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 6, PART 2 OF 2
(Nos. 1088–1171)

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** Hearing Date: March 19, 2019 Hearing Time: 9:00 a.m.

I. INTRODUCTION

The Developer has attempted to divert the Court from the legal deficiencies of its inverse condemnation claims by papering the Court's docket with extraneous filings, manipulating the procedural process and personally attacking opposing counsel. Setting aside this transparent effort at sleight of hand, the Developer cannot manufacture a vested right to redevelop the golf course where none exists under Nevada law. Nor can the Developer turn back the clock on the actions of its predecessor, which sought and obtained the open space designation, and then effectuated that designation by building the golf course. The Developer stands in the shoes of its predecessor, and is time-barred from challenging its predecessor's actions. Further, unless and until the Nevada Supreme Court rules otherwise, the Developer's inverse condemnation claims are barred by the preclusive effect of Judge Crockett's Decision.

Because it cannot refute the sound legal arguments presented in the City's motion, the Developer has improperly inundated the Court with thousands of pages of documents that the Court cannot consider in adjudicating a Rule 12 motion. The Developer has also resorted to misrepresenting the procedural history and the law. Because the Court has already correctly concluded that the Developer lacks any vested rights to have its redevelopment applications approved and must submit and obtain approval of a major modification of the Master Plan, the Court should not be misled by the Developer's legerdemain.

Inverse condemnation claims are properly dismissed pursuant to Rule 12 where, as here, the complaint fails to state a claim upon which relief can be granted. The basic pleading standard is not lowered for inverse condemnation cases. Dismissal with prejudice is mandated in this matter because the allegations in the Developer's complaint, even if accepted as true, do not give rise to a cognizable legal claim.

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II. LEGAL ARGUMENT

A. Nothing Presented in the Developer's Opposition Can Create a Vested Right Where None Exists Under Nevada Law

1. A Mere "Property Interest" is Not a Vested Property Right

This Court already correctly determined that the Developer has no vested rights to have its redevelopment applications approved because the City had the discretion to deny those applications. *See* Findings of Fact and Conclusions of Law entered on November 21, 2018 ("FFCL") at Conclusions of Law ¶¶35-38, 52, *citing Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995); *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004); *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983). Nothing in the Developer's opposition casts any doubt on the correctness of the Court's conclusion. And, other than *Stratosphere*, the Developer makes no effort to distinguish the authorities cited by the Court.

To sidestep this legal infirmity, the Developer conflates the term "property interest" with a vested property right. *See* Opposition at 10:1-12:27. These are not the same concept. Under Nevada law, a property interest alone does not constitute a constitutionally protected vested right; to become vested, the property interest must be "fixed and established." *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949); *see also Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property right must be "established" for a taking to occur); *Bowers v. Whitman*, 671 F.3d 905, 914 (9th Cir. 2012) (holding that a property interest that is "inchoate and does not provide a certain expectation" cannot be deemed a vested right that gives rise to a taking).

Redevelopment applications do not meet the vested rights standard because "[i]n order for rights in a proposed development project to vest, zoning or use approvals ***must not be subject to further governmental discretionary action affecting project commencement***, and the developer must prove considerable reliance on the approvals granted." *Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112 (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60 (holding that, because City's site development review process under Title

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19.18.050 involved discretionary action by City Council, the project proponent had no vested right to construct). The RPD-7 zoning does not create a vested right because "compatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990) (affirming county commission's denial of a special use permit even though property was zoned for the use).

The Developer's erroneous contention that this law does not apply to inverse condemnation claims is absurd. *See* Opposition at 10:12-14, 29:3-31:1. Constitutional guarantees are only triggered by a vested right. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994); *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). "A Takings Clause claim requires proof that the plaintiff possesses a property interest that is constitutionally protected." *Sierra Med. Servs. All. v. Kent*, 883 F.3d 1216, 1223 (9th Cir. 2018) (quotations omitted). A constitutionally protected property interest only exists when an individual has a "legitimate claim of entitlement" under state law that derives from "existing rules or understandings." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

"To determine whether a property interest has vested for Takings Clause purposes, 'the relevant inquiry is the certainty of one's expectation in the property interest at issue.'" *Bowers v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012); *quoting Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 1002 (9th Cir. 2007), *aff'd.* 553 U.S. 591 (2008). If a property interest is "contingent and uncertain," "speculative" or "discretionary," then the government's action will not constitute a constitutional taking. *Bowers*, 671 F.3d at 913, *quoting Engquist*, 478 F.3d at 1002-03; *accord Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1081 (9th Cir. 2015). For this reason, applications that are subject to the governmental authority's discretion are not vested rights that could trigger a taking. *See Bowers*, 671 F.3d at 913; *Hermosa on Metropole, LLC v. City of Avalon*, 659 F. App'x 409, 411 (9th Cir. 2016); *Charles Wiper, Inc. v. City of Eugene*, 486 F. App'x 630, 631 (9th Cir. 2012).

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Because the residential redevelopment that the Developer proposes is not "fixed and established," the Developer has no vested right to build it. *See id.* Similarly, because the Developer's 35-Acre Applications were speculative and contingent upon the Council's discretionary decision-making authority, the Developer had no vested right to have those applications approved. *See Bowers*, 671 F.3d at 913. In light of this law, the Developer cannot transform mere ownership of the golf course into a vested right to redevelop the golf course into houses. *See id.* The Developer's contention that this Court should recognize a vested right to build houses on the golf course when the decision to grant or deny redevelopment applications is discretionary is plainly an incorrect statement of the law. *See Filippini*, 66 Nev. at 22, 202 P.2d at 537; *Bowers*, 671 F.3d at 913.

Moreover, in that the golf course was built years ago, the Developer's assertion that the land is "vacant" is patently false. *See* Opposition at 36:16-24; 56:18-58:15 and *passim*. And, in that the Developer could continue to use the property as open space and a golf course, the Developer is misrepresenting that the City has denied "all" uses of the property. *See* Opposition at 48:17-20 and *passim*. The City Council only denied the specific 35-Acre Applications that sought to change the approved golf course into the project proposed in the applications.[1]

The Developer's complaint contains no allegation that the City interfered with the Developer's rights to operate its golf course. To the contrary, the Developer sabotaged its own ability to do so by selling the appurtenant water rights. For this reason, *Richmond Elks Hall Assoc. v. Richmond Redev. Agency*, 561 F.2d 1327, 1330 (9th Cir. 1977) and other cases regarding *de facto* takings upon which the Developer relies are inapposite. *See* Opposition 55:1-56:10. Because the Developer may continue to use the property as a golf course – which its

[1] For this reason, the Developer's reliance on *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 720 (1999) and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1020 (1992), is misplaced. Both of those cases involved denial of all economical use of the property. Here, the Developer can continue to use the property in exactly the manner sought and built by its predecessor, in whose shoes the Developer now stands.

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predecessor sought, was granted and built – the Developer cannot identify any vested right that has been *taken*. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1937 (2017); *Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537.

2. Neither *Sisolak* Nor *Schwartz* Gives the Developer a Vested Right to Redevelop the Golf Course Into Houses

The Developer's erroneous contention that landowners have vested rights under Nevada law to change the use of their property from open space to houses is not supported by the authorities the Developer cites. *See* Opposition at 10:11-12:27 and *passim*, *citing McCarran Intl. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006); *Schwartz v. State*, 111 Nev. 998, 900 P.2d 939 (1995). Neither *Sisolak* nor *Schwartz* is analogous here.

In *Sisolak*, the Nevada Supreme Court simply interpreted the word "vested" in NRS 493.040, which states that "[t]he ownership of the space above the lands and waters of this state *is declared to be vested* in the several owners of the surface beneath." *Sisolak*, 122 Nev. at 659, 137 P.3d at 1120 (emphasis added). In other words, the vested right discussed in *Sisolak* derived from statutory language. *Id.*, quoting NRS 493.040. Based on that statute, which does not apply here, the Court concluded that physical invasion by airplanes flying below the minimum altitudes needed for flight established by the FAA warranted compensation for a physical invasion. *Id.* at 658-59, 137 P.3d at 1119-20. *Sisolak* simply has no bearing here, where there is no statute that creates a vested right to redevelop a golf course and no physical invasion of the Developer's property.

Schwartz also involved a physical invasion in which the state condemned the landowner's easement to access its property, which the Court deemed a special class of property right protected by NRS 37.110(3). *Schwartz*, 111 Nev. at 1003, 900 P.2d at 942. Neither of these cases alters the well-established case law that there can be no vested right to develop property where further governmental approvals are discretionary. *See Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60 (post-dating *Sisolak*); *Foothills of Fernley, LLC v. City of Fernley,* 355 Fed.Appx. 109, 111, 2009 WL 3602019 at *1 (9th Cir. 2009) (continuing to cite *Am. W. Dev.* for that proposition even after the *Sisolak* decision).

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3. Inverse Condemnations Claims Do Not Have a Lower Pleading Standard

In light of this clear law, the Developer's argument regarding a purported constitutional "mandate" is misguided and does not excuse the Developer from pleading legally viable claims. *See* Opposition at 47:21-48:21. The only "fixed and established" use of the Property is the open space golf course, which was built by the Developer's predecessor according to the open space designation it sought and granted by the City Council 30 years ago. *See Filippini*, 66 Nev. at, 22, 202 P.2d at 537. The Developer cannot sidestep the Rule 12 requirement of a vested right by asserting an "entitlement" to bring an inverse condemnation action based upon the "self-executing character" of just compensation. The "self-executing" language upon which the Developer relies does not lower the pleading threshold for inverse condemnation claims. Rather, for compensation to be "self-executing," the plaintiff must first demonstrate a taking, and a plaintiff's taking claim cannot withstand a Rule 12 motion without stating a legally cognizable claim. *See Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

The authorities cited by Developer for its "self executing" argument do not alter this conclusion. In *Alper v. Clark County*, 93 Nev. 569, 571 P.2d 810 (1977), the taking was established by the county's construction of a road, and the question presented was whether the landowner had to first seek compensation under NRS 244.245 and NRS 244.250, which create procedures for filing claims with, and recovering costs from, a county. *See Alper*, 93 Nev. at 811-13, 571 P.2d at 572-74. The Nevada Supreme Court held that, under those circumstances, the landowner did not need to exercise state statutory rights to compensation before it could proceed in court under its constitutional claims. *Id.*

In contrast, here, the Developer brings takings claims for the City's discretionary denial of its redevelopment applications, not a physical invasion. *See* First Am. Compl. ¶¶44-93. No actual occupation of its property is alleged, nor could it be, because the only action being challenged is the Council's denial of the 35-Acres Applications. *See id.* No matter what type of claim it asserts, to survive a Rule 12 motion, the Developer must state legally cognizable claims. Absent a vested right to have its development applications approved, the Developer

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cannot state a constitutional claim. *See Landgraf*, 511 U.S. at 266. The *Alper* case does nothing to alter that conclusion. *See Alper*, 93 Nev. at 811-13, 571 P.2d at 572-74.

The same is true of the Developer's reliance on *U.S. v. Clarke*, 445 U.S. 253 (1980). *See* Opposition at 46:26-28 n.66. The question presented in *Clarke* was whether, under 25 U.S.C. §357, a state or local government could "condemn allotted Indian trust lands by physical occupation." *Clarke*, 445 U.S. at 254. In a general description of the term "inverse condemnation," the Court noted that "[i]nverse condemnation is 'a cause of action against a governmental defendant to recover the value of property ***which has been taken in fact by the governmental defendant***, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.'" *Id.* at 256 (emphasis added), quoting D. Hagman, Urban Planning and Land Development Control Law 328 (1971). Again, as in *Alper*, the "self-executing character of the constitutional provision [is] ***with respect to compensation***...." *Id.* at 257 (emphasis added), quoting 6 P. Nichols, Eminent Domain § 25.41 (3d rev.ed.1972). The actual taking must first be established before compensation becomes "self executing." *See id.* Like *Alper*, *Clarke* does not obviate the requirement that a plaintiff plead a legally cognizable claim in order to overcome a Rule 12 motion. Because the Developer cannot do so, dismissal of all claims is required. *See Sanchez*, 125 Nev. at 823, 221 P.3d at 1280.

The Developer would have this Court eliminate NRCP 12 motions altogether in takings cases. Contrary to the Developer's erroneous assertions (at 1:7-10, 4:20-22, 6:18-7:12), the City's motion for judgment on the pleadings does not deprive the Developer from being heard "on the merits." Long ago, the Nevada Supreme Court held that a Rule 12 dismissal constitutes "a determination on the merits." *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 171, 400 P.2d 621, 625 (1965). There is no special exception to this rule where the complaint asserts inverse condemnation claims. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003) (dismissing takings claims, noting that "a dismissal on statute of limitations grounds is a judgment on the merits").

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B. The Supreme Court's Affirmance of Judge Smith's Interpretation of the Queensridge CC&R's Did Not Create Any Vested Rights for the Developer

Notwithstanding the Developer's misleading assertion, Judge Smith's interpretation of the Queensridge CC&R's does not create vested development rights where none exist under Nevada law.

1. Judge Smith's Interpretation of the Queensridge CC&R's Does Not Affect the City's Discretionary Authority to Deny Redevelopment Applications

Judge Smith's interpretation of a contractual agreement among private parties has no bearing on the City's open space designation, the requirements of the City Code or the mandates of NRS Chapter 278, nor diminish the Council's discretion to deny land use applications. "[C]ontracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of [government]." *Guar. Tr. Co. of New York v. Henwood*, 307 U.S. 247, 258-59 (1939).

Judge Smith described the matter before him as claims by the Queensridge homeowners that ***their*** "vested rights" in the CC&Rs were violated; ***whether the Developer had vested rights under state law was not at issue***. *See* 11.30.16 Smith FFCL in Case No. A-16-739654-C at ¶¶2, 7, 29, 108, Ex. 2 to Developer's Motion for New Trial.[2] Indeed, Judge Smith confirmed that, notwithstanding the zoning designation for the golf course property, the Developer is nonetheless "***subject to City of Las Vegas requirements***" and that the City is not obligated to make any particular decision on the Developer's applications. *See* 1.31.17 FFCL ¶¶9, 16-17, 71, Ex. 3 (emphasis added).

In other words, Judge Smith's orders undermine the very argument the Developer now advances. Because Judge Smith's interpretation of the Queensridge CC&R's is irrelevant to Judge Crockett's interpretation of the City's Development Code requiring that the City approve a major modification to the Peccole Ranch Master Development Plan before the Developer can

[2] The numbered exhibits referenced in this reply may be found in the Developer's exhibits filed in support of its Motion for New Trial filed on December 13, 2018. The City objects to the Court's consideration of the extraneous matters cited by the Developer but, without waiving its objections, references them here only for the purposes of responding to the Developer's contentions. The exhibits referenced by letter are attached hereto.

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convert the golf course to houses, the Developer's reliance on Judge Smith's orders is misplaced.

2. The Supreme Court's Order of Affirmance is Not Binding Precedent

Moreover, when affirming Judge Smith's orders, the Supreme Court simply stated that Judge Smith did not abuse his discretion when "concluding that the golf course property was not subject to the CC&Rs." *See* Supreme Court Order at 2, Ex. 4. The Developer's leap from that language to the assertion that these decisions affirmatively state, as a matter of law, the Developer has "vested rights" to have the 35-Acre Applications granted has no foundation in reality, much less the law or the record. *See* Opposition at 13:25-14:1. Nothing stated in the Supreme Court's order of affirmance broadened the limited scope of the underlying orders being affirmed. Judge Smith's Orders, and the affirmance of those orders by the Nevada Supreme Court, had nothing to do with the law regarding when development rights vest. *See Stratosphere Gaming Corp.*, 120 Nev. at 527–28, 96 P.3d at 759–60.

3. The City is Not Bound By Judge Smith's Orders Because It Was Not a Party When the Orders Were Issued and Has Independent Decision-Making Authority Under NRS Chapter 278

Nothing about Judge Smith's interpretation of the Queensridge CC&Rs alters the City's land use authority under NRS Chapter 278, particularly since the City was dismissed from the case long before judgment was entered. Although Judge Smith made a finding that the property is zoned RPD-7, nowhere did he even suggest, much less hold, that zoning alone creates a vested right to develop. *See generally* 11.30.16 Smith FFCL, Ex. 2; *see also* 1.31.17 Smith FFCL, Ex. 3. To the contrary, Judge Smith expressly held that the Developer must submit development applications to the City for consideration and approval. *See* 1.31.17 Smith FFCL, Ex. 3, ¶¶ 9 and 12, Ex. 3; 11.31.16 Smith FFCL, ¶¶ 50 and 86, Ex. 2. As this Court correctly concluded, Nevada law is clear that a zoning designation does not confer a vested right nor overcome the requirement that zoning must conform to the master plan. NRS 278.250(2); *Stratosphere Gaming Corp.*, 120 Nev. at 527–28, 96 P.3d at 759–60. Judge Smith's decisions and the Nevada Supreme Court's order of affirmance do not hold otherwise.

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The Developer incorrectly argues that Judge Smith's Orders have preclusive effect on the City. *See* Opposition at 22:13-23:14. Yet, as the Developer well knows, because the case before Judge Smith involved only the interpretation of a contract between private parties, the City was dismissed long before a judgment was entered. *See* 11.30.16 Smith FFCL, ¶ 34, Ex. 2. For that reason, the City was not a party to the appeal. *See* Ex. 4. Nothing in Judge Smith's Orders or the Supreme Court's order of affirmance, therefore, can have preclusive effect on the City. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015).

C. The Developer's Own Argument Confirms Its Claims Are Time Barred Because the Open Space Designation Was Implemented By Construction of the Golf Course

The statute of limitations has run on the Developer's challenge to the Parks, Recreation and Open Space designation for the Property because that designation was implemented when the Developer's predecessor built the golf course to satisfy the City's parks and open space requirement. A development restriction created by a predecessor landowner binds successors. *See* NRS 278.0205; *Tompkins v. Buttrum Const. Co. of Nev.*, 99 Nev. 142, 146, 659 P.2d 865, 868 (1983) (noting that successor landowner steps into shoes of predecessor, and "one who creates a restriction is not permitted to violate it"); *Gladstone v. Gregory*, 95 Nev. 474, 480, 596 P.2d 491, 495 (1979) (holding that successor owner could not violate height restriction recorded by predecessor). The Developer's failure to even address these Nevada authorities, and its citation to cases from other jurisdictions (at 62:8-63:4) cannot overcome the time bar to its claims.

Here, the Developer's predecessor sought and obtained the open space designation ***and then built the golf course***, thereby ***implementing on the ground*** the master plan designation. There is no dispute that the land the Developer now seeks to redevelop was built out as a golf course by its predecessor. Because the Developer's predecessor actually built the golf course according to the open space designation it sought, the Developer's contention (at 13:1-21; 27:19-29:2; 60:1-65:10) that the Peccole Ranch Master Development Plan and General Plan were not implemented as to the 35-Acre Property is hollow. The Developer's predecessor chose

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the location of the open space and developed the golf course in furtherance of the development plan it submitted, deriving economic benefit from being able to sell houses that abutted or were in close proximity to an open space amenity. *See* ROR 2658-2667. As a result, the Developer's own argument (at 60:1- 61:14) confirms that the statute of limitations has run. *See Tompkins*, 99 Nev. at 146, 659 P.2d at 868; *Wilson v. Bd. of Cty. Comm'rs of Cty. of Teton*, 153 P.3d 917, 925 (Wyo. 2007); *Serra Canyon Co. v. California Coastal Comm.*, 16 Cal. Rptr. 3d 110, 113 (Cal. Ct. App. 2004); *Trimen Dev. Co. v. King Cty.*, P.2d 226, 231 (Wash. 1992).

The Developer's reliance on *Palazzolo v. Rhode Island* (at 61:25-62:7) is misplaced because *Palazzolo* held only that the state's "blanket rule" that a restriction on land use adopted prior to the current owner's acquisition defeats a takings claim based on that use restriction was overly broad. 533 U.S. 606, 628 (2001). Those are not the facts here. *Compare Daniel v. Cty. of Santa Barbara*, 288 F.3d 375, 384 (9th Cir. 2002) (distinguishing *Palazzolo* and holding that takings claim was time barred when taking occurred at time that predecessor granted county an offer to dedicate an easement). Here, the Developer's predecessor actively sought and obtained the land use restriction in order to enhance the value of its overall project and to satisfy the City's parks requirement and ***then built the golf course in furtherance of that designation***.

In other words, the predecessor solidified the open space designation on the ground, and the existence of the open space and golf course was not "repealed" in 2001 as the Developer contends. *See* Opposition at 63:11-28. The land remained a golf course until the Developer ceased that use and sold the water rights in 2015. As a result, the statute of limitations to object to that designation commenced in 1990 at the time the benefit was conferred on the Developer's predecessor.

D. The Developer's Effort to Exceed the Scope of its Complaint Constitutes Impermissible Claim Splitting

The Developer cannot overcome the legal deficiencies of its complaint by improperly filing thousands of pages of documents and making arguments (based on those extraneous documents) that the Court may not consider on this Rule 12(c) motion. The scope of a civil action is defined by the issues raised in the pleadings. *See Nevada-Douglas Consol. Copper Co.*

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v. Berryhill, 58 Nev. 261, 75 P.2d 992, 994 (1938) ("A fact necessary to be proven is equally necessary to be alleged."). In adjudicating a motion to dismiss, the Court is limited to the pleading being attacked. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Matters outside the complaint being challenged may not be considered. *Id.*

The Developer ignores this well-settled law by submitting reams of exhibits and presenting extensive arguments regarding matters that post-date the Council's decision to deny the 35-Acre Applications and that are outside the scope of its complaint. *See generally* Developer's appendix and Opposition at 31:13-46:11; 57:5-18; 68:6-74:11 and *passim*. Every purported "fact" the Developer asserts that does not exist in the Court's record on review was not before the Council when it denied the 35-Acre Applications. Such improper submissions and arguments must be disregarded. *See Nevada-Douglas Consol. Copper*, 58 Nev. at 261, 75 P.2d at 994. They relate to matters not alleged by the Developer and that are irrelevant to the straightforward issues of law that require dismissal.

Moreover, the Developer is already litigating elsewhere the subsequent City Council proceedings that it now invokes here in an attempt to survive the City's Rule 12 motion. *Compare* Opposition at 33:1-45:23 and 72:12-73:11 to Complaints in Case Nos. A-18-775804-J; A-18-780184-C, attached hereto as **Exhibit A** and **Exhibit B**, respectively. To allow the Developer to rely on matters that are already the subject of pending court cases constitutes impermissible claim splitting. *See Fitzharris v. Phillips*, 74 Nev. 371, 376, 333 P.2d 721, 724 (1958), disapproved on other grounds by *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). "It would be contrary to fundamental judicial procedure to permit two actions to remain pending between the same parties upon the identical cause." *Id.* A main purpose behind the rule preventing claim splitting is "to protect the defendant from being harassed by repetitive actions based on the same claim." Restatement (Second) Judgments, § 26 comment a.

In considering the City's motion for judgment on the pleadings, the Court may look no further than the allegations in the First Amended Complaint that challenge the City Council's denial of the 35-Acre Applications. All of the extraneous documents submitted by the Developer, and the matters outside the Developer's pleadings that the Developer asserts in its

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opposition, constitute impermissible claim splitting and cannot be considered. *See Breliant*, 109 Nev. at 847, 858 P.2d at 1261; *Fitzharris*, 74 Nev. at 376, 333 P.2d at 724. Even if these materials could be considered, however, they do not alter the conclusion that the Developer's claims must be dismissed.

E. The Developer's Judicial Estoppel Argument is Inapplicable

The Developer's contention that the City should be judicially estopped from asserting certain arguments must be rejected because there have been no statements made that are subject to judicial estoppel. The elements of judicial estoppel in Nevada are: "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).

Here, the Developer erroneously contends that the statements of its City Attorney and Planning Director that the Property is zoned R-PD7 and that a major modification was not required bar the City from asserting in this litigation that the Developer has no vested right to have its redevelopment applications approved and the Court lacks subject matter jurisdiction. *See* Opposition at 24:1-27:9. Judicial estoppel does not apply here for a number of reasons.

First, because Judge Crockett's Decision requires a major modification, and this Court has determined that Judge Crockett's Decision has preclusive effect on this case, statements made by the City Attorney and staff prior to the issuance of Judge Crockett's Decision have no bearing here. The City is bound to follow Judge Crockett's Decision unless and until it is reversed on appeal. Second, statements by the City Attorney and staff regarding the zoning are irrelevant because "compatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see also Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990) (affirming county commission's denial of a special use permit even though property was zoned for the use). Third, the

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Developer identifies no judicial proceeding in which the City successfully argued two totally inconsistent positions and none exists. *See NOLM*, 120 Nev. at 743, 100 P.3d at 663.

The Developer's *ad hominem* attack on the City's counsel is baseless and does not alter the conclusion that the elements of judicial estoppel are not satisfied here. A party has the right to retain outside counsel without interference from the opposing side. *See City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 371, 302 P.3d 1118, 1134 (2013). The City's attorneys owe duties to the City, not to third parties such as the Developer, and act only on behalf of their client, the City. *See* Restatement (Third) of the Law Governing Lawyers §51 (2000). The Developer's attacks on opposing counsel are simply an attempt to divert the Court from the narrow legal issue before it, and do not help the Developer survive this Rule 12 motion.

F. Threatening the Court With A "Judicial Taking" Cannot Prevent Dismissal

In the absence of any viable legal arguments, the Developer resorts to threatening the Court with a "judicial takings" claim, for which no factual or legal basis exists. *See* Opposition at 21:24-22:10; 56:11-17. No Nevada Supreme Court decision recognizes a judicial taking. Even if this Court were to look for guidance in federal law, the Developer's judicial taking theory fails as a matter of law because the United States Supreme Court has never recognized the concept of a judicial taking in a majority opinion.

Once, in a concurring opinion, Justice Potter Stewart wrote that a judicial taking could only occur where a judicial decision "constitutes a sudden change in state law, unpredictable in terms of relevant precedents." *Hughes v. Washington*, 389 U.S. 290, 296 (1967). As set forth in the legal authorities cited *supra*, the Court's dismissal of the Developer's claims is well-grounded in Nevada law. The circumstance described by Justice Stewart, even if it were binding precedent (it is not), is inapplicable here.

Second, in the case cited by the Developer, Justice Antonin Scalia wrote in a plurality opinion that a state court ***of last resort*** could be found to have "taken" property for public use where its decision contravened an established right of private property. *Stop The Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010). This district court is not a Nevada court of last resort and, therefore, could never effectuate a taking even

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under the case cited by the Developer. Moreover, as set forth in the legal authorities cited *supra*, the Developer has no "established" right to change the use of the golf course from open space to anything else. Indeed, as Justice Scalia notes, "A property right is not established if there is doubt about its existence; and when there is doubt we do not make our own assessment but accept the determination of the state court." *Id.* at 726 n.9.

The Developer bought an existing golf course knowing that it was designated open space by the City's General Plan and the Peccole Ranch Master Development Plan and constructed by its predecessor. Changes to this designation are within the sole discretion of the City Council. As a result, even if a judicial taking were recognized in Nevada (it is not), the Court's conclusion that Judge Crockett's order has preclusive effect, or that the Developer lacks vested rights, could not be construed as a judicial taking. The Court should, therefore, disregard the Developer's threats.

G. The Developer Fails to Establish its Claims Are Ripe Because Judge Crockett's Decision, Which the Court Has Determined Has Preclusive Effect, Requires the Approval of a Major Modification

The Court already determined as a matter of law that Judge Crockett's Decision has preclusive effect. *See* FFCL at Conclusions of Law ¶¶57-62. The Developer offers no rationale for the Court to revisit that correct conclusion. Pursuant to Judge Crockett's Decision, because the Developer has not provided the City Council with an opportunity to consider and decide an application for a major modification to the Peccole Ranch Master Development Plan, the ripeness doctrine bars the inverse condemnation claims. If a party's claims are not ripe for review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988).

Consideration of a major modification application is precisely the type of procedure the Supreme Court recognizes as a threshold requirement before a landowner can assert a takings claim. *See Palazzolo*, 533 U.S. at 620-21. Here, the Developer submitted ***and then withdrew*** a major modification application, preventing the City Council from considering it. *See* FFCL at Finding of Fact 33, *citing* ROR 1; 5; 6262. Where the application has been withdrawn, it

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cannot be considered "meaningful" to satisfy the ripeness requirements. *Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1199 (N.D. Cal. 1988) (discussing *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1455 (9th Cir. 1987).

Simply because the Developer may not agree with the procedures Judge Crockett deemed mandatory, or may contend that its prior actions already effectively met those requirements (*see* Opposition at 65:11-74:12), does not excuse the Developer from complying with them. *See Zilber*, 692 F. Supp. at 1199. The Developer does not get to unilaterally make that determination, and the City Council alone has the authority to consider and decide land use applications. Moreover, the Court cannot assume the role of the City Council, as the Developer requests. Also, because a district court cannot second guess another court's final judgment, the Developer must comply with Judge Crockett's Order unless and until it is reversed on appeal. *See Rohlfing v. Second Jud. Dist. Ct.*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990) (*citing* Nev. Const. art. 6, § 6; NRS 3.220).

The case of *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 720 (1999) cited by the Developer (at 67:3-13) addressed whether a judge or jury should decide if "a landowner has been deprived of all economically viable use of his property." *Id.* The Developer cannot get to this question unless and until it can demonstrate the existence of a justiciable controversy and legally viable claims. *See* NRCP 12(c). The Developer's claims are time barred, subject to issue preclusion, fail to state a cognizable claim and are not ripe for review. The *Monterey* case does not help the Developer.

III. CONCLUSION

Because the Court correctly concluded that the Developer lacks vested rights to have its redevelopment applications approved, there can be no taking as a matter of law, and the inverse condemnation claims must be dismissed. Moreover, the statute of limitations has run on the Developer's inverse condemnation claims. Finally, as the Court has determined that Judge Crockett's Decision has preclusive effect on this case, the Court lacks subject matter jurisdiction to hear the inverse condemnation claims because they are not ripe. For these reasons, the Developer's First Amended Complaint must be dismissed with prejudice.

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Respectfully submitted this 14th day of March, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 14th day of March, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS ON DEVELOPER'S INVERSE CONDEMNATION CLAIMS** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/Jelena Jovanovic
An employee of McDonald Carano LLP

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EXHIBIT “A”

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DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Petitioners, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-18-775804-J Dept. No.: Department 26 **PETITION FOR JUDICIAL REVIEW, COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** **(Exempt from Arbitration – Action Seeking Review of Administrative Decision and Action Concerning Title To Real Property)**

Petitioner, by and through its attorneys of record, The Law Offices of Kermitt L. Waters, for its Petition for Judicial Review and alternative claims in inverse condemnation complains and alleges as follows:

PARTIES

1. Petitioner ("Petitioner and/or Landowner") is organized and existing under the laws of the state of Nevada.

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

3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as " DOEs") inclusive are unknown to Petitioner at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other entities with standing to sue under the allegations set forth herein.

4. That the true names and capacities, whether individual, corporate, associate, or otherwise of Defendants named herein as ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X (hereinafter

collectively referred to as "ROEs"), inclusive are unknown to the Landowners at this time, who therefore sue said Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Defendants when the same are ascertained; that said Defendants are sued as principles; that at all times relevant herein, ROEs conduct and/or actions, either alone or in concert with the aforementioned defendants, resulted in the claims set forth herein.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this Petition for Judicial Review pursuant to NRS 278.0235 and NRS 278.3195 and this Court has jurisdiction over the alternative claims for inverse condemnation pursuant to the United States Constitution, Nevada State Constitution and the Nevada Revised Statutes.

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

GENERAL ALLEGATIONS

7. Petitioner owns 132.92 Acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-601-008, 138-31-702-003, and 138-31-702-004 (hereinafter referred to as the "133 Acre Property" or "Property").

Zoning Governs Existing Permitted Land Uses

8. Zoning defines what uses 'presently' are permitted, and not permitted, on a parcel.

9. A "master plan" designation, as such term is used in NRS 278 and the Las Vegas 2020 Master Plan, determines 'future' land use and is considered only when changing the zoning on a parcel.

10. General Plan Amendments and Major Modifications, as such mechanisms are defined in the Las Vegas 2020 Master Plan are not required if the proposed use complies with existing zoning on a parcel.

11. The City of Las Vegas Unified Development Code in Title 19.10.040 defines a zoning district titled "PD (Planned Development District)" and in Title 19.10.050 defines a zoning district titled "R-PD (Residential Planned Development)". The "PD" and "R-PD" zoning districts are separate and distinct from each other.

12. A "R-PD" district is not governed by the provisions of Title 19.10.040. The term "Major Modification" as used in Title 19.10.040 does not apply to a "R-PD" zoning district.

The Undisputed R-PD7 Residential Zoning

13. The existing zoning district on the 133 Acre Property is R-PD7 (Residential Planned Development District – 7.49 Units per Acre).

14. No formal action approving a plot plan, nor site development review, was ever taken by the Planning Commission, nor City Council, to allow the use of the Property as a golf course.

15. The R-PD7 zoning designation on the Property was established by Ordinance No. 5353 (Bill Z-2001-1) PASSED, ADOPTED, and APPROVED by the Las Vegas City Council on August 15, 2001 ("Ordinance 5353"). Specifically:

a. Assessor's Parcel Number 138-31-212-002 was changed from its then "Current Zoning" designation of "U(PR)" to its "New Zoning" designation "R-PD7";

b. Assessor's Parcel Number 138-31-610-002 was changed from its then "Current Zoning" designation of "U(PR)" to its "New Zoning" designation "R-PD7";

c. Assessor's Parcel Number 138-31-713-002 was changed from its then "Current Zoning" designation of "U(M)" to its "New Zoning" designation "R-PD7"; and

d. Assessor's Parcel Number 138-31-712-004 was changed from its then "Current Zoning" designation of "U(ML)" to its "New Zoning" designation "R-PD7".

16. Ordinance 5353 provided: "SECTION 4: All ordinances or parts of ordinances or section, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

17. Ordinance 5353 repealed any then existing master plans, including the conceptual Peccole Ranch Master Plan approved in 1990, with respect to the Property.

18. In a December 30, 2014 dated letter ("Zoning Verification Letter"), the City verified in writing that "The Subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." This includes the 133 Acre Property.

19. At a May 16, 2018 City Council hearing, the City Attorney and the City Staff affirmed the issuance and content of the Zoning Verification Letter.

20. The City does not dispute that the Property is zoned R-PD7.

21. None of the 133 Acre Property is zoned "PD".

22. Petitioner materially relied upon the City's verification of the Property's R-PD7 vested zoning rights.

23. At all relevant times herein, Petitioner had the vested right to use and develop the 133 Acre Property under and in conformity with the existing R-PD7 zoning.

24. R-PD7 zoning allows up to 7.49 residential units per acre, subject to comparability and compatibility adjacency planning principles.

25. The Property is taxed by the Clark County Assessor based on its R-PD7 zoning and Vacant Single Family Residential use classification.

26. Petitioner's vested property rights in the 133 Acre Property is recognized under the United States and Nevada constitutions, Nevada case law, and the Nevada Revised Statutes.

The Legally Irrelevant 2016 General Plan Amendment

27. In late 2005, the City changed the Land Use Designation under its 2020 Master Plan to "PR-OS" (Parks/Recreation/Open Space). The City Attorney has on multiple occasions stated that the City is unable to establish that it complied with its legal notice and public hearing requirements when it changed the General Plan Designation on the Property to PR-OS.

28. The PR-OS designation on the Property was legally deficient and is therefore void ab initio and has no legal effect on the Property.

29. On or about December 29, 2016, and at the request of the City, Petitioner filed an application for a General Plan Amendment to change the General Plan Designation relating to the 133 Acre Property and several other parcels of real property from PR-OS to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-68385" also referred to herein as the "2016 GPA").

30. The City Council denied the 2016 GPA on June 21, 2017.

31. The 133 Acre Property was also previously included, at the request of the City, as part of one master development agreement that would have allowed the development of 250.92 acres of property as a whole. At that time, the City Council advised Petitioner that the only way the City Council would allow development on the 133 Acre Property was under a master development agreement ("MDA") for the entirety of the Property (totaling 250.92 acres). On August 2, 2017, less than two months after the City Council said it was very, very close to

approving the MDA, however, the City Council voted to deny the MDA altogether, which also included the 133 Acre Property.

32. The City's denial of the 2016 GPA does not affect the R-PD7 zoning on the Property, nor Petitioner's exercising its vested property rights to develop the 133 Acre Property under the existing R-PD7 zoning.

33. The 2016 GPA was not a legal requirement under LVMC Title 19, nor NRS 278. The R-PD7 zoning on the 133 Acre Property takes precedence over the PR-OS General Plan Designation, per NRS 278.349(3)(e).

34. Whether or not Petitioner files a General Plan Amendment to remove or change the PR-OS designation does not prohibit Petitioner from exercising its vested property rights to develop the 133 Acre Property under the existing vested R-PD7 zoning.

The Unjustified Delay of the 2017 Tentative Map Applications

35. On or about October, 2017, Petitioner filed all applications required by the City for the purpose of obtaining approval on tentative maps pursuant to NRS 278 to utilize the existing vested R-PD7 zoning on the 133 Acre Property. The October 2017 applications were identified as WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; and TMP-72012 (collectively "2017 Tentative Map Applications").

36. Shortly after the acceptance of the 2017 Tentative Map Applications by the City, the Planning Staff requested that Petitioner file a General Plan Amendment to accompany 2017 Tentative Map Applications. The City Planning Staff informed Petitioner that a General Plan Amendment was being "requested only", and that it is not a requirement under City code.

37. Under protest as being legally unnecessary, Petitioner accommodated the City's request to file a General Plan Amendment application to change the designation on the Property

from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential). The application was identified as GPA-72220 ("2017 GPA").

38. The 2017 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.

39. The R-PD7 zoning on the 133 Acre Property takes precedence over the PR-OS General Plan Designation, per NRS 278.349(3)(e).

40. The 2017 Tentative Map Applications and 2017 GPA were recommended for APPROVAL by the City Staff, and APPROVED by a vote of the Planning Commission.

41. The 2017 GPA and the 2017 Tentative Map Applications were scheduled to be heard by the Las Vegas City Council ("City Council") on February 21, 2018.

42. At the February 21, 2018, City Council hearing, Petitioner requested that Councilman Coffin and Councilman Seroka recuse themselves from participation on the matter based on bias and conflicts of interest. The request was denied.

43. Although the 2017 Tentative Map Applications were on the agenda for a presentation and vote by the City Council, the City Council voted to abey the items to delay them several months, stating as the basis for the delay that one of the City Council seats was vacant and that Councilman Coffin was participating by phone from abroad. The stated reasons were invalid as the required quorum was present for the City Council to proceed with the applications at the February 21, 2018 hearing. Petitioner was denied any opportunity to be heard before the vote. The City Council vote resulted in a three (3) month delay to the hearing of the 2017 Tentative Map Applications.

44. After the vote resulting in abeyance, Petitioner stated on the record that it "vehemently opposed any kind of abeyance and continued delay of this matter" as the efforts to develop the Property had already been systematically delayed by the City for many years and

that Petitioner wanted a "vote on these applications and due process and the ability for [the City Council] to hear the zoning facts."

45. The abeyance resulted in the City Council delaying the hearing of the 2017 Tentative Map Applications for three (3) months, until May 16, 2018.

The "Yohan Lowie" Bill

46. On May 16, 2018, the day the 2017 Tentative Map Applications were scheduled to be heard, the City Council passed Bill No. 2018-5, the sole and singular intent of which was to prevent any development on the 133 Acre Property (and other properties, owned by affiliates of Petitioner, upon which the former Badlands Golf Course was operated).

47. During the discussion of Bill No. 2018-5:

a. Councilman Coffin foreshadowed the City Council's plan for the 2017 Tentative Map Applications (scheduled to be heard in the City Council's afternoon session) when he admitted that if the bill were to apply to the 2017 Tentative Map Applications, it could be interpreted as having the effect of influencing the City Council's decision on them[1].

b. Councilwoman Fiori stated her opinion that "*this Bill is for one development and one development only . . . [t]his Bill is only about Badlands Golf Course [which includes the 133 Acre Property]. . . . I call it the Yohan Lowie [a principal of Petitioner] Bill.*" ("Yohan Lowie Bill")

[1] **Coffin:** Thank you, your Honor. I'm not the sponsor of the bill but I do want to weigh in as I have heard testimony. And thank you very much for conducting the recommending committee without me there Monday, I couldn't be there. Uh, and I do appreciate the fact. But I knew the bill pretty well and I know that it doesn't address the, uh, current, uh, topic du jour of a- of a certain, uh, golf course, in, uh, the western part of town.

That would be retroactive treatment and, uh, I don't see how we can draw a conclusion or a connection between a bill discussing the future, with something that's been in play for quite a long time. So I think we've got to separate those two out for one thing. One, if we were to connect these two then someone might interpret this action today as somehow influencing the discussion on Badlands and that is not what we want to do. We wanna keep it separate and keep it clean, and this bill has nothing to do with that as far as I'm concerned. Thank you very much, your honor.

48. The City Council proceeded to vote to approve the Yohan Lowie Bill, refusing to allow Petitioner to be heard to make a record of its opposition to the ordinance.

49. Councilwoman Fiori and Mayor Goodman voted against the Yohan Lowie Bill and concurred with City Staff that the current policies relating to neighborhood engagement, which have been in place for many years, are effective and the Yohan Lowie Bill code revisions are unnecessary.

The 2017 Tentative Map Applications Are Stricken From The City Council Agenda

50. Finally, seven (7) months after the filing, the 2017 Tentative Map Applications and legally irrelevant 2017 GPA were set on the afternoon agenda of the City Council hearing on May 16, 2018, the same day as the passing of the "Yohan Lowie Bill".

51. At the commencement of the afternoon session of the May 16, 2018 City Council hearing, Councilman Seroka made an unprecedented "motion to strike" the 2017 Tentative Map Applications from the agenda, in order to avoid the 2017 Tentative Map Applications from being presented and voted upon by the City Council, and to cause them to be subjected to the Yohan Lowie Bill when re-filed by Petitioner.

52. The proffered bases of Councilman Seroka's unprecedented Motion to Strike Petitioner's applications were violations of Nevada law, and contradicted the positions and opinions of the City Staff, City Attorney, and prior formal actions of the City Council.

53. During the discussion of the motion, Councilman Coffin usurped the responsibilities of the City Attorney by giving legal advice to the other City Councilmembers stating that no advance notice is necessary for a procedural motion and that there was no need to have public comment on a motion to strike.

54. Based upon information and belief, other City Councilmembers were sandbagged and confused by the unprecedented and procedurally improper Motion to Strike Petitioner's applications. Specifically:

a. Councilwoman Fiori stated that "*none of us [on the City council] had a briefing on what just occurred*" and that "*it is quite shady and I don't see how we can even proceed*" and the actions were "*very shocking.*";

b. Councilman Crear said he did not feel comfortable moving forward and did not know if he had enough information to move forward; and

c. Councilman Anthony said "*95% of what Councilman Seroka just said, I heard it for the first time. I don't know what it means, I don't understand it.*"

55. Petitioner's representative stated that just a few days earlier Petitioner's representative met with councilman Seroka and other members of the City Council to address any open issues related to the 2017 Tentative Map Applications and no mention was made of the "motion to strike" or issues related thereto. Petitioner's representative further explained that Petitioner has been being stonewalled in its efforts to develop its property for many years, and that despite full compliance with City code and City Staff requests, the City keeps changing the rules on the fly for the purpose of preventing development of the property.

Seroka's Fiction #1
'That A GPA Was Necessary Yet Time Barred'

56. Councilman Seroka's first basis for the motion to strike was a legally fictitious claim ("Fiction #1") that Petitioner's 2017 GPA was the same or similar to the 2016 GPA that was denied in June of 2017, and under the City Code the 2017 GPA could not be filed sooner than one year from the date of the denial of the 2016 GPA. This was a legal fiction, because Petitioner is not required to file a General Plan Amendment ("GPA") in order to proceed under

its existing R-PD7 zoning. Petitioner would only be required to file a GPA if it filed an application seeking to change the zoning from R-PD7 to another zoning district classification.

57. At the May 16, 2018 hearing:

a. City Planning Staff advised the City Council that the 2017 GPA was filed by Petitioner only at the City's request and that Petitioner's filing of the 2017 GPA was under protest as being legally unnecessary.

b. City Attorney Brad Jerbic and City Staff both stated on the record that a GPA was not required to be filed by Petitioner to have the Tentative Map Applications heard.

58. Under Nevada law, existing land use is governed by zoning, and only future land use (the changing of zoning) takes the general plan (also commonly referred to as a master plan) designation into consideration. A GPA is not required for the submission, consideration and approval of a tentative map application if the underlying zoning allows for the use delineated on the tentative map.

59. Whether or not the 2017 GPA was filed by Petitioner, nor heard, approved, or denied by the City Council, was irrelevant in all respects regarding the hearing of Petitioner's 2017 Tentative Map Applications.

60. NRS 278.349(3) unambiguously provides that: "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider: (e) 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**;"

61. The City Council's striking Petitioner's 2017 Tentative Map Applications from the City Council agenda due to the "PR-OS" master plan designation was a violation of Nevada

law. Specifically, NRS 278349(3)(e) which provides that the Property's R-PD7 residential zoning rights take precedence over an inconsistent master plan designation.

62. No general plan amendment was required to be filed by Petitioner in order to have the 2017 Tentative Map Applications heard and voted upon by the City Council.

63. The courtesy filing of the 2017 GPA by Petitioner, at the specific request (but not requirement) of City Planning Staff, was an improper and illegal basis for striking Petitioner's 2017 Tentative Map Applications.

Seroka's Fiction #2
'That a "Major Modification" To A Master Plan Is Required
In Order To Proceed With The 2017 Tentative Map Applications

64. Councilman Seroka's second basis for the motion to strike was a legally fictitious claim ("Fiction #2") that a "major modification" application to the conceptual Peccole Ranch Master Plan was required to be filed concurrently with the 2017 Tentative Map Applications.

65. At the May 16, 2018 hearing City Attorney Brad Jerbic stated on the record that Petitioner had a due process right to have its 2017 Tentative Map Applications heard that day.

66. In fact, the City Council, on January 3, 2018, had previously taken formal action on that exact issue, voting 4-2 that NO MAJOR MODIFICATION of the conceptual Peccole Ranch Master Plan was necessary in order for the City Council to hear the 2017 Tentative Map Applications.

67. The January 3, 2018 formal action that Petitioner was <u>not</u> required to file a "major modification" with the 2017 Tentative Map Applications was affirmed on January 17, 2018, when the City Council DENIED Councilman Coffin's motion to rescind the January 3, 2018 NO MAJOR MODIFICATION vote.

68. Fiction #2 was illegal in that it was a violation of the formal action taken by the City Council on January 3, 2018 that NO MAJOR MODIFICATION was required, and on January 17, 2018 denying a rescission of the NO MAJOR MODIFICATION vote.

69. Under Nevada law, existing zoning on a parcel supersedes any conflicting land use designations within the Las Vegas 2020 Master Plan, Land Use Elements, Land Use Designations, Master Development Plans (including the conceptual Peccole Ranch Master Plan), Master Development Plan Areas, and Special Area Plans, as such terms are used in the Las Vegas 2020 Master Plan.

70. Notwithstanding its inapplicability with respect to development under existing zoning on a parcel, the conceptual Peccole Ranch Master Plan was repealed by Ordinance 5353 in 2001.

71. Despite having no basis in law, either substantively or procedurally, to strike Petitioner's applications, the City Council voted 5-2 in favor of striking the 2017 Tentative Map Applications, altogether conflicting with its prior formal actions to the contrary and preventing a hearing on the merits of Petitioner's 2017 Tentative Map Applications to develop its Property under its existing vested R-PD7 zoning.

72. This motion to strike the 2017 Tentative Map Applications by the City Council was not supported by substantial evidence and was arbitrary and capricious. By striking the Tentative Map Applications, the City Council entirely prevented the applications from even being heard on the merits.

73. Based on the City's actions, it is clear that the purpose of the February 21, 2018 City Council abeyance was to allow Councilman Seroka time to put his "Yohan Lowie Bill" on the May 16, 2018 morning agenda, get it passed, and then improperly strike the applications for

the 133 Acre Property causing them to fall under the Yohan Lowie Bill if they are re-filed in the future.

74. Regardless of which route Petitioner takes to develop its Property, the City gives Petitioner specific instructions on what applications to file, then after extensive delays the City Council changes the rules and denies the applications or prevents the applications from even being heard and voted upon.

75. Based upon information and belief, the City is attempting to purchase Petitioner's 133 Acre Property and is taking action to depress the market value of the Property or has placed an arbitrarily low value on the Property, thereby showing the City's bad faith intent to drive down the value of the Property so that it can purchase it at a greatly reduced value.

76. The City's actions in denying and/or striking Petitioner's applications has foreclosed all development of the 133 Acre Property in violation of Petitioner's vested right to develop the 133 Acre Property.

77. On or about May 17, 2018, Notices of Final Action were issued striking and preventing a hearing on GPA-7220; WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; TMP-72012.

78. This Petition for Judicial Review has been filed within 25 days of the Notices of Final Action as required by NRS 278.3195.

FIRST CLAIM FOR RELIEF
(Judicial Review)

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

80. The City has a duty to refrain from exercising its entitlement and land use authority in a manner that is arbitrary and capricious.

81. The City, by engaging in the conduct set forth above, acted arbitrarily and capriciously when it struck and denied a hearing on the 2017 Tentative Map Applications.

82. The City's decision to strike and deny a hearing on the 2017 Tentative Map Applications were not supported by evidence a reasonable mind would find adequate to support such action.

83. By striking and denying a hearing on the 2017 Tentative Map Applications without substantial evidence supporting such action, the City abused its discretion.

84. The City's arbitrary and capricious action in regards to the 2017 Tentative Map Applications has caused Petitioner to suffer real and significant damages.

85. Petitioner is aggrieved by the City's action to strike and deny a hearing on the 2017 Tentative Map Applications.

86. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law to correct the City's arbitrary and capricious actions.

87. Pursuant to NRS 278.3195, Petitioner is entitled to judicial review of the City's arbitrary and capricious action to strike and deny a hearing on the 2017 Tentative Map Applications and for an order reversing the City's actions regarding the 2017 Tentative Map Applications.

FIRST ALTERNATIVE CAUSE OF ACTION FOR DECLARATORY RELIEF

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

89. As a result of the PR-OS being improperly placed on the 133 Acre Property, and the City Council's action in denying Petitioner's zoning rights as a result of such designation, there is uncertainty as to its validity and application to the 133 Acre Property (although Petitioner denies that the PR-OS should even apply to the 133 Acre Property).

90. Declaratory relief is necessary to terminate or resolve the uncertainty.

91. Declaratory relief is permitted under Nevada law, including but not limited to NRS Chapter 30.

92. Therefore, Petitioner requests that this Court immediately enter an order finding the PR-OS designation on the 133 Acre Property is invalid and/or of no effect on the 133 Acre Property's R-PD7 zoning rights, thereby prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing zoning and to the 133 Acre Property entirely.

SECOND ALTERNATIVE CAUSE OF ACTION FOR PRELIMINARY INJUNCTION

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

94. Any action that placed a designation of PR-OS on the 133 Acre Property was without legal authority and, therefore, entirely invalid.

95. There is a reasonable and strong likelihood of success on the merits which will invalidate the improper PR-OS designation on the 133 Acre Property.

96. Continued application of the PR-OS designation on the 133 Acre Property will result in irreparable harm and cause a significant hardship on Petitioner as: 1) the 133 Acre Property is legally recognized real property and is unique in the State of Nevada; 2) the PR-OS designation on the 133 Acre Property may prevent Petitioner from using the Property for any beneficial use; 3) Petitioner relies upon the purchase and development of property, including the 133 Acre Property, to provide a livelihood for numerous individuals and continued application of the PR-OS to prevent development of the 133 Acre Property will interfere with the livelihood of these individuals; 4) under NRS 278.349(3(e) the PR-OS zoning has no applicability with respect to the existing R-PD7 zoning on the Property; and, 5) allowing the development of the 133 Acre

Property will result in significant financial benefit to the City, including but not limited to increasing the City tax base and creating additional jobs for its citizens.

97. There is no plain, adequate or speedy remedy at law.

98. Therefore, Petitioner is entitled to injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any application, land use decision, or otherwise, relating to the Property's existing zoning and/or to the 133 Acre Property entirely.

THIRD ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Categorical Taking)

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

100. Petitioner has vested rights to use and develop the 133 Acre Property.

101. The City reached a final decision that it will not allow development of Petitioner's 133 Acre Property.

102. Any further requests to the City to develop the 133 Acre Property would be futile.

103. The City's actions in this case have resulted in a direct appropriation of Petitioner's 133 Acre Property by entirely prohibiting Petitioner from using the 133 Acre Property for any purpose and reserving the 133 Acre Property undeveloped.

104. As a result of the City's actions, Petitioner has been unable to develop the 133 Acre Property and any and all value in the 133 Acre Property has been entirely eliminated.

105. The City's actions have completely deprived Petitioner of all economically beneficial use of the 133 Acre Property.

106. The City's actions have resulted in a direct and substantial impact on Petitioner and on the 133 Acre Property.

107. The City's actions result in a categorical taking of Petitioner's 133 Acre Property.

108. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property

109. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

110. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

FOURTH ALTERNATIVE CLAIM FOR RELIEF

IN INVERSE CONDEMNATION

(Penn Central Regulatory Taking)

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

113. Petitioner has vested rights to use and develop the 133 Acre Property.

114. The City reached a final decision that it will not allow development of Petitioner's 133 Acre Property.

115. Any further requests to the City to develop the 133 Acre Property would be futile.

116. The City through its motion to strike, and its prior actions denying an application to develop the 133 Acre Property, has done so even though: 1) Petitioner's proposed 133 Acre Property development was in conformance with its zoning density and was comparable and compatible with existing adjacent and nearby residential development; 2) the Planning Commission recommended approval; and 3) the City's own Staff recommended approval.

117. The City also stated that it would allow Petitioner to develop the 133 Acre Property as part of the MDA, referenced above. Petitioner worked on the MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and with the City's direct and active involvement in the drafting and preparing the MDA and the City's statements that it would approve the MDA and despite nearly two years of working on the MDA, on or about August 2, 2017, the City denied the MDA.

118. The City's actions have caused a direct and substantial economic impact on Petitioner, including but not limited to preventing development of the 133 Acre Property.

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

120. At all relevant times herein Petitioner had specific and distinct investment backed expectations to develop the 133 Acre Property.

121. These investment backed expectations are further supported by the fact that the City, itself, confirmed the Property has vested R-PD7 development rights prior to Petitioner's acquiring the 133 Acre Property.

122. The City was expressly advised of Petitioner's investment backed expectations prior to denying Petitioner the use of the 133 Acre Property.

123. The City's actions are preserving the 133 Acre Property as open space for a public use and the public is physically entering on and actively using the 133 Acre Property.

124. The City's actions have resulted in the loss of Petitioner's investment backed expectations in the 133 Acre Property.

125. The character of the City action to deny Petitioner's use of the 133 Acre Property is arbitrary, capricious, and fails to advance any legitimate government interest and is more akin

to a physical acquisition than adjusting the benefits and burdens of economic life to promote the common good.

126. The City never allowed Petitioner to be heard on the applications to develop the 133 Acre Property and never stated that Petitioner did not have a vested property right to develop the 133 Acre Property.

127. The City denied Petitioner the right to be heard on its applications to develop the 133 Acre Property.

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

129. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property.

130. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

131. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

FIFTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Regulatory Per Se Taking)

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

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

135. The City's actions exclude the Petitioner from using the 133 Acre Property and, instead, permanently reserve the 133 Acre Property for a public use and the public is physically entering on and actively using the 133 Acre Property.

136. The City's actions have shown an unconditional and permanent taking of the 133 Acre Property.

137. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property.

138. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

139. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

SIXTH ALTERNATIVE CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Nonregulatory Taking)

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

142. The City actions directly and substantially interfere with Petitioner's vested property rights rendering the 133 Acre Property unusable and/or valueless.

143. The City has intentionally delayed approval of development on the 133 Acre Property and, ultimately, struck or denied any and all development in a bad faith effort to preclude any use of the 133 Acre Property and/or to purchase the 133 Acre Property at a depressed value.

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

145. The City's actions result in a nonregulatory taking of Petitioner's 133 Acre Property.

146. The City has not paid just compensation to Petitioner for this taking of its 133 Acre Property.

147. The City's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

148. Therefore, Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Temporary Taking)

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

151. If there is subsequent Government Action or a finding by the Nevada Supreme Court, or otherwise, that Petitioner may develop the 133 Acre Property, then there has been a temporary taking of Petitioner's 133 Acre Property for which just compensation must be paid.

152. The Government has not offered to pay just compensation for this temporary taking.

153. The Government's failure to pay just compensation to Petitioner for the taking of its 133 Acre Property is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

154. Therefore, the Petitioner is compelled to bring this cause of action for the taking of the 133 Acre Property to recover just compensation for property the City has taken without payment of just compensation.

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

EIGHTH CLAIM FOR VIOLATION OF

THE LANDOWNERS' DUE PROCESS RIGHTS

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

157. The Government action in this case retroactively and without due process transformed Petitioner's vested property right to a property without any value.

158. The Government action in this case was taken without proper notice to Petitioner.

159. This Government action to eliminate or substantially change Petitioner's vested and established property rights, had the effect of depriving Petitioner of its legitimate constitutionally protected property rights.

160. This Government action was arbitrary and/or irrational and unrelated to any legitimate governmental objective or purpose.

161. This is a violation of Petitioner's substantive and procedural due process rights under the United States and Nevada State Constitutions.

162. This Government action mandates payment of just compensation as stated herein.

163. The Government action should be invalidated to return Petitioner's property rights to Petitioner thereby allowing development of the 133 Acre Property.

164. This requested relief is in excess of fifteen thousand dollars ($15,000.00).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. For Judicial Review of the City's denial and/or striking of the Petitioner's applications stated herein;

2. For an Order reversing the City's denial and/or striking of the Petitioner's applications stated herein;

3. Declaratory judgment with this Court immediately entering an order finding the PR-OS designation on the 133 Acre Property is invalid and of no effect on the 133 Acre Property and prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use application, decision, or otherwise, relating to the Property's existing vested zoning and to Petitioner's Property entirely;

4. Injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing zoning and to the 133 Acre Property entirely;

5. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of Petitioner's property by inverse condemnation;

6. Prejudgment interest commencing from the date the Government first froze the use of the 133 Acre Property which is prior to the filing of this Complaint in Inverse Condemnation;

7. Invalidation of the Government action, returning the vested property rights to Petitioner thereby allowing development of the 133 Acre Property;

8. A preferential trial setting pursuant to NRS 37.055;

9. Payment for all costs incurred in attempting to develop the 133 Acre Property;

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

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

DATED this 7th day of June, 2018.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

Vickie DeHart, on behalf of Petitioner, being first duly sworn, upon oath, deposes and says: that he/she has read the foregoing **PETITION FOR JUDICIAL REVIEW, COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF, AND ALTERNATIVE CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his/her knowledge.

V DeHart

Name: Vickie DeHart, as manager

SUBSCRIBED and SWORN to before me
This 7 day of June, 2018.

NOTARY PUBLIC
LeeAnn Stewart-Schencke

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

EXHIBIT “B”

COMP
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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-18-780184-C
Dept. No.: Department 28

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND VERIFIED CLAIMS IN INVERSE CONDEMNATION

(Exempt from Arbitration –Action Concerning Title To Real Property)

COMES NOW Plaintiffs, 180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., and SEVENTY ACRES, LLC, a Nevada Limited Liability Company ("Landowners") by and through its attorney of record, The Law Offices of Kermitt L. Waters, for its Complaint for Declaratory and Injunctive Relief and In Inverse Condemnation allege as follows:

PARTIES

1. Landowners are organized and existing under the laws of the State of Nevada.

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

3. That the true names and capacities, whether individual, corporate, associate, or otherwise of Plaintiffs named herein as DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X (hereinafter collectively referred to as " DOEs") inclusive are unknown to the Landowners at this time and who may have standing to sue in this matter and who, therefore, sue the Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Plaintiffs if and when the same are ascertained; that said Plaintiffs sue as principles; that at all times relevant herein, Plaintiff DOEs were persons, corporations, or other entities with standing to sue under the allegations set forth herein.

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

JURISDICTION AND VENUE

5. The Court has jurisdiction over the claims set forth herein pursuant to the United States Constitution, Nevada State Constitution, and the Nevada Revised Statutes, including the Chapter 30 provisions applicable to declaratory relief actions.

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

GENERAL ALLEGATIONS

7. Landowners own three separate and distinct properties that make up approximately 65 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-801-002 (11.28 acres, owned by 180 LAND COMPANY, LLC); 138-31-801-003 (5.44 acres, owned by SEVENTY ACRES, LLC), and; 138-32-301-007 (47.59 acres, owned by SEVENTY ACRES, LLC) (although these are three separate and distinct parcels, the parcels will hereinafter be collectively referred to as the "65 Acres").

8. The 65 Acres with several other separate parcels of property comprises approximately 250 acres of residential zoned land (hereinafter "250 Acre Residential Zoned Land").

Zoning Governs Existing Permitted Land Uses

9. Zoning specifically defines what uses *presently* are allowable on a parcel.

10. A "master plan" designation, as such term is used in NRS 278 and the Las Vegas 2020 Master Plan, determines *future* land use and is considered only when legally changing the zoning on a parcel.

11. General Plan Amendments and Major Modifications, as such mechanisms are defined in the Las Vegas 2020 Master Plan (adopted on September 6, 2000 through ordinance 2000-62) are not required if the proposed use complies with existing zoning on a parcel.

12. The City of Las Vegas subsequently adopted the Land Use & Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan on September 2, 2009, Ordinance #6056; revised with ordinance #6152 on May 8, 2012.

13. The Land Use & Neighborhoods Preservation Element establishes the City's land use hierarchy which progresses in the following ascending order: 2020 Mater Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. In the hierarchy, the land use designation is subordinate to the zoning designation because land use designations indicate the intended use and development density for a particular area while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

14. The City of Las Vegas Unified Development Code Title 19.10.040 defines a zoning district titled "PD (Planned Development District)" and Title 19.10.050 defines a zoning district titled "R-PD (Residential Planned Development)". The "PD" and "R-PD" zoning districts are

separate and distinct from each other and governed by separate and distinct provisions in the City Code.

15. An "R-PD" district is not governed by the provisions of Title 19.10.040. The term "Major Modification" as used in Title 19.10.040 does not apply to an "R-PD" zoning district.

The Undisputed R-PD7 Residential Zoning

16. The existing zoning district on the 65 Acres is R-PD7 (Residential Planned Development District – 7.49 Units per Acre).

17. Upon information and belief, no formal action approving a plot plan, nor site development review, was ever taken by the Planning Commission, nor City Council, to allow the use of the 250 Acre Residential Zoned Land as a golf course.

18. The R-PD7 zoning designation on the Property was established by Ordinance No. 5353 (Bill Z-2001-1) PASSED, ADOPTED, and APPROVED by the Las Vegas City Council on August 15, 2001 ("Ordinance 5353"). Specifically:

a. Assessor's Parcel Number 138-31-801-002 (11.28 acres, owned by 180 LAND COMPANY, LLC) was changed from its then "Current Zoning" designation of "U (M)" to its "New Zoning" designation "R-PD7";

b. Assessor's Parcel Number 138-31-801-003 (5.44 acres, owned by SEVENTY ACRES, LLC) was changed from its then "Current Zoning" designation of "U (M)" to its "New Zoning" designation "R-PD7"; and,

c. Assessor's Parcel Number 138-32-301-007 (47.59 acres, owned by SEVENTY ACRES, LLC) was changed from its then "Current Zoning" designation of "U (M)" to its "New Zoning" designation "R-PD7."

19. Ordinance 5353 provided: "SECTION 4: All ordinances or parts of ordinances or section, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of

the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed." (emphasis supplied).

20. Ordinance 5353 repealed any then existing master plans, including the conceptual Peccole Ranch Master Plan approved in 1990, with respect to the Property.

21. In a December 30, 2014, letter ("Zoning Verification Letter"), the City verified in writing that "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." This Zoning Verification Letter includes the 65 Acres.

22. At a May 16, 2018 City Council hearing, the City Attorney and the City Staff affirmed the issuance and content of the Zoning Verification Letter.

23. The City does not dispute that the Property is zoned R-PD7.

24. None of the 65 Acres is zoned "PD".

25. Landowners materially relied upon the City's verification of the Property's R-PD7 vested zoning rights.

26. At all relevant times herein, Landowners had the vested right to use and develop the 65 Acres under and in conformity with the existing R-PD7.

27. R-PD7 zoning allows up to 7.49 residential units per acre, subject to comparability and compatibility adjacency planning principles.

28. The Property is taxed by the Clark County Assessor based on its R-PD7 zoning and Vacant Single Family Residential use classification, further evidencing the vested property rights.

29. Landowners' vested property rights in the 65 Acres is recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

The Legally Irrelevant 2016 General Plan Amendment

30. In or about late 2005, the City changed the Land Use Designation for the Property under its 2020 Master Plan to "PR-OS" (Parks/Recreation/Open Space). The City Attorney has

on multiple occasions stated that the City is unable to establish that it complied with its legal notice and public hearing requirements when it changed the General Plan Designation on the Property to PR-OS.

31. The PR-OS designation on the Property was procedurally deficient and is therefore void ab initio and has no legal effect on the Property.

32. On or about December 29, 2016, and at the request of the City, the Landowners filed an application for a General Plan Amendment to change the General Plan Designation relating to the 65 Acres and several other parcels of real property from PR-OS to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-68385" also referred to herein as the "2016 GPA").

33. The City Council thereafter denied the 2016 GPA on June 21, 2017, even though the City requested that the Landowners file the GPA.

34. The City's denial of the 2016 GPA does not affect the R-PD7 zoning on the Property, nor prohibit the Landowners from exercising their vested property rights to develop the 65 Acres under the existing R-PD7 zoning.

35. The 2016 GPA was not a legal requirement under LVMC Title 19, nor NRS 278. The R-PD7 zoning on the 65 Acres takes precedence over the PR-OS General Plan Designation, per The Land Use & Preservation Elements of the Las Vegas 2020 Master Plan and per NRS 278.349(3)(e).

36. Whether or not the Landowners file a General Plan Amendment to remove or change the PR-OS designation does not prohibit the Landowners from exercising their vested property rights to develop the 65 Acres under the existing vested R-PD7 zoning.

RIPENESS AND FUTILITY

37. The Landowners' claims are ripe for adjudication as the City has already given the final word and provided a notice of final action that it will not allow any development on the 65 Acres and any further requests to develop on the 65 Acres is entirely futile as demonstrated by the continuous and repeated delays, changed positions by the City, and express and affirmative actions toward the 65 Acres that have prevented any development whatsoever on the 65 Acres.

38. The futility of submitting any further development applications is further demonstrated by the City's actions toward the several properties that make up the 65 Acres and the several other properties that comprise the 250 Acre Residential Zoned Land.

THE MASTER DEVELOPMENT AGREEMENT DENIAL

39. The 65 Acres was previously included, at the request of the City, as part of one master development agreement that would have allowed the development of the 250 Acre Residential Zoned Land (hereinafter "MDA").

40. At that time, the City affirmatively stated in public hearings that the only way the City Council would allow development on the 65 Acres was under the MDA for the entirety of the 250 Acre Residential Zoned Land.

41. Over an approximately 2.5 year period, the Landowners, at the City's demand, were required to change the MDA approximately ten (10) times and the Landowners complied with each and every City request.

42. However, on August 2, 2017, less than two months after the City Council said it was "very, very close" to approving the MDA, the City Council voted to deny the MDA altogether, which also included the 65 Acres.

43. This MDA denial is a final decision by the City that it will not allow any part of the 65 Acres to be developed and any further requests to develop are futile.

44. The City issued notice of the final decision denying the MDA on August 3, 2017.

THE 133 ACRES DENIALS

The Unjustified Delay of the 2017 Tentative Map Applications

45. Since the denial of the MDA, the City has stricken three sets of applications to develop three separate properties, also zoned RPD-7, comprising approximately 133 acres (the "133 Acres").

46. On or about October, 2017, 180 Land Company, LLC ("180 Land") filed all applications required by the City for the purpose of obtaining approval on tentative maps pursuant to NRS 278 and LVMC Title 19 to utilize the existing vested R-PD7 zoning on the 133 Acres, (which was also part of the MDA for the 250 Acre Residential Zoned Land). The October 2017 applications were identified as WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; and TMP-72012 (collectively "2017 Tentative Map Applications"). These October 2017 applications were distinct from the MDA.

47. Shortly after the acceptance of the 2017 Tentative Map Applications by the City, the Planning Staff requested that 180 Land file a General Plan Amendment to accompany the 2017 Tentative Map Applications. The City Planning Staff informed 180 Land that a General Plan Amendment was being "requested only," and that it is <u>not</u> a requirement under City code.

48. Under protest as being legally unnecessary, 180 Land accommodated the City's request and filed a General Plan Amendment application to change the designation on the 133 Acres from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential). The application was identified as GPA-72220 ("2017 GPA").

49. The 2017 GPA was not a legal requirement under LVMC Title 19, nor NRS 278.

50. The R-PD7 zoning on the 133 Acres takes precedence over the PR-OS General Plan Designation, per The Land Use & Preservation Elements of the Las Vegas 2020 Master Plan and per NRS 278.349(3)(e).

51. The 2017 Tentative Map Applications and 2017 GPA were recommended for APPROVAL by the City Staff, and APPROVED by a vote of the Planning Commission.

52. The 2017 GPA and the 2017 Tentative Map Applications were scheduled to be heard by the Las Vegas City Council ("City Council") on February 21, 2018.

53. At the February 21, 2018, City Council hearing, 180 Land requested that Councilman Coffin and Councilman Seroka recuse themselves from participation on the matter based, amongst other things on bias, conflicts of interest, and their public statements that the 133 Acres would never be developed. The request to recuse was denied.

54. Although the 2017 Tentative Map Applications were on the agenda for a presentation and vote by the City Council, the City Council voted to abey the items to delay them several months, stating as the basis for the delay that one of the City Council seats was vacant and that Councilman Coffin was participating by phone from abroad. The stated reasons were baseless as the required quorum was present for the City Council to proceed with the applications at the February 21, 2018 hearing. 180 Land was denied the opportunity to be heard before the vote. The City Council vote resulted in an additional three (3) month delay to the hearing of the 2017 Tentative Map Applications on the 133 Acres.

55. After the vote resulting in abeyance, 180 Land stated on the record that it "vehemently opposed any kind of abeyance and continued delay of this matter" as the efforts to develop the 133 Acres had already been systematically delayed by the City for years and that 180 Land wanted a "vote on these applications and due process and the ability for [the City Council] to hear the zoning facts."

56. The City took no action on the Landowners' request and allowed the abeyance.

57. The abeyance resulted in the City Council delaying the hearing of the 2017 Tentative Map Applications on the 133 Acres for three (3) months, until May 16, 2018.

The "Yohan Lowie" Bill

58. After the three month delay, on May 16, 2018, the day the 2017 Tentative Map Applications were scheduled to be heard on the 133 Acres, the City Council passed Bill No. 2018-5, the sole and singular intent of which was to prevent any development on the 133 Acres (and other properties that comprise the 250 Acre Residential Zoned Land – including the 65 Acres that is the subject of this complaint).

59. During the discussion of Bill No. 2018-5:

a. Councilman Coffin foreshadowed the City Council's plan for the 2017 Tentative Map Applications (scheduled to be heard in the City Council's afternoon session) when he admitted that if the bill were to apply to the 2017 Tentative Map Applications, it could be interpreted as having the effect of influencing the City Council's decision on them[1].

b. Councilwoman Fiore stated her opinion that "*this Bill is for one development and one development only . . . [t]his Bill is only about Badlands Golf Course [which includes the 133 Acres– and the 65 Acres that is the subject of the*

[1] **Coffin:** Thank you, your Honor. I'm not the sponsor of the bill but I do want to weigh in as I have heard testimony. And thank you very much for conducting the recommending committee without me there Monday, I couldn't be there. Uh, and I do appreciate the fact. But I knew the bill pretty well and I know that it doesn't address the, uh, current, uh, topic du jour of a- of a certain, uh, golf course, in, uh, the western part of town.

That would be retroactive treatment and, uh, I don't see how we can draw a conclusion or a connection between a bill discussing the future, with something that's been in play for quite a long time. So I think we've got to separate those two out for one thing. One, if we were to connect these two then someone might interpret this action today as somehow influencing the discussion on Badlands and that is not what we want to do. We wanna keep it separate and keep it clean, and this bill has nothing to do with that as far as I'm concerned. Thank you very much, your honor.

pending complaint]. . . . I call it the Yohan Lowie [a principal of 180 Land] Bill." ("Yohan Lowie Bill")

60. The City Council proceeded to vote to approve the Yohan Lowie Bill, refusing to allow 180 Land to be heard to make a record of its opposition to the bill/ordinance.

61. Councilwoman Fiore and Mayor Goodman voted against the Yohan Lowie Bill and concurred with City Staff that the current policies relating to neighborhood engagement, which have been in place for many years, are effective and the Yohan Lowie Bill code revisions are unnecessary.

The 2017 Tentative Map Applications for the 133 Acres Are Stricken From the City Council Agenda

62. Finally, seven (7) months after the filing, the 2017 Tentative Map Applications and legally irrelevant 2017 GPA for the 133 Acres were set on the afternoon agenda of the City Council hearing on May 16, 2018, the same day as the passing of the "Yohan Lowie Bill".

63. At the commencement of the afternoon session of the May 16, 2018 City Council hearing, Councilman Seroka made an unprecedented "motion to strike" the 2017 Tentative Map Applications from the agenda, in order to avoid the 2017 Tentative Map Applications from being presented and voted upon by the City Council, and to cause them to be subjected to the Yohan Lowie Bill when re-filed by 180 Land.

64. The proffered bases of Councilman Seroka's unprecedented motion to strike 180 Land's applications for the 133 Acres were "violations of Nevada law," an assertion of which contradicted the positions and opinions of the City Staff, City Attorney, and prior formal actions of the City Council.

65. During the discussion of the motion, Councilman Coffin usurped the responsibilities of the City Attorney by giving legal advice to the other City Councilmembers

stating that no advance notice is necessary for a procedural motion and that there was no need to have public comment on a motion to strike.

66. Based upon information and belief, other City Councilmembers were sandbagged and confused by the unprecedented and procedurally improper motion to strike 180 Land's applications to develop the 133 Acres. Specifically:

a. Councilwoman Fiore stated that "*none of us [on the City council] had a briefing on what just occurred*" and that "*it is quite shady and I don't see how we can even proceed*" and the actions were "*very shocking*.";

b. Councilman Crear said he did not feel comfortable moving forward and did not know if he had enough information to move forward; and

c. Councilman Anthony said "*95% of what Councilman Seroka just said, I heard it for the first time. I don't know what it means, I don't understand it.*"

67. 180 Land's representative stated that just a few days earlier 180 Land's representative met with councilman Seroka and other members of the City Council to address any open issues related to the 2017 Tentative Map Applications for the 133 Acres and no mention was made of the "motion to strike" or issues related thereto. 180 Land's representative further explained that 180 Land has been being stonewalled in its efforts to develop its property for many years, and that despite full compliance with City code and City Staff requests, the City keeps changing the rules on the fly for the purpose of preventing development of the property.

Seroka's Fiction #1
'That A GPA Was Necessary Yet Time Barred' for the 133 Acres

68. Councilman Seroka's first basis for the motion to strike the applications that would have allowed development of the 133 Acres was a legally fictitious claim ("Fiction #1") that 180 Land's 2017 GPA was the same or similar to the 2016 GPA that was denied in June of 2017, and under the City Code the 2017 GPA could not be filed sooner than one year from the date of the

denial of the 2016 GPA. This was a legal fiction, because 180 Land is not required to file a General Plan Amendment ("GPA") in order to proceed under its existing R-PD7 zoning. 180 Land would only be required to file a GPA if it filed an application seeking to change the zoning from R-PD7 to another zoning district classification.

69. At the May 16, 2018 hearing:

a. City Planning Staff advised the City Council that the 2017 GPA was filed by 180 Land only at the City's request and that 180 Land's filing of the 2017 GPA was under protest as being legally unnecessary.

b. City Attorney Brad Jerbic and City Staff both stated on the record that a GPA was not required to be filed by 180 Land to have the Tentative Map Applications for the 133 Acres to be heard.

70. Under Nevada law, existing land use is governed by zoning, and only future land use (the changing of zoning) takes the general plan (also commonly referred to as a master plan) designation into consideration. A GPA is not required for the submission, consideration and approval of a tentative map application if the underlying zoning allows for the use delineated on the tentative map.

71. Whether or not the 2017 GPA was filed by 180 Land, nor heard, approved, or denied by the City Council, was irrelevant in all respects regarding the hearing of 180 Land's 2017 Tentative Map Applications on the 133 Acres.

72. NRS 278.349(3) unambiguously provides that: "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider: (e) 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**;"

73. The City took the following position in its Answering Brief filed in a petition for judicial review in Clark County District Court Case No. A-17-752344-J:

> The Land Use & Neighborhood Preservation Element is significant, *inter alia*, because it plainly establishes the City's land use hierarchy. The land use hierarchy progresses in the following *ascending order*: 2020 Master Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. *In the hierarchy, the land use designation is subordinate to the zoning designation*, for example, because land use designations indicate the intended use and development density for a particular area, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

74. The City Council's striking 180 Land's 2017 Tentative Map Applications to develop the 133 Acres from the City Council agenda due to the "PR-OS" master plan designation was a violation of Nevada law. Specifically, NRS 278.349(3)(e) which provides that the Property's R-PD7 residential zoning rights take precedence over an inconsistent master plan designation.

75. No general plan amendment was required to be filed by 180 Land in order to have the 2017 Tentative Map Applications heard and voted upon by the City Council.

76. The courtesy filing, under protest of the 2017 GPA by 180 Land, at the specific request (but not requirement) of City Planning Staff, was an improper and illegal basis for striking 180 Land's 2017 Tentative Map Applications.

Seroka's Fiction #2
'That a "Major Modification" To A Master Plan Is Required
In Order To Proceed With the 2017 Tentative Map Applications for the 133 Acres

77. Councilman Seroka's second basis for the motion to strike the 133 Acres applications was a legally fictitious claim ("Fiction #2") that a "major modification" application

to the conceptual Peccole Ranch Master Plan was required to be filed concurrently with the 2017 Tentative Map Applications to develop the 133 Acres.

78. At the May 16, 2018 hearing City Attorney Brad Jerbic stated on the record that 180 Land had a due process right to have its 2017 Tentative Map Applications heard that day.

79. In fact, the City Council, on January 3, 2018, had previously taken formal action on that exact issue, voting 4-2 that NO MAJOR MODIFICATION of the conceptual Peccole Ranch Master Plan was necessary in order for the City Council to hear the 2017 Tentative Map Applications.

80. The January 3, 2018 formal action that 180 Land was not required to file a "major modification" with the 2017 Tentative Map Applications was affirmed on January 17, 2018, when the City Council DENIED Councilman Coffin's motion to rescind the January 3, 2018 NO MAJOR MODIFICATION vote.

81. Fiction #2 was illegal in that it was a violation of the formal action taken by the City Council on January 3, 2018 that NO MAJOR MODIFICATION was required, and on January 17, 2018 denying a rescission of the NO MAJOR MODIFICATION vote.

82. Under Nevada law, existing zoning on a parcel supersedes any conflicting land use designations within the Las Vegas 2020 Master Plan, Land Use Elements, Land Use Designations, Master Development Plans (including the conceptual Peccole Ranch Master Plan), Master Development Plan Areas, and Special Area Plans, as such terms are used in the Las Vegas 2020 Master Plan.

83. The City affirmed that zoning prevails over all other planning land use designations in its Answering Brief filed in a petition for judicial review in Clark County District Court Case No. A-17-752344-J.

84. Notwithstanding its inapplicability with respect to development under existing zoning on a parcel, the conceptual Peccole Ranch Master Plan was repealed by Ordinance 5353 in 2001.

85. On May 16, 2018, despite having no basis in law, either substantively or procedurally, to strike 180 Land's applications for the 133 Acres, the City Council voted 5-2 in favor of striking the 2017 Tentative Map Applications, altogether conflicting with its prior formal actions to the contrary and preventing a hearing on the merits of 180 Land's 2017 Tentative Map Applications to develop the 133 Acres under its existing vested property right R-PD7 zoning.

86. The motion to strike the 2017 Tentative Map Applications by the City Council was not supported by substantial evidence and was arbitrary and capricious. By striking the Tentative Map Applications, the City Council entirely prevented the applications to develop the 133 Acres from even being heard on the merits.

87. Based on the City's actions, it is clear that the purpose of the February 21, 2018 City Council abeyance was to allow Councilman Seroka time to put his "Yohan Lowie Bill" on the May 16, 2018 morning agenda, get it passed, and then improperly strike the applications for the 133 Acres causing them to fall under the Yohan Lowie Bill if they are re-filed in the future.

88. Regardless of which route 180 Land took to develop the 133 Acres, the City gave 180 Land specific instructions on which applications to file. Then, after accepting, processing and recommending 'approval' by both the City Planning Department and the City Planning Commission, the City Council extensively delayed the matter from being heard and ultimately and arbitrarily changed the requirements on the fly and improperly struck the applications preventing the applications from even being heard and voted upon.

89. Based upon information and belief, the City was attempting to acquire the entire 250 Acre Residential Zoned Land and took action to intentionally and artificially depress the value

of the 133 Acres (and the 65 Acres at issue in the pending complaint), or has publicly placed an arbitrarily low value on the Property, thereby showing the City's bad faith intent to manipulate the value of the entire 250 Acre Residential Zoned Land so that it can acquire it at a greatly reduced value.

90. The City's actions in denying and/or striking 180 Land's applications on the 133 Acres has foreclosed all development of the 133 Acres in violation of 180 Land's vested right to develop the 133 Acres.

91. On or about May 17, 2018, Notices of Final Action were issued striking and preventing a hearing on GPA-7220; WVR-72004; SDR-72005; TMP-72006; WVR-72007; SDR-72008; TMP-72009; WVR-72010; SDR-72011; TMP-72012.

92. The City's actions in entirely preventing any development of the 133 Acres further establishes that the City will not allow any part of the 65 Acres to be developed and any further requests to develop are futile.

THE 35 ACRE PROPERTY DENIALS

93. A 35 Acre Property is also one of the properties that comprise the 250 Acre Residential Zoned Land and individual applications to develop the 35 Acre Property have also been summarily denied by the City.

94. 180 Land also filed all applications required by the City for the purpose of obtaining approval on tentative maps pursuant to NRS 278 to utilize the existing vested R-PD7 zoning on the 35 Acre Property, (which was also part of the MDA for the 250 Acre Residential Zoned Land). These applications were separate from the MDA for the 250 Acre Residential Zoned Land.

95. While an application for a General Plan Amendment was filed by 180 Land relating to the larger 250 Residential Zoned Land, being application number, GPA-68385; additional applications were filed by 180 Land with the City that related more particularly to the 35 Acre

Property, being Assessor's Parcel Number 138-31-201-005. Those zoning applications pertaining to the 35 Acre Property were application numbers WVR-68480; SDR-68481 and TMP-68482.

96. At all relevant times herein, 180 Land had the vested right to use and develop the 35 Acre Property, at a density of up to 7.49 residential units per acre, subject to comparability and compatibility adjacency standards.

97. This vested right to use and develop the 35 Acre Property, was confirmed by the City in writing prior to 180 Land's acquisition of the 35 Acre Property and 180 Land materially relied upon the City's confirmation regarding the Property's vested zoning rights.

98. 180 Land's vested property rights in the 35 Acre Property is recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

99. Although the 35 Acre Property showed the General Plan Designation of PR-OS (Parks/Recreation/Open Space), that Designation was placed on the 35 Acre Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, the General Plan Designation of PR-OS was shown on the property in error.

100. On or about December 29, 2016, and at the suggestion of the City, The Landowners filed with the City an application for a General Plan Amendment to change the General Plan Designation on the 250 Acre Residential Zoned Land (including the 35 Acre Property) from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) and the application was given number GPA-68385 ("GPA-68385").

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

102. As noted, while the General Plan Amendment application (GPA-68385) related to the property, the balance of the applications filed with the City related specifically to the proposed development of sixty one (61) residential lots on the 35 Acre Property.

103. The development proposal for the 35 Acre Property was at all times comparable to and compatible with the existing adjacent and nearby residential development as the proposed development was significantly less dense than surrounding development with average lot sizes of one half (1/2) of an acre amounting to density of 1.79 units per acre. The adjacent Queensridge common interest community density is approximately 3.48 units per acre. To the north of the 35 Acre Property are existing residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre. In the center of the 35 Acre Property, are existing residences developed on lots generally ranging in size from one quarter (1/4) of an acre to one third (1/3) of an acre. To the south of the 35 Acre Property are existing residences developed on lots generally ranging in size from three quarters (3/4) of an acre to one and one quarter (1¼) acre.

104. The applications to develop the 35 Acre Property met every single City Staff request and every single applicable City of Las Vegas Municipal Code section and Nevada Revised Statute.

105. The Planning Staff for the City's Planning Department ("Planning Staff") reviewed GPA-68385, WVR-68480, SDR-68481 and TMP-68482 and issued recommendations of approval for WVR-68480, SDR-68481 and TMP-68482. The Planning Staff originally had "No Recommendation" with regard to GPA-68385; however in the "Agenda Memo-Planning" relating to the City Council meeting date of June 21, 2017, Planning Staff noted its recommendation of GPA-68385 as "Approval."

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

107. After considering 180 Land's comments, and those of the public, the Planning Commission approved WVR-68480, SDR-68481, and TMP-68482 subject to Planning Staff's conditions.

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

109. On June 21, 2017, the City Council heard WVR-68480, SDR-68481, TMP-68482 and GPA-68385.

110. In conjunction with this City Council public hearing, the Planning Staff, in continuing to recommend approval of WVR-68480, SDR-68481, and TMP-68482 for the 35 Acre Property, noted **"the adjacent developments are designated ML (Medium Low Density Residential) with a density cap of 8.49 dwelling units per acre. The proposed development would have a density of 1.79 dwelling units per acre…Compared with the densities and General Plan designations of the adjacent residential development, the proposed L (Low Density Residential) designation is less dense and therefore appropriate for this area, capped at 5.49 units per acre."** (emphasis supplied).

111. The Planning Staff found the density of the proposed General Plan for the 35 Acre Property compatible with the existing adjacent land use designation, found the zoning designations compatible, and found that the filed applications conform to other applicable adopted plans and policies that include approved neighborhood plans.

112. At the June 21, 2017 City Council hearing, 180 Land addressed the concerns of the individuals speaking in opposition to the 35 Acre Property development, and provided substantial evidence, through the introduction of documents and through testimony, of expert witnesses and others, rebutting each and every opposition claim.

113. Included as part of the evidence presented by 180 Land at the June 21, 2017 City Council hearing for the 35 Acre Property applications, 180 Land introduced evidence, among other things, (i) that representatives of the City had specifically noted in both City public hearings and in public neighborhood meetings, that the standard for appropriate development based on the existing R-PD7 zoning on the 35 Acre Property would be whether the proposed lot sizes were compatible with and comparable to the lot sizes of the existing, adjoining residences; (ii) that the proposed lot sizes for the 35 Acre Property were compatible with and comparable to the lot sizes of the existing residences adjoining the lots proposed in the 35 Acres; (iii) that the density of 1.79 units per acre provided for in the 35 Acre Property was *less than the density* of those already existing residences adjoining the 35 Acre Property; and (iv) that both Planning Staff and the Planning Commission recommended approval of WVR-68480, SDR-68481 and TMP-68482, all of which applications pertain to the proposed development of the 35 Acre Property.

114. Any public statements made in opposition to the various 35 Acre Property applications were either conjecture or opinions unsupported by facts; all of which public statements were either rebutted by findings as set forth in the Planning Staff report or through statements made by various City representatives at the time of the City Council public hearing or through evidence submitted by 180 Land at the time of the public hearing.

115. Despite the fact that the applications to develop the 35 Acre Property met every single City Staff request and every single applicable City of Las Vegas Municipal Code section and Nevada Revised Statute, despite Staff recommendation of approval and the recommendation

of approval from the Planning Commission, despite the substantial evidence offered by 180 Land in support of the WVR-68480, SDR-68481, TMP-68482 and GPA-68385, and despite the fact that no substantial evidence was offered in opposition, the City Council denied WVR-68480, SDR-68481, TMP-68482 and GPA-68385 for the 35 Acre Property.

116. The City Council's stated reason for the denial was its desire to see, not just the 35 Acre Property, but the entire 250 Acre Residential Zoned Land, developed under one master development agreement which would include many other parcels of property that were legally subdivided and separate and apart from the 35 Acre Property.

117. At the City Council hearing considering and ultimately denying WVR-68480, SDR-68481, TMP-68482 and GPA-68385 for the 35 Acre Property, the City Council advised 180 Land that the only way the City Council would allow development on the 35 Acre Property was under a master development agreement (MDA) for the entirety of the 250 Acre Residential Zoned Land. This is the same MDA that is referenced in the above allegations 39 through 44.

118. At the time the City Council was considering WVR-68480, SDR-68481, TMP-68482 and GPA-68385, that would allow the 35 Acre Property to be developed, the City Council stated that the approval of the MDA is "very, very close" and "we are going to get there [approval of the MDA]." The City Council was referring to the next public hearing wherein the MDA for the entire 250 Acre Residential Zoned Land would be voted on by the City Council.

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

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

120. On August 2, 2017, less than two months after the City Council said it was "very, very close" to approving the MDA for the 250 Acre Residential Zoned Land, the City Council voted to deny the MDA altogether.

121. The City's actions in denying the Landowners' tentative map (TMP-68482), WVR-68480, SDR-68481 and GPA-68385 and then denial of the MDA for the entire 250 Acre Residential Zoned Land foreclosed all development of the 35 Acre Property in violation of 180 Land's vested right to develop the 35 Acre Property and the denial by the City Council was not supported by substantial evidence and was arbitrary and capricious.

122. On or about June 28, 2017, Notices of Final Action were issued by the City for WVR-68480, SDR-68481, TMP-68482 and GPA-68385 stating that all applications to develop the 35 Acre Property had been denied.

123. The City's actions directed at entirely preventing any development of the 35 Acre Property further establishes that the City will not allow any part of the 250 Acre Residential Zoned Land, including the 65 Acres, to be developed and that any further requests to develop are futile.

OTHER ACTIONS DEMONSTRATING THAT THE CITY WILL NOT ALLOW DEVELOMENT OF ANY PART OF THE 65 ACRES (A TAKING) AND THAT IT IS FUTILE TO SEEK FURTHER DEVELOPMENT APPLICATIONS FROM THE CITY

124. In addition to the actions taken by the City directed at the 250 Acre Residential Zoned Land by way of the MDA, the actions directed at the 133 Acres, and the actions directed at the 35 Acre Property, as set forth above, the City has taken other actions that also firmly establish that the City will not allow any development of the 65 Acres, amounting to a taking, and it is futile

to seek further development applications from the City as the City will never allow the Landowners to develop the 65 Acres.

125. One member of the City Council ran a political campaign for the City Council, prior to being elected to the City Council, that development will not be allowed on the 65 Acres and/or the 65 Acres should be taken by eminent domain to prevent development.

126. The City has refused to approve a standard application to place a fence around certain areas of the 250 Acre Residential Zoned Land, including ponds on the Property, that were requested for security and safety reasons.

127. The City has refused to issue Trespass Complaints against the numerous and continuous trespassers even though police reports have been filed.

128. The City has refused to allow the construction of an access gate directly to the Landowners' Property from existing City streets for which the Landowners have a special right of access under Nevada law.

129. The City is even proposing an ordinance that: forces the Landowners to water all grass areas in the 250 Acre Residential Zoned Land, even though a golf course has not been operated on the property since December 1, 2016, and would now be illegal as a "non-conforming use" under Title 19; retroactively removes the Landowners' vested hard zoning and requires the Landowners to submit to a City application process and comply with development requirements that are vague and ambiguous, incredibly uneconomical, financially impossible, time consuming and impossible to meet; and imposes a conscious shocking retroactive $1,000 fine per day on the Landowners' property (without any factual or legal basis whatsoever).

130. The purpose of this new Bill proposed by the City is to create an expense without income on the Property and a development process that is so financially infeasible and timely that it renders the Property entirely unusable and valueless.

131. Based upon information and belief, the sole and express intent of these City actions is to enable the City to acquire the 250 Acre Residential Zoned Land for pennies on the dollar, and the City has sought the funds to accomplish this purpose.

132. Accordingly, it would be futile to submit any further applications with the City of Las Vegas to seek development of the 65 Acres.

133. It is clear that no development on the 65 Acres will ever be approved by the City. Therefore, the extent of the permitted development on the 65 Acres is known and final.

134. The City has forced the Landowners to leave the 65 Acres in a vacant and undeveloped condition for public use and the public is using the property.

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

135. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

136. As a result of the PR-OS being improperly placed on the 65 Acres, and the City Council's action in denying the Landowners' zoning rights as a result of such designation, there is uncertainty as to the validity of the PR-OS and its application to the 65 Acres (although the Landowners deny that the PR-OS applies to the 65 Acres).

137. Declaratory relief is necessary to terminate or resolve the uncertainty.

138. Declaratory relief is permitted under Nevada law, including but not limited to NRS Chapter 30.

139. Therefore, the Landowners request that this Court immediately enter an order finding the PR-OS designation on the 65 Acres is invalid and/or of no effect on the 65 Acres' R-PD7 zoning rights, thereby prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the Property's existing zoning and to the 65 Acres entirely.

SECOND CAUSE OF ACTION FOR PRELIMINARY INJUNCTION

140. The Landowners repeat, re-allege, and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

141. Any action that placed a designation of PR-OS on the 65 Acres was without legal authority and, therefore, entirely invalid.

142. There is a reasonable and strong likelihood of success on the merits which will invalidate the improper PR-OS designation on the 65 Acres.

143. Continued application of the PR-OS designation on the 65 Acres will result in irreparable harm and cause a significant hardship on the Landowners as: 1) the 65 Acres is legally recognized real property and is unique in the State of Nevada; 2) the PR-OS designation on the 65 Acres may prevent the Landowners from using the 65 Acres for any beneficial use; 3) the Landowners rely upon the acquisition and development of property, including the 65 Acres, to provide a livelihood for numerous individuals and continued application of the PR-OS to prevent development of the 65 Acres will interfere with the livelihood of these individuals; 4) under NRS 278.349(3)(e) the PR-OS zoning has no applicability with respect to the existing R-PD7 zoning on the 65 Acres; and, 5) allowing the development of the 65 Acres will result in significant financial benefit to the City, including but not limited to increasing the City tax base and creating additional jobs for its citizens.

144. There is no plain, adequate or speedy remedy at law.

145. Therefore, the Landowners are entitled to injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any application, land use decision, or otherwise, relating to the 65 Acres's existing zoning and/or to the 65 Acres entirely.

THIRD CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Categorical Taking)

146. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

147. The Landowners have vested rights to use and develop the 65 Acres.

148. The City reached a final decision that it will not allow development of the Landowners' 65 Acres.

149. Any further requests to the City to develop the 65 Acres would be futile.

150. The City's actions in this case have resulted in a direct appropriation of the Landowners' 65 Acres by entirely prohibiting the Landowners from using the 65 Acres for any purpose and reserving the 65 Acres as undeveloped/open space.

151. As a result of the City's actions, the Landowners have been unable to develop the 65 Acres and any and all value in the 65 Acres has been entirely eliminated.

152. The City's actions have completely deprived the Landowners of all economically beneficial use of the 65 Acres.

153. The City's actions have resulted in a direct and substantial impact on the Landowners and on the 65 Acres.

154. The City's actions result in a categorical taking of the Landowners' 65 Acres.

155. The City has not paid just compensation to the Landowners for this taking of their 65 Acres

156. The City's failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

157. Therefore, the Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

FOURTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Penn Central Regulatory Taking)

159. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

160. The Landowners have vested rights to use and develop the 65 Acres.

161. The City reached a final decision that it will not allow development of the Landowners' 65 Acres.

162. Any further requests to the City to develop the 65 Acres would be futile.

163. The City also stated that it would only allow the Landowners to develop the 65 Acres as part of the MDA, referenced above. The Landowners worked on the MDA for nearly two years, with numerous City-imposed and/or City requested abeyances and with the City's direct and active involvement in the drafting and preparing the MDA and the City's statements that it would approve the MDA and despite nearly two years of working on the MDA, on or about August 2, 2017, the City denied the MDA.

164. The City's actions have caused a direct and substantial economic impact on the Landowners, including but not limited to preventing development of the 65 Acres.

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

166. At all relevant times herein the Landowners had specific and distinct investment backed expectations to develop the 65 Acres.

167. These investment backed expectations are further supported by the fact that the City, itself, confirmed the Property has vested R-PD7 development rights prior to the Landowners acquiring the 65 Acres.

168. The City was expressly advised of the Landowners' investment backed expectations prior to denying the Landowners the use of the 65 Acres.

169. The City's actions are preserving the 65 Acres as open space for a public use and the public is physically entering on and actively using the 65 Acres.

170. The City's actions have resulted in the loss of the Landowners' investment backed expectations in the 65 Acres.

171. The character of the City action to deny the Landowners' use of the 65 Acres is arbitrary, capricious, and fails to advance any legitimate government interest and is more akin to a physical acquisition than adjusting the benefits and burdens of economic life to promote the common good.

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

173. The City has not paid just compensation to the Landowners for this taking of its 65 Acres.

174. The City's failure to pay just compensation to Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

175. Therefore, Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

FIFTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Regulatory Per Se Taking)

177. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

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

179. The City's actions exclude the Landowners from using the 65 Acres and, instead, permanently reserve the 65 Acres for a public use and the public is physically entering on and actively using the 65 Acres.

180. The City's actions have shown an unconditional and permanent taking of the 65 Acres.

181. The City has not paid just compensation to the Landowners for this taking of their 65 Acres.

182. The City's failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

183. Therefore, the Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

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SIXTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Nonregulatory Taking)

185. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

186. The City actions directly and substantially interfere with the Landowners' vested property rights rendering the 65 Acres unusable and/or valueless.

187. The City has intentionally delayed approval of development on the 65 Acres and, ultimately, struck or denied any and all development in a bad faith effort to preclude any use of the 65 Acres and/or to purchase the 65 Acres at a depressed value.

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

189. The City's actions result in a nonregulatory taking of the Landowners' 65 Acres.

190. The City has not paid just compensation to the Landowners for this taking of their 65 Acres.

191. The City's failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

192. Therefore, that Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

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SEVENTH CLAIM FOR RELIEF IN INVERSE CONDEMNATION

(Temporary Taking)

194. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

195. If there is subsequent City Action or a finding by the Nevada Supreme Court, or otherwise, that the Landowners may develop the 65 Acres, then there has been a temporary taking of the Landowners' 65 Acres for which just compensation must be paid.

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

197. The City failure to pay just compensation to the Landowners for the taking of their 65 Acres is a violation of the United States Constitution, the Nevada State Constitution, and the Nevada Revised Statutes, which require the payment of just compensation when private property is taken for a public use.

198. Therefore, the Landowners are compelled to bring this cause of action for the taking of the 65 Acres to recover just compensation for property the City has taken without payment of just compensation.

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

EIGHTH CLAIM FOR VIOLATION OF

THE LANDOWNERS' DUE PROCESS RIGHTS

200. The Landowners repeat, re-allege and incorporate by reference all paragraphs included in this pleading as if set forth in full herein.

201. The City action in this case retroactively and without due process transformed the Landowners' vested property right to a property without any value.

202. The City action in this case was taken without proper notice to the Landowners.

203. This City action to eliminate or substantially change the Landowners' vested and established property rights, had the effect of depriving the Landowners of their legitimate constitutionally protected property rights.

204. This City action was arbitrary and/or irrational and unrelated to any legitimate governmental objective or purpose.

205. This is a violation of the Landowners' substantive and procedural due process rights under the United States and Nevada State Constitutions.

206. This City action mandates payment of just compensation as stated herein.

207. The City action should be invalidated to return the Landowners' property rights to the Landowners thereby allowing development of the 65 Acres.

208. This requested relief is in excess of fifteen thousand dollars ($15,000.00).

PRAYER FOR RELIEF

WHEREFORE, the Landowners pray for judgment as follows:

1. Declaratory judgment with this Court immediately entering an order finding the PR-OS designation on the 65 Acres is invalid and of no effect on the 65 Acres and prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use application, decision, or otherwise, relating to the property's existing vested zoning and to the Landowners' property entirely;

2. Injunctive relief prohibiting the City or any other person, agency, or entity from applying the PR-OS to any land use decision, or otherwise, relating to the property's existing zoning and to the 65 Acres entirely;

3. An award of just compensation according to the proof for the taking (permanent or temporary) and/or damaging of the Landowners' property by inverse condemnation;

4. Prejudgment interest commencing from the date the City first froze the use of the 65 Acres which is prior to the filing of this Complaint in Inverse Condemnation;

5. Invalidation of the City action, returning the vested property rights to the Landowners thereby allowing development of the 65 Acres;

6. A preferential trial setting pursuant to NRS 37.055;

7. Payment for all costs incurred in attempting to develop the 65 Acres;

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

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

DATED this 27th day of August, 2018.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Kermitt L. Waters
KERMITT L. WATERS, ESQ.
Nevada Bar. No.2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

Vickie DeHart, on behalf of the Landowners, being first duly sworn, upon oath, deposes and says: that he/she has read the foregoing **COMPLAINT FOR DECLARATORY RELIEF AND INJUNCITIVE RELIEF, AND ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** and based upon information and belief knows the contents thereof to be true and correct to the best of his/her knowledge.

Vickie DeHart

SUBSCRIBED and SWORN to before me
This 27th day of August, 2018.

JENNIFER KNIGHTON
Notary Public, State of Nevada
Appointment No. 14-15063-1
My Appt. Expires Sep 11, 2018

NOTARY PUBLIC