demonstrative Exhibits for Take Hearing, "Exhibit 5," filed October 4, 2021, 5:17 p.m. p. 62.* In fact, Judge Jones has also recently rejected this City PR-OS argument in the 17 Acre Case, holding the original master plan designation for the property was MED and ML (medium residential use) and "the City has failed to present the evidence showing that this original MED and ML City Master Plan land use designation was ever legally changed from MED and ML to PR-OS, pursuant to the legal requirements set forth in Chapter 278 and LVMC 19.16.030." *See FFCL Re: Plaintiff Landowners' Motion to Determine "Property Interest," case NO. A-18-773268-C, filed on September 16, 2021, p. 14:1-10.* And, as is the City's course of conduct, it challenged Judge Jones's PR-OS finding in a motion to reconsider and, again, lost the PR-OS argument. In all, there have been 5 district court judges and 8 Nevada Supreme Court Justices that have considered the City's PR-OS argument and flatly rejected it.

The City next claims in its "Introduction" that the Court "ignores" "authorities directly on point" and, instead, relies on Sisolak and Bustos to decide the property interest issue. First, the "authorities directly on point" the City cites to are all petition for judicial review cases. *See City Motion, p. 10:26-11:4.* This is not a petition for judicial review case; it is an inverse condemnation case. Second, the Sisolak and Bustos cases the Court relied on are direct condemnation and inverse condemnation cases where the Court adopted the rules for deciding the property interest issue in an inverse condemnation case - the exact issue that was before the Court in this proceeding. In fact, in the Bustos case, the Nevada Supreme Court rejected the exact same arguments the City of Las Vegas made to the Court during trial and in its pending motion. *See* City of Las Vegas v. Bustos, 119 Nev. 360 (2003). In Bustos, the City argued that Judge Porter

should ignore the potential zoning of Mr. Bustos' property for commercial use and, instead, should apply the City's master plan that prohibited commercial use on the Bustos' property. Id., at 361. The City cited the same exact petition for judicial review law that it now cites to the Court. Id., *361, see fn.1 wherein the Court references the PJR law the City proposed the Court follow.* Judge Porter rejected the City's argument that the master plan applies and, instead, held that the Court must follow the zoning on the property when deciding the property interest issue and the Nevada Supreme Court affirmed, holding, "the district court properly considered the current zoning of the property, as well as the likelihood of a zoning change." Id., at 363. Therefore, contrary to the City's argument, the Court did not "ignore" relevant authorities; it properly followed direct condemnation and inverse condemnation case law that is directly on point.

The City also claims in its "Introduction" that Judges Sturman and Herndon Ruled on the Property Interest Issue – Contrary to the Court's Holding. *See City Motion, p. 12:15-22.* This City argument is disturbingly misleading. **Judge Sturman** has not ruled on the property interest issue in the 133 Acre Case. There were two hours of oral argument on the property interest issue, Judge Sturman made a comment during that hearing (cited by the City), that comment was addressed extensively during the hearing as being incorrect, and, at the end of the hearing, Judge Sturman ruled for **the Landowners** and asked them to prepare the property interest order. That order was submitted to Judge Sturman and it has not yet been signed. **Judge Herndon** did enter an order in the 65 Acre Case that cites extensively to the Landowners' property rights, including the Landowners' due diligence and the City's confirmation of the property rights – "the City Planning Department reported that: 1) the 250-Acre Residential Zoned Land was hard zoned and had vested rights to develop up to 7 units an acre; 2) 'the zoning trumps everything;' and, 3) any owner of the 250 Acre Residential Zoned Land can develop the property." *Findings of Fact and Conclusions of Law, filed in the 65 Acre Case no. A-18-780184-C, on December 30, 2020, p. 8:24-*

27. Judger Herndon also cited to some of the statements the City made at the hearing. But Judge Herndon then specifically states in his order that he was **not** resolving the property interest issue. Id., at p. 35:4-14. Judge Herndon only ruled on the ripeness issue as it applied to the 65 Acre Case and the held "the court believes addressing the merits of any of the remaining issues would be unwise as there are three companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect in the other pending actions." Id., at 35:9-12. Yet, the City is unabashedly doing exactly what Judge Herndon held should not be done – citing to an issue that Judge Herndon specifically stated he was not deciding and should not be cited to.

The City next claims in its "Introduction" that only $4.5 million was paid for the entire 250 Acre Property and the Court incorrectly excluded the City's valuation evidence. *See Motion to Stay, p. 13:14-23.* The City's continual citation to a $4.5 million purchase price is plainly false - it is based on a self-serving affidavit by its own private attorney, who claims to know what was paid for the property back in 2005, even though he has no personal knowledge whatsoever of the facts. *See City Appendix of Exhibits, filed on August 25, 2021, Exhibit FFFF, vol. 9, pp. 1591-1605.* The Court property relied on the deposition testimony of both PMKs for the Peccole Family and the Landowners which confirmed that the purchase occurred in 2005, was a "complicated" deal with "a lot of hair" on it, and involved significant other consideration, with the Landowner PMK confirming the consideration way back in 2005 was in excess of $100 million. *See Landowners' Motion in Limine No. 1: To Exclude 2005 Purchase Price, pp. 3-10, filed September 7, 2021.* The Court properly excluded this 2005 purchase price evidence, because it was not representative of the value of the 35 Acre Property as of the relevant September 14, 2017, date of valuation and the City failed to identify an expert witness to testify to the purchase price, among other reasons. *See Order Granting Plaintiffs' Motions in Limine No. 1, 2, and 3, pp.*

2-5, filed on November 16, 2021. See also FFLC Re: Take, pp. 43-44 (explaining why the purchase price was not considered when deciding the take issue). The City then embarrassingly implies that these rulings by the Court excluded the City's valuation evidence. *See City Motion to Stay, p. 13:18-23.* As the Court will recall, the City did **not** retain a valuation expert and in fact stipulated to admit the value evidence presented by the Landowners' expert. Therefore, it was the City that chose not to present valuation evidence at trial and the City cannot now blame the Court for its lack of valuation evidence at trial.

Finally, the City's "Introduction" claims that a stay should be granted, because the Landowners improperly segmented the entire 250 Acre Property into separate parcels (17, 35, 65, and 133 acre parcels) and all parcels should be considered as a whole. *See City Motion, p. 13:24-14:8.* The Court properly entered detailed findings for why this City "segmentation" arguments lacks any merit whatsoever. FFCL Re: Take, p. 38:17-40:10. The Court properly cited Nevada law, directly on point, that expressly rejects this segmentation argument – City of North Las Vegas v. Eighth Judicial Dist. Court and NRS 37.039. Id. The Court properly held that the 35 Acre Property has its own Clark County parcel number and own independent legal owner and, accordingly, under Nevada eminent domain law, must be evaluated as a single parcel. Id. The City's segmentation argument has no legal basis whatsoever.

Conclusion regarding the City's "Declaration" and "Introduction." As the Court can see, the City continues its course of conduct - repeatedly re-arguing issues that have already been decided, making arguments contrary to the position of its own client (the City Attorney, Planning, Tax departments, and City Councilpersons), and ignoring long-standing Nevada eminent domain and inverse condemnation precedent. The City also continues to repeatedly argue petition for judicial review law, despite at least four orders from the Court rejecting the petition for judicial review law's application to this inverse condemnation case and a recent Nevada Supreme Court

decision directly on point that petition for judicial review law should not be used. City of Henderson v. Eighth Judicial District Court, 137 Nev. Adv.Op. 26 (June 24, 2021)(clarifying that judicial review and civil actions are distinct from each other and "like water and oil will not mix"). In its pending motion, the City even misrepresents the Court's orders and blames the Court for its own failure to retain a valuation expert. All of this should be remembered when the Court considers attorney fees in this matter. *See Landowners Motion for Attorney Fees, filed on December 9, 2021, and set for hearing on February 3, 2022.*

C. Rebuttal of the City's NRAP Rule 8 Analysis

As explained above, NRAP Rule 8's stay provisions have no application whatsoever in this inverse condemnation case, because Nevada has adopted specific laws that state the City "must" pay the $34,135,000 award within 30 days of the final judgment – without exceptions. The Landowners will, however, very briefly address each of the City's baseless NRAP 8 arguments.

1. Rebuttal of the City's Claim the Object of the Appeal Would be Defeated and the City Would Suffer Irreparable Harm if a Stay is Denied

The City claims that the first two elements of NRAP Rule 8's stay requirements are met, because the object of the appeal will be defeated and it will suffer irreparable harm if a stay is not granted. *See City Motion, p. 16:5-20.* As explained above, the State of Nevada made this exact argument to the Nevada Supreme Court in State v. Second Judicial District Court, supra, and the Court rejected it. The State claimed that mandating payment of the funds pending appeal "deprives it of its right to appeal," because this would amount to "a voluntary satisfaction of judgment which renders the appeal subject to dismissal as moot." Id., at 205. The Nevada Supreme Court disagreed, holding "[s]uch is not our view of the law" and reasoned that payment of the funds pending appeal is a "condition to the condemnor's [government] right to maintain and appeal while remaining in possession. It is not an acceptance of the judgment rendered, but is the meeting of a

condition by which that judgment may be disputed." Id., at 205. Therefore, this City argument related to NRAP Rule 8 has already been rejected.

2. Rebuttal of the City's Claim that the Landowners Will Not Suffer Irreparable Harm, Because the City has to Pay Interest on the Award

The City claims that the next NRAP Rule 8 element is met, because the Landowners will not suffer irreparable injury or harm as the City will be required to pay interest on the delay in payment of the funds. *City Motion, p. 16:21-26.* Again, this argument was made by the State in State v. Second Judicial District Court, supra, and it was rejected. The Court held "the assurance of ultimate payment plus interest may not be sufficient to meet the immediate needs of a condemnee either to his property or to its cash equivalent. The power not only to take possession of another's property, but also to postpone indefinitely the payment of just compensation for it, is a power which **may well have an oppressive effect.** It might well, through duress of circumstances, compel the acceptance by a condemnee of compensation felt not to be just." Id., at 205. Therefore, this City argument related to NRAP Rule 8 has also already been rejected.

3. Rebuttal of the City's Claim that it is Likely to Prevail on Appeal

The City also claims that the next NRAP Rule 8 element is met, because the City disagrees with the verdict and thinks it will prevail on appeal. *See City Motion, pp. 17-30.* Every government entity that appeals disagrees with the verdict. This is no reason to ignore the mandatory payment requirements of NRS 37.140, NRS37.170, and State v. Second Judicial District Court.

Moreover, the City has argued and re-argued every single issue in this case at least twice. It has been given every opportunity to extensively present its case. Following extensive hearings, the Court entered FFCLs on the three primary issues in this case – the property interest issue, the take issue, and the just compensation issue. *See* FFCL Re: Property Interest, FFCL Re: Take, and FFCL Re: Just Compensation. These FFCLs are all well supported by and cite to Nevada eminent domain and inverse condemnation law directly on point. Therefore, the City's argument that it

will prevail on appeal is without merit.

On the property interest issue, the Landowners will prevail on appeal. Rather than re-argue this issue, the Landowners incorporate by reference their property interest argument set forth in the pleadings on this issue already submitted to the Court. In summary, there are six Nevada Supreme Court opinions directly on point which hold that the R-PD7 residential zoning must be used (not a master plan) to decide the property interest the Landowners had prior to the City's taking and all three relevant City Departments (City Attorney's Office, Planning Department, and Tax Department) opined that the R-PD7 residential zoning must be used to decide the Landowners' property interest and that this R-PD7 residential zoning granted the Landowners a property right to build residential units. Therefore, the Court's FFCL Re: Property Interest properly concluded the R-PD7 zoning granted the Landowners the right to build single family and multi-family residential units on their 35 Acre Property and will not be reversed on appeal. Furthermore, it is uncontested that the right to exclude is a fundamental element of property rights and the City's actions and ordinances took that right by preserving the Landowners' property for public use and authorizing the public to use the Landowners' property.

On the take issue, the Landowners will prevail on appeal. Again, rather than re-argue this issue, the Landowners incorporate by reference their take argument set forth in the pleadings on this issue already submitted to the Court. The City's taking actions are summarized above. It is rare that a government entity engages in so many aggressive and systematic actions against one landowner as the City did in this case; by denying all applications to develop the 35 Acre Property, prohibiting the Landowners from fencing their property to exclude others, prohibiting the Landowners from gaining access to their own property, and then even adopting a law that targets only the Landowners' property, makes it impossible to develop, and mandates that the Landowners allow the public to enter onto their property. The City's actions were so egregious that they met

all four of Nevada's taking standards – per se categorical, per se regulatory, non-regulatory / de facto, and Penn Central takings. Therefore, the Court's FFCL Re: Take properly concluded the City took by inverse condemnation the 35 Acre Property and will not be reversed on appeal.

On the just compensation issue, the Landowners will prevail on appeal. The Landowners presented the well-supported expert report prepared by appraiser, Tio DiFederico that values the Landowners' 35 Acre Property at $34,135,000. As the Court will recall, the City claimed it needed a continuance of the summary judgment hearings so it could retain an expert report to determine the economic impact of its actions on the 35 Acre Property, but never produced any such expert report. Therefore, the City had no expert valuation evidence to present at trial, even though the valuation in an eminent domain case is "a field dominated by expert opinion." City of Sparks v. Armstrong, 103 Nev. 619, 622 (1987). Accordingly, the City stipulated to the admission of Mr. DiFederico's $34,135,000 expert report and presented no evidence to rebut this value at the October 27, 2021, bench trial. Therefore, the Court's FFCL Re: Just Compensation properly concluded the value of the 35 Acre Property taking is $34,135,000 and will not be reversed on appeal.

IV. CONCLUSION RE: LANDOWNERS' COUNTERMOTION TO ORDER THE CITY PAY THE $34,135,000 AWARD IMMEDIATELY AND OPPOSITION TO THE CITY'S MOTION TO STAY

The Nevada Legislature adopted NRS 37.140 and NRS 37.170 to make sure every government entity pays a condemnation award within 30 days regardless of whether there is an appeal or not. NRS 37.140 states that award must be paid within 30 days of the final judgment – without exception. NRS 37.170 states that, even if the government elects to challenge that final judgment on appeal, it must pay the award as a precondition of appeal – without exception. State v. Second Judicial District Court confirms these mandatory payment provisions. Therefore, it is respectfully requested that the City be ordered to pay the $34,135,000 within 30 days of the final

judgment and as a precondition to appeal.

Finally, the City's NRCP Rule 62 and NRAP Rule 8 arguments lack merit as they are general rules and NRS 37.140 and NRS 37.170 are specific rules that apply to this inverse condemnation case. And, even considering the four NRAP Rule 8 elements, the City has failed to meet even one of the elements. Therefore, it is respectfully requested that the Court deny the City's stay request.

DATED this 5th day of January, 2022.

LAW OFFICES OF KERMITT L. WATERS

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Attorneys for Plaintiffs Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 5th day of January, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **PLAINTIFF LANDOWNERS' OPPOSITION TO THE CITY'S MOTION FOR IMMEDIATE STAY OF JUDGMENT AND COUNTERMOTION TO ORDER THE CITY TO PAY THE JUST COMPENSATION ASSESSED** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **PLAINTIFF LANDOWNERS' REPLY IN SUPPORT OF MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** **Hearing Date: January 18, 2022** **Hearing Time: 9:05 a.m.**

The Plaintiffs, 180 Land Co LLC and Fore Stars, Ltd. (hereinafter referred to as "Landowners") hereby file their Reply in Support of their Motion for Reimbursement of Property Taxes as follows:

The City's opposition is riddled with false statements of fact and law. The City's insistence on perpetuating a false narrative about this case has not only wasted precious judicial resources,

but has also caused the Landowners tremendously increased litigation costs, as the City's falsehoods must be continually addressed. The Landowners have filed a motion for attorney fees which is scheduled to be heard on February 3, 2022. The City's Opposition to the Landowners' request for reimbursement of property taxes is further support for why the Landowners should be awarded full attorney fees.

A. The City has *Per Se Taken* the Landowners' Property Meaning the City Is In Possession of the Property

The Landowners have established a ***"per se" taking*** of their property, not simply a regulatory taking, as the City continuously and falsely argues. *See Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and For Summary Judgment on The First, Third And Fourth Claims For Relief filed October 25, 2021 (hereinafter "FFCL Re: City's Taking") at ¶ 154-175.* A "per se" taking means the City is in possession of the Landowners' Property. Id. As the Court may recall, the City has taken the Landowners' property for the surrounding neighbors' use and enjoyment and has prevented the Landowners from doing anything with the Subject Property that would interfere with the surrounding neighbors' use and enjoyment of the Subject Property. For example, the City prevented the Landowners from constructing a fence around the Subject Property, as a fence would prevent the surrounding neighbors from using the Subject Property. *FFCL Re: City's Taking at ¶ 87-95*. The City passed ordinances (Bills 2018-5 and 2018-24) that preserved the Subject Property for the surrounding neighbors' use by ensuring the surrounding neighbors had ongoing access to the Subject Property. *FFCL Re: City's Taking at ¶ 103-122.* The City passed ordinances that authorized the surrounding neighbors to use the Subject Property for recreation and open space and the City went into the community and told the surrounding neighbors that the Subject Property was theirs to use as their own recreation and open space. *FFCL Re: City's Taking at ¶ 116-122.* The City even denied the Landowners access to their own property because the City did not want the Landowners' access

to impact the surrounding neighbors use of the Subject Property. *FFCL Re: City's Taking at ¶ 96-103.* Accordingly, the Landowners have been dispossessed of the Subject Property by the City and are entitled to reimbursement of the property taxes they were forced to pay since August 2, 2017.

B. The Arguments the City Presents are in Gross Disregard of Its Obligations and Are Made In Bad Faith

Despite the City's clear disappointment in not being able to take the Landowners' property for free, the City still has obligations to be truthful and equitable in this matter.

> "Occupying a position analogous to a public prosecutor, he is 'possessed of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice.' (Professional Responsibility: Report of the Joint Conference, (1958) 44 A.B.A.J. 1159, 1218.), The duty of a government attorney in an eminent domain action, which has been characterized as 'a sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner' (Sacramento etc. Drainage Dist. v. Reed (1963) 215 Cal.App.2d 60, 69, 29 Cal.Rptr. 847, 853), is of high order. 'The condemnor acts in a **quasi**-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation.' (Hogan, Trial Techniques in Eminent Domain (1970) 133, 135.)" *City of Los Angeles v. Decker*, 18 Cal. 3d 860. 871, 558 P.2d 545, 551 (1977).

Yet the City has lost sight of these obligations, and is making arguments that are not true, are not equitable and are not just.

1) $630,000 Would Not Make the Landowners Whole

The City argues that the Landowners would be made "whole if the Court required the City to reimburse the [Landowners] for $630,000" in total, not just for property taxes. (City Opp at 1:14-15). This is an astonishingly unjust argument by the City and violates its duty in this case. Not only has it been shown that the Landowners' property, which the City took, was worth nearly

$35 million, but the Landowners have paid nearly $1 million in property taxes.[1] Moreover, the City's argument in regard to the 2005 purchase price has been repeatedly rejected by this Court, because both the PMK for the Peccole Family (seller) and PMK for the Landowners (buyer) confirmed that the City's argument is entirely baseless. *See FFCL Re: City's Taking at ¶ 207-209; Order Granting Plaintiffs' Motion in Limine No. 1, 2, and 3 filed November 16, 2021 at ¶ 1-12, and; Plaintiffs Landowners' Motion in Limine No. 1: to Exclude 2005 Purchase Price filed September 7, 2021 at p. 5-10.* Yet, the City makes the completely irrational argument that the Landowners would be made whole with only $630,000. This is a troubling position for the City to take in this proceeding and further establishes the City's bad faith and illicit tactics employed against the Landowners.

2) It Is Not the Landowners Fault that they Had to Pay Property Taxes

In yet another astonishingly untrue and unjust argument, the City claims the Landowners are to blame for paying property taxes. (City Opp at 1:20). To support this untrue and unjust argument, the City claims the Landowners voluntarily shut down the golf course in December of 2016. (City Opp at 1:21-22). The City knows this is false having concurred that it was a failed golf course. In fact, the City's own attorney admitted as much during the September hearings on this matter.

> THE COURT: I mean, I get the concern. I don't mind saying that. I do. But what happens when that golf course model is no longer viable?
> MR. MOLINA: I think that we agree that it would be very difficult to run a golf course profitably here…*See Transcr. of Sept. 24, 2021 hearing at 87:10-16.*

Indeed, as the Court will recall (and the City knows) the Landowners even offered the golf course operator free rent to continue operations and the operator could still not make a profit. *See*

[1] Since the Landowners filed their original motion, yet another real property tax bill has come due in the amount of $51,306.81. *See Exhibit 3 attached hereto.* With the most recent payment the total amount of real property taxes the Landowners were forced to pay for the 35 Acre Property after August 2, 2017 is **$ 976,889.38**.

Appendix of Exhibits in Support of Appendix of Exhibits In Support of Plaintiff Landowners' Motion to Determine Take and For Summary Judgment on the First, Third And fourth Claims For Relief - Volume 4, Exhibits 45-47. This along with the expert testimony of Mr. DiFederico that confirmed a golf course was not an economic use and the City's complete lack of any contrary evidence allowed the Court to conclude that a golf course on the Subject Property was not an economic use. See *FFCL Re: City's Taking at ¶ 158.* Yet, the City unjustly and in bad faith advances the position in its opposition that the Landowners should have maintained an uneconomic use of the Subject Property (i.e., lost significantly more sums of money) in order to pay less property taxes. This is a troubling position for the City to take in this proceeding.

3) The City's Wants the Landowners to Perpetrate a Fraud on the Assessor

Next the City advances an argument that would have the Landowners perpetrate a fraud on the Assessor by adopting the City's illegal PR-OS argument to avoid property taxes. (City Opp at 7). It is truly shocking the length the City will go in this case. As this Court will recall, the Assessor investigated the Landowners' Property and determined the "lawful" use was "residential" based on the R-PD7 residential zoning; the Assessor gave absolutely no credence to the City's PR-OS argument. On this basis, the Assessor placed a value on the Landowners' Property, imposed a tax on the Landowners based on this value, and the Landowners have dutifully followed Nevada's tax laws and paid these real property taxes. The City's suggestion that the Landowners should have taken another avenue (which was clearly illegal) to avoid taxes is misguided, misleading and disconcerting.

C. The City's Attempt to Limit the Holding of *Alper* is Contrary to *Alper*'s Long Standing Precedence in Nevada Takings Jurisprudence - Having Been Cited <u>28 Times</u> by the Nevada Supreme Court Since 1984

The City claims *Alper* only applies to a small subset of cases. City Opp at 2:17. The Nevada Supreme Court has cited *Alper* 28 times in a wide range of takings cases from inverse

condemnation to eminent domain to precondemnation damages cases. Accordingly, the City's attempt to limit *Alper*'s holding is astonishing. *Alper* does not apply "narrowly to the small subset of cases …." as the City claims. (City Opp at 2:17). Quite the opposite. *Alper* is a bedrock takings opinion in Nevada jurisprudence, dealing with specific takings doctrines, including without limitation, prejudgment interest, the project influence rule, standards of highest and best use, and the award of attorney fees.

Alper has been cited and affirmed repeatedly by the Nevada Supreme Court for nearly 40 years. *City of North Las Vegas v. Robinson*, 122 Nev. 527, 533, 134 P.3d 705, 709 (2006) (*Alper* and the impact of government dedication requirements on highest and best use); *McCarran Airport v. Sisolak*, 122 Nev. 645, 674-675, 137 P.3d 1110, 1129-1130 (2006) (expanding *Alper* to award attorney fees when the taking agency receives federal funds and relying on *Alper* to support award of prejudgment interest); *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 712, 718, 941 P.2d 971, 975 (1997) (overruled on unrelated grounds) (relies on *Alper* to support statutory rate of interest as the floor and should only be used if other evidence of a higher rate is not offered); *City of Sparks v. Armstrong*, 103 Nev. 619, 621-622, 748 P.2d 7, 8-9 (1987) (cites *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings and relies on *Alper* for the project influence rule even calling the project influence rule the "*Alper* doctrine"); *Vacation Village, Inc. v. Clark County*, 244 Fed.Appx. 785, 787-788, 2007 WL 2292716 (2007) (unpublished 9th Circuit opinion) (citing in approval to *Sisolak*'s expansion of *Alper*, holding that no nexus between federal funds and the taking project is needed for the award of attorney fees under the relocation act instead if the entity that took the property receives federal funds then that is sufficient for awarding attorney fees pursuant to the URA); *Belle Vista Ranch Co., LLC v. RTC of Washoe*, 2021 WL 1713288 at *1 (2021) (unpublished opinion) (citing *Alper* for the project influence rule); *City of North Las Vegas v. 5th and Centennial*, 2014 WL 1226443

at *7 (2014) (unpublished opinion) (cites *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings); *Nevada Power co., v. 3 Kids. LLC.,* 129 Nev. 436, 441, 302 P.3d 1155, 1158 (2013) (citing *Alper* for highest and best use and government dedication requirements as it relates to highest and best use); *Dvorchak v. McCarran Airport*, 2010 WL 4117257 at *2 (2010) (unpublished opinion)(citing *Alper* for the statute of limitations starting point); *Johnson v. McCarran Airport*, 2010 WL 4117218 at *2 (2010) (unpublished opinion) (citing *Alper* for the statute of limitations starting point); *Buzz Stew LLC v. City of North Las Vegas*, 124 Nev. 224, fn 20, 181 P.3d 670 (2008) (citing *Alper* for date of taking when considering prejudgment interest and severance damages); *ASAP Storage Inc., v. City of Sparks*, 123 Nev. 639, fn 8, 173 P.3d 734 (2007)(citing *Alper* that real property interest in land supports a takings claim); *Nevadans for the Protection of Property Rights v. Heller*, 122 Nev. 894, fn 36, 141 P.3d 1235(2006) (citing *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings); *City of Las Vegas v. Bustos*, 119 Nev. 360, fns 6, 8 and 9, 75 P.3d 351 (2003) (citing *Alper* for highest and best use and import of the property's zoning); *County of Clark v. Sun State Properties, Ltd.,* 119 Nev. 329, fn 35, 72 P.3d 954 (2003) (citing *Alper* for prejudgment interest); *County of Clark v. Buckwalter*, 115 Nev. 58, 62, 974 P.2d 1162, 1164 (1999) (overturned by constitutional amendment and statute as to most probable price) (citing *Alper* that the determination of just compensation is exclusively a judicial function and may not be impaired by statute); *Argier v. Nevada Power Co.,* 114 Nev. 137, fn 2, 952 P.2d 1390 (1998) (citing *Alper* that inverse condemnation actions are the constitutional equivalent to formal condemnation proceedings to reject Nevada Power's argument that an inverse condemnation case was not applicable to an eminent domain action); *Stagecoach Utilities, Inc., v. Stagecoach General Imp. Dist.*, 102 Nev. 363, 366, 724 P.2d 205, 207 (1986) (citing *Alper* for prejudgment interest); *Manke v. Airport Authorities of Washoe County*, 101 Nev. 755, 759, 710 P.2d 80, 82 (1985) (citing

Alper for prejudgment interest); *Iliescu v. RTC of Washoe*, 2021 WL 4933429 at *5 (2021) (unpublished opinion) (citing *Alper* for highest and best use).

Here, as discussed above, and as ruled by this Court, the City engaged in systematic and aggressive actions that resulted in the "per se" taking of the Landowners' property. This means the City is in physical possession of the Landowners' property, accordingly, any distinction the City is erroneously attempting to make between the facts of this case and *Alper* should be rejected. Furthermore, *Alper* is a bedrock takings opinion in Nevada jurisprudence and applies to a wide range of takings cases, therefore, it cannot be distinguished from this case and the Landowners are entitled to reimbursement of the property taxes they were forced to pay for the 35 Acre Property after August 2, 2017.

D. *City of North Las Vegas v. 5th & Centennial* was Not a Direct Takings Case

The City argues to the Court that *City of North Las Vegas v. 5th & Centennial* is not applicable here because it was a direct takings case - "The Court held that prejudgment interest began to accrue not on the date the city served the summons and complaint in eminent domain, but rather on the date of commencement of the City's unreasonable delay in filing the eminent domain action." City Opp at 3:21-23. Either the City did not read *5th and Centennial* or it is intentionally misleading the Court as *5th and Centennial* was not a direct taking case. "On January 1, 2010, the Landowners filed a complaint against the City for inverse condemnation and precondemnation damages…" *City of North Las Vegas v. 5th & Centennial*, 130 Nev. 619, 331 P.3d 869 (2014). This is not a situation where two parties have different opinions on the significance of a case, the City is simply misstating the law to the Court, whether intentionally or unintendedly.

The date upon which property taxes were no longer obligated is the date the owner is dispossessed of her property. In situations such as this, where the government engages in

numerous taking actions, the Nevada Supreme Court looks to the first date of compensable injury resulting from the government's conduct. *City of North Las Vegas v. 5th & Centennial, LLC*., 130 Nev. 619 (2014) (relying on eminent domain statutes and law to commence interest in a precondemnation damages case on the first date of compensable injury). Accordingly, the Landowners should be reimbursed for the property taxes they were forced to pay after August 2, 2017.

E. NRS 37.120(3)

The City misreads language from NRS 37.120(3) to claim that reimbursement of property taxes is not available as it is not specifically enumerated. The language the City cites from NRS 37.120(3) states "without limitation" meaning "including but not limited to" - therefore the City's claim that "property taxes are conspicuously absent from the list" provided in NRS 37.120(3) is meaningless as the list starts with "without limitation." It is hard to imagine that the City does not know what the phrase "without limitation" means. Long standing Nevada law, including the bedrock *Alper* decision, provides that the Landowners are entitled to the reimbursement of the property taxes they were forced to pay after the City took their property. The City has cited nothing to counter that long standing Nevada law.

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F. CONCLUSION

For the foregoing reasons, it is respectfully requested that the City be ordered to reimburse the Landowners for the $ 925,582.57 + $ 51,306.81= **$ 976,889.38** of real property taxes they were forced to pay for the 35 Acre Property after August 2, 2017.

DATED this 11th day of January, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ Autumn Waters

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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 11th day of January, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **PLAINTIFF LANDOWNERS' REPLY IN SUPPORT OF MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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Exhibit 3

OFFICE OF THE COUNTY TREASURER
LAURA B. FITZPATRICK, TREASURER
500 S Grand Central Pkwy 1st Floor
Box 551220
Las Vegas NV 89155-1220
(702) 455-4323 www.clarkcountynv.gov/treasurer

0190505 01 AV 0.395 **AUTO T8 0 0513 89117-548945 -C01-P90705-I1234
138-31-201-005
180 LAND CO L L C
C/O V DEHART
1215 S FORT APACHE RD #120
LAS VEGAS NV 89117-5489

Real Property and Special Taxes

FISCAL YEAR 2021-2022 (July 1, 2021 - June 30, 2022)
PARCEL NUMBER 138-31-201-005 TAX RATE 3.2782 TAX DIST. 200 TAX CAP % 7.7%

Property Location and Description
UNASSIGNED SITUS
ASSESSOR DESCRIPTION: PARCEL MAP FILE 121 PAGE 100 LOT 1

Assessed Valuation

Land	6,260,363
Improvements	
Personal Property	
Assessed Value Subject to Cap	6,260,363
Land Value**	
Improvement Value**	
Personal Property Value**	
Less Exemption Value	
NET ASSESSED VALUE	6,260,363
New Construction Supplemental**	
**Not Subject to Cap	

Summary

	Amount
Taxes as Assessed	205,227.22
Less Cap Reduction	0.00
Net Taxes	205,227.22
Other Charges	
Las Vegas Artesian Basin	3.06
Total Annual Charges	205,230.28

PARCEL NUMBER 138-31-201-005 180 LAND CO L L C
DUE DATE JANUARY 3, 2022
Installment 3
Pay within 10 days after the due date to avoid penalties.
Make checks payable to CLARK COUNTY TREASURER
500 S Grand Central Pkwy 1st Floor
Box 551220
Las Vegas NV 89155-1220
AMOUNT DUE $51,306.81
TEAR HERE
1383120100522300051306814

PARCEL NUMBER 138-31-201-005 180 LAND CO L L C
DUE DATE MARCH 7, 2022
Installment 4
Pay within 10 days after the due date to avoid penalties.
Make checks payable to CLARK COUNTY TREASURER
500 S Grand Central Pkwy 1st Floor
Box 551220
Las Vegas NV 89155-1220
AMOUNT DUE $51,306.81
TEAR HERE
1383120100522400051306812

See Reverse Side for Distribution of Tax Dollars.

Installment	Amount
1	51,309.85
2	51,306.81
3	51,306.81
4	51,306.81

PARCEL NUMBER 138-31-201-005 180 LAND CO L L C
DUE DATE AUGUST 16, 2021
Installment 1
Pay within 10 days after the due date to avoid penalties.
Make checks payable to CLARK COUNTY TREASURER
500 S Grand Central Pkwy 1st Floor
Box 551220
Las Vegas NV 89155-1220
AMOUNT DUE $51,309.85
TEAR HERE
1383120100522100051309853

PARCEL NUMBER 138-31-201-005 180 LAND CO L L C
DUE DATE OCTOBER 4, 2021
Installment 2
Pay within 10 days after the due date to avoid penalties.
Make checks payable to CLARK COUNTY TREASURER
500 S Grand Central Pkwy 1st Floor
Box 551220
Las Vegas NV 89155-1220
AMOUNT DUE $51,306.81
TEAR HERE
1383120100522200051306816

IF YOUR MORTGAGE COMPANY PAYS YOUR TAXES, FORWARD THIS BILL TO THEM IMMEDIATELY

To pay online and to check the status of your taxes, visit clarkcountynv.gov/treasurer or by calling (702) 455-4323, select option 2 from the main menu.

0513-01-00-0190505-0001-0190986

180 LAND CO LLC 1361

Check#: 1361 Date: 01/03/2022 Vendor#: 237 Clark County Treasurer

Invoice#	Invoice Date	Job/Description	Balance	Retain	Discount	This Check
13831201005 3rd	12/31/2021	3rd Installment 1383	51,306.81			51,306.81

1361

180 LAND CO LLC
1215 S. FORT APACHE RD., #120
LAS VEGAS, NV 89117

BANK OF NEVADA
1115 S. Rancho Drive • 702-656-7100
Las Vegas, NV 89117
94-177/1224

FIFTY-ONE THOUSAND THREE HUNDRED SIX AND 81/100 DOLLARS 01/03/2022 $ *51,306.81
DATE AMOUNT

Security features. Details on back.

PAY TO THE ORDER OF
Clark County Treasurer
500 S Grand Cntrl Pkwy 1St Flr
PO Box 551220
Las Vegas NV 89155-1220

AUTHORIZED SIGNATURE

[redacted]

180 LAND CO LLC 1361

Check#: 1361 Date: 01/03/2022 Amount: 51,306.81 Vendor: 237 Clark County Treasurer

Invoice#	Invoice Date	Job/Description	Balance	Retain	Discount	This Check
13831201005 3rd	12/31/2021	3rd Installment 1383	51,306.81			51,306.81

PRODUCT DLM102 USE WITH 91500 ENVELOPE Reorder: CADform (928) 855-9846 PRINTED IN U.S.A. A

A FEDE2B AVKDK04 10/20/2015 08:12 -141-

RIS

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(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No. A-17-758528-J

DEPT. NO.: XVI

CITY'S REPLY IN SUPPORT OF MOTION FOR IMMEDIATE STAY OF JUDGMENT

(HEARING REQUESTED ON ORDER SHORTENING TIME)

Hearing Date: January 13, 2022
Hearing Time: 9:30 am

Introduction

In its opposition ("Opposition") to the City's Motion for Immediate Stay of Judgment ("Motion"), the Developer avoids the heart of the City's Motion. The Motion requests a stay of the Judgment to allow the Supreme Court to decide the truly momentous question of whether Nevada's land use regulatory scheme is unconstitutional, *before* the Developer and other property owners throughout the State invoke the Judgment as license to build whatever they desire. By eliminating

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virtually all regulatory restrictions on the use of property, the Judgment, unless stayed, could cause land use planning in Nevada to grind to a halt and throw Nevada real estate values into chaos. Home values could plunge as homeowners lose protection from undesirable development in their neighborhoods. Commercial property values could also be affected if property can be developed without any requirement to provide infrastructure or amenities to serve the new development. Without any meaningful controls on land use, unbridled real estate development could cause irrevocable harm to the environment and worsen traffic congestion. In the interest of stability of real estate values and sound land use planning, which have benefitted from many decades of extensive land use regulation, the Judgment should be stayed pending a ruling by the Nevada Supreme Court whether Nevada will have land use regulation or not.

The Developer does not dispute that the Judgment eviscerates a long-standing system of land use regulation carefully designed by the Nevada Legislature and the City of Las Vegas to protect the public interest. *See* NRS 278.010–278.630; Las Vegas Municipal Code (Unified Development Code ("UDC")) 19.10-19.18. These statutes require cities to exercise judgment and discretion in adopting General Plans that govern the use of property, require that zoning "must" be consistent with the General Plan, and authorize cities to exercise broad discretion in using these tools to plan communities for the general health, safety, and welfare. *See also Berman v. Parker*, 348 U.S. 26, 33 (1954) ("It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."). A decision with such far-reaching impacts to this well-established system of land use regulation deserves to be decided by the Nevada Supreme Court before it is implemented.

The Developer also has no answer for the City's argument that the $34 million plus Judgment should be stayed pending Nevada Supreme Court review. The cases and statutes the Developer cites for the proposition that the City must pay the Judgment within 30 days apply only in cases where (a) the agency filed an eminent domain action and requires physical possession of and title to the property to build a public project, or (b) the agency took physical possession of the property to build a public project, but failed to file an eminent domain action, requiring the property owner to file an inverse condemnation action to obtain compensation. In those cases, it is

appropriate that the Court transfers possession and title to the property to the condemning agency at the time of judgment because the agency requires the property for its public project. Under no scenario would the agency need to return possession and title to the property owner, regardless of the outcome of an appeal of the jury's determination of the amount of just compensation.

Here, in contrast, the City has not taken physical possession of the property and has no interest in or need for possession or title to fulfill a public project. The Developer remains in full possession and ownership of the property. If the Developer prevails in the appeal, it will be entitled to interest on the Judgment and will be made whole. There is no risk to the Developer if the Judgment is stayed. Requiring the City to pay compensation and take possession and title before resolution of the appeal, however, risks putting the City in an awkward position if it prevails on the appeal: the City may be unable to recover the taxpayer money paid to the Developer, and the property would have to be returned to the Developer. During the appeal, the City would be unable to physically change or sell the property, in case it needs to return the property to the Developer following a successful appeal. For these reasons, there is no Nevada authority that requires the City to pay the Judgment and take property that it does not want or need pending the City's appeal.

The City will provide compelling authorities and argument to the Nevada Supreme Court showing that the Judgment is erroneous, warranting a stay until the High Court can rule on the substantial changes in the law effected by the Judgment. At a minimum, the City has "present[ed] a substantial case on the merits when a serious legal question is involved and show[ed] that the balance of equities weighs heavily in favor of granting the stay." *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000). Accordingly, the Court should grant a stay of the Judgment pending resolution of the City's appeal.

Argument

I. A stay of the Judgment is necessary to avoid irreparable harm

In its opposition, the Developer does not even attempt to refute the City's argument that the object of the appeal will be defeated or that irreparable harm will occur throughout the State while the City's appeal is pending, if the Nevada Supreme Court later overturns the Judgment. The Developer does not deny that (a) it has already sought judgments in its favor in the 17 and 65-Acre

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takings cases citing the Judgment, which, according to the Developer's own evidence, would entitle it to an award of more than $125 million in those two cases, and another $200 million for the alleged taking in the 133-Acre case, (b) the media has widely reported that the Court held that property owners have a right to build anything they choose as long as the use is permitted by zoning, (c) other property owners in Nevada may invoke the Judgment to attempt to compel local governments to approve any and all development applications presented, regardless of harmful impacts on the community, and (d) city councils and boards of commissioners may feel compelled to approve any such development applications to avoid paying compensation to property owners from the public treasury. The harm to Nevada communities from poorly planned development or the drain on public fiscal resources during the appeal period could be immeasurable. Accordingly, the Court should stay the Judgment pending the City's appeal.

II. Before the power to regulate land use is shifted from the State Legislature and City Councils to the courts, the Nevada Supreme Court should determine whether such transfer of power is compelled by the Nevada and the United States Constitutions

In its Opposition, the Developer portrays the Judgment as merely following long-standing Nevada law. The Developer contends that that law has always required local government to approve any development proposed by any property owner, as long as it is a permitted use in the zoning district, or pay compensation for the market value of the property. The Developer is wrong. The Judgment effects a sea change in Nevada law and could cause irreparable harm throughout the State, the Court should stay the Judgment to allow Nevada Supreme Court review. In finding in the Developer's favor, this Court issued legal rulings that contravene statutes of the Nevada State Legislature, essentially transferring the power to regulate land use from the Legislature and local governments to the courts. Nevada's Constitution, however, expressly prohibits any one branch of government from impinging on the functions of another. *Secretary of State v. Nevada State Legislature,* 120 Nev. 456, 466, 93 P.3d 746, 753 (2004). The Nevada State Constitution provides that the state government "shall be divided into three separate departments" and prohibits any person authorized to exercise the powers belonging to one department to "exercise any functions, appertaining to either of the others" except where expressly permitted by the Constitution. Nev. Const. art. 3 § 1.

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Separation of powers "is probably the most important single principle of government." *Blackjack Bonding v. Las Vegas Mun. Ct.,* 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). Within this framework, Nevada has delegated broad authority to cities to regulate land use for the public good. *See*, *generally*,

NRS Chapter 278. The State has specifically authorized cities to "address matters of local concern for the effective operation of city government" by "[e]xpressly grant[ing] and delegat[ing] to the governing body of an incorporated city all powers necessary or proper to address matters of local concern so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government." NRS 268.001(6), (6)(a).

"Matters of local concern" include "[p]lanning, zoning, development and redevelopment in the city." NRS 268.003(2)(b). "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land." NRS 278.020(1); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 254, 439 P.2d 219, 222 (1968) (upholding a county's authority under NRS 278.020 to require a permit applicant to present evidence that the use is necessary to the public health and welfare of the community).

As a charter city, the City has the right to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land" and "[e]stablish and adopt ordinances and regulations which relate to the subdivision of land." Las Vegas City Charter § 2.210(1)(a), (b). Cities in Nevada limit the height of buildings, the uses permitted and the location of uses on property, and many other aspects of land use that could have impacts on the community. *See*, *e.g.*, *Boulder City v. Cinnamon Hills Assocs*., 110 Nev. 238, 239, 871 P.2d 320, 321 (1994) (upholding City's denial of building permit application); *State ex rel. Davie v. Coleman*, 67 Nev. 636, 641, 224 P.2d 309, 311 (1950) (upholding Reno ordinance establishing land use plan and restricting use of land).

Contrary to these authorities, this Court has held that (1) the zoning of property confers a constitutionally protected property right in the owner to build whatever the owner desires as long as the use is permitted under the zoning; (2) the City has no discretion to deny or condition approval

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of a development application, under either zoning or the General Plan; and (3) the City's designation of the 35-Acre Property as PR-OS in the City's General Plan is irrelevant to any development application. In issuing these unprecedented rulings, the Court has disregarded virtually the entire land use regulatory scheme in Nevada, which requires cities to adopt General Plans governing the use of property and confers broad discretion on cities to apply General Plan designations and zoning ordinances in reviewing land use permit applications. *See*, *e.g.*, NRS 278.150(1) ("The planning commission shall prepare and adopt a . . . general plan for the physical development of the city . . . which *in the commission's judgment* bears relation to the planning . . . for the development of the city.") (emphasis added); NRS 278.250(2) ("The zoning regulations *must* be adopted in accordance with the master plan for land use and be designed: . . . (b) To promote the conservation of open space . . . (k) To promote health and the general welfare.") (emphasis added); NRS 278.250(4) ("In exercising the powers granted in this section, the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate . . . ."). The Developer's Opposition seeks to perpetuate those errors so that while the appeal is pending, cities and other local governments will feel constrained by the Court's decision and fail to exercise their full statutory authority over local land use decisions that protect communities and provide for orderly development.

The Court's ruling also invalidates the City's General Plan and UDC 19.10-19.18 and Appendices, under which the City exercises the discretionary powers granted by state law to process land use applications. The UDC requires that, unless otherwise authorized by the UDC, all development approvals must be "consistent with the spirit and intent of the General Plan." UDC 19.16.010.A. The UDC also explains that the purpose of the review of Site Development Plans is to ensure that proposed development is compatible with nearby development and the General Plan. UDC 19.16.100.E. The City's discretion in reviewing these plans is emphasized by the fact that the UDC provides that the reviewing body may attach "to the amendment to an approved Site Development Plan Review whatever conditions are deemed necessary to ensure the proper amenities and to assure that the proposed development will be compatible" with nearby development. UDC 19.10.050.D. Similarly, the General Plan's Land Use Element states that "any

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zoning or rezoning or rezoning request must be in substantial agreement with the Master Plan . . . ." Ex. AAAA at 1435. The Court's decision turns this extensive body of property and land use law on its head.

The City hears and decides hundreds of local land use applications annually. During the pendency of the appeal, unless the Judgment is stayed, it will be reticent to enforce the UDC for fear of regulatory taking suit. The Developer's Opposition fails to even address this point.

In reaching the sweeping conclusion that local agencies no longer have discretion in the approval of land use permit applications, the Court has disregarded decades of unanimous Nevada Supreme Court authority to the contrary. *See*, *e.g.*, *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527, 96 P.3d 756, 759-60 (2004) (holding that because the City of Las Vegas' site development review process [the same process at issue in this case] involved discretionary action by the City Council, the project proponent had no vested right to construct); *Boulder City v. Cinnamon Hills Assocs*., 110 Nev. 238, 246, 871 P.2d 320, 325 (1994) ("The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally protected property interest.").

Accordingly, the Judgment violates separation of powers by encroaching on the Legislative Branch's prerogative to regulate land use. This challenge to the bedrock authority of a co-equal branch of government could not have more profound implications for government and the rule of law in Nevada. A stay will allow the Nevada Supreme Court to decide whether to overrule dozens of its prior decisions and statutes adopted by the State Legislature, on which government agencies and property owners have relied for decades.

III. The City is likely to prevail on the merits of its appeal, warranting a stay of the Judgment

A. The Judgment does not establish that the categorical and *Penn Central* claims are ripe

Consistent with Judge Herndon's judgment in the 65-Acre case, the Nevada Supreme Court is likely to find that the Developer's categorical and *Penn Central* taking claims are not ripe. In deciding that the categorical and *Penn Central* claims are ripe for adjudication, this Court improperly relied on a physical taking case, *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 664, 137 P.3d

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1110, 1123 (2006), where final decision ripeness does not apply and was not at issue. *See* 10-25-21 FFCL at 36-37. In fact, the court in *McCarran* actually noted that final decision ripeness *does* apply to taking claims involving regulatory denials of the owner's use of the property, like the Developer's categorical and *Penn Central* claims in this case.

At the same time the Judgment relies on authority that does not support it, the Judgment fails even to cite *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), *Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001), and *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419-20, 351 P.3d 736, 742 (2015), which hold that final decision ripeness applies to categorical and *Penn Central* denial-of-use taking claims. Although the Developer concedes that the ripeness doctrine applies to its *Penn Central* claim, the Court did not analyze whether that claim is ripe in the Judgment.

Nor does the Judgment, or the Developer, explain how the categorical and *Penn Central* claims could be ripe where the Developer filed only one application to develop the property. The Judgment and the Developer do not refute Judge Herndon's finding that the Master Development Agreement denied by the City in August 2017 does not constitute an application to develop any of the individual properties the Developer segmented from the Badlands, including the 35-Acre Property. Ex. CCCC at 1510-11. The Developer's applications for fencing and access, even if filed (they weren't) or denied (they weren't because the Developer never filed the required applications), are not applications to develop housing on the 35-Acre Property and hence do not constitute the necessary second application to develop the 35-Acre Property. *See* Ex. DDDD. Because the Developer failed to file and have denied at least two applications to build housing on the 35-Acre Property, the City is likely to prevail in its appeal of the Judgment.

B. The Judgment fails to demonstrate that the City's denial of development of housing on the 35-Acre Property wiped out the value of the Property

Because the City did not wipe out the value of the 35-Acre Property, or even change the value of the Property, there is a strong likelihood that the Nevada Supreme Court will overturn the Judgment. The Judgment fails to cite or apply the three Nevada Supreme Court cases that establish the standard for public agency liability for categorical and *Penn Central* takings. *See State v. Eighth*

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Judicial. Dist. Ct., 131 Nev. 411, 419, 351 P.3d 736, 741 (2015); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35. These cases do not remotely recognize a constitutional right to build conferred by zoning. Indeed, they stand for the opposite proposition.

As explained in the City's Motion, the City could not have wiped out the value of the 35-Acre Property because the Property was designated PR-OS in the City's General Plan when the Developer bought the Badlands and when it filed the 35-Acre Applications. PR-OS does not permit housing. The Judgment and the Opposition completely ignore (a) the City's Ordinances adopting the PR-OS designation for the Badlands (Exhibits I, M, N, P, Q); (b) NRS 278.150(1), which provides that "The planning commission shall prepare and adopt a . . . general plan for the physical development of the city . . . which *in the commission's judgment* bears relation to the planning . . . for the development of the city.") (emphasis added); (c) NRS 278.250(2), which states: "The zoning regulations *must* be adopted in accordance with the master plan for land use and be designed: . . . (b) To promote the conservation of open space . . . (k) To promote health and the general welfare.") (emphasis added); (d) NRS 278.250(4), which states that "In exercising the powers granted in this section, the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate . . . ."); (e) UDC 19.16.010.A, which states that all development approvals must be "consistent with the spirit and intent of the General Plan."; and (f) Ex. AAAA at 1435 from the City's General Plan, which provides that "any zoning or rezoning or rezoning request must be in substantial agreement with the Master Plan . . . ." The Nevada Supreme Court is not likely to accept an analysis of taking claims that ignores statutes and caselaw directly on point and instead relies on misinterpretations of caselaw that does not apply.

The Developer contends that the Nevada Supreme Court has endorsed its theory that zoning confers a constitutionally protected property right to build whatever the owner wants and that a city's General Plan is meaningless. None of the cases the Developer cites remotely support this bizarre theory. For example, the Developer contends that *City of Las Vegas v. C. Bustos*, 119 Nev. 360, 75 P.3d 351 (2003) holds that zoning confers a constitutional right on a property owner to build whatever they want if the use is a permitted use in the zoning district. *Bustos* is an eminent domain

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case where, as Judge Herndon explained, the agency concedes liability for a taking by filing the action. Ex. CCCC at 1499. Thus, in eminent domain cases, the only issue is the *value* of the condemned property. Eminent domain cases cannot, as a matter of logic, have any bearing on whether the City is *liable* for taking the Developer's property by regulation. *Bustos* and other eminent domain cases the Developer cites merely recognize that zoning is a limitation on the use of property, and that in *valuing* property in eminent domain, an appraiser may not assume a use that is not permitted by the zoning unless there is a reasonable probability of a change in the zoning. *E.g.*, *Bustos*, 119 Nev. at 362, 75 P.3d at 352.

The Developer also relies on *Clark County v. Alper*, 100 Nev. 382, 685 P.2d 943(1984) for the nonsensical proposition that (a) eminent domain caselaw provides the standard for government *liability* for a regulatory taking, and (b) that standard essentially removes all discretionary land use regulatory authority from local agencies. In *Alper*, the county physically appropriated property for a road-widening project but failed to initiate formal eminent domain proceedings under NRS Chapter 37. 100 Nev. at 391, 685 P.2d at 949. Only then did the property owner file an inverse condemnation action, at which point the parties stipulated to the county's liability. *Id.* The trial court valued the property as of the time of trial rather than the time of the taking when the City physically took possession of the property. In doing so, the court relied on NRS 37.120, which allows valuation in an eminent domain action to be moved to the date of trial where the government does not bring a formal eminent domain proceeding to trial within two years after taking property. *Id.*

The Supreme Court upheld the trial court's date of valuation, holding that "the county [could not] delay formal eminent domain proceedings on the expectation that the landowner [would] file an action for inverse condemnation and thereby avoid its obligation to bring the matter to trial within two years." *Id.* Therefore, to the extent *Alper* holds that eminent domain and inverse condemnation proceedings may be governed by the same rules, that holding is limited to the narrow issue of the date of valuation if the agency that has physically taken the property does not file an eminent domain action and bring it to trial within two years after the date of physical possession. *Id.*

Alper does not have the sweeping holding the Developer contends it has, and no such circumstances exist here. This is a regulatory taking action. The City has not exercised its eminent

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domain powers under NRS Chapter 37. There is no evidence that the City took physical possession of the property. In sharp contrast to *Alper*, where the City conceded liability for a taking, the Developer here claims that the City prevented *development* of the property through regulatory restrictions on the Developer's use of the property. The City does not concede liability for a taking. This is not a case where the City took physical possession of the property to build a public facility yet failed to file an eminent domain action. Because *Alper* has nothing whatever to do with an agency's liability for a regulatory taking, *Alper* cannot support the Judgment.

Similar to *Alper*, in *Argier v. Nevada Power Co.*, 114 Nev. 137, 952 P.2d 1390 (1998), Nevada Power Company (NPC) filed a complaint for an easement across Argier's land, took physical possession of the land, and installed power lines along the easement. NPC then filed an action to determine the value of the property. Prior to trial to determine the value of the easement, the Argiers sold their property. The only issue raised was whether the Argiers' conveyance of their land extinguished their right to just compensation. 114 Nev. 138, 952 P.2d 1391. The Supreme Court cited *Alper* for the unremarkable proposition that an owner is entitled to compensation if it owns the property at the time the agency takes physical possession of the land, regardless of whether the agency files an eminent domain action before taking possession or the owner files an inverse condemnation action for compensation after the agency takes physical possession. 114 Nev. 140 n.2, 952 P.2d 1392. *Argier* does not stand for the sweeping rule that zoning confers a constitutionally protected property right to build on the owner's land, or anything close to that concept.

To the same effect is the unpublished decision in *City of North Las Vegas v. 5th & Centennial, LLC.*, 2014 WL 1226443 (2014) (unpublished). In that case, the city filed an eminent domain action to acquire property for a road. The property owner claimed that the city had unreasonably delayed condemnation, entitling the owner to precondemnation damages under the inverse condemnation doctrine. The Court held that prejudgment interest accrued from the date of the injury; i.e., when the city should have filed the condemnation action. The Court thus issued the narrow holding that inverse condemnation actions and eminent domain actions should be treated the same for purposes of prejudgment interest where the agency unreasonably delayed in condemning the property. Here, the City did not condemn the property and the Developer makes no claim for

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precondemnation damages. Regardless, like *Alper* and *Argiers*, *City of North Las Vegas* does not remotely hold that zoning confers property rights to do anything.

The Court's ruling that zoning confers a constitutionally protected property right to build whatever a property owner wants should also be stayed to avoid irrevocable and irreparable harm pending appeal, because that conclusion of law directly contradicts the Nevada Supreme Court's ruling in the related case *Seventy Acres, LLC v. Jack B. Binion, et al.*, NSC Case No. 75481 (*Binion*). In its Opposition, the Developer represents that the holding of *Binion* was the exact opposite of what the Court actually held. In reinstating the City's approval of 435 luxury housing units for the 17-Acre Property, the Nevada Supreme Court stated that "[t]he governing ordinances require the City to make specific findings to approve a general plan amendment," among other applications. Ex. DDD at 1014. In so finding, the Supreme Court necessarily acknowledged both the validity of the PR-OS designation *and* the City's discretion to change or retain it.

In its opposition, the Developer does not explain how the Judgment can withstand scrutiny where it directly contradicts the Court's own decision earlier in the case denying the PJR. In that decision, the Court held that: (a) "[a] zoning designation does not give the developer a vested right to have its development applications approved"; (b) the PR-OS General Plan designation is valid and bars residential use of the Badlands, regardless of the zoning; and (c) the City has discretion to amend the PR-OS designation. Ex. XXX at 1385-86. In particular, in its PJR FFCL, this Court stated that the City Council's decision to grant or deny a general plan amendment application was a discretionary act. *Id.* The Court found that as a matter of law the City Council was "well within" its discretion to determine that the Developer did not meet the criteria for a General Plan Amendment changing the PR-OS designation to one that permitted housing, regardless of the property's zoning designation, necessarily rejecting the notion that zoning confers the right to build. *Id.* at 1392-94. The Court stated, "no matter the zoning designation," the applications for a general plan amendment were "subject to the Council's discretionary decision making." *Id.* The Court further found that the Developer had purchased the Badlands "knowing that the City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-OS)," and that it was

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up to the Council to decide whether a change in the area or conditions justified the Developer's requested development. *Id.*

The Judgment contradicts these rulings of law, depriving local governments of their police power to regulate land use. The Judgment excuses the obvious contradiction by attempting to distinguish the authorities on which it based its decision denying the PJR on the ground that they involved PJRs and not regulatory takings. This distinction is without authority and has little prospect of passing muster with the Nevada Supreme Court. If property owners had such a constitutional right, Nevada Supreme Court decisions unanimously holding that zoning does not confer property rights to build, including *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527, 96 P.3d 756, 759-60 (2004) and *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 246, 871 P.2d 320, 325 (1994), would necessarily have held the opposite. There is no authority that the underlying land use and property law applicable to a PJR, which is a procedure and remedy, not a body of substantive law, does not apply to a different cause of action with a different remedy. Moreover, *Boulder City* and *180 Land Co. LLC v. City of Las Vegas*, the Ninth Circuit Case involving the same parties and legal issue, were not PJRs, but like the instant case, were constitutional challenges to government restrictions on the use of property. In sum, whether or not a vested right exists does not depend on the type of lawsuit in which the question is being litigated.

City of Henderson v. Eighth Judicial District, 137 Nev. Ad. Op. 26, 489 P.3d 908 (2021), cited by the Developer, also does not support the Judgment's about-face from the Court's previous decision denying the PJR. In *City of Henderson*, the Court found that PJRs should not be joined with civil complaints, not because there is a danger of mixing substantive law of PJRs with substantive law of regulatory takings – *there is no substantive law of PJRs* – but rather because PJRs are limited to an administrative record, where civil complaints are not. *See id.* The Court held that by joining the two procedures before the same judge, *facts* that are not in the administrative record may affect the Court's decision on the PJR, and the record on appeal could be confused because it would be unclear which *facts* could be considered in the PJR. As the Nevada Supreme Court said: "To conclude otherwise would allow confusingly hybrid proceedings in the district courts, wherein the limited appellate review of an administrative decision would be combined with broad, original civil

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trial matters." 137 Nev. Adv Op. 26, 489 P.3d at 910.

Thus, *City of Henderson* does not hold that the *underlying substantive law* at issue in a PJR and a civil complaint are, or could be, different. Indeed, such a proposition would be absurd. In this case, the substantive Nevada law of property and land use regulation governs. Nevada cases are unanimous that zoning does not deprive local agencies of discretion to approve or disapprove development projects, and therefore does not confer property or vested rights. *See*, *e.g.*, *Stratosphere*, 120 Nev. at 527, 96 P.3d at 759-60 (2004); *Boulder City*, 110 Nev. at 246, 871 P.2d at 325.

Indeed, if zoning confers a constitutional property right, entitling the owner to build whatever it wants, there would be no need for a regulatory takings doctrine. If a local agency denies a development project, the applicant need only file a Petition for Judicial Review, the court would be compelled to grant it, and the applicant could build its project. The Judgment fails to explain how its peculiar theory of regulatory takings can be reconciled with Nevada Supreme Court decisions such as *State*, *Kelly*, and *Boulder City*, where the Court held that there is such a thing as the regulatory takings doctrine and that the agency's discretionary decisions limiting the development of private property did not effect a regulatory taking. The taking claims in those cases would never have existed if the Judgment is correct that zoning confers a constitutional right to build. The case would have ended in the trial court with the grant of a PJR. The Judgment simply does not fit with any regulatory taking case.

Because this Court found that the PR-OS designation is valid and governs the use of the 35-Acre Property, the Judgment's conclusion that the City has "taken" the 35-Acre Property by declining to change the PR-OS designation is clearly erroneous and would require reversal of the Judgment. By declining to change the PR-OS designation, the 35-Acre Property could not be used for housing before and after the City's denial of the 35-Acre Applications. The City's action accordingly did not change the value or use of the Property. Under these facts, the Nevada Supreme Court would be hard pressed to find a taking.

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C. The Judgment ignores applicable authority that requires the Court to determine the economic impact of the City's action on the parcel as a whole

The Judgment provides that the 35-Acre Property is the parcel as a whole for purposes of regulatory taking analysis because the 35-Acre Property consists of only one assessor's parcel. In support of the Judgment, the Developer cites an unpublished eminent domain case, *City of North Las Vegas v. Eighth Judicial Dist. Court*, 133 Nev. 995, *2, 401 P.3d 211 (table) (May 17, 2017) 2017 WL 2210130 (unpublished disposition) and the eminent domain statute NRS 37.039. Because liability for the taking is not at issue in eminent domain actions, and instead only the market value of the property is in question, these authorities have no bearing on the parcel as a whole for determination of liability in an inverse condemnation case, where liability is contested.

The standards for determining the parcel as a whole for regulatory takings are set forth in cases that the Judgment ignores. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017) (establishing three-part test to determine the parcel as a whole for purposes of liability for a regulatory taking); *Kelly*, 109 Nev. at 651, 855 P2d at 1035 (finding that the developer had improperly segmented the property to manufacture a takings claim, and that "[the development] must be viewed as a whole, not as thirty-nine individual lots" when assessing whether the developer had been deprived of all economic use). The Judgment cannot stand where it fails even to cite the controlling authority of the Nevada and United States Supreme Courts on the question of the parcel as a whole, and instead relies on authorities that have no relevance to the issue.

The Judgment's conclusion that the 35-Acre Property is parcel as a whole is inconsistent with well-established law. *Murr* requires that the Court consider the history of use of the 35-Acre Property. The Property is part of a 25-acre golf course set aside as the park, recreation, and open space for a 1,539-acre master planned development, the Peccole Ranch Master Plan ("PRMP"). The Judgment erroneously fails to recognize that the PRMP is the parcel as a whole and that because the City allowed 84% of the PRMP to be developed, the City cannot have taken the 35-Acre Property. *See Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034 (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests).

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The facts of the instant case present an even stronger case than *Kelly* for treating the PRMP as the parcel as a whole. In *Kelly*, the developer argued that the agency had deprived the developer's property of all value by pointing to the impact of a regulation on seven lots out of the developer's 39-lot planned unit development. 109 Nev. at 641 & n.1, 651, 855 P.2d at 1029 & n.1, 1035. The Court found that the developer had segmented the property to manufacture a takings claim, and that the development "must be viewed as a whole, not as thirty-nine individual lots when determining whether Kelly has been deprived of all economic use." *Id.* at 651. Because only seven lots were affected by the regulations in that case, the court concluded that Kelly "has not been deprived of all economic use." *Id*. at 651 (citing Penn Central, 438 U.S. at 130) (internal citation omitted). The Nevada Supreme Court rejected the regulatory takings claim because the developer had sold the 32 lots that were not subject to development restrictions, thus "yielding him a substantial profit." *Id*.

If the Supreme Court found no taking where Kelly was denied the right to develop single family home lots, where the seven Hilltop lots had *not* been designated as an open space amenity for the first 32 lots, the Supreme Court is even less likely to find a taking in the instant case, where the property the Developer seeks to develop had been set aside as open space. Here, unlike *Kelly*, the City's approval of the Peccole Ranch Master Plan ("PRMP") was conditioned on the set-aside of the 250-acre Badlands as a park, recreational, and open space amenity for the 1,289 acres of the PRMP that was developed. Exs. E, G, and H. In contrast to *Kelly*, the original developer of the PRMP had no expectation to segment and then develop the Badlands. The Judgment thus ignores the history of development of the PRMP and the Badlands, the relationship of the subject property to the acreage from which it came, and the legitimate expectations of the Developer. Under *Murr* and *Kelly*, these factors make all the difference in determining the parcel as a whole. The Supreme Court will likely follow unanimous Nevada and United States Supreme Court precedent to determine the parcel as a whole and therefore can be expected to overturn the Judgment.

Even if assessor's parcel boundaries were controlling, in this case the parcel as a whole would still be, at a minimum, the entire Badlands, which consists of several assessor's parcels, because *the Developer* created the assessor's parcels that now constitute the 35-Acre Property and the other three properties the Developer segmented from the Badlands. *Compare* Ex. VV *with* Ex.

XX. As Judge Herndon held, the Developer purchased the Badlands when the golf course was still in operation, and then closed the golf course and "recorded parcel maps subdividing the Badlands into nine parcels." The Developer later segmented the Badlands "into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, *despite the Developer's intent to develop the entire Badlands*." Ex. CCCC at 1490 (citations to exhibits omitted; emphasis added). The Badlands had historically been a single economic unit. The Developer cannot create an artificial parcel as a whole by simply segmenting the Badlands into new assessor's parcels, particularly where, as Judge Herndon held, the Developer intended to develop the entire Badlands.

Finally, assuming that the parcel as a whole is the 250-acre Badlands, the Judgment erroneously denies that the City has allowed significant development of the Badlands. The Judgment asserts that the City's approval of 435 luxury housing units for construction on the 17-Acre Property does not exist because the City "clawed back" the 17-Acre approvals. 10-25-21 FFCL at 39. This argument is, as Judge Herndon concluded, "frivolous." Ex. CCCC at 1507-08. "After the Supreme Court reinstated the approvals, the City had no power to nullify the approvals even if it had intended to do so. To the contrary, upon reinstatement, the City twice wrote to the Developer extending the approvals for two years after the date of the remittitur. Ex. FFF at 1019; Ex. GGG at 1021." Indeed, the City recently notified the Developer, again, that the 17-Acre approvals were valid and the Developer could start construction as soon as it obtained ministerial building permits. *See* Ex. A to Declaration of George F. Ogilvie III in Support of City's Opposition to Motion to Determine Prejudgment Interest filed 12/23/21. It is not plausible that the Nevada Supreme Court will find that the 17-Acre approvals are invalid after the Supreme Court itself reinstated those approvals (Ex. DDD), and the City has on three separate occasions notified the Developer that the approvals are valid and that the time for the Developer to start construction under those approvals has been extended for two years. As a result, because the City approved 435 luxury housing units for construction in the Badlands, increasing the value of just the 17-Acre Property to six times the amount the Developer paid for the entire 250-acre Badlands, the Supreme Court is

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likely to find that the Judgment erroneously found that the City wiped out the value of the parcel as a whole.

D. The Developer failed to present any evidence or authority to defend the Judgment's conclusion that the City is liable for a physical, non-regulatory, or temporary taking

In its Opposition, the Developer fails to demonstrate that Bill 2018-24 exacted an easement from the Developer. Bill 2018-24 did not apply to the Badlands on its face, and the City never applied the ordinance to the Developer. The physical taking claim is undermined by the fact that members of the public were trespassing on the Badlands *before* Bill 2018-24 was enacted, during the 15 months the legislation was in effect, and *after* it was repealed. Ex. 150. There is no evidence that any member of the public trespassed on the 35-Acre Property *as a result of Bill 2018-24*. The City did not authorize any trespasses. Finally, the Developer submitted no evidence of damage to the 35-Acre Property from trespassers on the Badlands, and the Court did not award any damages. It is therefore a strong probability that the Nevada Supreme Court will reverse the Judgment for a physical taking.

Nor did the Developer present any evidence or argument in its Opposition to show that the City interfered with the Developer's property, rendering it "unusable or valueless" as required for a non-regulatory taking. *State*, 131 Nev. at 421, 351 P.3d at 743. Finally, the Developer failed to point to any evidence that the City engaged in a temporary taking. Thus, the Nevada Supreme Court can be expected to reverse the Judgment as to these claims as well as the categorical and *Penn Central* claims.

IV. The Developer fails to rebut the City's authorities holding that Nevada law requires a stay of the money judgment until a final decision of the Nevada Supreme Court affirming the Judgment

A. Eminent Domain statutes regarding payment of judgments and transfer of possession and title do not apply to regulatory taking judgments

The Developer's contention that the Court should disregard statutes governing stays of judgments in civil actions and instead apply the rules for judgments applicable to eminent domain actions in NRS 37.140 because the latter are "more specific" is misplaced. NRS 37.140 applies only where a public agency has exercised its power of eminent domain. NRS 37.0095; *see also Valley*

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Electric Ass'n v. Overfield, 121 Nev. 7, 9, 106 P.3d 1198, 1199 (2005) ("NRS Chapter 37 . . . contains the statutory scheme governing Nevada eminent domain proceedings"); *Gold Ridge Partners v. Sierra Pacific Power Co.*, 128 Nev. 495, 499, 285 P.3d 1059, 1062 (2012) ("NRS Chapter 37 governs the power of a public agency to take property through eminent domain proceedings."). The statute does not apply to regulatory taking judgments. As Judge Herndon concluded, eminent domain and inverse condemnation "have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken." Ex. CCCC at 1499 fn. 4. By contrast, in inverse condemnation, "the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation." *Id.*

Despite the clear differences between the two doctrines, the Developer has consistently conflated them, relying primarily on language in *Clark County v. Alper*, 100 Nev. 382, 685 P.2d 94. As demonstrated in Section I above, *Alper* applies to the small set of cases where the government physically takes property but fails to initiate eminent domain proceedings, thereby forcing the property owner to file an inverse condemnation action.

No such circumstances exist here. This is a regulatory taking action. The City has not exercised its eminent domain powers under NRS Chapter 37. The Developer does not claim that the City took physical possession of the property. Nor does the Developer claim any damages for the alleged public trespass on its property.

In sharp contrast to *Alper*, the Developer claims that the City prevented the Developer's *development* of the property for its desired use. This is not a case where the City took physical possession of the property to build a public facility yet failed to file an eminent domain action. Unlike eminent domain actions where the public agency requires title and possession to build a public project, such as a road or a wastewater treatment plant, here the City does not need or want the 35-Acre Property for a public facility. It would be a manifest error of law to require the City to pay the assessed compensation within 30 days after the Judgment under NRS 37.140, which has no application to this case. Accordingly, the eminent domain statutes regarding judgments are not "more specific" than statutes and caselaw pertaining to regulatory takings. Instead, the two bodies

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of law are separate in concept and practice. Under the law applicable to regulatory takings judgments, NRCP 62(d) and *Clark Cty. Off. of Coroner/Med. Exam'r v. Las Vegas Rev.-J.*, 134 Nev. 174, 177, 415 P.3d 16, 19 (2018), the City is entitled to an automatic stay of the money judgment without posting a bond.

B. Even if the statutes governing judgments in eminent domain actions did apply, the judgment would not be payable until it is final in the Nevada Supreme Court

Even if the Court finds that NRS Chapter 37 applies, the Court should stay the payment of the Judgment pending the City's appeal. NRS 37.140 requires payment of just compensation only after entry of a "final judgment." "'Final judgment' means a judgment which cannot be directly attacked by appeal." NRS 37.009(2). The Developer's Opposition does not even address this statutory language. The Judgment here can be directly attacked by appeal and is not final for purposes of NRS 37.140. Accordingly, even assuming *arguendo* NRS 37.140 applies, the City is not required to pay the Judgment unless and until the Nevada Supreme Court affirms it and issues a remittitur. Therefore, in the event the Court does not stay the money judgment as described above, it should nevertheless issue a stay of the City's obligation to pay the Judgment unless and until the Nevada Supreme Court affirms the Judgment and issues a remittitur.

C. The Developer fails to show that it will suffer any harm if the Judgment is stayed

Regardless of the statutory authority for a stay, the Court should issue the stay because the City has demonstrated that the Developer will not suffer irreparable, or any, harm if the City's payment of the Judgment is stayed. Although the Developer insists that it paid $100 million for the Badlands, the Developer provides no evidence to support that claim, and overwhelming documentary evidence shows that the Developer paid less than $4.5 million for the Badlands. Ex. AAA at 966; Ex. FFFF at 1591-95; Ex. SSSS at 3787-88; Ex. UUU at 1300; Ex. FFFF at 1595-97; Ex. FFFF-34 at 1998. Moreover, the Developer has not attempted to refute the City's evidence, again overwhelming, that the Developer has no interest in developing any part of the Badlands; its sole objective in this litigation is to obtain money from the public treasury without having to take the risk of actually developing its property. Accordingly, immediate payment of the windfall

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judgment of $34,135,000 plus additional amounts (the Developer claims prejudgment interest of $52 million, more than $3 million in attorneys' fees, $1 million in property taxes, and more than $300,000 in costs), is not necessary to avoid irreparable harm. *See Hansen*, 116 Nev. at 658, 6 P.3d at 987 (noting that increased litigation expenses alone do not constitute irreparable harm). Because the Developer is entitled to interest on the Judgment at the prime rate plus two percent, it will not suffer any harm from a delay in the judgment. NRS 17.130.

The Developer also fails to address the potential harm to the City if the City hands the Developer a sizeable portion of the public treasury. If the Nevada Supreme Court reverses the Judgment, as it is likely to do, and the Developer has spent the money, the taxpayers will be left without recourse to recover the money. Accordingly, the balance of the harms weighs heavily in favor of the City. The stay should be granted.

Conclusion

The City's Motion for Immediate Stay of the Judgment should be granted.

DATED this 11th day of January 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 11th day of January, 2022, I caused a true and correct copy of the foregoing **CITY'S REPLY IN SUPPORT OF MOTION FOR IMMEDIATE STAY OF JUDGMENT** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY'S REPLY IN SUPPORT OF MOTION TO RETAX MEMORANDUM OF COSTS** Hearing Date: January 18, 2022 Hearing Time: 9:00 a.m.

The City of Las Vegas ("City"), by and through the undersigned counsel, submits the following reply in support of the City's motion to retax the verified memorandum of costs filed by Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (collectively, the "Developer"). In opposing the City's motion, the Developer admitted that certain costs it claimed were incurred in a different case. The Developer's opposition also revealed that it is seeking costs actually paid by the City. Finally, additional documentation the Developer submitted with its opposition fails to satisfy *Cadle Co. v. Woods & Erickson*, LLP, 131 Nev. 114 (2015). For these reasons, the motion should be granted.

I. Costs Withdrawn

The Developer conceded that it is not entitled to recover $61.33 for charges paid to FedEx to ship a package to one of the Developer's attorneys, stating that "on closer review, the brief sent to Mr. Schneider was for the 65 Acre Case." Opp. at 4:5-7. The City accepts the Developer's concession that this cost is not recoverable but has serious concerns about the accuracy of the remaining costs claimed. As a matter of common sense, the Developer cannot substantiate the reasonableness or necessity of any costs for purposes of NRS 18.005 if the Developer cannot substantiate that the cost was actually incurred in this case and not some other case. The Developer has now admitted to claiming costs for something that related exclusively to another case. The Court should not rely on the Developer's unsupported declarations as evidence that costs were actually incurred in this case.

II. Costs Amended – E-filing Fees

The Developer conceded that it estimated its filing fees by multiplying the number of filings by the standard filing fee. That much was clear based upon the documentation submitted with the Developer's memorandum of costs. The Developer had now "amended" its estimate to arrive a lower figure, which is still an estimate. The Nevada Supreme Court has made it quite clear that estimated costs are not actual costs, and only the latter are recoverable. *See Bobby Berosini, Ltd. v. PETA,* 114 Nev. 1348, 1352, 971 P.2d 383, 385–86 (1998) ("*PETA*") (stating that costs awarded under NRS 18.005 must be reasonable, and that "reasonable costs must be actual and reasonable," rather than an estimate, even if the estimate itself is reasonable (internal quotation marks omitted)). While the City does not dispute the e-filing fees are recoverable costs, an estimation of such costs is not sufficient to support an award of costs pursuant to NRS 18.005.

III. Costs Disputed

1. Photocopy Fees Paid to Holo Discovery ($14,422.81)

The Developer initially claimed $14,422.81 in photocopying costs paid to Holo Discovery and submitted no documentation to substantiate that these costs were reasonable or necessary. The Developer only submitted invoices and checks to show the amounts paid.

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The largest invoice, for $13,646.69, indicated that the documents were delivered on October 27, 2021, the date that trial was supposed to begin in this case. Per the Court's 3rd Amended Order Setting Civil Jury Trial, Pre-trial/Calendar Call ("Scheduling Order"), the parties were required to deliver their exhibits two days prior to the trial date. Thus, based on the delivery date shown on the invoice and assuming the Developer complied with the Scheduling Order, these copies could not have been the Developer's trial exhibits.

In opposing the motion, the Developer claims that the invoice was issued in error and submitted a revised invoice stating that the documents were delivered two days before trial on October 25, 2021. Nonetheless, the Developer failed to explain why it was necessary or reasonable to print 44,145 pages in black and white, and 7,580 pages in color (a total of 51,725 pages) for a trial that was limited to one issue—damages. Moreover, there is no explanation as to why the Developer's trial exhibits required index tabs for lettered exhibits (as shown on the invoice), where neither the Developer nor the City used letters to identify trial exhibits.

The Developer's claim that its expert witness files were voluminous does not explain the excessive copying charges, as the expert witness reports and work files totaled only 8,003 pages. Setting aside the fact that it was completely unnecessary to include the entire work file for each of its experts with its trial exhibits, the Developer's explanation still does not add up. The only way to get to 51,725 pages is if the Developer printed at least five copies of its trial exhibits when the Scheduling Order required only two copies. Any additional copies printed were for the convenience of the Developer's counsel and were not necessary. Nonetheless,

Finally, the Developer provided no explanation regarding the other invoices from Holo Discovery totaling $776.21 or how those invoices relate to this case. Because the Developer made no attempt to explain why each copy was necessary, none of these copying costs are recoverable under *PETA.*

2. Copies of Briefs from Supreme Court Law Library ($33.20)

In opposition to the City's motion, the Developer claims that it was necessary to order the briefs in the *Kelly v. Tahoe* case to review the same for any applicability to the subject case. Opp. at 5:14-15. The Developer further claims that the City relied heavily on *Kelly v. Tahoe*, which

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simply is not true. The first time the City filed any briefing citing *Kelly v. Tahoe* was in the City's opposition to the Developer's motion to dismiss Seventy Acres LLC, which the City filed on May 12, 2020. The City also cited *Kelly*, once in a footnote and again in string cite, in the City's opposition to Developer's motion to determine property interest, which the City filed on August 18, 2020. That is not heavy reliance that justifies ordering copies of briefs that have no evidentiary or precedential value in this case or any other case involving the Badlands Property. In fact, according to the Developer, *Kelly* had no applicability to the instant case (*see* Opp. at 5:15), which implies that these costs were not necessary.

3. Copies of Certified Documents from Clark County Recorder ($171.00)

In opposition to the City's motion, the Developer claims that the City made the CC&Rs relevant to this case but does not explain how. The Developer claims that the City spent 4-hours at the summary judgment hearing "trying to rewrite Mr. Peccole's history." However, the Developer ordered copies of the CC&Rs two years before the summary judgment hearings, and the Developer did not rely on the CC&Rs at the summary judgment hearing or in its briefing. In any event, it was not necessary for the Developer to order copies of these documents because there were numerous copies submitted into the record on the Developer's applications, which were included in the record for the Developer's petition for judicial review, and which were also produced in discovery by the City. The City never questioned the authenticity of these documents and it was not necessary for the Developer to pay for certified copies of the same.[1]

4. District Court Clerk ($119.00)

In opposition to the City's motion, the Developer claims it was necessary to do research on a case between the City and Mr. Peccole from 1992 because "the interaction between the City and Mr. Peccole was put at issue *by the City* in this case." Not true. The Developer consistently argued

[1] The Developer presumably had copies of these documents in its possession as a result of the litigation involving the homeowners in Queensridge, a case which actually did concern the CC&Rs. *See* Findings of Fact and Conclusions of Law, Final Order and Judgment entered January 31, 2017 in Case No. A-16-739654-C. It was not necessary for the Developer's counsel to purchase additional copies for this case.

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that Mr. Peccole always intended to develop the golf course as residential, a claim that was flatly rejected by the 30(b)(6) designee for Peccole Nevada Corporation, William Bayne. In any event, Mr. Peccole's intent is not relevant to any claim or issue in the case and there was nothing that the Developer could have expected to find in that case that would have made it relevant. The Developer's acknowledgment that it found nothing relevant further reinforces the fact that this research was not necessary.

5. GGA Partners ($11,162.41) and Global Golf Advisors ($67,094.00)

With respect to GGA Partners and Global Golf Advisors, which are apparently the same entity, the Developer claims that it was necessary to retain them to rebut the City's arguments that a golf course was an economically viable use of the Badlands Property. The Developer failed to cite to one instance where the City made that argument. Instead, the Developer cited a transcript from a hearing where the City argued that even if the court were to assume that a golf course was not an economically viable use, the subject property still has value to the surrounding development as open space. *See* Opp. Ex 20, 9.27/21 Transcript.

The Developer claims that the City should have retained an expert to rebut the GGA report even though the Developer did not disclose GGA as an expert. The Developer only included the report in the work file produced by Tio DiFederico, the Developer's appraiser. Fees paid to nondisclosed experts are not recoverable under NRS 18.005. There is simply no basis to court to determine the reasonableness of the costs charged by an expert who is never disclosed and never testifies.

6. The DiFederico Group ($114,250.00)

The Developer claims that the City cannot criticize Mr. DiFederico's work because it never deposed him, however, the fact that the City never deposed him is another reason the costs claimed are unreasonable. Mr. DiFederico incurred these excessive costs despite the fact that he was never deposed and never testified at trial. Moreover, a portion of Mr. DiFederico's final invoice includes 5.5 hours preparing for trial, for which he billed at a higher rate, on October 27, 2021, after the parties agreed to stipulate to the admissibility of Mr. DiFederico's report. *See* Exhibit 3 to Memo of Costs at pg. 26.

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The Developer claims that the City cannot dispute the reasonableness of Mr. DiFederico's fees because the City stipulated to the admissibility of Mr. DiFederico's report. The City stipulated that Mr. DiFederico's report was admissible, it did not stipulate that the costs incurred to prepare the report were reasonable or necessary. The admissibility of an expert report has little to no bearing on whether the amount paid to the expert are reasonable.

As to whether Mr. DiFederico performed an independent analysis of the highest and best use of the property or an independent analysis of the economic impact on the property, the report speaks for itself. Mr. DiFederico's report does not contain an analysis of the 7,048 pages the Developer claims that Mr. DiFederico reviewed to determine the impact on the property. Mr. DiFederico relied entirely on the Court's order regarding the Developer's motion to determine property interest in concluding that the highest and best use of the property was for single family residential, and then concluded without any analysis that the value of the property was zero after the "City's actions" because there is no market for property that cannot be used for its legally permitted use.

The Developer attempts to defend the SDM based on *Tacchino v. State Department of Highways,* 89 Nev. 150, 508 P.2d 1212 (1973). The *Tacchino* case is distinguishable because the landowner in that case had already received approval of a subdivision map and had already started cutting and grading streets, and some sewers and storm drains had been installed. Thus, valuing the property based on individual lot sales was not mere speculation as it was something that a purchaser might consider in purchasing the property.

The *Tacchino* court acknowledged that "valuation must be based upon what a willing purchaser will pay for the whole at the time of the taking and not on what a number of purchasers might be induced to pay in the future for the land in small parcels." 89 Nev. at 153, 508 P.2d at 1214. The Court went on to state, "[t]here is solid support for this rule when the land is undeveloped and the subdivision is imaginary or hypothetical." *Id.* (citing *Department of Highways v. Schulhoff*, 167 Colo. 72, 445 P.2d 402 (1968). Although the *Tacchino* court ultimately rejected a per se rule that appraisals based on the SDM are inadmissible, it recognized that such appraisals are unreliable where the subdivision is imaginary or hypothetical.

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Whether the use of the SDM in this case was reasonable is beside the point. Mr. DiFederico analyzed three different hypothetical subdivisions, none of which had been approved and two of which had not even been proposed to the City. Mr. DiFederico certainly incurred unnecessary costs in attempting to analyze lot values for three hypothetical subdivisions rather than one. For purposes of this motion, the issue is not the reasonableness of the SDM, but rather the reasonableness and necessity of Mr. DiFederico's fees. It was not reasonable or necessary for Mr. DiFederico to analyze the value of individual lots in three hypothetical subdivisions.

Finally, the Developer submitted a declaration in support of its opposition to the motion stating that, in the last eminent domain case tried by the Law Offices of Kermitt L. Waters, an appraiser who did not provide trial testimony had fees that exceeded $250,000. *See* Opp. Ex 23. The declaration does not state whether the Court awarded costs to the Developer's counsel for such fees or who that expert was. The expert fees charged by an unknown expert in a one case does not somehow establish that a lesser amount of fees charged by a different appraiser in another case are reasonable.

7. Jones Roach & Caringella ($29,625.00)

The Developer claims that Jones Roach & Caringella (JRC) were "prepared to be rebuttal or surrebuttal experts." Opp. at 10:20-21. The Developer further claims that the City deprived the Developer of a "vehicle" to use these rebuttal experts. *Id.* at 10:22-23. The Developer apparently paid JRC $29,625.00 to prepare them with background information. *Id.* at 11:1-6. Finally, the Developer claims that even though JRC never produced a report, the costs were still reasonable and actually incurred.

The Developer's arguments regarding JRC ignore a key element of the analysis under NRS 18.005. In addition to being reasonable and actually incurred, costs must be necessary. The Developer made a strategic decision to retain these experts prior to the expert disclosure deadline and assumed the risk that their anticipated testimony may not be necessary. The City should not be forced to bear the cost of experts who were never disclosed, never prepared a report, and never testified at a deposition or at trial simply because the Developer made a decision to retain them prematurely in the event that their testimony *might* be necessary.

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8. Legal Wings ($290.00)

The Developer claims that this cost was incurred for the deposition of Clyde Spitze. The City noticed Mr. Spitze's deposition, filed the application for commission to take Mr. Spitze's deposition out of state, filed the application for subpoena under the Utah Uniform Interstate Depositions and Discovery Act, and served the subpoena on Mr. Spitze. *See* **Exhibit A** attached hereto. In opposition to the motion, the Developer submitted the first page of the deposition transcript, which does not establish that the commission the Developer paid for was for Mr. Spitze's deposition.

9. Fee to Transcribe HOA Meeting Paid to Oasis Reporting ($1,049.00)

The Developer paid $1,049.00 to have Oasis Reporting transcribe an audio recording of an HOA meeting. The transcript is hearsay and was never properly authenticated. The statements quoted from the transcript are inadmissible hearsay, were not made under oath, and were not part of the record related to the Developer's petition for judicial review. The Developer never deposed Mr. Seroka and the City never had an opportunity to cross examine about the statements he allegedly made at the HOA meeting. In any event, NRS 18.005(2) only allows costs for reporter's fees for depositions and one copy of each deposition, it does not allow for costs incurred to *create* transcripts from HOA meetings.

10. Westlaw ($50,669.02)

The Developer submitted no additional evidence to substantiate the Westlaw charges it claims were actually or necessarily incurred in this case. Instead, the Developer simply asks the Court to rely upon the Developer's unsupported assertion that "every single Westlaw search was utilized in the 35 acre case as the City has argued the same thing in all four cases, repeatedly." Opp. at 12:5-6. This is not persuasive given that the Developer attempted to claim costs that related exclusively to another case. Moreover, the Developer appears to be suggesting that all of its Westlaw charges should be recoverable regardless of whether they were incurred in this case or the other three cases because this is the "lead case." This simply begs the question, did the Developer incur Westlaw charges in the other cases that the Developer did not include in its memorandum of

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costs in this case? There simply is no way to tell because the Developer failed to use any discernable method for separately tracking its Westlaw charges in each case.

The Developer made no attempt to demonstrate that the Westlaw charges were reasonable, necessary, and actually incurred in this case through evidence that corroborates the Developer's unilateral assertions. The Developer's opposition, like its memorandum of costs, simply tells the court that the costs were incurred in this case. This is not sufficient under *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120 (2015), *PETA*, 114 Nev. at 1353, 971 P.2d at 386 (1998); and *Matter of DISH Network Derivative Litig.*, 133 Nev. 438, 452, 401 P.3d 1081, 1094 (2017).

11. In-House Copy Costs ($6,345)

In opposition the motion, the Developer makes no attempt to explain how the in-house copying costs claimed were actually incurred in this case. The Developer simply points to the number of pages that the Developer filed with the court and the number of pages produced by both parties to argue that the sheer volume of documents filed and produced somehow makes the number of copies printed reasonable. *See* Opp. at 12:13-24. This argument has no merit because all documents filed in the case have been filed electronically and all discovery produced in this case has been produced electronically.

In addition to failing to submit evidence demonstrating that these copying costs were incurred in this, the Developer failed to provide any evidence substantiating the reason for these copies. As the Supreme Court stated in *Caddle Co.*, "[d]ocumentation substantiating the reason for each copy 'is precisely what is required under Nevada law.'" 131 Nev. 114, 121 (2015). The documentation submitted by the Developer is clearly insufficient to support an award of costs for these copying charges.

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IV. Conclusion

The City respectfully requests that the Court grant its motion to retax costs.

DATED this 11th day of January, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, and that on the 11th day of January, 2022, a true and correct copy of the foregoing **CITY'S REPLY IN SUPPORT OF MOTION TO RETAX MEMORANDUM OF COSTS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano

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EXHIBIT A

NTTD

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Attorneys for Defendants City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **NOTICE OF TAKING DEPOSITION OF CLYDE SPITZE**

PLEASE TAKE NOTICE that City of Las Vegas will take the deposition of Clyde Spitze on the **24th** day of **July, 2019** at **10:00 a.m. (Mountain Time)** at National Court Reporter's Inc., 1575 West 200 North, Cedar City, Utah 84720, before a Notary Public or some other officer authorized by law to administer oaths, and shall be recorded by stenographic means. You are invited to attend and cross-examine. Oral examination will continue from day-to-day until completed, or at a later date mutually agreed upon by the parties until completed. Defendant reserves the right to videotape the deposition.

DATED this 2nd day of July, 2019.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 2nd day of July, 2019, a true and correct copy of the foregoing **NOTICE OF TAKING THE DEPOSITION OF CLYDE SPITZE** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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Email

Check your email. You will receive information and documents at this email address.

I am the [ ] Plaintiff/Petitioner
[ ] Defendant/Respondent
[X] Attorney for the [ ] Plaintiff/Petitioner [X] Defendant/Respondent and my Nevada (state) Bar number is 3552

In the District Court of Utah

Fifth Judicial District Iron County

Court Address 40 North 100 East, Cedar City, Utah 84720

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Plaintiff/Petitioner v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X Defendant/Respondent	**Application for Subpoena under the Utah Uniform Interstate Depositions and Discovery Act** 190500044 Case Number Bell Judge Commissioner

Instructions: You must attach the following records and forms if they are not already on file with the court.

- Proposed Utah Subpoena and all required supporting records and forms

- The foreign Subpoena
- The names, addresses and telephone numbers of all attorneys of record and of any self-represented party

(1) [X] I request that the court issue a Subpoena incorporating the terms of the foreign Subpoena issued by or on behalf of the court in which the action is pending.

(2) [X] The district court of this judicial district is permitted to issue a Utah Subpoena because this is the district in which discovery is sought to be conducted.

(3) [X] The court in which this action is pending is a court of record in Nevada, a state that has enacted the Uniform Interstate Depositions and Discovery Act or provisions substantially similar to the uniform act.

(4) The foreign Subpoena requires the person named to: (check at least one)

[X] Attend and give testimony at a deposition
[ ] Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person
[ ] Permit inspection of premises under the control of the person.

(5) [X] The foreign Subpoena is attached to this Application.

(6) [X] The names, addresses and telephone numbers of all attorneys of record and of any self-represented party are attached to this Application.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

7-3-19
Date

Signature ► _____

Printed Name George Ogilvie

Certificate of Service

I certify that I filed with the court and am serving a copy of this Application for Subpoena under the Utah Uniform Interstate Depositions and Discovery Act on the following people.

Person's Name	Service Method	Service Address	Service Date
LAW OFFICES OF KERMITT L. WATERS Kermitt L. Waters, Esq., James J. Leavitt, Esq., Michael A. Schneider, Esq., Autumn L. Waters, Esq., Michael K. Wall, Esq.,	[X] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)	704 South Ninth Street Las Vegas, Nevada 89101	
HUTCHISON & STEFFEN, PLLC Mark A. Hutchison (4639) Joseph S. Kistler (3458)	[X] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)	Peccole Professional Park 10080 West Alta Drive, Suite 200 Las Vegas, NV 89145	
	[ ] Mail [ ] Hand Delivery [ ] E-filed [ ] Email [ ] Left at business (With person in charge or in receptacle for deliveries.) [ ] Left at home (With person of suitable age and discretion residing there.)		

_____ Signature ▶ _____

Date

Printed Name _____

4824-7490-2683, v. 1

ANOT

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Attorneys for Defendants City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, ET AL., Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **AMENDED NOTICE OF TAKING THE DEPOSITION OF CLYDE SPITZE** **Date of Deposition: August 16, 2019** **Time: 10:00 a.m. (Mountain Time)**

PLEASE TAKE NOTICE that the City of Las Vegas will take the deposition of Clyde Spitze on the **16th** day of **August, 2019** at **10:00 a.m. (Mountain Time)** at National Court Reporter's Inc., 1575 West 200 North, Cedar City, Utah 84720, before a Notary Public or some other officer authorized by law to administer oaths, and shall be recorded by stenographic means. You are invited to attend and cross-examine. Oral examination will continue from day-to-day until completed, or at a later date mutually agreed upon by the parties until completed. Defendant reserves the right to videotape the deposition.

DATED this 18th day of July, 2019.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 18th day of July, 2019, a true and correct copy of the foregoing **AMENDED NOTICE OF TAKING THE DEPOSITION OF CLYDE SPITZE** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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Attorneys for Defendants City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, ET AL., Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **SECOND AMENDED NOTICE OF TAKING DEPOSITION OF CLYDE SPITZE** **LOCATION CHANGE ONLY** **Date of Deposition: August 16, 2019** **Time: 10:00 a.m. (Mountain Time)**

PLEASE TAKE NOTICE that the City of Las Vegas will take the deposition of Clyde Spitze on the **16th** day of **August, 2019** at **10:00 a.m. (Mountain Time)** at National Court Reporter's Inc./Hampton Inn, 1145 South Bentley Boulevard, Cedar City, Utah 84720, before a Notary Public or some other officer authorized by law to administer oaths, and shall be recorded by stenographic means. You are invited to attend and cross-examine. Oral examination will continue from day-to-day until completed, or at a later date mutually agreed upon by the parties until completed. Defendant reserves the right to videotape the deposition.

DATED this 22nd day of July, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of July, 2019, a true and correct copy of the foregoing **SECOND AMENDED NOTICE OF TAKING THE DEPOSITION OF CLYDE SPITZE** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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Attorneys for Defendant City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, ET AL., Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **APPLICATION FOR ISSUANCE OF COMMISSION TO TAKE OUT-OF-STATE DEPOSITION OF CLYDE SPITZE** **Date of Deposition: August 16, 2019** **Time: 10:00 a.m. (Mountain Time)**

Pursuant to Rule 28(a) of the Nevada Rules of Civil Procedure, counsel for Defendant City of Las Vegas ("Defendant"), hereby apply to this Court for issuance of a Commission to take the deposition of Clyde Spitze ("Deponent") outside the State of Nevada, commencing at **10:00 a.m. (Mountain Time)** on **August 16, 2019**, (and continuing from day to day thereafter until completed) at the offices of National Court Reporter's Inc./Hampton Inn, 1145 South Bentley Boulevard, Cedar City, Utah 84720. Defendant respectfully submit the following:

1. Applicant is the attorney of record for Defendants in the above-entitled action.

2. Deponent resides in the State of Utah.

3. Defendant will provide for the attendance of a court reporter at the time and place of the deposition who is authorized to administer oaths under the laws of the State of Utah.

4. A copy of the Second Amended Notice of Taking Deposition of Clyde Spitze is attached hereto as Exhibit 1 and incorporated herein by this reference as if set forth in full and at length.

5. Under Rule 28(a) of the Nevada Rules of Civil Procedure, upon application and proof that the notice to take deposition out of the State of Nevada has been given as provided in NRCP 30(b)(1), the Clerk of Court is authorized to issue a Commission for the taking of deposition of the witness(es) outside the State of Nevada.

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PHONE 702.873.4100 • FAX 702.873.9966

6. Wherefore, applicant prays that the Clerk of this Court issue a Commission to take the deposition as listed above outside the State of Nevada.

DATED this 15th day of August, 2019.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Amanda C. Yen (NV Bar #9726)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on 15th day of August, 2019, a true and correct copy of the foregoing **APPLICATION FOR ISSUANCE OF COMMISSION TO TAKE OUT-OF-STATE DEPOSITION OF CLYDE SPITZE** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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EXHIBIT “1”

ANOT

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, ET AL., Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **SECOND AMENDED NOTICE OF TAKING DEPOSITION OF CLYDE SPITZE** **LOCATION CHANGE ONLY** **Date of Deposition: August 16, 2019** **Time: 10:00 a.m. (Mountain Time)**

PLEASE TAKE NOTICE that the City of Las Vegas will take the deposition of Clyde Spitze on the **16th** day of **August, 2019** at **10:00 a.m. (Mountain Time)** at National Court Reporter's Inc./Hampton Inn, 1145 South Bentley Boulevard, Cedar City, Utah 84720, before a Notary Public or some other officer authorized by law to administer oaths, and shall be recorded by stenographic means. You are invited to attend and cross-examine. Oral examination will continue from day-to-day until completed, or at a later date mutually agreed upon by the parties until completed. Defendant reserves the right to videotape the deposition.

DATED this 22nd day of July, 2019.

McDONALD CARANO LLP

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

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of July, 2019, a true and correct copy of the foregoing **SECOND AMENDED NOTICE OF TAKING THE DEPOSITION OF CLYDE SPITZE** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, ET AL., Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **COMMISSION TO TAKE OUT-OF-STATE DEPOSITION OF CLYDE SPITZE** **Date of Deposition: August 16, 2019** **Time: 10:00 a.m. (Mountain Time)**

TO: ANY OFFICER AUTHORIZED BY LAW TO ADMINISTER OATHS, OR ANY NOTARY PUBLIC OF THE STATE OF NEW YORK

YOU ARE HEREBY COMMISSIONED AND FULLY AUTHORIZED to take the deposition of Clyde Spitze ("Deponent") in accordance with the Nevada Rules of Civil Procedure at the offices of National Court Reporter's Inc./Hampton Inn, 1145 South Bentley Boulevard, Cedar City, Utah 84720 on August 16, 2019 at 10:00 a.m. (Mountain Time) and on succeeding days until concluded, or at such other time and places as may be mutually agreed upon by counsel for the respective parties hereto.

You shall put the witness under oath, and the testimony shall be recorded by someone acting under your direction, stenographically and, if requested, by videotape, and thereafter transcribed. Objections to evidence presented noted, and the evidence shall be taken subject to the objections. When the testimony is fully transcribed, it shall be signed by the witness after a full opportunity to make corrections or changes. You shall certify on the deposition that the witness was duly sworn by you, and that the deposition is a deposition, and place it in an envelope endorsed with the title of the action and the deponent's name and send it by registered mail to the deponent for review and signature and to Defendant's counsel.

DATED: 8/16/2019

STEVEN D. GRIERSON
CLERK OF THE COURT

By: _____
DEPUTY
Alexander Banderas

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

Submitted by:

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Amanda C. Yen (NV Bar #9726)
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McDONALD CARANO

Fifth District Court for the State of Ut

28369

DATE	INVOICE NUMBER	MEMO	BALANCE
07/03/2019	GFO/070419	18169- 2 35.00 18169.2 Filing Fee Out-of-State Subpoena, Clyde Spitze	
CHECK DATE	CHECK NUMBER	TOTAL	
07/03/2019	000028369		35.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

NEVADA STATE BANK
1 West Liberty Street
Reno, Nevada 89501

94-77/1224

28369

McDONALD CARANO

2300 W. SAHARA AVENUE, #1000
LAS VEGAS, NEVADA 89102
(702)873-4100

PAY: *Thirty Five and 00/100 Dollars*

NUMBER	DATE	AMOUNT
000028369	07/03/2019	********35.00

TO THE ORDER OF **Fifth District Court for the State of Ut**

2 SIGNATURES REQUIRED IF OVER $2500.00

MP

MP

RUB RED IMAGE FADES WITH HEAT

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVE INK

⑈028369⑈ [redacted]

McDONALD CARANO

Fifth District Court for the State of Ut

28369

DATE	INVOICE NUMBER	MEMO	BALANCE
07/03/2019	GFO/070419	18169- 2 35.00 18169.2 Filing Fee Out-of-State Subpoena, Clyde Spitze	
CHECK DATE	CHECK NUMBER	TOTAL	
07/03/2019	000028369		35.00

FILE COPY

CHECK REQUEST

RUSH Yes No	Date/Time needed: 7/3/19 a.m. run
Client # 18169	Client name: City of Las Vegas
Matter # 2	Matter Name: adv. 180 Land Co.
Expense code: 024	Type Description: Court Filing Fee
Amount of check : $35.00	Requested by: jj/GFO/KS
Reason for check: Filing Fee Out-of-State Subpoena, Clyde Spitze	
Payable to: Fifth District Court 40 North 100 East Cedar City, UT 84720 Main Telephone: (435) 867-3250	
FOR ACCOUNTING ONLY	
Vendor #	Batch #
Voucher #	G/L #
Miscellaneous notation:	

21958

McDONALD CARANO

Clyde Spitze

28370

DATE	INVOICE NUMBER	MEMO			BALANCE
07/03/2019	GFO/070319				
		18169-	2	18.50	
		18169.2 Witness Fee			

CHECK DATE	CHECK NUMBER		
07/03/2019	000028370	TOTAL	18.50

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

NEVADA STATE BANK
1 West Liberty Street
Reno, Nevada 89501

94-77/1224

28370

McDONALD CARANO

2300 W. SAHARA AVENUE, #1000
LAS VEGAS, NEVADA 89102
(702)873-4100

PAY: *Eighteen and 50/100 Dollars*

NUMBER	DATE	AMOUNT
000028370	07/03/2019	*********18.50

TO THE ORDER OF

Clyde Spitze
1148 East Ashdown Forest Road
Cedar City, UT 84721

2 SIGNATURES REQUIRED IF OVER $2500.00

RUB RED IMAGE TO REVEAL HEAT

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVE INK

⑈028370⑈ [redacted]

McDONALD CARANO

Clyde Spitze

28370

DATE	INVOICE NUMBER	MEMO			BALANCE
07/03/2019	GFO/070319				
		18169-	2	18.50	
		18169.2 Witness Fee			

CHECK DATE	CHECK NUMBER		
07/03/2019	000028370	TOTAL	18.50

FILE COPY

CHECK REQUEST

RUSH Yes <u>No</u>	Date/Time needed: 7/3/19 a.m. run
Client # 18169	Client name: City of Las Vegas
Matter # 2	Matter Name: adv. 180 Land Co.
Expense code: 014	Type Description: Subpoena Witness Fee
Amount of check : $18.50	Requested by: jj/GFO/KS
Reason for check: Witness Fee	
Payable to: Clyde Spitze 1148 East Ashdown Forest Road Cedar City, Utah 84721	
FOR ACCOUNTING ONLY	
Vendor #	Batch #
Voucher #	G/L #
Miscellaneous notation:	

21960

McDONALD CARANO

ICU Investigations

28371

DATE	INVOICE NUMBER	MEMO			BALANCE
07/03/2019	GFO/070319				
		18169-	2	272.00	
		18169.2 Process Server Fee, Clyde Spitze			
CHECK DATE	CHECK NUMBER			TOTAL	272.00
07/03/2019	000028371				

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

McDONALD CARANO

2300 W. SAHARA AVENUE, #1000
LAS VEGAS, NEVADA 89102
(702)873-4100

NEVADA STATE BANK
1 West Liberty Street
Reno, Nevada 89501

94-77/1224

28371

PAY: *Two Hundred Seventy Two and 00/100 Dollars*

NUMBER	DATE	AMOUNT
000028371	07/03/2019	********272.00

TO THE ORDER OF

ICU Investigations
2157 S. Talon Cr.
Cedar City, UT 84720

2 SIGNATURES REQUIRED IF OVER $2500.00

RUB RED IMAGE FADES WITH HEAT

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVE INK

⑈028371⑈

McDONALD CARANO

ICU Investigations

28371

DATE	INVOICE NUMBER	MEMO			BALANCE
07/03/2019	GFO/070319				
		18169-	2	272.00	
		18169.2 Process Server Fee, Clyde Spitze			
CHECK DATE	CHECK NUMBER			TOTAL	272.00
07/03/2019	000028371				

FILE COPY

WL85112M1 JAY JOHNSON & ASSOCIATES PH. 775-323-0200 / FAX 775-323-4507 PRINTED IN U.S.A.

CHECK REQUEST

RUSH Yes No	Date/Time needed: 7/3/19 a.m. run
Client # 18169	Client name: City of Las Vegas
Matter # 2	Matter Name: adv. 180 Land Co.
Expense code: 044	Type Description: Process Server Fee
Amount of check : $272.00	Requested by: jj/GFO/KS
Reason for check: Process Server Fee, Clyde Spitze	
Payable to: ICU Investigations, LLC 2157 S. Talon Cr. Cedar City, Utah 84720	
FOR ACCOUNTING ONLY	
Vendor #	Batch #
Voucher #	G/L #
Miscellaneous notation:	

21962

Electronically Filed
6/22/2022 2:19 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY LLC,	)	CASE#: A-17-758528-J
	)	
Petitioner,	)	DEPT. XVI
	)	
vs.	)	
	)	
CITY OF LAS VEGAS,	)	
	)	
Respondent.	)	

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS,
DISTRICT COURT JUDGE

THURSDAY, JANUARY 13, 2022

RECORDER'S TRANSCRIPT OF HEARING

CITY'S MOTION FOR IMMEDIATE STAY OF JUDGMENT ON OST

PLAINTIFF LANDOWNERS' OPPOSITION TO THE CITY'S MOTION FOR IMMEDIATE STAY OF JUDGMENT AND COUNTERMOTION TO ORDER THE CITY TO PAY THE JUST COMPENSATION ASSESSED

APPEARANCES:

For the Petitioner: JAMES J. LEAVITT, ESQ.
ELIZABETH M. GHANEM HAM, ESQ.

For the Respondent: GEORGE F. OGILVIE, III, ESQ.
REBECCA L. WOLFSON, ESQ.
PHILIP R. BYRNES, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER

GAL FRIDAY REPORTING & TRANSCRIPTION
10180 W. Altadena Drive, Casa Grande, AZ 85194 (623) 293-0249
Case Number: A-17-758528-J

Las Vegas, Nevada, Thursday, January 13, 2022

[Case called at 12:25 p.m.]

THE COURT: All right, let's go back on the record and next up happens to be page 19 of the calendar, and that's 180 Land Company, LLC versus the City of Las Vegas. Let's go ahead and set forth our appearances.

MR. LEAVITT: Good afternoon, Your Honor. James J. Leavitt on behalf of 180 Land, the plaintiff landowners.

MS. GHANEM: Good morning, Your Honor. Elizabeth Ghanem Ham also plaintiff landowners.

MR. OGILVIE: Good afternoon, Your Honor. George Ogilvie on behalf City of Las Vegas.

THE COURT: All right.

MS. WOLFSON: Good afternoon, Your Honor. Rebecca Wolfson also on behalf the City of Las Vegas.

MR. BYRNES: Good afternoon, Your Honor. Phil Byrnes on behalf of the City of Las Vegas.

THE COURT: And does that cover all appearances for the record?

MR. LEAVITT: On behalf of the Plaintiff, Your Honor, yes.

MR. OGILVIE: On behalf the City, yes, Your Honor.

THE COURT: All right. Okay. And I have a question for everyone as far as today's matters are concerned. I think everyone understand it's 12:30? Is that correct, staff?

THE CLERK: 12:26, yes.

THE COURT: 12:26.

THE CLERK: Yeah.

THE COURT: And we have another matter set this afternoon, right?

THE CLERK: 1:15.

THE COURT: And we -- we currently have a 1:15 set. And as far as the morning calendar's concerned, there's another three matters on calendar. I can't -- I don't know how our calendar ended up being so jammed up like it is right now because I'm looking here -- how many contested matters did we have on the calendar?

THE CLERK: Wow.

THE COURT: Excessive.

THE CLERK: Almost.

THE COURT: Too many.

THE LAW CLERK: Fourteen.

THE COURT: Fourteen contested matters.

THE CLERK: Yes.

THE COURT: And the reason why I bring this up and I just want to make sure I'm clear on this. I understand -- I read the -- the motion for immediate stay of judgment. I understand this is a hotly contested matter. I respect both the positions that have been asserted by all parties to this litigation and I'm concerned about one issue for now and it's really this simple. I don't want to short circuit the argument in this case. I want to make sure both sides have a

full and fair opportunity to explain their respective positions, not just for the purposes of my decision making, but also purposes for the record on appeal in this matter because there's going to be an appeal, right? And so --

MR. OGILVIE: Yes, Your Honor.

THE COURT: Right. And I respect that, I really and truly do. And so, here's my question, especially in light of this very very important motion regarding stay of the judgment and whether or not the City has to tender within the appropriate time period 34 plus million dollars, I -- that's not a summary hearing. It's not. And I don't have the time right now to give this the time this -- this issue deserves.

And so my question is this, and I'm talking about coming back within a relatively short period of time. My trial calendar has -- has cleared out and I would like to give this motion an entire afternoon. And it might take us an hour, it might take less or could take the whole afternoon, but my point is this, I think we have to make a vibrant record in this matter and then I can make a decision.

Any objection to that? We'll first go to the Plaintiff, 180.

MR. LEAVITT: Your Honor, no -- no objection. We agree that we need to have a -- a full record. Obviously the -- the concern is the timeliness to have this heard on a -- in a timely manner.

THE COURT: We're going to get it done as soon as possible, I mean, and we're talking probably -- we have -- we have a -- we have a lot of dates here we're going to give you. But we're

going to do -- we're not kicking a can down the road very far, Mr. Leavitt, I'll just tell you that.

And Mr. Ogilvie, sir?

MR. OGILVIE: Your Honor, I'll -- I'll be candid with the Court. My argument was about 20 minutes. I don't anticipate it requiring more than an hour.

THE COURT: Okay. And I get that, but -- and here's my point, Mr. Ogilvie, I'm starting another hearing at 1:15.

MR. OGILVIE: Oh, I -- let me -- let me -- I don't have a problem kicking a can -- or not kicking a can but continuing this hearing. I don't -- I don't have a problem -- let me just make that clear. I don't have a problem, Your Honor. I -- you -- you were suggesting setting aside a whole afternoon. I -- I don't think that's necessary and I'll advise the Court that we're in front of the Court on Tuesday morning at 9:00. I presume that the Court's calendar is probably as crowded that day as it was today, but if it isn't, I would say that we could -- we could probably hear both matters Tuesday morning.

THE COURT: Okay. Mr. Ogilvie, that's a good suggestion. We're going to look at that right now because I don't know the answer. I don't. We'll find out.

What do we have Tuesday? How backed up are we Tuesday? Check it out, CJ.

THE CLERK: Checking it now, Judge, the law clerk and I are and, wow, that 9:05 session, just that session alone has 10

matters.

THE COURT: Okay. That's better than today.

THE CLERK: A lot of motions --

THE COURT: What do we have in the afternoon?

THE CLERK: The afternoon, 18th, we have already given a special session to Ann McGee, the Miracle Flights case. We have summary judgment at 9:30 that's a separate session that's full that has --

THE COURT: What do we have --

THE CLERK: -- three cases.

THE COURT: What -- what do we have Monday?

THE CLERK: Martin Luther King Day.

THE COURT: Okay. I got you. We're off.

THE CLERK: Yes.

THE COURT: What do we have -- I'd like to get this done next week if possible. What do we have afternoons?

THE CLERK: Afternoons. As you mentioned, trial lifted so we've already discussed Front Sight [ph] on the Monday. I don't know if you --

THE COURT: No, but I'm talking about next week.

THE CLERK: Oh, the --

THE COURT: Afternoons next week.

THE CLERK: Afternoons, so Tuesday off. We have bench trial in the afternoon on Wednesday --

THE LAW CLERK: We could do -- we could do the

morning, the 19th. It's not --

MR. OGILVIE: Your Honor, I'll advise the Court that Judge Sturman just kicked a hearing in one of the other (indiscernible) lands matters to Thursday afternoon at 1:30.

THE COURT: Okay. So she's backed up also from what -- with a lot --

MR. OGILVIE: I -- I think it's a common malady.

THE COURT: Well you know what it is? This is what's happened. There's -- right now they actually have a civil judges meeting I can't attend because of my calendar. But, there's been this big push to try to try cases which I think is somewhat unrealistic in light of COVID and so there's so much going on and pressures and -- and we're going to do the best we can. But I think that's caused some of this too.

THE LAW CLERK: CJ?

THE CLERK: Yes?

THE LAW CLERK: 19th? In the morning at the 9:30 we don't have anything.

THE COURT: How about the 19th at 9:30 there's nothing, right?

THE LAW CLERK: Uh-huh. Short -- very short.

THE CLERK: There are some matters but short enough.

THE LAW CLERK: Yeah.

THE COURT: You'll have the whole -- for all practical purposes, you'll at least have a couple hours that morning, if

necessary.

MR. OGILVIE: That works for the City, Your Honor.

MR. LEAVITT: Your Honor, that works for the -- the landowners.

THE COURT: All right. And that's what we'll do. So we'll just vacate today's hearing -- you know what? Shouldn't we just move both matters that are pending to that day? Does that make sense, gentlemen? You know better than I do. Because they're telling me I have very light calendar on the 19th in the morning.

MR. OGILVIE: It -- Your Honor, this is George Ogilvie. It does make sense. I -- I need to consult with the rest of my legal team relative to the other matter though.

THE COURT: All right, I understand. We'll keep that --

MR. LEAVITT: Yeah, the other matter --

THE COURT: We'll keep that currently pending.

But hypothetically, Mr. Ogilvie, after you discuss this with your other legal team and if you parties want to stipulate just a simple -- you can actually prepare a letter by -- a joint letter with -- to make it even quicker with you and Mr. Leavitt if you want me to move that to the 19th, I'll move the other matter to the same time period. All right?

MR. OGILVIE: Sounds good.

THE COURT: Okay.

MR. OGILVIE: Yes.

THE COURT: So, what we're going to do, we're going to

go ahead and vacate the motion for immediate stay from today and we're going to move that for six days to the 19th. Is that correct, sir?

THE CLERK: Correct, Judge, and 10:00?

THE COURT: Ten o'clock. And by then I should --

MR. OGILVIE: Your --

THE COURT: -- be finished with my prior calendar and you have two hours, or more.

MR. OGILVIE: Great. Just one -- one item, Your Honor. I don't know what 180 Land's intentions are pending that hearing, but I would ask that a stay be imposed at least on the execution of the judgment until the Court can hear this -- this motion next Wednesday.

MR. LEAVITT: Well, Your Honor, on behalf of 180 Land, James J. Leavitt. I mean obviously we won't agree to any type of stay but there's -- we will wait for the motion to be heard, Your Honor, before we take further action against the City of Las Vegas --

THE COURT: Okay.

MR. LEAVITT: -- or towards the City of Las Vegas.

THE COURT: All right. What about that? Is that enough? Mr. Ogilvie?

MR. OGILVIE: I -- yeah, no, I accept Mr. Leavitt's --

THE COURT: Okay.

MR. OGILVIE: -- representations, absolutely.

THE COURT: All right. Okay. Just wanted to make sure

we're all on the same page.

And so anyway, I just want to thank you for your accommodation and we're going to just move this matter from today to Wednesday and that's January 19th at 10:00. Is that correct, CJ?

THE CLERK: Correct, Judge.

THE COURT: All right. Okay. And enjoy your day.

MR. OGILVIE: Thank you, Your Honor.

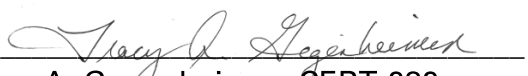
MR. LEAVITT: Thank you. Be safe.

THE COURT: Okay.

[Proceedings concluded at 12:35 p.m.]

* * * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



Tracy A. Gegenheimer, CERT-282
Court Recorder/Transcriber