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 128, PART 19**

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DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. and NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

vs.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 Land Co., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC., a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; FRANK PANKRATZ, an individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC, SEVENTY ACRES, LLC, EHB COMPANIES, LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S MOTION FOR ATTORNEYS' FEES AND COSTS

Date: November 21, 2016
In Chambers
Courtroom 11B

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PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co., LLC, Seventy Acres, LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's Motion For Attorneys' Fees and Costs was entered in the above-entitled action on the 20th day of January, 2017, a copy of which is attached hereto.

Dated: January 26, 2017.

THE JIMMERSON LAW FIRM, P.C.

By: _____
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 26th day of January, 2017, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC, SEVENTY ACRES, LLC, EHB COMPANIES, LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S MOTION FOR ATTORNEYS' FEES AND COSTS** *as* indicated below:

__X__ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

__X__ by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. AND NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

v.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO, LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; and FRANK PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO LLC, SEVENTY ACRES LLC, EHB COMPANIES LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S MOTION FOR ATTORNEYS' FEES AND COSTS

Hearing Date: November 21, 2016
IN CHAMBERS

Courtroom 11B

This matter coming on for Hearing on the 21st day of November, 2016 on Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's Motion for Attorney's Fees and Costs, and the Supplement thereto and request for NRCP 11 Sanctions, and Plaintiffs' Response thereto, and

DOUGLAS E. SMITH
DISTRICT JUDGE
DEPARTMENT EIGHT
LAS VEGAS NV 89155

the Court, having fully considered the papers and pleadings on file herein, and good cause appearing, issues the following Findings of Fact, Conclusions of Law, Order and Judgment:

FINDINGS OF FACT

1. Plaintiffs Robert and Nancy Peccole are residents of the Queensridge common interest community ("Queensridge CIC"), as defined in NRS 116, and owners of the property identified as APN 138-31-215-013, commonly known as 9740 Verlaine Court, Las Vegas, Nevada ("Residence"). (Amended Complaint, Par. 2). On August 4, 2016, Plaintiffs filed their Amended Complaint which alleged the following Claims for Relief against all Defendants: 1) Injunctive Relief; 2) Violations of Plaintiffs' Vested Rights and 3) Fraud.

2. At the time of filing of the Complaint and Amended Complaint, the Residence was owned by the Robert N. and Nancy A. Peccole Family Trust ("Peccole Trust"). The Peccole Trust acquired title to the Residence on August 28, 2013 from Plaintiff's Robert and Nancy Peccole, as individuals. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their present ownership interest in the Residence on September 12, 2016 and therefore had full knowledge of the plans to develop the land upon which the Badlands Golf Course is presently operated at the time they acquired the Residence. By September 12, 2016, and thereafter, Plaintiffs also had full knowledge of the hard zoning on Plaintiff' and Defendants' property of R-PD7, and of the City of Las Vegas' Ordinance of July 6, 2001, Bill No. Z-2001-1, Ordinance No. 5353, that formally codified that zoning for the properties at issue.

3. Earlier, on August 8, 2016, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin the City of Las Vegas from entertaining or acting upon agenda items before the City Planning Commission that allegedly violated Plaintiffs' vested rights as home owners in the Queensridge CIC.

4. All Defendants opposed the Motion, and in Plaintiffs' Reply, Plaintiffs confirmed that their Motion was directed not just to the City, but to other Defendants, stating: "The Motion for Preliminary Injunction does not involve the zoning issue, but instead,

addresses the Fore Stars Defendants' violation of the conditions and restrictions contained in the Master Declaration." (Reply, p. 16/ln. 2-4). By their own argument, Plaintiffs acknowledged that the Motion for Preliminary Injunction was for all intents and purposes directed at the Fore Stars Defendants, notwithstanding that it was done so under the guise of the City's conduct.

5. On September 2, 2016, Defendants filed a detailed Opposition, with copies of the Master Declaration, Deeds, Title Reports and multiple other documents attached, demonstrating that the covenants, conditions and restrictions of the Queensridge Master Declaration (the Master Declaration of CC&Rs of the Queensridge CIC) only apply to land which was originally declared to be a part of, or which was later annexed into, the Queensridge CIC by a Declaration of Annexation. The property owned by the Defendants was not annexed into the Queensridge CIC. Defendants' land is free and clear of encumbrances by CC&Rs, and the restrictions of the Master Declaration. Defendants' Deeds, Plaintiffs' Deeds and title report, and the Master Declaration all confirm that fact.

6. Thus, it was a misrepresentation by Plaintiffs to claim the land not subject to annexation or easement is impacted by the CC&Rs of the adjacent Queensridge CIC, when CC&Rs have no applicability to such land. Therefore, Plaintiffs' alleged "vested rights" to "enforce the conditions and restrictive covenants of the Master Declaration" relating to the Queensridge CIC, allegedly arising from their Purchase Agreement, Property Deed and the Master Declaration, have no applicability to land that is not annexed into, or a part of, the Queensridge CIC. As such, the Master Declaration has no applicability to Defendants' land.

7. On September 27, 2016, the parties were before the Court on the Motion for Preliminary Injunction and, after reading all papers and pleadings on file, the Court heard extensive oral argument lasting nearly two (2) hours from all parties. The Court concluded that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to demonstrate irreparable injury by the City's consideration of the Applications, and failed to demonstrate a likelihood of success on the merits, amongst other failings.

8. The Court denied Plaintiffs' Motion for Preliminary Injunction in an Order entered on September 30, 2016, because Plaintiffs failed to demonstrate that permitting the City of Las Vegas Planning Commission (or the Las Vegas City Council) to proceed with its consideration of the Applications constitutes irreparable harm to Plaintiffs that would compel the Court to grant Plaintiffs the requested injunctive relief in contravention of the Nevada Supreme Court's holding in *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

9. On September 28, 2016—the day after their Motion for Preliminary Injunction directed at the City of Las Vegas was denied—Plaintiffs ignored that Nevada Supreme Court precedent and filed a virtually identical Motion for Preliminary Injunction, but directed it specifically at Defendants Fore Stars Ltd., Seventy Acres LLC, 180 Land Co LLC, EHB Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz (hereinafter "Developer Defendants"), and no longer against the Defendant City of Las Vegas. Substantively, the Motion and the arguments are identical to those made in the original Motion which had just been denied the day before, except that Plaintiffs focused a bit more on the "vested rights" claim, namely, that the applications themselves could not have been filed because they are allegedly prohibited by the Queensridge Master Declaration.

10. Extensive briefing followed in which Defendants demonstrated that the terms, conditions and restrictions of the Queensridge Master Declaration could not be enforced against land which is not within the Queensridge CIC, either because it was "Not a Part of the Property or Annexable Property" as defined within the Queensridge Master Declaration, or because it was Annexable Property, but which was never annexed (and therefore never became a part of the Queensridge CIC).

11. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first Motion for Preliminary Injunction. The Court found that the Motion was procedurally improper because Plaintiffs were required to seek leave of Court prior to filing a Motion for Rehearing pursuant to EDCR 2.24(a) and Plaintiffs failed to do so. On October 10, 2016, the

Court issued an Order vacating the erroneously-set hearing on Plaintiffs Motion for Rehearing, converting Plaintiffs Motion to a Motion for Leave of Court to File Motion for Rehearing and setting same for in chambers hearing on October 17, 2016.

12. On October 11, 2016, the Court held a hearing on Defendants City of Las Vegas' Motion to Dismiss Amended Complaint, which was ultimately was granted by Order filed October 19, 2016. At the hearing, the Court advised Mr. Peccole, counsel for Plaintiffs, that it believed that he was too close to this" and was missing the issue of whether the Master Declaration would apply to land which is not part of the Queensridge CIC. *October 11, 2016 Hearing Transcript at 13:11-13.*

13. Also on October 11, 2016, Defendants wrote a letter to Plaintiffs pursuant to NRCP 11, asking Plaintiffs to withdraw their second Motion for Preliminary Injunction. Defendants, in accordance with the procedures contained within NRCP 11, gave Plaintiffs 21 days to withdraw their Motion, and also enclosed within their letter the proposed Motion for Rule 11 Sanctions Defendants intended to file if the offending second Motion for Preliminary Injunction filed by Plaintiffs was not withdrawn.

14. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in relation to the Order Denying their first Motion for Preliminary Injunction against the City of Las Vegas.

15. On October 13, 2016, Plaintiffs' counsel responded to the NRCP 11 letter from counsel for EHB Companies, LLC, refusing to withdraw the second Motion for Preliminary Injunction against Developer Defendants.

16. On October 18, 2016, Defendants filed an Opposition to Plaintiffs' Motion for Preliminary Injunction against Developer Defendants.

17. On October 18, 2016, Defendants filed an Opposition to Plaintiffs' Motion for Stay Pending Appeal.

18. On October 19, 2016, Defendants filed an Opposition to Plaintiffs' Motion for Rehearing.

19. On October 19, 2016, the Court entered an Order denying Plaintiffs' Motion for Rehearing of Plaintiffs' first Motion for Preliminary Injunction because Plaintiffs could not show irreparable harm, because they possess administrative remedies before the City Planning Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, which they had failed to exhaust, and because Plaintiffs failed to show a reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any change of circumstances since that time that would show a reasonable likelihood of success as of October 17, 2016.

20. On October 19, 2016, the Court entered an Order denying Plaintiffs' Motion for Stay Pending Appeal on the Order Denying Plaintiffs' Motion for Preliminary Injunction against the City of Las Vegas because, as the Order stated, Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs failed to show that the object of their potential writ petition will be defeated if their stay is denied, they failed to show that they would suffer irreparable harm or serious injury if the stay is not issued and they failed to show a likelihood of success on the merits.

21. On October 21, 2016, Defendants filed their Motion for Attorneys' Fees and Costs, seeking an award of attorneys' fees and costs pursuant to EDCR 7.60 and NRS 18.070, which was set to be heard in Chambers on November 21, 2016.

22. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas. Subsequently, on October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as moot.

23. On October 31, 2016, the Court entered an Order denying Plaintiffs' Motion for Preliminary Injunction against Developer Defendants because, as the Court's Order stated, Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for which compensatory damages are an inadequate remedy and failed to show a reasonable

likelihood of success on the merits, since the Master Declaration of the Queensridge CIC did not apply to land which was not annexed into, nor a part of, the Queensridge CIC. The Court also based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations against interfering with or seeking advanced restraint against an administrative body's exercise of legislative power. *See Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969)

24. As this Court has already found, Plaintiffs' claim within their Motion for Preliminary Injunction that the Applications were "illegal" or "violations of the Master Declaration" is without merit. The filing of these Applications by Defendants, or any Applications by Defendants, is not prohibited by the terms of the Master Declaration, because the Applications concerned Defendants' own land, and such land that is not annexed into the Queensridge CIC is therefore not subject to the terms of its Master Declaration. Defendants cannot violate the terms of an agreement to which they are not a party and which does not apply to them.

25. Exhibit A to the Queensridge Master Declaration defines the initial land committed as "Property" and Exhibit B defines the land that is eligible to be annexed, but it only becomes part of the "Property" if a Declaration of Annexation is filed with the County Recorder. Recital A to the Queensridge Master Declaration defines "Property" to "mean and include both of the real property described in Exhibit "A" hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below," and further states that "In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded..."

26. The Court finds that publically available recorded documents, the Declarations of Annexation recorded between 1996-2011 (contained within the Supplemental Exhibit, Annexation Binder filed on October 20, 2016 at the Court's request), and the map entered as Exhibit A at the November 1, 2016 Hearing and to Defendants' November 2, 2016 Supplement

for illustrative purposes, show that the property owned by Developer Defendants that was never annexed into the Queensridge CIC is not part of the "Property" as defined in the Queensridge Master Declaration. The Court therefore finds that the terms, conditions, and restrictions of the Queensridge Master Declaration do not apply to the GC Land and cannot be enforced against the GC Land.

27. Plaintiffs cannot prove a set of facts under which the GC Land was annexed into the "Property" as defined in the Queensridge Master Declaration. Since Plaintiffs have failed to prove that the GC Land was annexed into the "Property" as defined in the Master Declaration, then the GC Land is not subject to the terms and conditions of the Master Declaration. There can be no violation of the Master Declaration by Defendants if the GC Land is not subject to the Master Declaration. Therefore, the Defendants' Applications are not prohibited by, or violative of, the Master Declaration.

28. The Court finds that Exhibit C to the Master Declaration is not a depiction exclusively of the "Property" as Plaintiffs allege. It is clear that it depicts both the Property, which is a very small piece, and the Annexable Property, pursuant to the Master Declaration, page 10, Section 1.55, which states that Master Plan is defined as the "Queensridge Master Plan proposed by Declarant for the Property and the Annexable Property which is set forth in Exhibit "C," hereto..." Plaintiffs' Supplement filed November 8, 2016, Exhibit 5, is page 10 of the Master Declaration, and Plaintiffs emphasize that is a master plan proposed by the Declaration "for the property." But reading the provision as a whole, it is clear that it is a "proposed" plan for the Property (a defined term within the Master Declaration at Recital A) and "the Annexable Property" (a defined term within the Mater Declaration, also at Recital A). Likewise, Exhibit 6 to Plaintiffs' Supplement filed November 8, 2016 defines 'Final Map' as a Recorded map of "any portion" of the Property. It does not depict only the Property. The Master Declaration at Section 1.55 is clear that its Exhibit C depicts the Property and the Annexable Property, and Defendants' Supplemental Exhibit A makes clear that not all of the possible Annexable Property was actually annexed into the Queensridge CIC. Therefore, not

all of the possible Annexable Property became part of the Queensridge CIC, including, but not limited to, the nine (9) holes of golf course owned by Defendants, commonly referred to as "Outlaw."

29. Plaintiffs' Supplemental Exhibit 7, which is Exhibit C to the Master Declaration, does not depict "Lot 10" as part of the Property. It depicts Lot 10 as part of the Annexable Property. Plaintiffs' Supplemental Exhibit 8 depicts, as discussed by Defendants at the November 1, 2016 Hearing, that Lot 10 was subdivided into several parcels (one of which was Parcel 21) became the 9-hole golf course, commonly referred to as "Outlaw." It was not designated as "not a part of the Property or Annexable Property" because it was Annexable Property. However, again, the public record Declarations of Annexation, as summarized in Defendants' Supplemental Exhibit A, shows that Parcel 21, the 9 holes, was never annexed into the Queensridge CIC and never became subject to the Queensridge CIC Master Declaration of CC&R's.

30. The Master Declaration at Recital B provides that the Property "may, but is not required to, include...a golf course," and further provides that "The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or Annexable Property." Plaintiffs concede that the 18-hole golf course is clearly not a part of the Property or Annexable Property and is not subject to the Queensridge CIC. The Court finds that does not mean that the 9-hole golf course was a part of the Property. Quite the contrary. It is clear that it was part of the Annexable Property, and was subject to development rights. In addition to the "diamond" on the Exhibit C Map indicating it is "subject to development rights, p. 1, Recital B of the Master Declaration states: "Declarant intends, without obligation, to develop the Property and the Annexable Property..."

31. Further, the Amended and Restated Master Declaration of October, 2000 included the 9 holes, and provides "The existing 27-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or Annexable Property."

32. The Court finds that Mr. Peccole's Deed (Plaintiffs' Supplemental Exh. and Preliminary Title Report provided by Plaintiffs (Exhibit 3 to Plaintiffs' Reply in support of their first Motion for Preliminary Injunction, filed September 9, 2016), as well as the current Title Report for Plaintiffs' residence (Exhibit B to Defendants' Opposition to Motion for Rehearing, filed October 19, 2016) both indicate that his home was part of the Queensridge CIC, that it sits on Parcel 19, which was annexed into the Queensridge CIC in March, 2000. Both indicate that his home is subject to the terms and conditions of the Master Declaration, "including any amendments and supplements thereto." Conversely, the Fore Stars, Ltd. Deed of 2005 does **not** have any such reference to the Queensridge Master Declaration or Queensridge CIC. Likewise ***none*** of the other Deeds involving the GC Land, Defendants' Supplemental Exhibits E, F, and G filed November 2, 2016 (all public documents), make ***any*** reference to such land being subject to, or restricted by, the Queensridge Master Declaration.

33. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration does not apply to the land proposed to be developed by the Defendants, as it states on page 2, paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by including a Restrictive Covenant that Badlands must remain a golf course as he and other agents of the developer had represented to homeowners." The Amended Complaint reiterated at page 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out any restrictions that the golf course must remain a golf course." *Id.* Thus, Plaintiffs proceeded in prosecuting this case and attempting to enjoin development with full knowledge that there were no applicable restrictions, conditions and covenants from the Master Declaration which applied to Defendants' land, and there were no restrictive covenants in place relating to the sale which prevented Defendants from doing so.

34. Indeed, while Plaintiffs made the false allegation that the density cap on the golf course was "0" units under the Queensridge Master Plan, page 11, paragraph 44 of the Amended Complaint alleges that Defendants' proposed "amendment" to the City of Las Vegas Master Plan "would allow Fore Stars, Ltd. to exceed the density cap of 8 units per acre on the

Badlands Golf Course that is located in the Queensridge Master Planned Community." *Id. at lines 10-13.*

35. As part of Defendants having prevailed on all the Motions filed by Plaintiffs attempting to improperly obtain a preliminary injunction, Defendants have been forced to incur significant attorneys' fees and costs to respond to the repetitive filings of Plaintiffs. Plaintiffs' Motions are without merit and their repetitive nature, and their repetitive advancement of arguments that were without merit, and after the Court expressly warned Plaintiffs that they were "too close" to the dispute (with Plaintiffs being relatives of, and a part of, the family who developed the Queensridge CIC), were filed in bad faith as that term is used within NRS 18.010(2)(b) and EDCR 7.60. Plaintiffs' goals, to delay and to cost Defendants as much as possible in attorneys' fees and costs, becomes more and more apparent, as Developer Defendants have the right to develop the GC Land.

36. This Court has heard Plaintiffs' arguments and is not satisfied, and does not believe, that the GC Land is subject to the Master Declaration of Queensridge. Thus, Plaintiffs do not have the ability to "enforce" the Master Declaration of Queensridge against Defendants.

37. On November 15, 2016, Defendants filed a Supplement to the Motion for Attorneys' Fees and Costs and Joint Motion for Rule 11 Sanctions and Attorneys' Fees and Costs, having waited, as noted above, the requisite period following service of the demand to withdraw the Motion. The Supplement sought attorneys' fees and costs against Plaintiffs in the sum of $147,216.85, relating to preliminary injunction and related issues (but not the Motion to Dismiss), or, at minimum, the reduced sum of attorneys' fees and costs representing the total attorneys' fees and costs incurred after the September 2, 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction, totaling $82,718.50, as well as sanctions against Plaintiffs and Plaintiffs' counsel pursuant to NRCP 11.

38. On November 17, 2016, Plaintiffs filed a Response to that Supplement.

39. As previously found, this Court is of the opinion that Plaintiffs' counsel Robert N. Peccole, Esq. appeared to be so personally close to the case that he is blinded by his

relativity to the case that he is ignoring the key issues central to the causes of action and failing to recognize that continuing to pursue flawed claims for relief, and rehashing the arguments again and again, following the date of the Defendants' September 2, 2016 Opposition when Plaintiffs had actual notice of the flaws in their position, the proof contained within the Exhibits, and the error in Plaintiffs' improper and scurrilous allegations, has caused Defendants substantial attorneys' fees and costs.

40. In fact, completely ignoring the Findings of this Court to date regarding the inapplicability of the Master Declaration to land not annexed into the Queensridge CIC, Plaintiffs filed three (3) additional documents: Renewed Motion for Preliminary Injunction Against Fore Stars, Ltd. Seventy Acres, 180 Land Co., EHB Companies, Yohan Lowie, Vickie DeHart and Frank Pankratz, filed November 18, 2016, Motion Requesting Leave to Amend Amended Complaint, filed November 21, 2016, and Additional Information to Renewed Motion for Preliminary Injunction, filed November 28, 2016.

41. On November 30, 2016, this Court entered extensive *Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint.* Such Findings of Fact, Conclusions of Law and Orders are referred to and hereby incorporated herein by reference, as if set forth in full.

42. Defendants have submitted, pursuant to the *Brunzell* case, its affidavits regarding attorney's fees and costs requested, in the total sum of $147,216.85, with $114,368.94 incurred with The Jimmerson Law Firm, PC through October 20, 2016, and $32,847.91 incurred with Sklar Williams, PLLC, through October 31, 2016, for all of the fees and costs incurred relating to Plaintiffs' attempts to improperly enjoin the City and Defendants. Defendants have identified the total attorneys' fees and costs incurred after the September 2, 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction, totaling **$82,718.50,** with $65,266.04 incurred with The Jimmerson Law Firm, PC through October 20,

2016, and $17,452.46 incurred with Sklar Williams, PLLC, through October 31, 2016. Those attorneys' fees and costs continued to accrue after October 20, 2016, through the Court's Minute Order of November 21, 2016.

43. The specific Findings within the prior Orders filed with the Court demonstrate the frivolousness of Plaintiffs' position, and certainly after receipt of the September 2, 2016 Opposition and the voluminous exhibits attached thereto, Plaintiffs were on notice that their claims were unreasonable and unsupported by fact or law and, as such, Plaintiffs' maintaining the same was unreasonable and in bad faith.

44. The Court Finds Defendants have been forced to incur substantial fees and costs relating to Plaintiffs' improper attempts to obtain a preliminary injunction to prevent review of Defendants' applications, and to prevent submission of applications by Defendants. The Court has reviewed the redacted billings, which show sums incurred from the date of Defendants' receipt of the initial Motion for Preliminary Injunction in August, 2016 through the October, 2016 billing, not including additional fees and costs, not yet calculated, from October 20, 2016 through the date of filing of the Supplement. While Defendants sought all of their fees from the date of the filing of Plaintiffs' first Motion for Preliminary Injunction, in addition thereto, Defendants separately calculated those sums incurred only following the filing of their September 2, 2016 Opposition to the first Motion for Preliminary Injunction through the October, 2016 billing for their respective counsel.

45. Defendants sought an award of attorneys' fees and costs, dollar for dollar, relating to the need to oppose Plaintiffs' preliminary injunction and related Motions, not including the fees and costs incurred relating to Defendants' Motion to Dismiss. Defendants requested, at minimum, those fees and costs incurred following the filing of their Opposition, dollar for dollar, as the same were reasonable and necessarily incurred.

46. The Court Finds that Plaintiffs were on notice that their position was maintained without reasonable ground after the September 2, 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction. The voluminous documentation

attached thereto made clear that the Master Declaration does not apply to Developer Defendants' land that was not annexed into the Queensridge CIC.

47. The Court finds that the sums incurred after September 2, 2016 were reasonable and necessary, as Plaintiffs continued to maintain their frivolous position and filed multiple, repetitive documents which required response.

48. The Court Finds that Defendants and Defendants' counsel meet the factors outlined in Nevada Rules of Professional Conduct, Rule 1.5 and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

49. Regarding the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform legal services properly was significant and substantial. The issues presented required an understanding and clear presentation of zoning, land use, the applicability of NRS 116, common interest communities, the inapplicability of NRS 278A, the City's administrative process, annexation and related matters. The time associated with this work was substantial as evidenced by the briefing, and the Court finds that these efforts were both reasonable and necessary to incur in order to receive the Court's Orders.

50. The Declaration of Counsel attests that the acceptance of this work required counsel to do a substantial amount of work and spend a significant amount of time on these issues. The substantial documents prepared and filed by Defendants, the analysis of the relevant codes, statutes and case law, as well as the presentations and boards in Court, all evidence the significant amount of time and effort devoted by Defendants' counsel.

51. The fee customarily charged in the locality for similar legal services--namely hourly rates of Mr. Jimmerson at $595.00 per hour downward to paralegals and other staff in accordance with their fee agreement, are customarily charged in Clark County, Nevada for similar legal services and are, indeed, reasonable. The firm's use of paralegals promoted cost-effective litigation and reduced litigation costs, as they were billed at a lower rate. Mr. Hackett's current hourly rate is $395.00 per hour, and his Associate at $275 per hour. These

billing rates, too, are consistent with the rates for similar services for attorneys with similar training and experience in the local area and are reasonable for this type of commercial and business litigation work in Las Vegas, Nevada.

52. The amount involved and the results obtained are another factor for the Court to consider. This case involves the right to develop millions of dollars' worth of property. Given the number of filings by Plaintiffs that required responses, and the Court hearings, the time spent was reasonable and necessary to explain and defend Defendants' position.

53. The nature and length of the professional relationship between Defendants and their counsel is such that Defendants sought out The Jimmerson Law Firm, P.C. and Sklar Williams believing them to be well-qualified to process Defendants' work, and indeed these firms have completed significant work on their behalf.

54. The experience, reputation, and ability of the lawyer or lawyers performing the services are certainly commensurate with the requests being made. The Jimmerson Law Firm, P.C., is an AV rated law firm. Mr. Jimmerson has long been recognized as one of the State's better attorneys as a civil litigator, and nationally is in many specific professional societies and nationally-known organizations. Mr. Jimmerson has been awarded "Top 100 Trial Lawyers" by the National Trial Lawyer Association; repeatedly noted in Steven Naifeh's "Best Lawyers"; elected to "Super Lawyers Business Litigation"; a Fellow in the American College of Family Trial Lawyers, and Diplomat of the American Academy of Matrimonial Lawyers. The Jimmerson Law Firm and Mr. Jimmerson have been named in the Preeminent Attorneys and Law Firms in Martindale Hubbell for more than two dozen years. Mr. Jimmerson was nominated for and awarded the Ellis Island Medal of Honor, a Lifetime Achievement Award for work as a trial attorney and for humanitarian and other efforts.

55. Mr. Hackett was awarded his *Juris Doctorate* degree *cum laude* from California Western School of Law in 1991, where he served as the Articles Editor on the Law Review and thereafter served as a law clerk for a federal judge on the United States Court of Appeals for the Sixth Circuit for 1 year, until 1992. Mr. Hackett then sat for and passed the California

Bar and was admitted in 1992, and sat for and passed the Nevada Bar and was admitted in 1993. Mr. Hackett is admitted to practice in all courts in the State of California and the State of Nevada, the United States District Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit. Mr. Hackett was previously employed as an associate attorney for seven (7) years and then became a shareholder for four (4) years at Lionel Sawyer & Collins, until leaving the firm in 2003. During that time, he practiced primarily as a commercial litigator handling preliminary injunctions, trials, appeals and all other manner of commercial disputes, including many real estate development matters similar to the present case. From 2003 through 2009, Mr. Hackett was the Managing Director of an international real estate development company based in Israel, which was developing condominiums and other real estate ventures in Las Vegas, Nevada and through the United States, Europe and Asia, directly responsible for all aspects of a 450 unit condominium development valued at approximately $900 million dollars and oversaw a workforce of fifty (50) employees. Mr. Hackett joined the firm of Sklar Williams PLLC in 2010 and has been practicing in commercial litigation with that firm since that date. Mr. Hackett was assisted in this case by associate Johnathan Fayeghi, a 2012 graduate of UNLV Boyd School of Law, and admitted to the Nevada Bar in 2012 and has practiced in commercial litigation since joining SW in 2014.

56. The costs incurred by Defendants include those for hearing transcripts, photocopies and printing, boards, legal research, filing fees, fax transaction charges, hand delivery, recorded documents, and related costs. These were reasonable and necessary to prosecute this action. Each cost was actually incurred and none appear to be "estimated" costs.

57. Because of the multiple hearings and Orders made by this Court, due to Plaintiffs' duplicative filings, and to prepare for briefing, hearing and oral argument, Defendants had to obtain the Transcripts from multiple hearings. Those Transcripts and documentation of rulings, which were used and weaved into argument at the hearing and in briefings, helped Defendants to prevail.

58. Photocopies and Printing included copies of the Master Declaration, Amended

Master Declaration, several maps and boards, and other voluminous exhibits and supplements. Several copies needed to be made for service and for the Court, as well as for the oral presentations. There were tens of thousands of pages of documents not just to copy, but to print and review.

59. Legal Research was necessary due to the complexity and inaccuracy of many of the issues raised in Plaintiffs' Motions. Given the complexity of the issues, these research costs were reasonable and appropriate.

60. Filing Fees, Fax Transaction Charges, and Hand Delivery fess are all reasonable and necessary litigation costs which are permitted under statute, and none of these charges are unreasonable or excessive. Likewise, recording fees, certified copies, and documents obtained from the Clark County Recorder were, unfortunately, necessary to address the claims made by Plaintiffs.

61. Defendants are the prevailing party in this case, and Plaintiffs' position was maintained without reasonable ground or to harass the prevailing party. NRS 18.010.

62. Plaintiffs have presented to the court motions which were, or became, frivolous, unnecessary or unwarranted, in bad faith, and which so multiplied the proceedings in a case as to increase costs unreasonably and vexatiously. EDCR 7.60.

63. Given the attorneys' fees and costs incurred relating to the preliminary injunction issues, Plaintiffs' other multiple related Motions, and the meritorious request for attorneys' fees and costs relating thereto, awarding further attorneys' fees and costs pursuant to NRCP 11, which addresses the same Motions, attorneys' fees, and costs, is unnecessary and denied as moot.

64. If any of these Findings of Fact is more appropriately deemed a Conclusion of Law, so shall it be deemed.

CONCLUSIONS OF LAW

65. NRS § 18.010 makes allowance for attorney's fees when the Court finds that the claim of the opposing party was brought without reasonable ground or to harass the prevailing party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, "both baseless and made without a reasonable competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). Sanctions may be awarded where the pleading fails to be well grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry. *Id.* The decision to award attorney fees as a sanction against a party for pursuing a claim without reasonable ground is within the district court's sound discretion and will not be overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 130 P.3d 1280 (Nev. 2006).

66. NRS 18.010 (2) provides that: "In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party: (a) When the prevailing party has not recovered more than $20,000; or (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

67. An award of attorney's fees and costs in this case is appropriate, as Plaintiffs' claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry before, proceeding with their first Motion for Preliminary Injunction after receipt of the Opposition, and in filing their second Preliminary Injunction Motion, their Motion for Rehearing or their Motion for Stay Pending Appeal, particularly in light of the Decision of the Court the day prior. Plaintiffs' Motion is the epitome of a pleading that "fails to be well grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry."

68. The Court finds that the Motions appear to be part of a long line of attempts to delay Developer Defendants' development of their land, with the hope that such delays—and the negative publicity generated by lies—will deter the City in approving just, reasonable, and appropriate zoning applications, and to financially burden Defendants with litigation costs.

69. Further, there was absolutely no competent evidence to support the contentions in Plaintiffs' Motions, neither the purported "facts" they assert, nor the "irreparable harm" that they alleged would occur if their Motions were denied. There was no Affidavit or Declaration filed supporting those alleged facts, and Plaintiffs even changed the facts of this case to suit their needs by transferring title to their property mid-litigation after the Opposition to Motion for Preliminary Injunction had been filed by Defendants. Plaintiffs were blindly asserting "vested rights" which they had no right to assert against Defendants.

70. In contrast, the evidence submitted by Defendants, and attested to by Declaration and Affidavit, demonstrated the frivolousness of Plaintiffs' claims. The Court agrees that Plaintiffs' attempts to twist the facts to fit their argument in an effort to mislead the Court should be met with stiff admonishment, and an award to Defendants of their attorneys'

fees and costs, dollar for dollar, following the filing of Defendants' September 2, 2016 Opposition and the exhibits attached thereto.

71. Plaintiffs certainly did not, and cannot present any set of circumstances under which they would have had a good faith basis in law or fact to assert their Motion for Preliminary Injunction against the non-Applicant Defendants whose names do not appear on the Applications. The non-Applicant Defendants had nothing to do with the Applications, and Plaintiffs maintenance of the Motion against the non-Applicant Defendants, named personally, served no purpose but to harass and annoy and cause them to incur unnecessary fees and costs.

72. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party without just cause: (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted, and (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

73. Plaintiffs' motivation in filing these baseless "preliminary injunction" motions was to interfere with, and delay, knowing full well that they ultimately could not deny, Defendants' development of their land. Plaintiffs have again forced Defendants to incur attorneys' fees to respond to the unsupported positions taken by Plaintiffs, and their frivolous attempt to bypass City Ordinances and circumvent the legislative process. The Court concludes that Plaintiffs filed Motions that were obviously frivolous, unnecessary, or unsupported, and so multiplied the proceedings in this case so as to increase costs unreasonably and vexatiously.

74. The Plaintiffs' Motion for Preliminary Injunction, first against the City of Las Vegas and then against the remaining Defendants, was prosecuted in bad faith and warrants an award of attorney fees and costs. The allegations within Plaintiffs' Motion for Preliminary

Injunction against the City, then repeated against the remaining Defendants, were not based upon fact, were not based upon law and were without reasonable basis.

75. This Court, and specifically the Defendants, have each given the Plaintiffs ample opportunity to withdraw their Motions, rescind their actions and otherwise seek to exhaust their administrative remedies as against both the City of Las Vegas and the remaining Defendants rather than to persist and maintain a bad faith piece of litigation that harms the Defendants. Instead they proceeded in making "scurrilous allegations" and in trying to assert alleged "vested rights" which they do not possess against Defendants. Plaintiffs' refusal to withdraw their improper Motion for Preliminary Injunction stands in stark contrast to the quick amendment of their original Complaint in response to correspondence from counsel for the now-dismissed Peccole Defendants, Lance C. Earl, Esq.

76. Considering the length of time that the Plaintiffs have maintained their action, coupled with the fact that they have been given ample time to withdraw their Motions, but still fail to do the right thing, the Court can only reach one inference and conclusion from Plaintiffs actions, including the naming defendants personally with no basis whatsoever, which is that Plaintiffs are seeking to harm the Defendants, their project and their land, improperly and without justification, and have committed an abuse of process in doing so. Thus, this is a very compelling case of bad faith having been demonstrated on the part of the Plaintiffs, whose emotional approach and lack of clear analysis or care in the drafting and submission of their pleadings and Motions warrant the award of reasonable attorney's fees and costs in favor of the Defendants and against the Plaintiffs.

77. The Nevada Supreme Court, in *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969),

specifically found that a litigant could not enjoin administrative or legislative procedures by seeking an injunction against the applicant rather than the City Council, finding: "This means that a court could not enjoin the City of Reno from entertaining Eagle Thrifty's request to review the planning commission recommendation. **This established principle may not be avoided by the expedient of directing the injunction to the applicant instead of the City Council**." *Id.* (Emphasis added.) Thus, this Court's denial of Plaintiffs' Motion for a Preliminary Injunction with respect to the Application was already a denial of an injunction against Developer Defendants, as well as the City.

78. Nevada law grants the City broad authority to implement procedures necessary to effectuate zoning, including granting cities and counties the authority to "provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts are determined, established, enforced and amended." NRS 278.250; NRS 278.260.

79. The Nevada Supreme Court has long recognized that zoning is a matter properly within the province of the legislature and that the judiciary should not interfere with zoning decisions, especially before they are even final. *See, e.g., McKenzie v. Shelly*, 77 Nev. 237, 362 P.2d 268 (1961) (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not interfere with the zoning power unless clearly necessary); *Forman v. Eagle Thrifty Drugs and Markets*, 89 Nev. 533, 516 P.2d 1234 (1973) (statutes guide the zoning process and the means of implementation until amended, repealed, referred or changed through initiative).

80. In fact, the Nevada Supreme Court has specifically ruled that local zoning decisions should not be interfered with by means of a Court injunction. In *Eagle Thrifty Drugs*

& Markets, Inc., v. Hunter Lake Parent Teachers Assoc., 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969), the Nevada Supreme Court reversed the District Court's decision to grant an injunction, finding that it was not within the province of the judiciary to interfere with the zoning power delegated to the cities and counties by the State. *Id.* 451 P.2d at 715.

81. Although the Supreme Court noted that none of the City's reapplication procedures were expressly authorized under State law, the Supreme Court nevertheless determined that the procedures were encompassed by the broad grant of authority in NRS 278.250 and NRS 278.260, which expressly authorizes cities and counties "to establish the administrative machinery to amend, supplement and change zoning districts." *Id.* The Supreme Court further declared that, "[a]lthough some may believe that the procedural provisions of the city do not afford sufficient protection ... any correction must come from the City Council... it is not [the Court's] business to write a new city ordinance." *Id.*, 451 P.2d at 715.

82. For identical reasons, it is not the business of this Court to intervene in the zoning process by issuance of an injunction prohibiting the City of Las Vegas Planning Commission "entertaining or acting upon agenda items presently before the City Planning Commission..." *See Plaintiffs' Motion for Preliminary Injunction at p. 2, lines 4-8.* Plaintiffs' remedy is to follow the process outlined in NRS 278, not prematurely rush into this Court seeking an injunction against something that has not even occurred and therefore is not ripe. As stated by the Nevada Supreme Court: "Zoning is a legislative matter, and the legislature has acted. It has authorized 'the governing body' to provide for zoning districts and to establish the administrative machinery to amend, supplement and change zoning districts. As a general proposition, the zoning powers should not be subjected to judicial interference unless clearly

necessary." See *Board of Commissioners v. Dayton Dev. Co.*, 91 Nev. 71, 530 P.2d 1187 (1975), attached hereto as **Exhibit "M."** Plaintiffs' Motion is without legal or factual basis, and judicial intervention is not clearly necessary.

83. Further, the Court explicitly found in their Order denying Plaintiffs' Motion for a Preliminary Injunction against the City of Las Vegas, that the City does not act in accordance with private agreements. The City of Las Vegas Municipal Code Title 19 (Unified Development Code) 19.00.080(j) provides: "No provision of this Title is intended to interfere with or abrogate or annul any easement, private covenants, deed restriction or other agreement between private parties. In cases in which this Title imposes a greater restriction upon the use of land or structures, the provisions of this Title shall prevail and control. By virtue of this Title, the City is not a party to and has no power or authority to enforce private deed covenants, conditions or restrictions. Private covenants or deed restrictions which impose conditions more restrictive than those imposed by this Title, or which impose restrictions not covered by this Title, are not implemented nor superseded by this Title." *See also, Western Land Co. v. Truskolaski*, 88 Nev. 200, 495 P.23d 624 (1972)(a zoning ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to invalidate restrictive covenants merely because of a zoning change). The Court found that "the City ordinance is not inconsistent with *Gladstone v. Gregory*, 95 Nev. 474, 596 P.23d 291 (1979), cited by Plaintiffs."

84. Plaintiffs have created a fiction of "vested rights" which they allege Defendants are infringing upon, but which they do not legally have. "The cradle of equity is the power to afford adequate remedy where the law is impotent; **it does not create new rights,** but affords a remedy for existing rights." *Aetna Cas. & Sur. Co. v. Jeppesen & Co.*, 440 F. Supp. 394, 404

(D. Nev. 1977) (quoting *Berdie v. Kurtz*, 88 F.2d 158, 159 (9th Cir. 1937). (emphasis added) "Equity, in other words, **may not be used to create new substantive rights.**" *E. Tennessee Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004); *see also N. Border Pipeline Co. v. 86.72 Acres of Land*, 144 F.3d 469, 471 (7th Cir. 1998) ("A preliminary injunction may issue only when the moving party has a substantive entitlement to the relief sought.)" (Emphasis added).

85. Here, the injunction that Plaintiffs sought was already denied by the Court, just one (1) day prior, and Plaintiffs original Motion was directed towards all Defendants. Thus, Plaintiffs' almost-verbatim, duplicative Motion has already been found by the Court to be without merit, and Plaintiffs can only be duplicating and resubmitting the same for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

86. The injunction that Plaintiffs sought that was already denied by the Court just one day prior filed by Plaintiffs, under the totality of the circumstances, evidences an improper and ulterior purpose by the Plaintiffs other than resolving a legal dispute. The Court has grave concerns regarding an improper motive underlying Plaintiffs' filing of the second Motion for Preliminary Injunction. This is evidenced by the Plaintiffs having filed multiple Motions alleging and maintaining that they possess "vested rights" in the Defendants' GC Land through the CC&Rs of the Queensridge Master Declaration that they do not possess. Plaintiffs have continued to make these allegations after Defendants briefed the reasons Plaintiffs did not possess such "vested rights," after the Court issued Orders ruling the Plaintiffs did not possess such "vested rights," and even in the face of Plaintiffs' own admission, through their internally-inconsistent Amended Complaint, that there was no restrictive covenant on the GC Land that prevented the development thereof. These various vexatious and groundless Motions were

filed with the improper purpose and intent to delay Defendants' construction plans and force Defendants to unnecessarily incur attorney's fees and costs.

87. Further, Plaintiffs have admitted to the Supreme Court that their duplicative Motion for Preliminary Injunction filed on September 28, 2016 was without merit and unsupported by the law. In their *Response to Motion to Amend Caption and Joinder and Response to the Motion to Dismiss Appeal of Order Granting the City of Las Vegas Motion to Dismiss Amended Complaint*, filed November 10, 2016, Plaintiff's state:"..[T]he case of *Eagle Thrifty Drugs & Market, Inc. v. Hunter Lake Parent Teachers Association,* 85 Nev. 162 (1969) **would not allow directing of a Preliminary Injunction against any party but the City Council.** Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies, LLC **could not be made parties to the Preliminary Injunction because only the City was appropriate under *Eagle Thrifty."*** (Emphasis added.)

88. The Supreme Court, by Order filed November 10, 2016, dismissed Plaintiffs' Notice of Appeal of the Order denying its first Motion for Preliminary Injunction, holding that "the district court has not certified the order dismissing appellants' complaint as to respondent as final pursuant to NRCP 54(b)" and "in light of the district court's dismissal of appellants' complaint for injunctive relief against respondent, "the existence of which is necessary to permit the granting of an injunction, the question of the propriety of an injunction be[comes] moot."'"

89. Plaintiffs clearly recognized that the filing of a Preliminary Injunction Motion against undersigned Defendants was improper, but they did it anyway.

90. Plaintiffs' Motions are duplicative, improper, vexatious and sanctionable. Plaintiffs' decision to also direct their Motion to the non-Applicant Defendants--EHB

Companies LLC, Lowie, DeHart and Pankratz—was especially egregious given the fact that it is a violation of established Nevada law to seek an injunction against a Manager of a Limited Liability Company, and their refusal to withdraw that aspect of the Motion is sanctionable. NRS 86.371; NRS 86.381.

91. The City Planning Commission and City Council's work is of a legislative function and Plaintiffs' claims attempting to enjoin the review of Defendant Developers' Applications are not ripe. UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G).

92. Plaintiffs had an adequate remedy in law in the form of judicial review pursuant to UDC 19.16.040(T) and NRS 233B.

93. Zoning ordinances do not override privately-placed restrictions and courts cannot invalidate restrictive covenants because of a zoning change. *Western Land Co. v. Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972).

94. NRS 278A.080 provides: "The powers granted under the provisions of this chapter may be exercised by any city or county which enacts an ordinance conforming to the provisions of this chapter." The evidence demonstrates that no such ordinance was enacted by the City of Las Vegas. *See Exhibit "L" to Defendants' Second Supplement, filed November 15, 2016 (Declaration of Luann Holmes).*

95. NRS 116.1201(4) specifically and unambiguously provides, "The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities."

96. NRS 278.320(2) states that "A common-interest community consisting of five or more units shall be deemed to be a subdivision of land within the meaning of this section, but need only comply with NRS 278.326 to 278.460, inclusive and 278.473 to 278.490, inclusive."

97. Plaintiffs "vested rights" argument is not a viable one because Plaintiffs have failed to show that the GC Land is subject to the Master Declaration.

98. In making an award of attorneys' fees and costs, the Court shall consider the quality of the advocate, the character of the work to be done, the work actually performed, and the result. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

99. Nevada Rule of Professional Conduct 1.5 (a) provides: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The time limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent."

100. In *LVMPD v. Yeghiazarian*, 312 P.3d 503 (2013), the Supreme Court adopted the majority opinion in *Missouri v. Jenkins*, 491 U.S. at 285, 109 S.Ct. 2463 (1989), which stated that: [A] "reasonable attorney's fee" cannot have been meant to compensate only work performed personally by members of the bar. Rather, the term must refer to a reasonable fee for the work product of an attorney. Thus, the fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor

contributes to the work product for which an attorney bills her client.... **We thus take as our starting point the self-evident proposition that the "reasonable attorney's fee" provided for by statute should compensate the work of paralegals, as well as that of attorneys."** (Emphasis added.) The Court held that "the use of paralegals and other nonattorney staff reduces litigation costs, so long as they are billed at a lower rate." *Id.* at 288, 109 S.Ct. 2463. "As NRS 17.115(4)(d)(3) and NRCP 68(f)(2) both refer to "reasonable attorney's fees," we conclude that this phrase includes charges for persons such as paralegals and law clerks." *Id.*

101. The Ninth Circuit and other jurisdictions have also adopted this position. *See Richlin Sec'y Serv. Co. v. Chertoff*, 553 U.S. 571, 580-83, 128 S.Ct. 2007, 170 L.Ed.2d 960 (2008) (reaffirming *Jenkins); Trs. of Constr. Indus. & Laborers Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir.2006) ("[F]ees for work performed by nonattorneys such as paralegals may be billed separately, at market rates, if this is the prevailing practice in a given community." (internal quotations omitted)); *U.S. Football League v. Nat'l Football League*, 887 F.2d 408, 416 (2d Cir.1989) ("Paralegals' time is includable in an award of attorney's fees."); *Todd Shipyards Corp. v. Dir., Office of Workers' Comp. Programs*, 545 F.2d 1176, 1182 (9th Cir.1976) ("Paralegals can do some of the work that the attorney would have to do anyway and can do it at substantially less cost per hour."); *Guinn v. Dotson*, 23 Cal.App.4th 262, 28 Cal.Rptr.2d 409, 413 (1994) (reasonable attorney fees include necessary support services for attorneys).

102. If any of these Conclusions of Law is more appropriately deemed a Findings of Fact, so shall it be deemed.

ORDER AND JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz' Motion for Attorneys' Fees and Costs is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz are hereby awarded, and Plaintiffs shall pay to Defendants, attorneys' fees and costs in the amount of $82,718.50, this being the total amount incurred after the September 2, 2016 filing of the Defendants' Opposition to the Plaintiffs' first Motion for Preliminary Injunction. Said sum is hereby reduced to judgment, plus legal interest accruing thereon until paid in full, collectible by any lawful means.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that given the attorneys' fees and costs awarded herein pursuant to NRS 18.010 and EDCR 7.60, Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's Joint Motion for Rule 11 Sanctions is denied as moot.

DATED this 19 day of January, 2017.

DISTRICT COURT JUDGE
A-16-739654-C

CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, a copy of the foregoing was served on the parties by electronic service, by placing a copy in the attorneys' folders in the Clerk's Office, by mailing, emailing, or faxing to the following:

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CLERK OF THE COURT

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Attorneys for Defendants Fore Stars, Ltd., 180 Land Co., LLC., Seventy Acres, LLC; Yohan Lowie, Vickie DeHart and Frank Pankratz

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. and NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

vs.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 Land Co., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC., a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; FRANK PANKRATZ, an individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT

Date: January 10, 2017
Courtroom 11B

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, Final Order and Judgment was entered in the above-entitled action on the 31st day of January, 2017, a copy of which is attached hereto.

Dated: January 31st, 2017.

THE JIMMERSON LAW FIRM, P.C.

By: [signature] 5387 for
James J. Jimmerson, Esq.
Nevada State Bar No. 000264
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendants Fore Stars, Ltd., 180 Land Co., LLC., Seventy Acres, LLC; Yohan Lowie, Vickie DeHart and Frank Pankratz

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 31st day of January, 2017, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT** *as* indicated below:

X by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

X by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8689 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxmail.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
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An employee of The Jimmerson Law Firm, P.C

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. AND NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

v.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO, LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; and FRANK PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT

Hearing Date: January 10, 2017
Hearing Time: 8:00 a.m.

Courtroom 11B

This matter coming on for Hearing on the 10th day of January, 2017 *on* Plaintiffs' *Renewed Motion For Preliminary Injunction,* Plaintiffs' *Motion For Leave To Amend Amended Complaint,* Plaintiffs' *Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs,* Plaintiffs' *Motion For Court To Reconsider Order Of Dismissal,* and Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,

Vickie Dehart and Frank Pankratz's *Oppositions* thereto and *Countermotions for Attorneys' Fees and Costs,* and upon *Plaintiffs' Opposition to Countermotion for Attorney's Fees and Costs* and Defendants' *Countermotion to Strike Plaintiffs' Rogue and Untimely Opposition filed January 5, 2017 and Attorneys' Fees and Costs*, and upon Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's *Memorandum of Costs and Disbursements*, and no objection or Motion to Retax having been filed by Plaintiffs in response thereto, ROBERT N. PECCOLE, ESQ. of PECCOLE & PECCOLE, LTD. and LEWIS J. GAZDA, ESQ. of GAZDA & TADAYON appearing on behalf of Plaintiffs, and Plaintiff, ROBERT N. PECCOLE being present, and JAMES J. JIMMERSON, ESQ. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz, and Defendants Yohan Lowie and Vickie DeHart being present, and STEPHEN R. HACKETT, ESQ. of SKLAR WILLIAMS, PLLC and TODD DAVIS, ESQ. of EHB COMPANIES, LLC appearing on behalf of Defendants EHB Companies, LLC and the Court having reviewed and fully considered the papers and pleadings on file herein, and having heard the lengthy arguments of counsel, and having allowed Plaintiffs, over Defendants' objection, to enter Exhibits 1-13 at the hearing, and having reviewed the record, good cause appearing, issues the following Findings of Fact, Conclusions of Law, Final Orders and Judgment:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preliminary Findings

1. The Court hearing on November 1, 2016 was extensive and lengthy, and this Court does not need a re-argument of those points. At that time, the Court granted both parties great leeway to argue their case and, thereafter, to file any and all additional documents and/or

exhibits that they wished to file, so long as they did so on or before November 15, 2016. Each party took advantage of said opportunity by submitting additional documents for the Court's review and consideration. The Court has reviewed all submissions by each party. Further, at the Court's extended hearing on January 10, 2017, upon Plaintiffs' and Defendants' post-judgment motions and oppositions, the Court further allowed the parties to make whatever arguments necessary to supplement their respective filings and in support of their respective requests;

2. On November 30, 2016, this Court, after a full review of the pleadings, exhibits, affidavits, declarations, and record, entered extensive *Findings of Fact, Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint.* On January 20, 2017, the Court also entered its *Findings Of Fact, Conclusions Of Law, and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart And Frank Pankratz's Motion For Attorneys' Fees And Costs* (the "Fee Order"). Both of these Findings of Fact, Conclusions of Law and Orders are hereby incorporated herein by reference, as if set forth in full, and shall become a part of these Final Orders and Judgment;

3. Following the Notice of Entry of the Court's extensive *Findings of Fact, Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint,* Plaintiffs filed four (4) Motions and one (1) Opposition, on an Order Shortening Time set for hearing on this date, Defendants filed their Oppositions and Countermotions for Attorneys' Fees and Costs, Defendants timely filed their *Memorandum of Costs and Disbursements*, and Plaintiffs chose not to file any Motion to Retax. After this briefing, Plaintiffs, at the January 10, 2017 Court hearing,

presented in excess of an hour and a half of oral argument. The Court allowed the new exhibits to be admitted over the objection of Defendants;

4. Following the hearing, the Court has reviewed the papers and pleadings filed by both Plaintiffs and Defendants, along with Exhibits, and the oral argument of Plaintiffs and Defendants, and relevant statutes and caselaw, and based upon the totality of the record, makes the following Findings:

Plaintiffs' Renewed Motion for Preliminary Injunction

5. As a preliminary matter, based on the record and the evidence presented to date by both sides, the Court does not believe the golf course land ("GC Land") is subject to the terms and restrictions of the Master Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge ("Master Declaration" or "CC&Rs"), because it was not annexed into, or made part of, the Queensridge Common Interest Community ("Queensridge CIC") which the Master Declaration governs. The Court has repeatedly made, and stands by, this Finding;

6. The Court does not believe that William and Wanda Peccole, or their entities (Nevada Legacy 14, LLC, the William Peter and Wanda Ruth Peccole Family Limited Partnership, and/or the William Peccole 1982 Trust) intended the GC Land to be a part of the Queensridge CIC, as evidenced by the fact that if that land had been included within that community, then every person in Queensridge would be paying money to be a member of the Badlands Golf Course and paying to maintain it. They were not, and have not. In fact, the Master Declaration at Recital B states that the CIC "may, but is not required to include...a golf course" and Plaintiffs' Purchase documents make clear that residents of Queensridge acquire no golf course rights or membership privileges by their purchase of a house within the Queensridge CIC. *Exhibit C to Defendants' Opposition filed September 2, 2016 at page 1, Recital B, and Exhibit L to Defendants' Opposition filed September 2, 2016 at paragraph 4 of Addendum 1*;

7. By Plaintiffs' own exhibit, the enlargement of the Exhibit C Map to the Master Declaration, it shows that the GC Land is not a part of the CC&Rs. The Exhibit C map showed the initial Property *and* the Annexable Property, as confirmed by Section 1.55 of the Master Declaration;

8. Therefore, the argument about whether or not the Master Declaration applies to the GC Land does not need to be rehashed, despite Plaintiffs' insistence that it do so. The Court has repeatedly found that it does not. That is the Court's prior ruling, and nothing Plaintiffs have brought forward reasonably convinces the Court otherwise. *See* the Court's November 20, 2016 Order, Findings 51-76;

9. Regarding the Renewed Motion for Preliminary Injunction, Plaintiffs' Renewed Motion and Exhibits are not persuasive, and the Court has made clear that it will not stop a governmental agency from doing its job. The Court does not believe that intervention is "clearly necessary" or appropriate for this Court. As the Court understands it, if the owner of the GC Land has made an application, the governmental agency would be derelict in their duty if it did not review it, consider it and do all of its necessary work to follow the legal process and make its recommendations and/or decision. The Court will not stop that process;

10. Based upon the papers, there is no basis to grant Plaintiffs' Renewed Motion for Preliminary Injunction;

11. Plaintiffs' argument that there is a "conspiracy" with the City of Las Vegas "behind closed doors" to get certain things done is inappropriate and without merit;

12. It is entirely proper for Defendants to follow the City rules that require the filing of applications if they want to develop their property, or to discuss a development agreement with the City Attorney, or present a plan to the City of Las Vegas Planning Commission or the Las Vegas City Council. That is what they are supposed to do;

13. Plaintiffs submitted four (4) photos to demonstrate that the proposed new development under the current application would "ruin his views." However, Plaintiffs' purchase documents make clear that no such "views" or location advantages were guaranteed to Plaintiffs, and that Plaintiffs were on notice through their own exhibit that their existing views could be blocked or impaired by development of adjoining property "whether within the Planned Community or outside of the Planned Community" *Exhibit 1 to Plaintiffs' Reply to Defendants' Motion to Dismiss, filed September 9, 2016.*

14. In response to the Court's inquiry regarding what Plaintiffs are trying to enjoin, Plaintiffs indicate they desire to enjoin Defendants from resubmitting the four (4) applications that have been withdrawn, without prejudice, but which can be refiled. The Court finds that refiling is exactly what Defendants are supposed to do if they want those applications considered;

15. Plaintiffs' argument that Defendants cannot file Applications with the City, because it is a violation of the Master Declaration is without merit. That might be true if the GC Land was part of the CC&R's. As repeatedly stated, this Court does not believe, and the evidence does not suggest, that the GC Land is subject to the CC&Rs, period;

16. Defendants' applications were legal and the proper thing to do, and the Court will not stop such filings. Plaintiffs' position is the filing was not allowed under the Master Declaration, and Plaintiffs will not listen to the Court's Findings that the GC Land was not added to the Queensridge CIC by William Peccole or his entities. Plaintiffs' position is vexatious and harassing to the Defendants under the facts of this case;

17. Plaintiffs argue that the new applications that were filed were negotiated and discussed with the City Attorneys' Office without the knowledge of the City Council. But, again, that is not improper. The City Council does not get involved until the applications are

submitted and reviewed by the Planning Staff and City Planning Commission. The Court finds that there is no "conspiracy" there. People are supposed to follow the rules, and the rules say that if you are going to seek a zone change or a variance, you may submit a pre-application for review, have appropriate discussions and negotiations, and then have a public review by the Planning Commission and ultimately the City Council;

18. The fact that a new application was submitted proposing 61 homes, which is different from the original applications submitted for "The Preserve" which were withdrawn without prejudice, is irrelevant;

19. Plaintiffs' argument that Defendants submitted a new application on December 30, 2016 to allegedly defeat Plaintiffs' Renewed Motion for Preliminary Injunction, to bring the case back into the administrative process, is not reasonable, nor accurate. There were already three (3) applications which were pending and which had been held in abeyance, and thus were still within the administrative process. The new application changes nothing as far as Plaintiffs' requests for a preliminary injunction;

20. Plaintiffs' Exhibit 5 demonstrates that notice was provided to the homeowners, which is what Defendants were supposed to do. There was nothing improper in this;

21. Even if *all* the applications had been withdrawn, Plaintiffs could not "directly interfere with, **or in advance restrain**, the discretion of an administrative body's exercise of legislative power." *Eagle Thrifty Drugs & Markets, Inc. v. Hunter Lake Parent Teachers Assn. et al*, 85 Nev. 162, 451 P.2d 713 (1969) at 165, 451 P.2d at 714. Additionally, "This established principle **may not be avoided by the expedient of directing the injunction to the applicant instead of the City Council.**" *Id.* This holding still applies to these facts;

22. Regardless, the possible submission of zoning and land use applications will not violate any rights or restrictions Plaintiffs claim in their Master Declaration, as "A zoning

ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to invalidate restrictive covenants merely because of a zoning change." *W. Land Co. v. Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972). Additionally, UDC 19.00.0809(j) provides: "No provision of this Title is intended to interfere with or abrogate or annul any easement, private covenants, deed restriction or other agreement between private parties.... Private covenants or deed restrictions which impose restrictions not covered by this Title, are not implemented nor superseded by this Title."

23. Plaintiffs' argument that Defendants needed permission to file the applications for the 61 homes is, again, without merit, because Plaintiffs incorrectly assume that the CC&Rs apply to the GC Land, when the Court has already found they do not. Plaintiffs unreasonably refuse to accept this ruling;

24. Plaintiffs have no standing under *Gladstone v. Gregory,* 95 Nev. 474, 596 P.2d 491 (1979) to enforce the restrictive covenants of the Master Declaration against Defendants or the GC Land. The Court has already, repeatedly, found that the Master Declaration does not apply to the GC Land, and thus Plaintiffs have no standing to enforce it against the Defendants. Defendants did not, and cannot, violate a rule that does not govern the GC Land. The Plaintiffs refuse to hear or accept these findings of the Court;

25. Contrary to Plaintiffs' statement, the Court is not making an "argument" that Plaintiffs' are required to exhaust their administrative remedies; that is a "decision" on the part of the Court. As the Court stated at the November 1, 2016 hearing, Plaintiffs believe that CC&Rs of the Queensridge CIC cover the GC Land, and Mr. Peccole is so closely involved in it, he refuses to see the Court's decision coming in as fair or following the law. No matter what decisions are made, Mr. Peccole is so closely involved with the issues, he would never accept

any Court's decision, because if it does not follow his interpretation, in Plaintiffs' mind, the Court is wrong. *November 1, 2016 Hearing Transcript, P. 3, L. 13-2;*

26. Defendants have the right to close the golf course and not water it. This action does not impact Plaintiffs' "rights;"

27. A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of success on the merits. *Boulder Oaks Cmty. Ass'n v. B & J Andrew Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); citing NRS 33.010, *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). A district court has discretion in deciding whether to grant a preliminary injunction. *Id.* The Plaintiffs have failed to make the requisite showing;

28. On September 27, 2016, the parties were before the Court on Plaintiffs' first Motion for Preliminary Injunction and, after reading all papers and pleadings on file, the Court heard extensive oral argument lasting nearly two (2) hours from all parties. The Court ultimately concluded that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to demonstrate irreparable injury by the City's consideration of the Applications, and failed to demonstrate a likelihood of success on the merits, amongst other failings;

29. On September 28, 2016—the day after their Motion for Preliminary Injunction directed at the City of Las Vegas was heard—Plaintiffs ignored the Court's words and filed another Motion for Preliminary Injunction which, substantively, made arguments identical to those made in the original Motion which had just been heard the day before, except that Plaintiffs focused more on the "vested rights" claim, namely, that the applications themselves could not have been filed because they are allegedly prohibited by the Master Declaration. On

October 31, 2016, the Court entered an Order denying that Motion, finding that Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for which compensatory damages are an inadequate remedy and failed to show a reasonable likelihood of success on the merits, since the Master Declaration of the Queensridge CIC did not apply to land which was not annexed into, nor a part of, the Property (as defined in the Master Declaration). The Court also based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations against interfering with or seeking advanced restraint against an administrative body's exercise of legislative power. See *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969);

30. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first Motion for Preliminary Injunction, without seeking leave from the Court. The Court denied the Motion on October 19, 2016, finding Plaintiffs could not show irreparable harm, because they possess administrative remedies before the City Planning Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, which they had failed to exhaust, and because Plaintiffs failed to show a reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any change of circumstances since that time that would show a reasonable likelihood of success as of October 17, 2016;

31. At the October 11, 2016 hearing on Defendants City of Las Vegas' Motion to Dismiss Amended Complaint, which was ultimately was granted by Order filed October 19, 2016, the Court advised Mr. Peccole, as an individual Plaintiff and counsel for Plaintiffs, that it believed that he was too close to this" and was missing that the Master Declaration would not apply to land which is not part of the Queensridge CIC. *October 11, 2016 Hearing Transcript at 13:11-13;*

32. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in relation to the Order Denying their first Motion for Preliminary Injunction against the City of Las Vegas, which sought, again, an injunction. That Motion was denied on October 19, 2016, finding that Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c), Plaintiffs failed to show that the object of their potential writ petition will be defeated if their stay is denied, Plaintiffs failed to show that they would suffer irreparable harm or serious injury if the stay is not issued, and Plaintiffs failed to show a likelihood of success on the merits;

33. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas, and on October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as moot;

34. Plaintiffs can assert no harm, let alone "irreparable" harm from the three remaining pending applications, which deal with development of 720 condominiums located a mile from Plaintiffs' home on the Northeast corner of the GC Land;

35. Plaintiffs cannot demonstrate a likelihood of success on the merits. Plaintiffs have argued the "merits" of their claims *ad nausem* and they have not had established any possibility of success;

36. The Court has repeatedly found that the claim that Defendants' applications were "illegal" or "violations of the Master Declaration" is without merit, and such claim is being maintained without reasonable grounds;

37. Plaintiffs' argument within his Renewed Motion is just a rehash of his prior arguments that Lot 10 was "part of" the "Property," (as defined in the Master Declaration) that

the flood drainage easements along the golf course are not included in the "not a part" language, and that he has "vested rights." These arguments have already been addressed repeatedly;

38. In its *Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion to Dismiss,* filed November 30, 2016, the Court detailed its analysis of the Master Declaration, the Declarations of Annexation, Lot 10, and the other documents of public record, and made its Findings that the Plaintiffs were not guaranteed any golf course views or access, and that the adjoining GC Land was not governed by the Master Declaration. Those Findings are incorporated herein by reference, as if set forth in full. Specifically Findings No. 51-76 make clear that the GC Land is not a part of and not subject to the Master Declaration of the NRS 116 Queensridge CIC;

39. There is no "new evidence" that changes this basic finding of fact, and Plaintiffs cannot "stop renewal of the 4 applications" or "stop the application" allegedly contemplated for property merely adjacent to Plaintiffs' Lot and which is not within the Queensridge CIC;

40. Since Plaintiffs were on notice of this undeniable fact on September 2, 2016, yet persisted in filing Motion after Motion to try and "enjoin" Defendants, that is exactly why this Court awarded Defendants $82,718.50 relating to the second Motion for Preliminary Injunction, the Motion for Rehearing and the Motion for Stay (Injunction), and why this Court awards additional attorneys' fees and costs for being forced to oppose a Renewed Motion for Preliminary Injunction and these other Motions now;

41. The alleged "new" information cited by Plaintiffs--the withdrawal of four applications without prejudice at the November 16, 2016 City Council meeting--is irrelevant because this Court cannot and will not, in advance, restrain Defendants from submitting applications. Further, the three (3) remaining applications are pending and still in the administrative process;

42. Zoning is a matter properly within the province of the legislature and that the judiciary should not interfere with zoning decisions, especially before they are even final. *See, e.g., McKenzie v. Shelly*, 77 Nev. 237, 362 P.2d 268 (1961) (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not interfere with the zoning power unless clearly necessary); *Forman v. Eagle Thrifty Drugs and Markets*, 89 Nev. 533, 516 P.2d 1234 (1973) (statutes guide the zoning process and the means of implementation until amended, repealed, referred or changed through initiative). Court intervention is not "clearly necessary" in this instance;

43. Plaintiffs have admitted to the Supreme Court that their duplicative Motion for Preliminary Injunction filed on September 28, 2016 was without merit and unsupported by the law. In their *Response to Motion to Amend Caption and Joinder and Response to the Motion to Dismiss Appeal of Order Granting the City of Las Vegas Motion to Dismiss Amended Complaint*, filed November 10, 2016, Plaintiff's state:"..[T]he case of *Eagle Thrifty Drugs & Market, Inc. v. Hunter Lake Parent Teachers Association,* 85 Nev. 162 (1969) **would not allow directing of a Preliminary Injunction against any party but the City Council.** Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies, LLC **could not be made parties to the Preliminary Injunction because only the City was appropriate under *Eagle Thrifty.*"** (Emphasis added.) Yet Plaintiffs have now filed a "Renewed" Motion for Preliminary Injunction;

44. Procedurally, Plaintiffs' Renewed Motion is improper because "No motions once heard and disposed of may be *renewed* in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of

such motion to the adverse parties." *EDCR 2.24 (Emphasis added.)* This is the second time the Plaintiffs have failed to seek leave of Court before filing such a Motion;

45. After hearing all of the arguments of Plaintiffs and Defendants, Plaintiffs have failed to meet their burden for a preliminary injunction against Defendants, and Plaintiffs have no standing to do so;

Plaintiffs' Motion for Leave to Amend Amended Complaint

46. Plaintiffs have already been permitted to amend their Complaint, and did so on August 4, 2016;

47. Plaintiffs deleted the Declaratory Relief cause of action, but maintained a cause of action for injunctive relief even after Plaintiffs were advised that the same could not be sustained, Plaintiffs withdrew the Breach of Contract cause of action and replaced it with a cause of action entitled "Violations of Plaintiffs' Vested Rights," and Plaintiffs' Fraud cause of action remained, for all intents and purposes, unchanged;

48. Plaintiffs were given the opportunity to present a proposed Amended Complaint and failed to do so. There is no Amended Complaint which supports the new alter ego theory Plaintiffs suggest;

49. After the November 1, 2016 hearing on the Motion to Dismiss, the Court provided an opportunity for Plaintiffs (or Defendants) to file any additional documents or requests, including a request to Amend the Complaint, with a deadline of November 15, 2016. Plaintiffs' Motion to Amend Amended Complaint was not filed within that deadline;

50. EDCR 2.30 requires a copy of a proposed amended pleading to be attached to any motion to amend the pleading. Plaintiffs never attached a proposed amended pleading, in violation of this Rule. This makes it impossible for the Court to measure what claims Plaintiffs

propose, other than those outlined in their briefs, all of which are based on a failed and untrue argument;

51. Plaintiffs continue to attempt to enjoin the City from completing its legislative function, or to in advance, restrain Defendants from submitting applications for consideration. This Court has repeatedly Ordered that it will not do that;

52. The Court considered Plaintiffs' oral request from November 1, 2016 to amend the Amended Complaint, and made a Finding in its November 30, 2016 Order of Dismissal, at paragraph 90, "Although ordinarily leave to amend the Complaint should be freely given when justice requires, Plaintiffs have already amended their Complaint once and have failed to state a claim against the Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be permitted to amend their Complaint a second time in relation to their claims against Defendants as the attempt to amend the Complaint would be futile;"

53. Further amending the Complaint, under the theories proposed by Plaintiffs, remains futile. The Fraud cause of action does not state a claim upon which relief can be granted, as the alleged "fraud" lay in the premise that there was a representation that the golf course would remain a golf course in perpetuity. Again, Plaintiffs' own purchase documents evidence that no such guarantee was made and that Plaintiffs were advised that future development to the adjoining property could occur, and could impair their views or lot advantages. The alleged representation is incompetent (*See NRCP 56(e)),* fails woefully for lack of particularity as required by NRCP 9(b), and appears disingenuous under the facts and law of this case;

54. The Fraud claim also fails because Plaintiffs voluntarily dismissed the Defendants—all his relatives or their entities--who allegedly made the fraudulent representations that the golf course would remain in perpetuity;

55. While it is true that Defendants argued that Plaintiffs did not plead their Fraud allegations with particularity as required by NRCP 9(b), Defendants also vociferously argued in their Motion to Dismiss that Plaintiffs failed to state a Fraud claim upon which relief could be granted because their allegations failed to meet the basic and fundamental elements of Fraud: (1) a false representation of fact; (2) made to the plaintiff; (3) with knowledge or belief that the representation was false or without a sufficient basis; (4) intending to induce reliance; (5) creating justifiable reliance by the plaintiff; (6) resulting in damages. *Blanchard v. Blanchard*, 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992). The Court concurred;

56. To this day, Plaintiffs failed to identify any actual false or misleading statements made by Defendants to them, and that alone is fatal to their claim. Defendants' zoning and land use applications to the City to proceed with residential development upon the GC Land does not constitute fraudulent conduct by Defendants because third-parties allegedly represented at some (unknown) time roughly 16 years earlier that the golf course would never be replaced with residential development;

57. Plaintiffs do not and cannot claim that they justifiably relied on any supposed misrepresentation by any of the Defendants or that they suffered damages as a result of the Defendants' conduct because such justifiable reliance requires a causal connection between the inducement and the plaintiff's act or failure to act resulting in the plaintiff's detriment;

58. Plaintiffs have not, and cannot claim that any representations on the part of Defendants lead them to enter into their "Purchase Agreement" in April 2000, over 14 years prior to any alleged representations or conduct by any of the Defendants. The Court was left to wonder if any of these failings could be corrected in a second amended complaint, as Plaintiffs failed to proffer a proposed second amended complaint as is required under EDCR 2.30. As such, Plaintiffs' Motion to Amend Complaint was doomed from the outset;

59. All of Plaintiffs' claims are based on the theory that Plaintiffs have "vested rights" over the Defendants and the GC Land. The request for injunctive relief is based on the assertion of alleged "rights" under the Master Declaration;

60. The Court has already found, both of Plaintiffs' legal theories (1) the zoning aspect and exhaustion of administrative remedies, and (2) the alleged breach of the restrictive covenants under a Master Declaration "contract," are maintained without reasonable ground. Defendants are not parties to the "contract" alleged to have been breached, and Court intervention is not "clearly necessary" as an exception to the bar to interfere in an administrative process;

61. The zoning on the GC Land dictates its use and Defendants rights to develop their land;

62. Plaintiffs' reargument of the "Lot 10" claim, which Plaintiffs have argued before, which this Court asked Plaintiffs not to rehash, is without merit. Drainage easements upon the GC Land in favor of the City of Las Vegas do not make the GC Land a part of the Queensridge CIC. The Queensridge CIC would have to be a party to the drainage easements in order to have rights in the easements. Plaintiffs presented no evidence to establish that the Queensridge CIC is a party to any drainage easements upon the GC Land;

63. Plaintiffs do not represent FEMA or the government, who are the authorities having jurisdiction to set the regulations regarding "flood drainage." Plaintiffs do not have any agreements with Defendants regarding flood drainage and nor any jurisdiction nor standing to claim or assert "drainage" rights. Any claims under flood zones or drainage easements would be asserted by the governmental authority having jurisdiction;

64. Notwithstanding any alleged "open space" land use designation, the zoning on the GC Land, as supported by the evidence, is R-PD7. Plaintiffs latest argument suggests the land is

"zoned" as "open space" and that they have some right to prevent any modification of that alleged designation under NRS 278A. But the Master Declaration indicates that Queensridge is a NRS Chapter 116 community, and NRS 116.1201(4) specifically and unambiguously provides, "The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities." The Plaintiffs do not have standing to even make any claim under NRS 278A;

65. There is no evidence of any recordation of any of the GC Land, by deed, lien, or by any other exception to title, that would remotely suggest that the GC Land is within a planned unit development, or is subject to NRS 278A, or that Queensridge is governed by NRS 278A. Rather, Queensridge is governed by NRS 116;

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

67. The Plaintiffs do not own the land which allegedly contains the drainage pointed out in Exhibits 11 and 12. It is Defendants' responsibility to deal with it with the government. Tivoli Village is an example of where drainage means were changed and drainage challenges were addressed by the developer. Plaintiffs have no standing to enforce the maintenance of a drainage easement to which they are not a party;

68. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration does not apply to the land proposed to be developed by the Defendants, as it states on page 2, paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by including a Restrictive Covenant that Badlands must remain a golf course as he and other agents of the developer had represented to homeowners." The Amended Complaint reiterated at page 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out any

restrictions that the golf course must remain a golf course." *Id.* Thus, Plaintiffs proceeded in prosecuting this case and attempting to enjoin development with full knowledge that there were no applicable restrictions, conditions and covenants from the Master Declaration which applied to the GC Land, and there were no restrictive covenants in place relating to the sale which prevented Defendants from doing so;

69. Plaintiffs improperly assert that the Motion to Dismiss relied primarily upon the "ripeness" doctrine and the allegation that the Fraud Cause of Action was not pled with particularity. But this is not true. The Motion to Dismiss was granted because Plaintiffs do not possess the "vested rights" they assert because the GC Land is not part of Queensridge CIC and not subject to its CC&Rs. The Fraud claim failed because Plaintiffs could not state the elements of a Fraud Cause of Action. They never had any conversations with any of the Defendants prior to purchasing their Lot and therefore, no fraud could have been committed by Defendants against Plaintiffs in relation to their home/lot purchase because Defendants never made any knowingly false representations to Plaintiffs upon which Plaintiffs relied to their detriment, nor as stated by Plaintiff to the Court did Defendants ever make any representations to Plaintiffs at all. Plaintiffs' were denied an opportunity to amend their Complaint a second time because doing so would be futile given the fact that they have failed to state claims and cannot state claims for "vested rights" or Fraud;

70. None of Plaintiffs' alleged "changed circumstances"—neither the withdrawal of applications, the abatement of others, or the introduction of new ones, changes the fundamental fact that Plaintiffs have no standing to enforce the Master Declaration against the GC Land, or any other land which was not annexed into the Queensridge CIC. It really is that simple;

71. Likewise, the claim that because applications were withdrawn by Defendants at the City Council Meeting and the rest were held in abeyance, that the *Eagle Thrifty* case no

longer applies and no longer prevents a preliminary injunction to enjoin Defendants from submitting future Applications, fails as a matter of law. Plaintiffs' Motion to Amend remains improper under *Eagle Thrifty* because Plaintiffs are effectively seeking to restrain the City of Las Vegas by requesting an injunction against the Applicant, and they are improperly seeking to restrain the City from hearing future zoning and development applications from Defendants. *Eagle Thrifty* neither allows such advance restraint, nor does it condone such advance restraint by directing a preliminary injunction against the Applicant;

72. Amending the Complaint based on the theories argued by Plaintiffs would be futile, and Plaintiffs continue to fail to state a claim upon which relief can be granted;

73. Leave to amend should be freely granted "when justice so requires," but in this case, justice requires the Motion for Leave to Amend be denied. It would be futile. Additionally, Plaintiffs have noticeably failed to submit any proposed second amended Complaint at any time. *See* EDCR 2.30. The Court is compelled to deny Plaintiffs' Motion to Amend;

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Plaintiffs' Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs

74. Plaintiffs are not entitled to an Evidentiary Hearing on the Motion for Attorneys' Fees and Costs. NRS 18.010(3) states "in awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence."

75. Plaintiffs' seek an Evidentiary Hearing on the "Order for Rule 11 Fees and Costs," but the request for sanctions and additional attorneys' fees pursuant to NRCP 11 was denied by this Court. Plaintiffs do not seek reconsideration of that denial, and no Evidentiary Hearing is warranted;

76. The Motion itself if procedurally defective. It contains only bare citations to statues and rules, and it contains no Affidavit as required by EDCR 2.21 and NRCP 56(e);

77. NRCP 60(b) does not allow for Evidentiary Hearing to give Plaintiffs "opportunity to present evidence as to why they filed a Motion for Preliminary Injunction against Fore Stars and why that was appropriate." It allows the setting aside of a default judgment due to mistakes, inadvertence, excusable neglect, newly discovered evidence or fraud. With respect to the Motion for Attorneys' Fees and Costs and Order granting the same, this is not even alleged;

78. Plaintiffs must establish "adequate cause" for an Evidentiary Hearing. *Rooney v. Rooney,* 109 Nev. 540, 542–43, 853 P.2d 123, 124–25 (1993). Adequate cause "requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds....." "The moving party must present a prima facie case...showing that (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching." *Id.*

79. Plaintiffs have failed to establish adequate cause for an Evidentiary Hearing. Plaintiffs have not even submitted a supporting Affidavit alleging any facts whatsoever;

80. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76). "Rehearings are not granted as a matter of right, and are not allowed for the purpose of reargument." *Geller v. McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947) (citation omitted). Points or contentions available before but not raised in the original hearing cannot be maintained or considered on rehearing. See *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996);

81. There is no basis for an Evidentiary Hearing under NRCP 59(a). There were no irregularities in the proceedings of the court, or any order of the court, or abuse of discretion whereby either party was prevented from having a fair trial. There was no misconduct of the court or of the prevailing party. There was no accident or surprise which ordinary prudence could not have guarded against. There was no newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered or produced at trial. There were no excessive damages being given under the influence of passion of prejudice, and there were no errors in law occurring at the trial and objected to by the party making the motion. If anything, the fact that Defendants were awarded 56% of their incurred attorneys' fees and costs relating to the preliminary injunction issues, and denied additional sanctions pursuant to NRCP 11, demonstrates this Court's evenhandedness and fairness to the Plaintiffs;

82. Plaintiffs are not automatically entitled to an Evidentiary Hearing on the issue of attorneys' fees and costs, and the decision to forego an evidentiary hearing does not deprive a party of due process rights if the party has notice and an opportunity to be heard. *Lim v. Willick Law Grp.*, No. 61253, 2014 WL 1006728, at *1 (Nev. Mar. 13, 2014). *See, also, Jones v. Jones, 22016 WL 3856487, Case No. 66632 (2016)*;

83. In this case, Plaintiffs had notice and the opportunity to be heard, and already presented to the Court the evidence they would seek to present about why they filed a Motion for a Preliminary Injunction against these Defendants, having argued at the September 27, 2016 Hearing, the October 11, 2016 Hearing, the November 1, 2016 Hearing and the January 10, 2017 hearing that they had "vested rights to enforce "restrictive covenants" against Defendants under the *Gladstone v. Gregory* case. Those arguments fail;

84. The Court also gave Plaintiffs the opportunity to submit any further evidence they wanted, with a deadline of November 15, 2016. The Court considered all evidence timely submitted;

85. Plaintiffs filed on November 8, 2016 Supplemental Exhibits with their argument regarding the "Amended Master Declaration" and on November 18, 2016 "Additional Information" including description of the City Council Meeting. Plaintiffs also filed on November 17, 2016, their Response to the Motion for Attorneys' Fees and Costs;

86. On its face, the facts claimed in Plaintiffs' Motion, unsupported by Affidavit, regarding why he had to file the first Motion for Preliminary Injunction, second Motion for Preliminary Injunction on September 28, 2016, the Motion for Stay Pending Appeal and the Motion for Rehearing, which Motions were the basis of the award of attorneys' fees and costs, are unbelievable. Plaintiffs claim that the City was dismissed as a Defendant and the "only remedy" was to file directly against the Defendants. But Plaintiffs filed their Motion for Preliminary Injunction against Fore Stars the day after the hearing on their first Motion for Preliminary Injunction—even before the decision on their first Motion was issued detailing the denial of the Motion and the analysis of the *Eagle Thrifty* case. The Court had not even *heard*, let alone granted, City's Motion to Dismiss at that time;

87. Plaintiffs' justification that the administrative process came to an end when four applications were withdrawn without prejudice, three were held in abeyance, and "a contemplated additional violation of the CC&R's appeared on the record" is also without merit. Aside from the fact that Plaintiffs are not permitted to restrain, in advance, the filing of applications or the City's consideration of them, factually, as of September 28, 2016, the Planning Commission Meeting had not even occurred yet (let alone the City Council Meeting). The administrative process was still ongoing;

88. The claim that the *Gladstone case* was applicable directly against restrictive covenant violators after the administrative process ended and Defendants were "no longer protected by Eagle Thrifty" is, again, belied by the fact that the CC&R's do not apply to, and cannot be enforced against, land that was not annexed into the Queensridge CIC. *Gladstone* does not apply. Plaintiffs' argument is not convincing;

89. Plaintiffs' arguments regarding how "frivolous" is defined by NRCP 11 is irrelevant because those additional sanctions against Plaintiffs' counsel were denied as moot, in light of the Court awarding Defendants attorneys' fees and costs under NRS 18.010(2)(b) and EDCR 7.60;

90. Defendants' Motion sought an award of $147,216.85 in attorneys' fees and costs, dollar for dollar, incurred in having to defeat Plaintiffs' repeated efforts to obtain a preliminary injunction against Defendants, which multiplied the proceedings unnecessarily. After considering Defendants' Motion and Supplement and Plaintiffs' Response, the Court awarded Defendants $82,718.50. The attorneys' fees and costs awarded related only to those efforts to obtain a preliminary injunction through the end of October, 2016, and did not include or consider the additional attorneys' fees, or the additional costs, which were incurred by Defendants relating to the Motions to Dismiss, or the new filings after October, 2016;

91. NRS 18.010, EDCR 7.60 and NRCP 11 are distinct rules and statues, and the Court can apply any of the rules and statues which are applicable;

92. NRS § 18.010 makes allowance for attorney's fees when the Court finds that the claim of the opposing party was brought without reasonable ground or to harass the prevailing party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, "both baseless and made without a reasonable competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). Sanctions or attorneys' fees may be awarded where the pleading fails to be well

grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry. *Id.* The decision to award attorney fees against a party for pursuing a claim without reasonable ground is within the district court's sound discretion and will not be overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 130 P.3d 1280 (Nev. 2006).

93. NRS 18.010 (2) provides that: "The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

94. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party without just cause: (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted, (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously, and (4) Fails or refuses to comply with these rules;

95. An award of attorney's fees and costs in this case was appropriate, as Plaintiffs' claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry before proceeding with their first Motion for Preliminary Injunction after receipt of the Opposition, and in filing their second Preliminary Injunction Motion, their Motion for Rehearing or their Motion for Stay Pending Appeal, particularly in light of the hearing the day prior.

Plaintiffs' Motions were the epitome of a pleading that "fails to be well grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry;"

96. There was absolutely no competent evidence to support the contentions in Plaintiffs' Motions--neither the purported "facts" they asserted, nor the "irreparable harm" that they alleged would occur if their Motions were denied. There was no Affidavit or Declaration filed supporting those alleged facts, and Plaintiffs even changed the facts of this case to suit their needs by transferring title to their property mid-litigation after the Opposition to Motion for Preliminary Injunction had been filed by Defendants. Plaintiffs were blindly asserting "vested rights" which they had no right to assert against Defendants;

97. Plaintiffs certainly did not, and cannot present any set of circumstances under which they would have had a good faith basis in law or fact to assert their Motion for Preliminary Injunction against the non-Applicant Defendants whose names do not appear on the Applications. The non-Applicant Defendants had nothing to do with the Applications, and Plaintiffs maintenance of the Motion against the non-Applicant Defendants, named personally, served no purpose but to harass and annoy and cause them to incur unnecessary fees and costs;

98. On October 21, 2016, Defendants filed their Motion for Attorneys' Fees and Costs, seeking an award of attorneys' fees and costs pursuant to EDCR 7.60 and NRS 18.070, which was set to be heard in Chambers on November 21, 2016. Plaintiffs filed a response on November 17, 2016, which was considered by the Court;

99. Defendants have been forced to incur significant attorneys' fees and costs to respond to the repetitive filings of Plaintiffs. Plaintiffs' Motions are without merit and unnecessarily duplicative, and made a repetitive advancement of arguments that were without merit, even after the Court expressly warned Plaintiffs that they were "too close" to the dispute;

100. Plaintiff, Robert N. Peccole, Esq., by being so personally close to the case, is so blinded by his personal feelings that he is ignoring the key issues central to the causes of action and failing to recognize that continuing to pursue flawed claims for relief, and rehashing the arguments again and again, following the date of the Defendants' September 2, 2016 Opposition, is improper and unnecessarily harms Defendants;

101. In making an award of attorneys' fees and costs, the Court shall consider the quality of the advocate, the character of the work to be done, the work actually performed, and the result. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Defendants submitted, pursuant to the *Brunzell* case, affidavits regarding attorney's fees and costs they requested. The Court, in its separate Order of January 20, 2017, has analyzed and found, and now reaffirms, that counsel meets the *Brunzell* factors, that the costs incurred were reasonable and actually incurred pursuant to *Cadle Co. v. Woods & Erickson LLP*, 131 Nev. Adv. Op. 15 (Mar. 26, 2015), and outlined the reasonableness and necessity of the attorneys' fees and costs incurred, to which there has been no challenge by Plaintiffs;

102. Plaintiffs were on notice that their position was maintained without reasonable ground after the September 2, 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction. The voluminous documentation attached thereto made clear that the Master Declaration does not apply to Defendants' land which was not annexed into the Queensridge CIC. Thus, relating to the preliminary injunction issues, the sums incurred after September 2, 2016 were reasonable and necessary, as Plaintiffs continued to maintain their frivolous position and filed multiple, repetitive documents which required response;

103. Defendants are the prevailing party when it comes to Defendants' Motions for Preliminary Injunction, Motion for Stay Pending Appeal and Motion for Rehearing filed in

September and October, and Plaintiffs' position was maintained without reasonable ground or to harass the prevailing party. *NRS 18.010;*

104. Plaintiffs presented to the court motions which were, or became, frivolous, unnecessary or unwarranted, in bad faith, and which so multiplied the proceedings in a case as to increase costs unreasonably and vexatiously, and failed to follow the rules of the Court. *EDCR 7.60;*

105. Given these facts, there is no basis to hold an Evidentiary Hearing with respect to the Order granting Defendants' attorneys' fees and costs, and the Order should stand;

Plaintiffs' Opposition to Countermotion for Fees and Costs

106. This Opposition to "Countermotion," substantively, does not address the pending Countermotions for attorneys' fees and costs, but rather the Motion for Attorneys' Fees and Costs which was filed October 21, 2016 and granted November 21, 2016;

107. The Opposition to that Motion was required to be filed on or before November 10, 2016. It was not filed until January 7, 2017;

108. Separately, Plaintiffs filed a "response" to the Motion for Attorneys' Fees and Costs, and Supplement thereto, on November 17, 2016. As indicated in the Court's November 21, 2016 Minute Order, as confirmed by and incorporated into the Fee Order filed January 20, 2017, that Response was reviewed and considered;

109. Plaintiffs did not attach any Affidavit as required by EDCR 2.21 to attack the reasonableness or the attorneys' fees and costs incurred, the necessity of the attorneys' fees and costs, or the accuracy of the attorneys' fees and costs incurred;

110. There is sufficient basis to strike this untimely Opposition pursuant to EDCR 2.21 and NRCP 56(e) and the same can be construed as an admission that the Motion was meritorious and should be granted;

111. On the merits, Plaintiffs' "assumptions" that "attorneys' fees and costs are being requested based upon the Motion to Dismiss" and that "sanctions under Rule 11 for filing a Motion for Preliminary Injunction against Fore Stars Defendants" is incorrect. As made clear by the itemized billing statements submitted by Defendants, none of the attorneys' fees and costs requested within that Motion related to the Motion to Dismiss. Further, this is also clear because at the time the Motion for Attorneys' Fees and Costs was filed, the hearings on the City's Motion to Dismiss, or the remaining Defendants' Motion to Dismiss, had not even occurred;

112. Plaintiffs erroneously claim that Defendants cited "no statutes or written contracts that would allow for attorneys' fees and costs." Defendants clearly cited to NRS 18.010 and EDCR 7.60;

113. The argument that if this Court declines to sanction Plaintiffs' counsel pursuant to NRCP 11, they cannot grant attorneys' fees and costs pursuant to NRS 18.010 and EDCR 7.60 is nonsensical. These are district statutes with distinct bases for awarding fees;

114. This Court was gracious to Plaintiffs' counsel in exercising its sound discretion in denying the Rule 11 request, and had solid ground for awarding EDCR 7.60 sanctions and attorneys' fees under NRS 18.010 under the facts;

115. Since Motion for Attorneys' Fees and Costs, and Supplement, was not relating to the Motion to Dismiss, the arguments regarding the frivolousness of the Amended Complaint need not be addressed within this section;

116. The argument that Plaintiffs are entitled to fees because they "are the prevailing party under the Rule 11 Motion" fails. Defendants prevailed on every Motion. That the Court declined to impose additional sanctions against Plaintiffs' counsel does not make Plaintiffs the "prevailing party," as the Motion for Attorneys' Fees and Costs was granted. Moreover, Plaintiffs have not properly sought Rule 11 sanctions against Defendants;

117. There is no statute or rule that allows for the filing of an Opposition after a Motion has been granted. The Opposition was improper and should not have been belatedly filed. It compelled Defendants to further respond, causing Defendants to incur further unnecessary attorneys' fees and costs;

Plaintiffs' Motion for Court to Reconsider Order of Dismissal

118. Plaintiffs seek reconsideration pursuant to NRCP 60(b) based on the alleged "misrepresentation" of the Defendants regarding the Amended Master Declaration at the November 1, 2016 Hearing;

119. No such "misrepresentation" occurred. The record reflects that Mr. Jimmerson was reading correctly from the first page of the Amended Master Declaration, which states it was "effective October, 2000." The Court understood that to be the effective date and not necessarily the date it was signed or recorded. Defendants also provided the Supplemental Exhibit R which evidenced that the Amended Master Declaration was recorded on August 16, 2002, and reiterated it was "effective October, 2000," as Defendants' counsel accurately stated. This exhibit also negated Plaintiffs' earlier contention that the Amended Master Declaration had not been recorded at all. Therefore, not only was there no misrepresentation, there was transparency by the Defendants in open Court;

120. The Amended Master Declaration did not "take out" the 27-hole golf course from the definition of "Property," as Plaintiffs erroneously now allege. More accurately, it excluded the entire 27-hole golf course from the possible Annexable Property. This means that not only was it never annexed, and therefore never made part of the Queensridge CIC, but it was no longer even *eligible* to be annexed in the future, and thus could never become part of the Queensridge CIC;

121. It is significant, however, that there are two (2) recorded documents, the Master Declaration and the Amended Master Declaration, which both make clear in Recital A that the GC Land, since it was not annexed, is not a part of the Queensridge CIC;

122. Whether the Amended Master Declaration, effective October, 2000, was recorded in October, 2000, March, 2001 or August, 2002, does not matter, because, as Defendants pointed out at the hearing, Mr. Peccole's July 2000 Deed indicated it was "subject to the CC&Rs that were recorded at the time and as may be amended in the future" and that the "CC&Rs which he knew were going to be amended and subject to being amended, were amended;"

123. The only effect of the Amended Master Declaration's language that the "entire 27-hole golf course is not a part of the Property or the Annexable Property" instead of just the "18 holes," is that the 9 holes which were never annexed were no longer even annexable. Effectively, William and Wanda Peccole and their entities took that lot off the table and made clear that this lot would not and could not later become part of the Queensridge CIC;

124. None of that means that the 9-holes was a part of the "Property" before—as this Court clearly found, it was not. The 1996 Master Declaration makes clear that the 9-holes was only Annexable Property, and it could only become "Property" by recording a Declaration of Annexation. This never occurred;

125. The real relevance of the fact that the Amended Master Declaration was recorded, in the context of the Motion to Dismiss, is that, pursuant to *Brelint v. Preferred Equities*, 109 Nev. 842, the Court is permitted to take judicial notice of, and take into consideration, recorded documents in granting or denying a motion to dismiss;

126. Plaintiffs ignore the fact that notwithstanding the fact that the Amended Master Declaration, effective October, 2000, was not recorded until August, 2002, Plaintiffs transferred Deed to their lot twice, once in 2013 into their Trust, and again in September, 2016, both times

after the Amended Master Declaration (which they were, under their Deeds, subject to) was recorded and both times with notice of the development rights and zoning rights associated with the adjacent GC Land;

127. Plaintiffs' argument that the Amended Master Declaration is "invalid" because it "did not contain the certification and signatures of the Association President and Secretary" is irrelevant, since the frivolousness of Plaintiffs' position is based on the original Master Declaration and not the amendment. But this Court notes that the Declarations of Annexation which are recorded do not contain such signatures of the Association President and Secretary either. Hypothetically, if that renders such Declarations of Annexation "invalid," then Parcel 19, where Plaintiffs' home sits, was never properly "annexed" into the Queensridge CIC, and thus Plaintiffs would have no standing to assert the terms of the Master Declaration against anyone, even other members of the Queensridge CIC. This last minute argument is without basis in fact or law;

128. A Motion for reconsideration under EDCR 2.24 is only appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). And so motions for reconsideration that present no new evidence or intervening case law are "superfluous," and it is an "abuse of discretion" for a trial court to consider such motions. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76).

129. Plaintiffs' request that the Order be reconsidered because it does not consider issues subsequent to the City Council Meeting of November 16, 2016 is also without merit. The Motion to Dismiss was heard on November 1, 2016 and the Court allowed the parties until November 15, 2016 to supplement their filings. Although late filed, Plaintiffs did file "Additional Information to Brief," and their "Renewed Motion for Preliminary Injunction," on

November 18, 2016—before issuance of the *Findings of Fact, Conclusions of Law, Order and Judgment* on November 30th --putting the Court on notice of what occurred at the City Council Meeting. However, as found hereinabove, the withdrawal and abeyance of City Council Applications does not matter in relation to the Motion to Dismiss. Plaintiffs did not possess "vested rights" over Defendants' GC Land before the meeting and they do not possess "vested rights" over it now;

130. Plaintiffs' objection to the Findings relating NRS 116, NRS 278, NRS 278A and R-PD7 zoning is also without merit, because those Findings are supported by the Supplements timely filed by Defendants, and those statutes and the zoning issue are all relevant to this case with respect to Defendants' right to develop their land. This was raised and discussed in the Motion to Dismiss and Opposition to the first Motion for Preliminary Injunction, and properly and timely supplemented. Defendants did specifically and timely submit multiple documents, including the Declaration of City Clerk Luann Holmes to attest to the fact that NRS 278A does not apply to this controversy, and thus it is clear that the GC Land is not part of or within a planned unit development. Plaintiffs do not even possess standing to assert a claim under NRS 278A, as they are governed by NRS 116. Further, Defendants' deeds contain no title exception or reference to NRS 278A, as would be required were NRS 278A to apply, which it does not;

131. Recital B of the Master Declaration states that Queensridge is a "common interest community pursuant to Chapter 116 of the Nevada Revised Statutes." Plaintiffs raised issues concerning NRS 278A. While Plaintiffs may not have specifically cited NRS 278A in their Amended Complaint, in paragraph 67, they did claim that "The City of Las Vegas with respect to the Queensridge Master Planned Development required 'open space' and 'flood drainage' upon the acreage designated as golf course (The Badlands Golf Course)." NRS 278A, entitled "Planned Unit Development," contains a framework of law on Planned Unit Developments, as

defined therein, and their 'common open space.' NRS 116.1201(4) states that the provisions of NRS 278A do not apply to NRS 116 common-interest communities like Queensridge. Thus, while Plaintiffs may not have directly mentioned NRS 278A, they did make an allegation invoking its applicability;

132. Zoning on the subject GC Land is appropriately referenced in the November 30, 2016 *Findings of Fact, Conclusions of Law, Order and Judgment,* because Plaintiffs contended that the Badlands Golf Course was open space and drainage, but the Court rejected that argument, finding that the subject GC Land was zoned R-PD7;

133. Plaintiffs now allege that alter-ego claims against the individual Defendants (Lowie, DeHart and Pankratz) should not have been dismissed without giving them a chance to investigate and flush out their allegations through discovery. But no alter ego claims were made, and alter ego is a remedy, not a cause of action. The only Cause of Action in the Amended Complaint that could possibly support individual liability by piercing the corporate veil is the Fraud Cause of Action. The Court has rejected Plaintiffs' Fraud Cause of Action, not solely on the basis that it was not plead with particularity, but, more importantly, on the basis that Plaintiffs failed to state a claim for Fraud because Plaintiffs have never alleged that Lowie, DeHart or Pankratz made any false representations to them prior to their purchase of their lot. The Court further notes that in Plaintiffs' lengthy oral argument before the Court, the Plaintiffs did not even mention its claim for, or a basis for, its fraud claim. The Plaintiffs have offered insufficient basis for the allegations of fraud in the first place, and any attempt to re-plead the same, on this record, is futile;

134. Fraud requires a false representation, or, alternatively an intentional omission when an affirmative duty to represent exists. See *Lubbe v. Barba*, 91 Nev. 596, 541 P.2d 115 (1975). Plaintiffs alleged Fraud against Lowie, DeHart and Pankratz, while admitting they never

spoke with any of the prior to the purchase of their lot and have never spoken to them prior to this litigation. Plaintiffs' Fraud Cause of Action was dismissed because they cannot state facts that would support the elements of Fraud. No amount of additional time will cure this fundamental defect of their Fraud claim;

135. Plaintiffs claim that the GC Land that later became the additional nine holes was "Property" subject to the CC&Rs of the Master Declaration at the time they purchased their lot, because Plaintiffs purchased their lot between execution of the Master Declaration (which contains an exclusion that "The existing 18-hole golf course commonly known as the 'Badlands Golf Course' is not a part of the Property or the Annexable Property") and the Amended and Restated Master Declaration (which provides that "The existing 27-hole golf course commonly known as the 'Badlands Golf Course' is not a part of the Property or the Annexable Property"), is meritless, since it ignores the clear and unequivocal language of Recital A (of both documents) that "In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded..."

136. All three of Plaintiffs' claims for relief in the Amended Complaint are based on the concept of Plaintiffs' alleged vested rights, which do not exist against Defendants;

137. There was no "misrepresentation," and there is no basis to set aside the Order of Dismissal;

138. In order for a complaint to be dismissed for failure to state a claim, it must appear beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (emphasis added);

139. It must draw every fair inference in favor of the non-moving party. *Id.* (emphasis added);

140. Generally, the Court is to accept the factual allegations of a Complaint as true on a Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of the claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010);

141. Plaintiffs have failed to state a claim upon which relief can be granted, even with every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no set of facts which would entitle them to relief. The Court has grave concerns about Plaintiffs' motives in suing these Defendants for fraud in the first instance;

Defendants' Memorandum of Costs and Disbursements

142. Defendants' Memorandum of Costs and Disbursements was timely filed and served on December 7, 2016;

143. Pursuant to NRS 18.110, Plaintiffs were entitled to file, within three (3) days of service of the Memorandum of Costs, a Motion to Retax Costs. Such a Motion should have been filed on or before December 15, 2016

144. Plaintiffs failed to file any Motion to Retax Costs, or any objection to the costs whatsoever. Plaintiffs have therefore waived any objection to the Memorandum of Costs, and the same is now final;

145. Defendants have provided evidence to the Court along with their Verified Memorandum of Costs and Disbursements, demonstrating that the costs incurred were reasonable, necessary and actually incurred. *Cadle Co. v. Woods & Erickson LLP*, 131 Nev. Adv. Op. 15 (Mar. 26, 2015);

Defendants' Countermotions for Attorneys' Fees and Costs

146. The Court has allowed Plaintiffs to enter thirteen (13) exhibits, only three (3) of which had been previously produced to opposing counsel, by attaching them to Plaintiffs' "*Additional Information to Renewed Motion for Preliminary Injunction*," filed November 28,

2016. The Exhibits should have been submitted and filed on or before November 15, 2016, in advance of the hearing, and shown to counsel before being marked. The Court has allowed Plaintiffs to make a record and to enter never before disclosed Exhibits at this post-judgment hearing, including one document dated January 6, 2017, over Defendants' objection that there has been no Affidavit or competent evidence to support the genuineness and authenticity of these documents, as well as because of their untimely disclosure. The Court notes that Plaintiffs should have been prepared for their presentation and these Exhibits should have been prepared, marked and disclosed in advance, but Plaintiffs failed to do so. *EDCR 7.60(b)(2);*

147. The efforts of Plaintiffs throughout these proceedings to repeatedly, vexatiously attempt to obtain a Preliminary Injunction against Defendants has indeed resulted in prejudice and substantial harm to Defendants. That harm is not only due to being forced to incur attorneys' fees, but harm to their reputation and to their ability to obtain financing or refinancing, just by the pendency of this litigation;

148. Plaintiffs are so close to this matter that even with counsel's experience, he fails to follow the rules in this litigation. Plaintiffs' accusation that the Court was "sleeping" during his oral argument, when the Court was listening intently to all of Plaintiffs' arguments, is objectionable and insulting to the Court. It was extremely unprofessional conduct by Plaintiff;

149. Plaintiffs' claim of an alleged representation that the golf course would never be changed, if true, was alleged to have occurred sixteen (16) years prior to Defendants acquiring the membership interests in Fore Stars, Ltd. Of the nineteen (19) Defendants, twelve (12) were relatives of Plaintiffs or entities of relatives, all of whom were voluntarily dismissed by Plaintiffs. The original Complaint faulted the Peccole Defendants for not "insisting on a restrictive covenant" on the golf course limiting its use, which would not have been necessary if

the Master Declaration applied. This was a confession of the frivolousness of Plaintiffs' position. *NRS 18.010(2)(b); EDCR 7.60(b)(1)*;

150. Between September 1, 2016 and the date of this hearing, there were approximately ninety (90) filings. This multiplication of the proceedings vexatiously is in violation of EDCR 7.60. *EDCR 7.60(b)(3)*;

151. Three (3) Defendants, Lowie, DeHart and Pankratz, were sued individually for fraud, without one sentence alleging any fraud with particularity against these individuals. The maintenance of this action against these individuals is a violation itself of NRS 18.010, as bad faith and without reasonable ground, based on personal animus;

152. Additionally, EDCR 2.30 requires that any Motion to amend a complaint be accompanied by a proposed amended Complaint. Plaintiffs' failure to do so is a violation of EDCR 2.30. EDCR 7.60(b)(4);

153. Plaintiffs violated EDCR 2.20 and EDCR 2.21 by failing to submit their Motions upon sworn Affidavits or Declarations under penalty of perjury, which cannot be cured at the hearing absent a stipulation. *Id.;*

154. Plaintiffs did not file any post-judgment Motions under NRCP 52 or 59, and two of their Motions, namely the *Motion to Reconsider Order of Dismissal* and the *Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs*, were untimely filed after the 10 day time limit contained within those rules, or within EDCR 2.24.

155. Plaintiffs also failed to seek leave of the Court prior to filing its Renewed Motion for Preliminary Injunction or its Motion to Reconsider Order of Dismissal. *Id.;*

156. Plaintiffs' Opposition to Countermotion for Attorneys' Fees and Costs, filed January 5, 2017, was an extremely untimely Opposition to the October 21, 2016 Motion for

Attorneys' Fees and Costs, which was due on or before November 10, 2016. All of these are failures or refusals to comply with the Rules. *EDCR 7.60(b)(4);*

157. While it does not believe Plaintiffs are intentionally doing anything nefarious, they are too close to this matter and they have refused to heed the Court's Orders, Findings and rules and their actions have severely harmed the Defendants;

158. While Plaintiffs claim to have researched the *Eagle Thrifty* case prior to filing the initial Complaint, admitting they were familiar with the requirement to exhaust the administrative remedies, they filed the first Motion for Preliminary Injunction anyway, in which they failed to even cite to the *Eagle Thrifty* case, let alone attempt to exhaust their administrative remedies;

159. Plaintiffs' motivation in filing these baseless "preliminary injunction" motions was to interfere with, and delay, Defendants' development of their land, particularly the land adjoining Plaintiffs' lot. But while the facts, law and evidence are overwhelming that Plaintiffs ultimately could not deny Defendants' development of their land, Plaintiffs have continued to maintain this action and forced Defendants to incur substantial attorneys' fees to respond to the unsupported positions taken by Plaintiffs, and their frivolous attempt to bypass City Ordinances and circumvent the legislative process. These actions continue with the current four (4) Motions and the Opposition;

160. Plaintiffs' Renewed Motion for Preliminary Injunction (a sixth attempt), Plaintiffs' untimely Motion to Amend Amended Complaint (with no proposed amendment attached), Plaintiffs' untimely Motion to Reconsider Order of Dismissal, Plaintiffs' Motion for Evidentiary Hearing and Stay of Rule 11 Fees and Costs (which had been denied) and Plaintiffs' untimely Opposition were patently frivolous, unnecessary, and unsupported, and so multiplied the proceedings in this case so as to increase costs unreasonably and vexatiously;

161. Plaintiffs proceed in making "scurrilous allegations" which have no merit, and to asset "vested rights" which they do not possess against Defendants;

162. Considering the length of time that the Plaintiffs have maintained their action, and the fact that they filed four (4) new Motions after dismissal of this action, and ignored the prior rulings of the Court in doing so, and ignored the rules, and continued to name individual Defendants personally with no basis whatsoever, the Court finds that Plaintiffs are seeking to harm the Defendants, their project and their land, improperly and without justification. Plaintiffs' emotional approach and lack of clear analysis or care in the drafting and submission of their pleadings and Motions warrant the award of reasonable attorney's fees and costs in favor of the Defendants and against the Plaintiffs. *See EDCR 7.60 and NRS 18.010(b)(2)*;

163. Pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), Defendants have submitted affidavits regarding attorney's fees and costs they requested, in the sum of $7,500 per Motion. Considering the number of Motions filed by Plaintiffs on an Order Shortening Time, including two not filed or served until December 22, 2016, and an Opposition and Replies to two Motions filed by Plaintiffs on January 5, 2017, which required response in two (2) business days, the requested sum of $7,500 in attorneys' fees per each of the four (4) motions is most reasonable and necessarily incurred. Given the detail within the filings and the timeframe in which they were prepared, the Court finds these sums , totaling $30,000 ($7,500 x 4) to have been reasonably and necessarily incurred;

Plaintiffs' Oral Motion for Stay Pending Appeal.

164. Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs failed to show that the object of their potential appeal will be defeated if their stay is denied, they failed to show that they would suffer irreparable harm or serious injury if the stay is not issued, and they failed to show a likelihood of success on the merits.

ORDER AND JUDGMENT

NOW, THEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Renewed Motion for Preliminary Injunction* is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' *Motion For Leave To Amend Amended Complaint*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Court To Reconsider Order Of Dismissal*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' Countermotion to Strike *Plaintiffs' Rogue and Untimely Opposition Filed 1/5/17 (titled Opposition to "Countermotion" but substantively an Opposition to the 10/21/16 Motion for Attorney's Fees And Costs, granted November 21, 2016)*, is hereby granted, and such Opposition is hereby stricken;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' request for $20,818.72 in costs, including the $5,406 already awarded on November 21, 2016, and the balance of $15,412.72 in costs through October 20, 2016, pursuant to their timely *Memorandum of Costs and Disbursements*, is hereby granted and confirmed to Defendants, no Motion to Retax having been filed by Plaintiffs. Said costs are hereby reduced to Judgment, collectible by any lawful means;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judgment entered in favor of Defendants and against Plaintiffs in the sum of $82,718.50, comprised of $77,312.50

in attorneys' fees and $5,406 in costs relating only to the preliminary injunction issues after the September 2, 2016 filing of Defendants' first Opposition through the end of the October, 2016 billing cycle, is hereby confirmed and collectible by any lawful means;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Countermotion for Attorneys' Fees relating to their responses to Plaintiffs four (4) motions and one (1) opposition, and the time for appearance at this hearing, is hereby GRANTED. Defendants are hereby awarded additional attorneys' fees in the sum of $30,000 relating to those matters pending for this hearing;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, therefore, Defendants are awarded a total sum of $128,131.22 ($20,818.72 in attorneys' fees and costs, including the $5,406 in the November 21, 2016 Minute Order and confirmed by the Fee Order filed January 20, 2017, $77,312.50 in attorneys' fees pursuant to the November 21, 2016 Minute Order, as incorporated within and confirmed by Fee Order filed January 20, 2017, and $30,000 in additional attorneys' fees relating to the instant Motions, Oppositions and Countermotions addressed in this Order), which is reduced to judgment in favor of Defendants and against Plaintiffs, collectible by any lawful means, plus legal interest;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' oral Motion for Stay pending appeal is hereby denied;

DATED this 31 day of January, 2017.

DISTRICT COURT JUDGE
A-16-739654-C

BA

4

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; ROBERT N. and NANCY C. PECCOLE, individuals, and Trustees of the ROBERT N. and NANCY PECCOLE TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; and ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST,

Plaintiffs,

vs.

FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; and THE CITY OF LAS VEGAS

Defendants.

CASE NO.: A-15-729053-B
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DEPARTMENT XXVII

CLERK OF THE COURT

ORDER GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC AND SEVENTY ACRES, LLC'S MOTION TO DISMISS THE SECOND CAUSE OF ACTION OF FIRST AMENDED COMPLAINT AND DEFENDANT CITY OF LAS VEGAS' MOTION TO DISMISS THE SECOND CAUSE OF ACTION OF FIRST AMENDED COMPLAINT

THE COURT FINDS after review that on November 14, 2016, Defendants Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC filed a Motion to Dismiss Plaintiff's First Amended Complaint and on November 14, 2016, Defendant City of Las Vegas filed a separate Motion to Dismiss Plaintiff's First Amended Complaint (collectively the "Motions"). On December 29, 2016, Plaintiffs' filed an Opposition to the Motions and a Countermotion under NRCP 56(f).

THE COURT FURTHER FINDS after review that the Motions and Countermotion were set for a Hearing on Motions Calendar on February 2, 2017. Following the hearing, the Court took the matter under advisement regarding the Plaintiffs' second claim for relief for declaratory judgment based on NRS Chapter 278A.

THE COURT FURTHER FINDS after review that NRS Chapter 278A does not apply to common interest communities pursuant to NRS 116.1201(4). Plaintiffs claim ownership interest in the common interest communities known as Queensridge or One Queensridge Place. For this reason, NRS Chapter 278A is not applicable and Plaintiffs' request for declaratory judgment fails to state a claim upon which relief can be granted.

THE COURT FUTHER FINDS after review that NRS Chapter 278A only applies to the City of Las Vegas upon enactment of ordinances which the City of Las Vegas has not adopted. Queensridge or One Queensridge Place, as part of the Peccole Ranch Master Plan Phase II, is located within the City of Las Vegas and for this additional reason NRS Chapter 278A is not applicable to the instant case and Plaintiffs' requested for declaratory judgment fails to state a claim upon which relief can be granted.

THE COURT ORDERS for good cause appearing, Defendant Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC's Motion to Dismiss Plaintiff's second cause of action for declaratory relief in Plaintiff's First Amended Complaint is **GRANTED**.

THE COURT FURTHER ORDERS for good cause appearing, Defendant City of Las Vegas' Motion to Dismiss Plaintiff's second cause of action for declaratory relief in Plaintiff's First Amended Complaint is **GRANTED**.

THE COURT FURTHER ORDERS for good cause appearing, Plaintiff's Countermotion under NRCP 56(f) is **DENIED**. Defendant Fore Stars, Ltd., 180 Land

Co., LLC, and Seventy Acres to draft Findings of Fact and Conclusions of Law in an Order pursuant to the Court's Order dated March 22, 2017, and to present them only after all parties' counsel have the ability to review and approve the form of the Findings and Conclusions.

THE COURT FURTHER ORDERS for good cause appearing, the status check set for March 21, 2017 is vacated.

Dated: March 22, 2017

Nancy Allf

NANCY ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed I caused the foregoing document to be electronically served pursuant to EDCR 8.05(a) and 8.05(f), through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and by email to:

Greenberg Traurig – Mark E. Ferrario, Esq.
ferrariom@gtlaw.com

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Plaintiffs,

v.

FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; and THE CITY OF LAS VEGAS,

Defendants.

Case No.: A-15-729053-B

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

PLEASE TAKE NOTICE that a "Finding of Fact, Conclusions of Law and Order Granting in Part and Denying in Part, Defendant City of Las Vegas' Motion to Dismiss Plaintiff's First Amended Complaint, and Defendants' Fore Stars, Ltd; 180 Land Co., LLC, Seventy Acres, LLC's Motion to Dismiss Plaintiff's First Amended Complaint, and Denying Plaintiff's Countermotion Under NRCP 56(f)" was entered in the above-captioned matter on May 2, 2017, a true and correct copy of which is attached hereto.

DATED this 3rd day of May, 2017.

PISANELLI BICE

By: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Dustun H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of May, 2017, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** to the following:

Mark E. Ferrario, Esq.
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lvlitdock@gtlaw.com

and

James J. Jimmerson, Esq., Bar No. 264
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Attorney for Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC

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Attorneys for the City of Las Vegas

/s/ Shannon Dinkel
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

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Steven D. Grierson
CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROL YN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J.SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER

Plaintiffs,

vs.

FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; and THE CITY OF LAS VEGAS,

Defendants.

CASE NO. A-15-729053-B

DEPT. NO. XXVII

Courtroom #3A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART AND DENYING IN PART, DEFENDANT CITY OF LAS VEGAS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, AND DEFENDANTS' FORE STARS, LTD; 180 LAND CO., LLC, SEVENTY ACRES, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, AND DENYING PLAINTIFF'S COUNTERMOTION UNDER NRCP 56(f)

Date of Hearing: February 2, 2017

Time of Hearing: 1:30 pm

THIS MATTER coming on for hearing on the 2nd day of February, 2017 on Defendants CITY OF LAS VEGAS' *Motion to Dismiss Plaintiffs' First Amended Complaint*, and Defendants FORE STARS, LTD; 180 LAND CO., LLC, SEVENTY ACRES, LLC'S *Motion to Dismiss Plaintiffs' First Amended Complaint*, and Plaintiffs' Oppositions thereto, and Countermotions under NRCP 56(f), and the Court having reviewed the papers and pleadings on file and heard the arguments of counsel at the hearing, and good cause appearing hereby

FINDS and ORDERS as follows:

1. Plaintiffs First Amended Complaint alleges two causes of action. Plaintiffs' first cause of action alleges Defendants violated NRS 278.4925 and LVMC § 19.16.070 in the recordation of a parcel map. Plaintiffs' second cause of action alleges a claim for declaratory relief based upon, as Plaintiffs allege, "Plaintiffs' rights to notice and an opportunity to be heard prior to the recordation of any parcel map," and "Plaintiffs' rights under NRS Chapter 278A and the City's attempt to cooperate with the other Defendants in circumventing those rights." (First Amended Complaint, p. 16).

2. Defendants' Motions to Dismiss Plaintiffs' First Amended Complaint are made pursuant to NRCP 12(b)(5). Accordingly, the Court must "regard all factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party." *Stockmeier v. Nevada Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008). The court may not consider matters outside the allegations of Plaintiffs' complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

3. The Court finds that Plaintiffs have stated claims upon which relief may be granted as it relates to the parcel map recording alleged in Plaintiffs' First Amended Complaint.

4. Moreover, the Court finds that Plaintiffs have standing and rejects Defendants' argument that Plaintiffs have failed to exhaust their administrative remedies as no notice was provided to Plaintiffs.

5. The Court took under submission Defendant's Motion to Dismiss the Second Cause of Action in Plaintiffs' First Amended Complaint (Declaratory Relief) as to whether Plaintiffs have any rights under NRS 278A over Defendants' property. Plaintiffs seek an order "declaring that NRS Chapter 278A applies to the Queenridge/Badlands development and that no modifications may be made to the Peccole Ranch Master Plan without the consent of property owners" and "enjoining Defendants from taking any action (iii) without complying with the provisions of NRS Chapter 278A." (First Amended Complaint, p. 16).

6. The Court finds that Plaintiffs' second claim for relief for declaratory judgment based upon NRS Chapter 278A fails to state a claim upon which relief may be granted.

...

7. The Court finds that pursuant to NRS 116.1201(4) as a matter of law NRS Chapter 278A does not apply to common interest communities. NRS 116.1201(4) provides, "The provisions of chapters 117 and 278A of NRS do not apply to common interest communities." Plaintiffs have alleged ownership interest in the common interest communities as defined in NRS Chapter 116 known as Queensridge or One Queensridge Place. For this reason, NRS Chapter 278A is not applicable to Plaintiffs' claim.

8. The Court further finds that a "planned unit development" as used and defined in NRS 278A only applies to the City of Las Vegas upon enactment of an ordinance in conformance with NRS 278A. Plaintiffs allege that Queensridge or One Queensridge Place is part of the Peccole Ranch Master Plan Phase II that is located within the City of Las Vegas. The City of Las Vegas has not adopted an ordinance in conformance with NRS 278A and for this additional reason NRS Chapter 278A is not applicable and Plaintiffs' request for declaratory judgment based upon NRS Chapter 278A fails to state a claim upon which relief can be granted.

9. Because the Court finds that Plaintiffs' claim for declaratory judgment based upon NRS 278A fails under Rule 12(b)(5) of the Nevada Rules of Civil Procedure, Plaintiffs' countermotion under NRCP 56(f) is denied.

ORDER

NOW, THEREFORE:

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss the First Cause of Action (Breach of NRS 278 and LVMC 19.16.070) and Second Cause of Action based upon the recordation of the parcel map in Plaintiffs' First Amended Complaint is hereby DENIED;

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss the Second Cause of Action (Declaratory Relief) based upon NRS 278A in Plaintiffs' First Amended Complaint is hereby GRANTED, and is hereby dismissed, with prejudice.

...

...

IT IS FURTHER ORDERED that Plaintiffs' Countermotion under NRCP 56(f) is hereby DENIED.

Dated this 1 day of May, 2017.

Nancy Allf
HONORABLE NANCY ALLF

Respectfully Submitted:

JIMMERSON LAW FIRM

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Attorneys for Fore Stars Ltd., 180 Land Co., LLC, and Seventy Acres, LLC

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Excerpt of Brad Jerbic from
10/18/2016 Planning Commission Meeting
Starting at 01:40:43

MR. JERBIC: I will be happy to. The - With all due respect to what everybody says, this is what I believe are the facts. When EMB acquired the property in Queensridge that's the Badlands golf course, they requested of the Planning Department a letter asking what the zoning classification, if there was any, for the golf course was at that time.

Planning provided two letters. One addressed three APN numbers. One addressed one APN number. Both of those letters identified those properties as having hard zoning RPD-7. RPD-7 no longer exists in our zoning code. But at the time it did exist, it allowed up to, that is up to, 7.49 units per acre. Because RPD-7 stands for residential planned development, the reason it is up to is you have to be compatible with surrounding land uses.

So as I have opined before, in my opinion, just my opinion, that if an individual were to come forward with RPD-7 and ask for seven and a half units per acre next to acre parcels, half-acre parcels, quarter-acre parcels, the

Planning Department would not ever recommend approval of that because it's not harmonious or compatible?

The other thing a lot of people have said is that gives you a right to build up to 7.9 units per acre. I have said it does not give you a right to build 7.9 units per acre. It gives you a right to ask. Now, does denial of 7.9 units per acre -- 7.49 units per acre amount to inverse condemnation? Absolutely not.

Mr. Schreck is correct. I have told him that. I have told the HOA meetings. Every meeting I have gone to I have said that. And the developer here will say the same thing. They do not believe that there is an inverse condemnation case if 7.49 units per acre were denied.

However, and this is where there will be some disagreement I'm sure, the developer did acquire property that has hard zoning. Many other golf courses here in town are zoned very specifically for civic use or for open space use. This golf course was not. I don't know why.

But 25 years ago or more when the hard zoning went into place, it covered the entire golf course, the 250 that was referenced by Mr. Kaempfer. As a result the developer has a right to come in and ask for some development there. What

that development is, how much there is is up to this Planning Commission and up to the Las Vegas City Council.

Excerpt of Brad Jerbic from
10/18/2016 Planning Commission Meeting
Ending at 01:43:05

[redacted]

[redacted]

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MOT
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Seventy Acres, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER

Plaintiffs,

vs.

FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; and THE CITY OF LAS VEGAS,

Defendants.

CASE NO. A-15-729053-B

DEPT. NO. XXVII

Courtroom #3A

DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC AND SEVENTY ACRES, LLC'S

MOTION FOR SUMMARY JUDGMENT ON ISSUE OF ALLEGED "UNLAWFULNESS" OF PARCEL MAP

Come now Defendants Fore Stars, Ltd. ("Fore Stars"), 180 Land Co., LLC ("180 Land Co") and Seventy Acres, LLC ("Seventy Acres") (collectively "Developer Defendants"), and hereby submit their Motion for Summary Judgment, to dismiss with prejudice the remaining claim(s) against them as it relates to Plaintiffs' baseless allegations that Fore Stars' submission of its parcel map, and/or the City of Las Vegas' approval and release of the same for recordation, was "unlawful" and/or that the same allegedly "breached" NRS 278 and LVMC 19.16.070.

This Motion is based on NRCP 56, the pleadings and papers on file herein, the attached memorandum of points and authorities, the Declaration of Frank Pankratz, attached hereto as **Exhibit "A,"** the Declaration of Counsel, attached hereto as **Exhibit "B,"** the Declaration of Paul Burn with CV, attached hereto as **Exhibit "C,"** the deposition testimony of representatives of the City of Las Vegas, representative(s) of the Plaintiffs, and representatives of the Developer Defendants, the supporting exhibits attached hereto, and any oral argument this Court should choose to entertain at a hearing on this motion.

Dated this 12th day of June, 2017.

JIMMERSON LAW FIRM, P.C.

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NOTICE OF MOTION

TO: ALL PARTIES AND ATTORNEYS OF RECORD

YOU AND EACH OF YOU will please take notice that the undersigned will bring the foregoing ***Defendants Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC's Motion for Summary Judgment On Issue Of Alleged "Unlawfulness" Of Parcel Map*** for hearing before the above-entitled Court in Department XXVII, on the 20th day of July, 2017, at 10:30 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard.

Dated this 12th day of June, 2017.

JIMMERSON LAW FIRM, P.C.

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415 South 6th Street, Suite 100
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Telephone: (702) 388-7171
Attorneys for *Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case involves claims by Plaintiffs concerning Defendants' alleged "violation of Nevada law in the recording of a parcel map" on June 15, 2015. *See Amended Complaint ¶ 1; 72-74; 76.* Plaintiff's Complaint fails in its claim the map was "unlawful," because as a matter of law, the preparation of such a parcel map, which merged three (3) contiguous large parcels of land (179.2 acres, 53.02 acres and 18.67 acres) and then divided the merged parcel into four (4) new parcels (166.99 acres, 70.52 acres, 11.28 acres and 2.13 acres), was not only proper, but was expressly required under state law and local ordinance. When dividing any land "into four lot or less" an applicant **shall** prepare a parcel map. *NRS 278.461.* Parcel maps merely draw boundary lines, and the map itself does not, on its own, grant entitlements for development, and therefore does not necessitate notice to abutting parcels.

Because Plaintiffs' claim has no merit, in an attempt to confuse the Court, Plaintiffs sprinkle half-truths throughout the Amended Complaint, citing various sections of NRS 278 (and NRS 278A), which have no applicability to the instant case. In fact, Plaintiffs' scurrilous allegations have no nexus to the law cited in the Amended Complaint. Indeed, Plaintiffs' Amended Complaint is based on the ***false*** legal premise that Developer Defendants were required to file a "tentative map" despite (1) clear statutory provisions *requiring* the filing of a parcel map because it involved "four lots or less" (*See NRS 278.461*), and (2) clear statutory provisions requiring the filing of tentative maps only where land is subdivided into five (5), or more, parcels, thereby creating a "subdivision". (*See NRS 278.320)*

Under NRS Chapter 278 — Planning and Zoning, the statutory requirements for the creation of a "parcel map" are separate and distinct (under Sections NRS 278.461-469) from the statutory requirements for the creation of a "tentative map" when creating a

"subdivision" (NRS 278.320-329; 330-353). Similarly, Title 19 of the Unified Development Code of the City of Las Vegas ("LVMC"), the City of Las Vegas ordinances that govern mapping, also differentiates between a "Parcel Map," and a "Tentative Map," and details the process for each within separate sections of the LVMC. The "tentative map" sections simply do not apply to the parcel map filed by Developer Defendants, and Plaintiffs' improper attempt to apply the "tentative map" requirements a parcel map filed *two years ago* is nothing more than a transparent attempt to delay development, and avoid the "arbitrary and capricious" standard they would have to meet if they filed suit *after* exhausting their administrative remedies. In fact, during the period of pendency of the meritless Amended Complaint wherein Plaintiffs claim they were denied public notice (for an administrative action redrawing the property boundaries to land, but not affecting development entitlements), Plaintiffs have received countless notices and actively participated in Planning Commission and City Council hearings relating specifically to Developer Defendants requests to revise entitlements on their property.

Additionally, since their underlying claim regarding the June 18, 2015 parcel map—the only parcel map referenced and objected to in their Amended Complaint—has no merit, Plaintiffs raised an entirely new claim in their Opposition to Defendants' Motion to Dismiss, that Developer Defendants have engaged in "serial mapping" in order to "evade" the requirements of NRS 278. While these factual allegations are entirely false and contained nowhere in the Amended Complaint, that claim, if they *had* been made therein, as a matter of law, they would also have to be dismissed, as they are unsupported by Nevada law.

As will be shown herein, the Plaintiffs have failed to create any genuine issue of material fact, and further have glaringly distorted the clear and controlling law that applies to parcel map processing. Indeed, both parties agree that this matter is a straightforward statutory interpretation case for this Honorable Court to resolve. The City of Las Vegas

parcel map approval process is a pure issue of law only, which is ripe for a dispositive ruling from this Honorable Court. This Motion for Summary Judgment should be granted, and the Amended Complaint should be dismissed as a matter of law.

II. STATEMENT OF RELEVANT FACTS

A. THE PARCEL MAP FILED BY FORE STARS, LTD IN JUNE, 2015.

1. On March 2, 2015, the date that the entity Fore Stars, Ltd. changed ownership, it owned four (4) parcels of land,[1] as follows:

a. APN# 138-31-713-002: 179.2 acres
b. APN# 138-31-610-002: 53.02 acres
c. APN# 138-31-212-002: 18.67 acres
d. APN# 138-31-712-004: 0.22 acres (never became part of a subsequent parcel map)

Division of land by parcel map for the purpose of sale or financing is a routine and typical. This was the purpose in the instant case. Fore Stars' was using its property as collateral for a loan. Because Fore Stars did not wish to pledge all 250 acres as security for the loan, Fore Stars reconfigured the boundaries of its property, re-drawing three lots[2] into four lots creating a 70 acre parcel which was then pledged as collateral for the loan. That 70-acre parcel was then transferred to a newly formed entity, Seventy Acres, LLC.

Map revisions requires the engagement of "a professional land surveyor" to survey the property and prepare appropriate maps for submission and consideration by the City of Las Vegas, one that is "licensed by the state licensing board" which "guarantees that the licensee, the professional land surveyor has a minimum professional competency."[3] In this case, Developer Defendants engaged GCW Engineering, which "puts a great number of

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[1] See depiction of Acquisition Parcels attached hereto as **Exhibit "D."**
[2] A fourth lot, a tiny 0.22 acre parcel owned by Fore Stars was never part of any later Parcel Map.
[3] *See*, e.g., Excerpts from Transcript of Alan Reikki, City Surveyor, attached as **Exhibit "J,"** at 56:24-57:4; 57.

maps through the system,"[4] and whose Director, Paul Burn, Mr. Burn has 38 years of experience as a licensed, registered professional land surveyor and supervisor, with extensive mapping knowledge, familiarity with local conditions, and expertise in a vast array of development conditions.[5] Paul Burn created and oversaw the parcel map at issue, and attests that he "followed the law" in the preparation of the subject map, and that its classification and recordation as a "parcel map" was "appropriate".[6]

2. Thus, the three lots reflected in 1.a., b., and c. above, became four lots by virtue of PM 120-49 (referred to as Parcel Map 59572 by Douglas Rankin)[7] (06/18/2015), filed by Fore Stars, Ltd., all created as part of the same parcel map as follows:

a. Lot 1: APN#138-32-202-001: 2.13 acres.

b. Lot 2: APN# 138-32-301-004: 70.52 acres. This lot was created and used as collateral for financing purposes.

c. Lot 3: APN#138-31-702-002: 166.99 acres.

d. Lot 4: APN# 138-31-801-002: 11.28 acres.

The parcel map is attached hereto as **Exhibit "E,"** and the visual depiction of the four (4) lots created by this division is attached hereto as **Exhibit "F."** At the time the Parcel Map was submitted, a beneficiary Statement for NLV, LLC was also submitted as required.[8] The Court should note that this is the **only** Parcel Map Plaintiffs reference in their Amended Complaint and, therefore, is the only Parcel Map at issue in this litigation.

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[4] *Id.*
[5] *See* Declaration and CV of Paul Burn, Exhibit "C."
[6] *Id.*
[7] Parcel Maps are colloquially referenced by their File Book and Page number, and not the PMP number that Mr. Rankin incorrectly uses. For ease of comparison to the maps referenced by Mr. Rankin in his Declaration, however, both references are being used here.
[8] *See* Beneficiary Statement attached hereto as **Exhibit "G."** *See,* also, Excerpts from Riekki Deposition, **Exhibit "J,"** at 169:18-170:5.

B. DISCOVERY CONFIRMED THAT FILING THE PARCEL MAP WAS APPROPRIATE AND LAWFUL.

Plaintiffs and Defendants each took the depositions of: 1) Tom Perrigo, City Planning Department Director, 2) Peter Lowenstein, City of Las Vegas Planning Manager, 3) Alan Riekki, the City Surveyor for the City of Las Vegas, and 4) Doug Rankin, a former Planning Manager in the City of Las Vegas Planning Department and witness for the Plaintiffs herein. Each of these witnesses was asked questions directly regarding the propriety and legality of Developer Defendants' use of parcel maps on June 18, 2015 and afterwards.

Mr. Rankin, *a witness for the Plaintiffs*, was an employee of the City of Las Vegas Planning Department at the time the June 18, 2015 Parcel Map application was submitted. Mr. Rankin testified that he **did not believe** that the City Planning Department did anything to hurt the Plaintiffs and benefit the Developer Defendants.[9] Mr. Rankin testified that the City's approval of the Developer Defendants' Parcel Map at issue in this litigation, based upon his experience as a former City Planning Department Manager, was based upon the City's good faith belief that the Developer Defendants' request is consistent with the law.[10] Rankin admitted that he would defer to City Surveyor Alan Riekki with regard to City of Las Vegas decisions regarding surveying and mapping.[11]

Indeed, there is no evidence that Mr. Rankin himself, or on behalf of the Planning Department at the time the Parcel Map application was filed, ever objected to the Parcel Map application as being improper or in contravention of Nevada law!!

Doug Rankin testified that it is usually nineteen (19) different departments and agencies at the City of Las Vegas, and several professionals outside the City of Las Vegas, review each map as part of the mapping and land division process.[12] He believed the men and women of these departments and agencies to be competent in their duties.[13] Mr. Rankin,

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[9] *See* Excerpt from Deposition of Doug Rankin of May 3, 2017, attached as **Exhibit "H",** at p. 323/ln. 24-324/ln. 5.
[10] **Exhibit "H,"** Excerpts from Deposition of Doug Rankin at p. 272/ln. 12-20.
[11] **Exhibit "H,"** Excerpts from Deposition of Doug Rankin at p. 220/ln. 7-15.
[12] **Exhibit "H,"** Excerpts from Deposition of Doug Rankin at p. 159/ln. 1-20.
[13] **Exhibit "H,"** Excerpts from Deposition of Doug Rankin at p. 234/ln. 14-19.

again, Plaintiff's witness, even confirmed that he was unaware of anything "improper" with respect to the parcel map approvals, and both the City, and the Developer Defendants, acted in "good faith," and the issue is one of law:[14]

> Q. As far as you know, did **anyone approve a parcel map for any developer because of improper means, bribery or anything else**?
>
> A. **I'm not aware of any of that.**
>
> Q. Are you aware of any planner who approved parcel maps **as being in bed with or conniving with a developer**?
>
> A. **I've not aware of any of that.**
>
> Q. It certainly is expected that these decisions be made **on the merits** by the City Planning Department employees?
>
> A. **I believe so.**
>
> Q. And while you can disagree or they can disagree, **you believe that both sides are coming from a point of good faith**?
>
> MR. BICE: Objection to the form. Assumes facts not in evidence.
>
> BY MR. JIMMERSON:
>
> Q. As far as you know?
>
> A. **I believe they acted in good faith, as we are on our side.**
>
> Q. So what we have is a legal conclusion that is being disagreed upon, right?
>
> A. **I believe that is the point.**

City of Las Vegas Planning Director Tom Perrigo testified that he had read the Amended Complaint in this case—and specifically the allegations contained therein that the City acted in complicity with the Developer Defendants—and denied that those allegations were true or correct.[15] He was aware of no actions on the part of the City of Las Vegas that were improper or unlawful.[16] With regard to the Parcel Map process that is at issue in this

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[14] **Exhibit "H,"** Excerpts from Deposition of Doug Rankin at p. 235/ln. 2-22 (Emphasis added).
[15] *See* Deposition Transcript of Tom Perrigo, Vol. II of December 19, 2016, attached hereto as **Exhibit "I,"** at p. 420/ln. 20-421/ln. 1).
[16] **Exhibit "I,"** Excerpts from Deposition of Tom Perrigo at p. 421/ln. 5-8.

litigation, he provided the various Plaintiffs with open access to his agency and his processes and did not conduct business behind closed doors.[17] He maintained that the City did not act improperly or in complicity with Developer Defendants or others to deprive the Plaintiffs and other homeowners of an opportunity to be heard.[18]

City of Las Vegas City Surveyor, Alan Riekki testified that he had read Plaintiff's Amended Complaint and denied that the City of Las Vegas acted in complicity with the Developer Defendants for approval of the Parcel Maps at issue in this litigation as alleged in the Amended Complaint.[19] He also testified, explicitly that the parcel map "is not unlawful" because:

> "The parcel map was submitted in accordance with Chapter 278 of Nevada Revised Statutes and, also, in accordance with local ordinance."

He was aware of no activity or actions by Developer Defendants that suggested that they were trying to circumvent rules or regulations for which they are required to comply and there had been no conduct by Developer Defendants to circumvent the rules and regulations applicable to mapping.[20] He was unaware of any actions by Developer Defendants that were in violation of the Nevada Revised Statutes or the Uniform Development Code.[21] He further confirmed:[22]

> Q. Do you have **any information whatsoever to suggest or support the allegations by these plaintiffs that the City of Las Vegas has been complicit with the other codefendants, the developers here, my clients, with regard an attempt to evade any laws of mapping whatsoever?**
>
> MR. BICE: Objections to form.
>
> THE WITNESS: **No**

Mr. Riekki confirmed the lawfulness of the parcel map at page 20 of his deposition:[23]

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[17] **Exhibit "I,"** Excerpts from Deposition of Tom Perrigo at p. 422/ln 12-18
[18] **Exhibit "I,"** Excerpts from Deposition of Tom Perrigo at p. 423/ln. 10-13.
[19] *See* Excerpts from Deposition Transcript of Alan Riekki of May 23, 2017, attached as **Exhibit "J,"** at p. 13/ln. 6-14/ln 13).
[20] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 46/ln. 17-p. 47/ln. 7.
[21] **Exhibit "J"** Excerpts from Deposition of Alan Riekki at p. 48/ln. 22-25.
[22] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 49/ln. 16-23.
[23] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 20/ln. 5-17.

> Q. Now, as you read the plaintiff's amended complaint, they complain, as I read the complaint as well as you, that you -- that the recording, or that the approval of Exhibit Number 2, the parcel map, that was recorded in or about June 18th, 2015, was "unlawful." So knowing what it was before, three parcels, and then having it re -- having been divided into four parcels, why is that not unlawful? Another way to say, why is it proper? Why is it lawful?
>
> MR. BICE: Objection. Form.
>
> THE WITNESS: I believe it follows the provided-for statute for mergers and resubdivisions.

Indeed, he confirmed it was proper, citing NRS 278.4925 as allowing owners of adjoining properties to merge and resubdivide their parcels with a Parcel Map.[24] In this particular case, he testified, because all of the parcels were owned by the same entity, **"it is perfectly legal to apply for a map to merge all of those parcels into one parcel and to re—resubdivide them, which is exactly what happened."**[25] Mr. Riekki testified that the **"choice of parcel map has to do with the number of resultant lots that you're going to end up with. It has nothing to do with the character of the lots that you start with."**[26]

Mr. Riekki confirmed the correctness of Mr. Rankin's testimony that approximately nineteen (19) different departments and agencies at the City of Las Vegas and outside parties review each map, and testified that, in fact, at least two copies go outside the City to the Health Department and the Department of Water Resources.[27] Within the City Departments, copies go to Planning Department, Traffic Planning, Traffic Engineering, Development Coordination, Fire Department, Right-of-Way Section, amongst a "long list" of many others.[28]

Mr. Riekki further testified that the resulting lots created when the Developer Defendants' Parcel Maps were approved:"[29]

> A. In this particular case, because the resultant lots are so large, they certainly were not ready for development.

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[24] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 20/ln. 23-p. 21/ln. 4.
[25] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 22/ln. 15-21.
[26] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 43/ln. 15-18.
[27] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 25/ln. 9-23.
[28] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 26/ln. 6-15.
[29] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 39/ln. 15-22.

> Q. And to develop like a subdivision requirement, it would require using a tentative map and then ultimately moving to a final map; is that right?
>
> A. That's correct.

Unless Developer Defendants "wanted to build eight 50, 60-, 70-, 80-, 90-acre home sites," they would have to, at some point, use a Tentative Map and Final Map process to ultimately build out their property.[30] Mr. Riekki also confirmed that when Developer Defendants used the Parcel Map process, they were simply dividing land "internal to the property owner's property,"[31] and that it is a common and regular practice, even after final maps:

> "I have myself mapped final map lots into parcel map lots. I've divided a single lot in a subdivision into multiple lots. I've taken three lots in a subdivision and merged them into one lot with a merger and resubdivision. I can think of numerous cases where that's been done. And I have never found anything in the code that would give me any pause about doing so."[32]

The use of a parcel map by Fore Stars, Ltd., Seventy Acres, LLC and 180 Land Co. LLC to redraw boundary lines within their respective property and to assign APN numbers to the parcels, and the City of Las Vegas' approval of the same, was wholly legal and proper, and this Motion should be granted.

III. LEGAL ANALYSIS

A. LEGAL STANDARD FOR SUMMARY JUDGMENT

NRCP 56(c) sets forth the standard for granting summary judgment: The court must enter summary judgment where "there is no issue of genuine material fact and ... the moving party is entitled to judgment as a matter of law." *Fire Ins. Exch. v. Cornell*, 120 Nev. 303, 90 P.3d 978, 979 (2004). The movant has the burden to demonstrate that there is no genuine issue of any material fact to be determined. NRCP 56 (c). The moving party must specifically identify and cite to the parts of the record that indicate the absence of a genuine issue of

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[30] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 242/ln. 16-21.
[31] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 40/ln. 14-18.
[32] **Exhibit "J,"** Excerpts from Deposition of Alan Riekki at p. 43/ln 19-44/ln1..

material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

The Nevada Supreme Court has made it clear that "when a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026,1030 (2005). A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the non-moving party. *Id,* at 731, 1031. The court stated, a non-moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732, 1031.

B. THERE IS NO GENUINE ISSUE OF MATERIAL FACT.

The sole basis for Plaintiffs' Amended Complaint is the recordation of a Parcel Map by Developer Defendants on June 18, 2015 (the "June 2015 Parcel Map"). *Amended Complaint ¶ 29.* Developer Defendants owned only four (4) parcels when they first began the parcel map process in the Spring of 2015. The parcel map in question that the Plaintiffs wrongly characterize as being "unlawful" simply merged three (3) of those lots together, and re-divided them into four (4) new lots. This is undisputed. *See June 2015 Parcel Map, attached hereto as Exhibit "E", at Sheet 3 of 11; Amended Complaint ¶29.* The re-drawing of lot boundaries was simply an internal matter within the Defendants' property, preparatory to financing and/or transferring certain chunks of land.

It is undisputed that the map that is the subject of Plaintiffs' claims was in fact a "parcel map." Defendants and co-defendant City of Las Vegas, fully complied with Nevada Revised Statues ("NRS") Chapter 278 — Planning and Zoning and Title 19 of the Unified Development Code of the City of Las Vegas ("LVMC") governing the legal requirements for preparation, approval, and recordation of a valid parcel map. Indeed, even the City of Las

Vegas website provides that a parcel map "may be used to create four or fewer lots for purposes of sale, transfer or development. No [Tentative Map] is required."; "Only a [Tentative Map] application will require a public hearing." and "[Parcel Maps] are reviewed administratively."[33]

There is no debate about whether a parcel map was recorded instead of a tentative map, and there is no dispute the process was followed on more than one occasion. Developer Defendants Ltd. recorded a parcel map on June 18, 2015. Seventy Acres recorded two parcel maps: one on November 30, 2015 and another four months later on March 15, 2016. 180 Land Co. recorded one parcel map on January 24, 2017. **Of the four parcel maps listed above, only one is made the subject of the Amended Complaint filed by Plaintiffs herein—the June 18, 2015 parcel map.** *See* Amended Complaint, ¶ 36-43, 64-74. Despite the fact that the Amended Complaint was filed on October 10, 2016—long after the parcel maps filed November 30, 2015 and March 15, 2016—the Amended Complaint makes no mention of them.

The only question is whether a tentative map or a parcel map was "required" to be filed when Developer Defendants were establishing new boundaries of their lots within the property they owned, without developing the same. Indeed, when portions of the land were finally submitted for consideration for development in the form a statutorily defined "subdivision" (see NRS 278.320(1)(a)), it is undisputed that Developer Defendants did file for a tentative map, and followed all the statutory process and notification requirements relating to the same. Neither Developer Defendants, nor the City, are doing this for the first time. Both entities are experience in the area of land division and land development and

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[33] *See* City of Las Vegas Mapping Information, attached hereto as **Exhibit "K"** at 13.1 at FAQ 3 and 4 (emphasis added).

understand the distinct procedural requirements of each the parcel map and tentative map process as required under the law.

On February 2, 2017, this Court denied Developer Defendant's Motion to Dismiss the first cause of action in Plaintiffs' Amended Complaint on the basis that "Plaintiffs appear to have stated a claim on whether Nevada law allows successive maps." **Developer Defendants note that the issue or allegation of "successive maps" appears nowhere within Plaintiff's First Amended Complaint,** but rather was a new tale spun in Plaintiff's Opposition to the Defendants' Motion to Dismiss. This Court dismissed, with prejudice, Plaintiffs' second cause of action entirely which related to NRS 278A not applying to the facts of this case.

Plaintiffs first cause of action is for "breach of NRS 278 & LVMC §19.16.040." But Plaintiffs have not asserted, and cannot assert, any facts from this case that show a breach of this statute and ordinance. A review of the plain language of these provisions shows that the Plaintiffs' first cause of action is based upon a misunderstanding, or evan an intentional misconstruction, of the requirements of NRS Chapter 278 & LVMC §19.16.040 as neither of them impose a requirement that a tentative map be submitted where the proposed division of land involves a parcel or contiguous parcels being divided into **four or less** parcels with new boundaries. The facts alleged by the Plaintiffs which relate to only four parcels cannot give rise to the claim asserted in the Amended Complaint.

C. JUDGMENT SHOULD BE ENTERED AS A MATTER OF LAW BECAUSE UNDER THE LAW, THE PROPER PROCEDURE FOR RECORDING THE DIVISION OF LAND INTO FOUR OR FEWER PARCELS IS WITH A PARCEL MAP, NOT A TENTATIVE MAP.

Since there is no dispute regarding the facts surrounding the creation and use of the parcel map, the Court must turn to the law and determine whether, under the law, with the division of land at issue, what kind of "map" were Defendants required to file.

A Parcel Map is a map that divides a parcel into **four or fewer new lots.** *See* NRS 278.017. It can be used to divide a single parcel, or a landowner who owns several contiguous parcels may simultaneously merge the parcels and re-divide them as appropriate, which typically would have, after the division, different boundary lines. *See* NRS 278.4295. The division would be by parcel map if the resultant number of lots is four (4) or fewer, or by a tentative map/final map process if the resultant number of lots on the map is **five (5) or more** lots. *See* NRS 278.461l NRS 278.320. The "resultant" number of lots is specific to each individual map that is filed, and is what dictates the appropriate type of "map" to use to divide the land, and the use of Parcel Maps to do so is quite common. *Id.*[34]

In the City of Las Vegas, in addition to the Nevada State Statutes, the Parcel Map is governed by the Uniform Development Code ("UDC") 19.16.040. The final approval of a Parcel Map is exclusively the decision of the City of Las Vegas, after input from the various departments and agencies as outlined above. The process to have a Parcel Map approved requires the applicant to submit more than a dozen sets of the proposed parcel map which are routed to the various divisions or departments within the City of Las Vegas and/or other governmental agencies for review and approval. In short, there more than a dozen—and according to Mr. Rankin, **approximately nineteen (19)** sets of eyes, and nineteen required approvals, which must be obtained, before a Parcel Map will be formally approved by the City of Las Vegas and released for recordation.

As a matter of general usage, Parcel Maps are commonly used for boundary line adjustments in larger chunks of ground, as opposed to smaller lots for residential or commercial development. As set forth above, Parcel Maps are limited to an owner parceling, or processing, four lots or fewer and, after division, having created four lots or fewer, with

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[34] *See, also,* Excerpt from Riekki Deposition, **Exhibit "J,"** at p. 43/ln 15-24.

presumably new boundary lines. They are also used when a portion of a parcel needs to be "carved out" for some purpose, such as financing or to apply for new zoning or other change to a portion of an area of land. The approval process for a developer using a Parcel Map is an administrative one where the approval is ultimately given by the City of Las Vegas Planning Department after approximately nineteen different City sections, divisions and departments and other government agencies reviewing for completeness, compliance, and approve the Parcel Map.

The Plaintiffs complain that the City of Las Vegas should not have approved Developers' Parcel Map because a Tentative Map should have been used instead. Tentative maps, which are a precursor to a Subdivision Map of five (5) or more lots, purposefully require a huge amount of additional detail and cost, including depicting lot sizes, lot elevations, grades, utility connections and the like. *NRS 278.*

Citing NRS 278.349, NRS 278.4925 and UDC 19.16.070, Plaintiffs further argued, as part of their overall scheme to defeat or delay the overall development of Developer Defendants' property that the Tentative Map process requires "public action" by the City Planning Commission or the City Council and was unlawfully recorded. *See* Amended Complaint ¶ 71-72. It should be noted, however, that neither NRS 278.4925 nor UDC 19.16.070 make mention of any sort of public action requirement by the Planning Commission as alleged by Plaintiffs. NRS 278.349 requires that the Planning Commission "take final action ... by an affirmative vote of a majority of all the members" to approve or disapprove a tentative map." Again, Plaintiffs' goal is to delay Developers' development of their property. Plaintiffs' mischief is not a credit to them, and their refusal to acknowledge the frivolousness of their position, despite the statutes being clear and unambiguous, is further evidence before this Court of Plaintiffs' unclean hands.

Separate and apart from the above, the Developer Defendants' use of the Parcel Map was entirely lawful and proper and consistent with Nevada State Statute and the City of Las Vegas Uniform Development Code. **The map was lawful, not unlawful.** But, in addition, it is undisputed under the facts of this case that the lots that were divided or merged and re-divided, as expressly permitted by NRS 278.461 and NRS 278.4295. Furthermore, all parties agree, the four (4) new lots were lots that could not be developed into residential housing without further mapping (including use of Tentative Maps) and/or Site Development Review (hereinafter "SDR") which would result in public notice and public hearing regarding any development plans. Clearly, Plaintiffs' cannot show prejudice by Developer Defendants preparation and recordation of a Parcel Map. Under the facts of this case, it is undisputed that there is no prohibition or any law or ordinance that requires the Defendants to use a Tentative Map for the large lot division that the Defendants undertook to meet their refinancing needs. It is undisputed under the facts of this case that parcel map division, merger, and re-division of lots is expressly permitted by NRS 278.461 and NRS 278.4295.

So, to this point, it is simply an issue of law, and not fact, that this Court should decide. The Court should find that the City of Las Vegas' process of multi-departmental review and decision in approving the Parcel Map for recordation was entirely proper and was not an arbitrary or capricious, nor improper, decision. Rather, it was entirely consistent with state statute and local ordinance. The Court, in making its determination, would be granting summary judgment in favor of Developer Defendants and would also be effectively granting summary judgment in favor of Defendant City of Las Vegas since the Plaintiffs' allegations are that the City of Las Vegas' actions to approve this Parcel Map were unlawful, wherein Plaintiffs claim that a Tentative Map was required to be used, even though the law provides no such requirement when the map involves four lots or less.

As noted in the introduction above, as it relates to the Developer Defendants, even were this Court to be uncertain as to the applicability of a Parcel Map, versus Tentative Map, which essentially is challenging the City of Las Vegas' processes and decision making, it is clear, by the evidence that has been adduced to this time, that there is absolutely no evidence cited by the Plaintiffs which would allow any reasonable inference to be drawn that: 1) the approval of the Parcel Map was in error; and 2) that, as it relates to the Developer Defendants, that they were "complicit" in the City's approval of an allegedly "unlawful" map. In **other words, there is no evidence that Developer Defendants did anything other than comply with the City of Las Vegas procedural requirements in submitting the Parcel Map and seeking approval from the City of Las Vegas to support any reasonable inference of "complicity" or "circumvention."** As such, as a matter of law, the Parcel Map approved by the City of Las Vegas was entirely proper and consistent and directly followed the law. In addition, Developer Defendants were frivolously named in this lawsuit because there is no evidence, contrary to Plaintiffs' allegations, that would create a genuine issue of fact that Developer Defendants acted in any way improperly. Defendants submit that the evidence points to Developer Defendants acting in good faith and in accordance with law.

The viability of Plaintiffs' first cause of action turns on the meaning of NRS 278.4925, which provides:

> (1) An owner or governing body that owns two or more contiguous parcels may merge and resubdivide the land into new parcels or lots without reverting the preexisting parcels to acreage pursuant to NRS 278.490. [35]
>
> (2) Parcels merged without reversion to acreage pursuant to this section must be resubdivided and recorded on a final map, ***parcel map*** or map of division into large parcels, ***as appropriate***, in accordance with NRS 278.320 to

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[35] This ability to merge and resubdivide without reverting to acreage is echoed by UDC 19.16.070(C), which states "In accordance with NRS 278.4925, the owner of two or more contiguous parcels may merge and resubdivide the land into new parcels or lots without reverting the preexisting parcels to acreage pursuant to NRS 278.490." Note that the term "resubdivide" as set forth in UDC 19.16.070(C) does not mean "subdivision" as that term is used and defined in NRS 278.320.

> 278.4725, inclusive, and any applicable local ordinances. The recording of the resubdivided parcels or lots on a final map, ***parcel map*** or map of division into large parcels, ***as appropriate***, constitutes the merging of the preexisting parcels into a single parcel and the simultaneous resubdivision of that single parcel into parcels or lots of a size and description set forth in the final map, ***parcel map*** or map of division into large parcels, ***as appropriate***. (Emphasis added.)

Mr. Riekki explained that prior to the enactment of this subsection, a developer had to take two separate steps to merge divided land, reverting it to acreage, and then divide it anew, using a Parcel Map if it was creating four (4) or fewer lots on that map, and a Tentative Map/Final Map process if he wanted to create five (5) or more lots on a single map. Now, as can be seen, the first part of this statute permits the owner of contiguous lots to merge such lots, and re-divide them, without requiring the lots to be reverted to acreage. *NRS 278.4925(1)*. There is no dispute among the parties as to the meaning of subparagraph (1). Instead, the dispute centers on subparagraph (2), which requires that the map of the new division be recorded on one of three types of maps: a "final map," a "parcel map," or "map of large division into large parcels." *NRS 278.4925(2)*. *Which* of these three types of maps should be recorded to effect the "merger and re-division" depends on which type of map is "appropriate," in accordance with NRS 278.320 to 278.4725, inclusive, and any applicable local ordinances." *Id.* The statutes cited within subparagraph (2) are the statutes that set forth the procedures governing land division. Accordingly, in order to understand which type of map is "appropriate," those statutes must be examined.

The Court need only look at the structure of NRS 278 to see that it is broken up by **headers,** each of which are followed by the applicable sections of the statute. **NRS 278.320-278.329** has the title "**Subdivision of Land: General Provisions,**"[36] These statutes set forth the general provisions governing the division of land. The most significant of these statutes is the following:

> "Subdivision" means any land, vacant or improved, which is divided or proposed to be divided into ***five or more*** lots, parcels, sites, units or plots, for the purpose of any transfer or development, or any proposed transfer or development, unless exempted by one of the following provisions. *NRS 278.320.*

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[36] *See* Excerpts from NRS 278, attached hereto as **Exhibit "L."**

Thus, as used in NRS 278.320-278-4725, a "subdivision" as used in the subsequent statutes only involves a division into five or more parcels. As a matter of law, Developer Defendants' division of land underlying this action did not result in a "subdivision" because only ***four lots*** resulted, not five (5) or more.

Another statute within the general provisions requires local governments to enact ordinances consistent with, *inter alia*, the state's mapping requirements. NRS 278.326.

The final statute contained within these general provisions that is relevant to this Motion is the following:

> Approval of any map pursuant to the provisions of NRS 278.010 to 278.630, inclusive, ***does not in itself prohibit the further division of the lots, parcels, sites, units or plots described***, but any such further division shall conform to the applicable provisions of those sections. *NRS 278.327.* (Emphasis added.)

This statute makes clear that approval of specific divisions of land in the past does not preclude future division of the same land. This is because, as noted above, the re-parceling of land of four lots or less is an internal matter within the Developer Defendants' property and does not affect nearby landowners.

NRS 278.330-278.353 has the title **"Subdivision of Land: Tentative Maps,"** and they set forth the procedures related to "tentative maps," including provisions relating to the agencies that must be provided with copies of a tentative map, and the actions that must be taken for approval of a tentative map. These statutes are relevant to this Motion *only* because Plaintiffs erroneously contend that the tentative map procedure should have been followed here. Simply stated, the issue between the Plaintiffs and the City is that the City has long ago determined that a parcel is lawful and proper when dividing a parcel, or merging and dividing contiguous parcels by a single owner, into four (4) or less lots, see *Exhibit E*, compared to Plaintiffs knowingly mistaken position set forth within its Amended Complaint at

¶1 that "tentative map procedures must be followed. As a matter of law the Plaintiffs are wrong. Indeed, NRS 278.330 reveals the error of this contention:

> 1. The initial action in connection with the making of any ***subdivision*** is the preparation of a tentative map.
>
> *NRS 278.330(1).*[37] (Emphasis added.)

As can be plainly seen, a "tentative map" is part of the process used to create a "subdivision" which was defined in the previous sections as a land division resulting in ***five or more lots***. No tentative map process would apply to a division that would result in ***four lots or less***.

NRS 278.360-278.460 has the title "**Subdivision of Land: Final Maps,"** which is, simply, the follow-up and final process in the tentative map process, and thus, also relates to "subdivisions," *i.e.,* divisions into ***five or more lots***. *NRS 278.360.* The timing for final maps is keyed to the tentative map process. *Id.* A final map also requires professional surveying; placement of monuments for boundaries; certifications by multiple agencies; plans for installation of water meters; and approval of the local authorities – all requirements indicative of the concerns of subdivisions. *NRS 278.371-278.390.*

NRS 278.461-278.469 has the title "**Parcel Maps"** and this wholly separate section from "subdivisions" governs the procedures related to parcel maps, which is what was filed in this case. As outlined in the very first section of the "**Parcel Maps"** header, the use of the parcel map was **mandated** and the City of Las Vegas' approval of Developer Defendants' parcel map was correct. NRS 278.461provides:

> 1. Except as otherwise provided in this section, a person who proposes to divide any land for transfer or development into ***four lots or less*** **shall**:
>
> (a) ***Prepare a parcel map*** and file the number of copies, as required by local ordinance, of the parcel map with the planning commission or its designated representative or, if there is no planning commission, with the clerk of the governing body; and

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[37] The corresponding ordinance for the City of Las Vegas is set forth in Section LVMC Section 19.16.050 ("Tentative Map Ordinance"). *See* LVMC § 19.16.050, which includes a flow chart of the Typical Review Process for creation of a Tentative Map, attached hereto as **Exhibit "M".**

> (b) Pay a filing fee in an amount determined by the governing body,
>
> unless those requirements are waived or the provisions of NRS 278.471 to 278.4725, inclusive, apply. The map must be accompanied by a written statement signed by the treasurer of the county in which the land to be divided is located indicating that all property taxes on the land for the fiscal year have been paid, and by the affidavit of the person who proposes to divide the land stating that the person will make provision for the payment of the tax imposed by chapter 375 of NRS and for compliance with the disclosure and recording requirements of subsection 5 of NRS 598.0923, if applicable, by the person who proposes to divide the land or any successor in interest. [38]
>
> NRS 278.461(emphasis added). [39]

As can be seen, when a person proposes to divide land into four lots, he ***shall*** prepare and file a parcel map. That is exactly what was done by each of the Developer Defendants. The remaining provisions in this range of cited statutes refer to procedures specific to parcel maps, including approval by the local government authority. The only other provision relevant here is NRS 278.464(7), which provides that any person aggrieved by a decision of the local authority may appeal the decision.

NRS 278.471-278.4725 has the title "**Division of Land Into Large Parcels,**" and these sections govern the procedures for division into lots that are at least 1/16th of a section as described by the government land office survey, or at least 40 acres in area. NRS 278.471. A local governing body can also make these statutory provisions applicable to lots that are at least 1/64th of a section, or ten acres in area. *Id.*

The above review of the range of statutes cited in NRS 278.4925 fully explains the requirements of that statute. The "appropriate" map to be used to effect the merger and re-division depends on the number of lots that result from the division. If the re-division yields

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[38] The subsequent subparagraphs of NRS 278.461 include requirements or exemptions that are not applicable under the facts here.

[39] The corresponding ordinance for the City of Las Vegas is set forth in UDC Section 19.16.040 ("Parcel Map Ordinance"). **Exhibit "N."** The Ordinance includes a flow chart of the Typical Review Process for creation of a Parcel Map. *Id.*

five or more lots, then a final map, which would first require a tentative map, would be "appropriate." But **when the yield is four or fewer lots, a parcel map is required.** Even if more than one type of map can be deemed "appropriate" in this case, the fact remains that the parcel map was certainly not "unlawful."

From this analysis, it is clear that Plaintiffs' contention that the tentative map process should have been followed here, even though there is no dispute that the merger and re-division resulted in only four lots, is simply wrong. Indeed, pursuant to NRS 278.461, when the resulting division will leave four lots, the owner "shall" prepare and file a parcel map. When interpreting statutes, "[t]he word "shall" is generally regarded as mandatory." *Markowitz v. Saxon Special Servicing*, 129 Nev. Adv. Op. 69, 310 P.3d 569, 572 (2013). Thus, it is apparent that here, *only* a "parcel map" *could* be "appropriate."

Because the Plaintiffs' first cause of action is premised on the *erroneous* notion that the tentative map procedures must be followed, as a matter of law, judgment should be entered for Defendants, and this Court should reach the same conclusion as Judge Douglas E. Smith, *Peccole, et al, v. Peccole, et al*, Case No. A-16-739654-C (2017), which was that "The City Planning Director properly followed the procedure for approval of a parcel map rather than a tentative map."[40]

D. PLAINTIFFS ARE STILL REQUIRED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES, AND HAVE FAILED TO DO SO.

Plaintiffs' First Amended Complaint seeks to bypass the normal administrative process to create rules that do not exist to contrive approvals not required.

Plaintiffs argued that they were not required to exhaust their administrative remedies because no notice was required to be provided to them in the Parcel Map process. The very

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[40] *See* Order Granting CLV Motion to Dismiss, attached as **Exhibit "O"** at ¶ 18.

fact that notice was not required to be provide to adjacent landowners is further evidence that a Parcel Map, which redraws boundary lines within an applicant's own property, and does not "add land to" or "take away land from" does not "aggrieve" adjacent landowners, does not, by itself, affect them. Indeed, the single "parcel map" complained of in the Amended Complaint was filed **two (2) years ago** in June, 2015, and had absolutely no effect or prejudice upon the Plaintiffs.

What could, potentially, affect some of them is the proposed zoning changes, General Plan Amendments, and other development proposals that have been made by different entities for potions of the land. But these proposals have all been discussed in weekly meetings among the Plaintiffs, dozens of meetings between Plaintiffs and representatives of Developer Defendants, between **August, 2015** and the present, and nearly two (2) years' of public hearings before the Las Vegas Planning Commission and City Council, and when approval was finally obtained on one (1) project, Plaintiffs filed a "Petition for Judicial Review," which currently pends before Judge Crockett. They exercised the administrative remedies they know are available under *NRS 278.3195* and *LVMC 19.16.040(T)*. Further, it is undisputed that Plaintiffs had **actual knowledge** of the recording of the Parcel Map of June 18, 2015, certainly by the time they filed their Complaint in December, 2015, if not earlier.

It is established law that the failure to exhaust all administrative remedies precludes judicial review. *Allstate Ins. Co. v. Thorpe,* 123 Nev. 565, 571, 170 P.3d 989, 993 (2007); *City of Henderson v. Kilgore,* 122 Nev., 331, 336 n. 10, 131 P.3d 11, 15 n. 10 (2006); *Kay v. Nunez*, 122 Nev. 1100, 1104, 146 P.3d 801, 805 (2006). The failure to exhaust administrative remedies pursuant to NRS 278.3195(4) **absolutely precludes** any subsequent court action. *Mesagate HOA v. City of Fernley*, 124 Nev. 1092, 1100–01, 194 P.3d 1248, 1254 (2008). Until Plaintiffs pursue these administrative avenues of review, they cannot be considered an "aggrieved person" under NRS 278.3195(1) and the local Ordinances in question. *See City*

of North Las Vegas v. Eighth Judicial District Court, 122 Nev. 1197, 147 P.3d 1109 (2006). Here, we likewise have a situation where neighboring property owners such as Plaintiff have no standing because they have not availed themselves of the administrative review process and cannot show how they are aggrieved by a parcel map approval on land they do not have any interest in.

Plaintiffs want this Court to ignore the law, ignore the discretion of the government body charged with making those decisions, and ignore the administrative process to force Developer Defendants to "start all over." The *only* reason for Plaintiffs to maintain such an unreasonable position is to cause delay in development, and financial and political harm to Defendants.

IV. CONCLUSION

Developer Defendants followed the applicable statutory procedure for obtaining approval and recording the required Parcel Map, as others have done before them for years. City of Las Vegas City Surveyor Alan Riekki testified that there are in excess of 13,000 parcel maps on file with the County of Clark[41] and there have been multiple parcel maps filed within Peccole Ranch and Peccole West themselves![42]

The Plaintiffs have simply ignored the plain language of the statute they claim to be enforcing, in an effort to fashion a claim and to delay development and approval of Developer Defendants' property. Plaintiffs should not be allowed to proceed with delay tactics and gamesmanship. Their actions have irreparably harmed Developer Defendants and have caused them huge financial damages, which continue to accrue every day this lawsuit remains open.

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[41] **Exhibit "J,"**.Riekki Deposition Excerpt, at page 33.
[42] See, sample list of parcel map filings, **Exhibit "P."**

For the reasons stated above, Defendants Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC respectfully request this Court grant their Motion and grant Summary Judgment in their favor on Plaintiffs' remaining cause of action.

DATED this 12th day of June, 2017.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this 12th day of June, 2017, I caused a true and correct copy of the foregoing ***Defendants Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC's Motion for Summary Judgment On Issue Of Alleged "Unlawfulness" Of Parcel Map*** to be filed and e-served via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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EXHIBITS TO
DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC AND SEVENTY ACRES, LLC'S MOTION FOR SUMMARY JUDGMENT ON ISSUE OF ALLEGED "UNLAWFULNESS" OF PARCEL MAP(S)

A.	Declaration of Frank Pankratz
B.	Declaration of JJJ
C.	Declaration/Expert Report of Paul Burn with CV
D.	Visual Depiction- Acquisition Parcels
E.	Fore Stars, Ltd.- June 18, 2015 Parcel Map
F.	Visual Depiction of June 18, 2015 Parcel Map
G.	Beneficiary Statement
H.	Deposition Transcript Excerpts- Doug Rankin
I.	Deposition Transcript Excerpts- Tom Perrigo
J.	Deposition Transcript Excerpts- Alan Riekki
K.	City of Las Vegas Mapping FAQ
L.	Excerpts from NRS 278
M.	LVMC 19.16.050- Tentative Map
N.	LVMC 19.16.040- Parcel Map
O.	Peccole et al v Fore Stars et al- Order Granting City of Las Vegas' Motion to Dismiss (10/19/16)
P.	Sample List of Parcel Map Filings