

A- 13- 675741- B

Case No. _____
(Assigned by Clerk's Office)

~~XXIX~~


Plaintiff(s) (name/address/phone): City of Henderson, a
municipal corporation and political subdivision of the State
of Nevada

Dennis L. Kennedy, Joshua P. Gilmore, Mark Hesiak, Paul C. Williams, Bailey♦Kennedy, 8984 Spanish Ridge Ave., Las Vegas, NV 89148; Phone: (702) 562-8820

Attorney (name/address/phone):

☐ Arbitration Requested

Civil Cases		Business Court
<p>Real Property</p> <p><input type="checkbox"/> Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Title to Property</p> <p><input type="checkbox"/> Foreclosure</p> <p><input type="checkbox"/> Liens</p> <p><input type="checkbox"/> Quiet Title</p> <p><input type="checkbox"/> Specific Performance</p> <p><input type="checkbox"/> Other Real Property</p> <p><input type="checkbox"/> Partition</p> <p><input type="checkbox"/> Planning/Zoning</p>	<p>Other Civil Types</p> <p><input type="checkbox"/> Civil Writ</p> <p><input type="checkbox"/> Other Special Proceeding</p> <p><input type="checkbox"/> Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Conversion of Property</p> <p><input type="checkbox"/> Damage to Property</p> <p><input type="checkbox"/> Employment Security</p> <p><input type="checkbox"/> Enforcement of Judgment</p> <p><input type="checkbox"/> Foreign Judgment -- Civil</p> <p><input type="checkbox"/> Other Personal Property</p> <p><input type="checkbox"/> Recovery of Property</p> <p><input type="checkbox"/> Stockholder Suit</p> <p><input type="checkbox"/> Other Civil Matters</p>	<p>Business Court Case Type</p> <p>Clark County Business Court</p> <p><input type="checkbox"/> NRS Chapters 78-89</p> <p><input type="checkbox"/> Commodities (NRS 91)</p> <p><input type="checkbox"/> Securities (NRS 90)</p> <p><input type="checkbox"/> Mergers (NRS 92A)</p> <p><input type="checkbox"/> Uniform Commercial Code (NRS 104)</p> <p><input checked="" type="checkbox"/> Purchase or Sale of Stock /Assets of Business/ Corporate Real Estate</p> <p><input type="checkbox"/> Trade-mark/Trade Name (NRS 600)</p> <p><input type="checkbox"/> Enhanced Case Mgmt/Business</p> <p><input type="checkbox"/> Other Business Court Matters</p>
<p>Negligence Torts</p> <p><input type="checkbox"/> Negligence – Premises Liability (Slip/Fall)</p> <p><input type="checkbox"/> Negligence – Other</p>	<p><input type="checkbox"/> Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> General</p> <p><input type="checkbox"/> Breach of Contract</p> <p><input type="checkbox"/> Building & Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Other Contracts/Acct/Judgment</p> <p><input type="checkbox"/> Collection of Actions</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Guarantee</p> <p><input type="checkbox"/> Sale Contract</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Civil Petition for Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation</p> <p><input type="checkbox"/> Other Administrative Law</p> <p><input type="checkbox"/> Department of Motor Vehicles</p> <p><input type="checkbox"/> Worker's Compensation Appeal</p>	<p>Washoe County Business Court</p> <p><input type="checkbox"/> NRS Chapters 78-88</p> <p><input type="checkbox"/> Commodities (NRS 91)</p> <p><input type="checkbox"/> Securities (NRS 90)</p> <p><input type="checkbox"/> Investments (NRS 104 Art. 8)</p> <p><input type="checkbox"/> Deceptive Trade Practices (NRS 598)</p> <p><input type="checkbox"/> Trade-mark/Trade Name (NRS 600)</p> <p><input type="checkbox"/> Trade Secrets (NRS 600A)</p> <p><input type="checkbox"/> Enhanced Case Mgmt/Business</p> <p><input type="checkbox"/> Other Business Court Matters</p>
<p>Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Motor Vehicle-Product Liability</p> <p><input type="checkbox"/> Other Torts-Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Defamation (Libel/Slander)</p> <p><input type="checkbox"/> Interfere with Contract Rights</p> <p><input type="checkbox"/> Employment Torts (Wrongful Termination)</p> <p><input checked="" type="checkbox"/> Other Torts</p> <p><input type="checkbox"/> Anti-trust</p> <p><input checked="" type="checkbox"/> Fraud/Misrepresentation</p> <p><input type="checkbox"/> Insurance</p> <p><input type="checkbox"/> Legal Tort</p> <p><input type="checkbox"/> Unfair Competition</p>		


Signature of initiating party or representative

COMPB

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CITY OF HENDERSON, a municipal corporation
and political subdivision of the State of
Nevada,

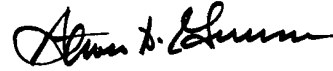
Plaintiff,

vs.

CHRISTOPHER F. MILAM, an individual; JOHN
F. MARCHIANO, an individual; CHRISTOPHER
C. STEPHENS, an individual; LEE HANEY, an
individual; MICHAEL FORD, an individual;
SILVER STATE LAND, LLC, a Delaware
limited liability company; LAS VEGAS
NATIONAL SPORTS CENTER, LLC, a Delaware
limited liability company; LAS VEGAS
NATIONAL SPORTS CENTER (HOLDINGS), LLC,
a Delaware limited liability company; IDM
LLC, a Delaware limited liability company;
and DOE LENDERS I-X, inclusive,

Defendants.

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CLERK OF THE COURT

Case No. **A- 13- 675741- B**
Dept. No.

XXI X
COMPLAINT

Exempt from Arbitration: NAR 3(A)
(Amount in Controversy in Excess of
\$50,000.00, Exclusive of Interest and
Costs; Declaratory and Equitable Relief
Requested)

Business Court Assignment Requested:
EDCR 1.61(a)(2)(ii)

COMES NOW PLAINTIFF, the City of Henderson ("Plaintiff" or "City"), a municipal
corporation and political subdivision of the State of Nevada, and complains against
DEFENDANTS, Christopher F. Milam; John F. Marchiano; Christopher C. Stephens; Lee
Haney; Michael Ford; Silver State Land, LLC; Las Vegas National Sports Center, LLC; Las

1 Vegas National Sports Center (Holdings), LLC; IDM LLC (collectively, the “Milam
2 Defendants”); and DOE LENDERS I-X, inclusive, and each of them, as follows:

3 **THE PARTIES**

4 1. Plaintiff City of Henderson is, and at all times material hereto was, a municipal
5 corporation and political subdivision of the State of Nevada, which exercises its legislative
6 power, including all issues concerning land use, through its Mayor and City Council and
7 executive power through its City Manager.

8 2. The City Council is comprised of the following members: Mayor Andy A. Hafen;
9 Gerri Schroder (Ward I); Debra March (Ward II); John F. Marz (Ward III); and Sam Bateman
10 (Ward IV). The City Manager is Jacob Snow.

11 3. The City is informed and believes, and thereon alleges, that Defendant
12 Christopher F. Milam (“Milam”) is, and at all times material hereto was, a resident and citizen of
13 Travis County, Texas.

14 4. The City is informed and believes, and thereon alleges, that Defendant John F.
15 Marchiano (“Marchiano”) is, and at all times material hereto was, a resident and citizen of Clark
16 County, Nevada.

17 5. The City is informed and believes, and thereon alleges, that Defendant
18 Christopher C. Stephens (“Stephens”) is, and at all times material hereto was, a resident and
19 citizen of San Diego County, California.

20 6. The City is informed and believes, and thereon alleges, that Defendant Lee Haney
21 (“Haney”) is, and at all times material hereto was, a resident and citizen of Clark County,
22 Nevada.

23 7. The City is informed and believes, and thereon alleges, that Defendant Michael
24 Ford (“Ford”) is, and at all times material hereto was, a resident and citizen of Clark County,
25 Nevada.

26 8. Unless otherwise noted, Milam, Marchiano, Stephens, Haney, and Ford are
27 collectively referred to herein as the “Individual Defendants.”
28

1 9. The City is informed and believes, and thereon alleges, that Defendant Silver
2 State Land, LLC (“Silver State Land”), is, and at all times material hereto was, a Delaware
3 limited liability company, with its principal place of business located in Clark County, Nevada,
4 and that Milam is its managing member.

5 10. The City is informed and believes, and thereon alleges, that Defendant Las Vegas
6 National Sports Center, LLC (“LVNSC”), is, and at all times material hereto was, a Delaware
7 limited liability company, with its principal place of business located in Clark County, Nevada,
8 and that Milam is its managing member.

9 11. The City is informed and believes, and thereon alleges, that Defendant Las Vegas
10 National Sports Center (Holdings), LLC (“LVNSC Holdings”), is, and at all times material
11 hereto was, a Delaware limited liability company, with its principal place of business located in
12 Clark County, Nevada, and that Milam is its managing member.

13 12. The City is informed and believes, and thereon alleges, that Defendant IDM LLC
14 (“IDM”), is, and at all times material hereto was, a Delaware limited liability company, with its
15 principal place of business located in Travis County, Texas, and that Milam is its managing
16 member.

17 13. Unless otherwise noted, Silver State Land, LVNSC, LVNSC Holdings, and IDM
18 are collectively referred to herein as the “Corporate Defendants.”

19 14. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants named herein as DOE LENDERS I-X, inclusive, are presently
21 unknown to the City, who therefore sues said Defendants by such fictitious names. The City will
22 seek leave to amend its claims to reflect the true names and capacities of said Defendants when
23 ascertained. The City is informed and believes, and thereon alleges, that each of the Defendants
24 designated herein as DOE LENDER is legally responsible in some manner for the unlawful acts
25 alleged herein and injuries and damages caused thereby.

26 **JURISDICTION AND VENUE**

27 15. Venue is proper in the Eighth Judicial District Court in and for the State of
28 Nevada, County of Clark, pursuant to NRS 13.040, because (i) the Individual Defendants, with

1 exception of Milam and Stephens, are believed to be residents of Clark County, Nevada, (ii) the
2 Corporate Defendants are authorized to transact business, and currently transact business, within
3 Clark County, Nevada, and (iii) the Land is located in Clark County, Nevada.

4 16. This Court has personal jurisdiction over the Defendants, and each of them,
5 pursuant to NRS 14.065, because the acts and omissions complained of herein were committed,
6 in part, within the State of Nevada, County of Clark, and thus, the Defendants, and each of them,
7 have had sufficient minimum contacts with this forum such that the exercise of personal
8 jurisdiction over them will not offend the traditional notions of fair play and substantial justice.

9 **GENERAL ALLEGATIONS**

10 **Summary of Complaint**

11 17. Milam, with the assistance of a team of agents and confederates (Marchiano,
12 Stephens, Haney, and Ford), persuaded the City to enter into a master development agreement
13 with LVNSC to rezone land owned by the United States and located within Henderson, Nevada,
14 in order to acquire the Land and build multiple sports arenas on it (the "Project").

15 18. The agreement between the City and LVNSC was embodied in the Amended and
16 Restated Master Project Agreement, dated as of October 18, 2011 (the "MPA"), as amended on
17 April 17, 2012 (the "First Amendment") (collectively, the "Master Project Agreement").

18 19. In truth and in fact, shortly after entering into the Master Project Agreement,
19 Milam decided that LVNSC would not honor its obligations thereunder (and knew that LVNSC
20 had no ability to do so). However, instead of admitting that the Project would not proceed and
21 terminating the Master Project Agreement, he and the other Milam Defendants conspired to
22 utilize the Master Project Agreement as an instrument of fraud to obtain land from the United
23 States Bureau of Land Management (the "BLM") below what a true competitive bidding process
24 would yield and, shortly thereafter, sell it piecemeal to residential and commercial developers at
25 a substantial profit. Milam believed that his fraudulent scheme would at all times remain
26 unknown to the City.

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1 20. The land at issue is a continuous tract of approximately 485 acres of land,
2 composed of two separate parcels (Nos. 191-21-000-001 and 191-22-101-001) in Henderson,
3 Nevada, near Las Vegas Boulevard South and St. Rose Parkway (the “Land”).

4 21. As discussed herein, Milam, Marchiano, Stephens, Haney, and Ford knowingly
5 made numerous false and misleading representations and omissions to the City, including public
6 statements during City Council meetings, over a lengthy period of time: (i) that the Project was
7 viable; (ii) that they were committed to completing the Project; (iii) that the Project was funded;
8 and (iv) that they would not engage in land speculation (*i.e.*, that they would not seek to resell
9 the Land to third parties once they obtained it), all in order to persuade the City to perform under
10 the Master Project Agreement and to sponsor Milam in his bid to acquire the Land from the
11 BLM. Milam further represented that he had the rights to the next expansion team in Major
12 League Soccer and was in advanced negotiations with three different teams from the National
13 Basketball Association to bring a franchise to Henderson, Nevada.

14 22. The City—believing that Milam, Marchiano, Stephens, Haney, and Ford were
15 telling the truth, and having obtained certain protections against land speculation in the First
16 Amendment to the MPA—nominated LVNSC to purchase the Land. The City’s nomination
17 facilitated LVNSC’s ability to obtain the Land from the BLM through a modified competitive
18 bidding process. As a result, Silver State Land was the sole bidder on the Land.

19 23. On or about June 4, 2012, the BLM confirmed that Silver State Land was the
20 successful bidder for the Land for the purchase price of ten million five hundred thousand dollars
21 (\$10,500,000), or approximately twenty-one thousand six hundred fifty dollars (\$21,650.00) per
22 acre. Silver State Land acquired the right to purchase the Land at an amount significantly below
23 what a true competitive bidding process would yield as a result the City’s nomination of LVNSC
24 in accordance with the Master Project Agreement and the restricted bidding process.

25 24. From June 2012 to November 2012, Milam, Marchiano, Stephens, Haney, and
26 Ford continued to make false and misleading representations and omissions to the City,
27 including: (i) that the Project was viable; (ii) that they were committed to completing the Project
28 in a timely manner; (iii) that the Project was funded; and (iv) that they would not engage in land

1 speculation. These statements were false, known by them to be false when made, and were all
2 part of a continuing fraud, perpetrated at the same time that Milam was secretly marketing the
3 Land to third parties for residential development.

4 25. In November 2012, the City discovered that Milam was marketing the Land for
5 future single-family residential development, among other uses not permitted by the Master
6 Project Agreement or intended by the City, contrary to everything that he and his representatives
7 had said over the prior two years.

8 26. On November 26, 2012, the City delivered a letter to Milam reiterating that the
9 City had no interest in rezoning the Land for single-family residential use. The City also
10 requested an explanation from Milam regarding the language in the marketing materials
11 regarding the Land and demanded that Milam immediately cease marketing the Land for
12 residential development. Milam did not respond.

13 27. On November 28, 2012, Silver State Land caused the balance of the purchase
14 price for the Land to be wire transferred into escrow to complete the purchase from the BLM.

15 28. The very same day, November 28, 2012, Milam hand-delivered a letter to the City
16 purporting to terminate the Master Project Agreement on the grounds that it was no longer
17 viable. The purpose of Milam's last-minute termination was to obtain the Land from the BLM
18 without being subject to or encumbered by the terms and conditions of the Master Project
19 Agreement governing the use of the Land, including the City's right to receive any net proceeds
20 from any future sale of the Land.

21 29. Later that day, November 28, 2012, the City's representatives confronted
22 Marchiano about Milam's actions. Marchiano confessed to the City Manager and City Attorney
23 that Milam had been lying to the City regarding his intentions for the Land and the Project.
24 Haney has also tried to come clean by claiming ignorance about what Milam was doing—a claim
25 that defies belief.

26 30. On information and belief, Milam's agents and confederates (Marchiano,
27 Stephens, Haney and Ford) reaped substantial fees assisting Milam in securing the right to
28 acquire the Land from the BLM. Marchiano and Ford further stand to reap in excess of one

1 million dollars (\$1,000,000) in additional fees upon the closing of the sale of the Land. All of
2 them were willing and active participants in Milam's scheme to defraud the City.

3 31. On information and belief, Milam and/or the Corporate Defendants have
4 borrowed approximately fifteen million dollars (\$15,000,000.00) from DOE LENDERS I-X,
5 pledging the Land as security, even though Silver State Land does not yet own the Land, and
6 Milam, the Corporate Defendants, and/or DOE LENDERS I-X intend to encumber the Land
7 promptly upon Silver State Land's acquisition of it.

8 **Milam and His Accomplices**

9 32. Milam is a man with a troubled past, and is no stranger to fraud. In fact, a
10 judgment in the sum of one million one hundred thousand dollars (\$1,100,000.00) against Milam
11 and other entities controlled by him for fraud and breach of fiduciary duty based on prior corrupt
12 business dealings in Clark County, Nevada, was recently affirmed by the Nevada Supreme
13 Court. *See Milam v. Stealth Holdings, LLC*, No. 56268, 2012 WL 5984658 (Nev. Nov. 28,
14 2012).

15 33. Marchiano is a Nevada licensed attorney who, on information and belief, at all
16 times material hereto, represented Milam and his entities (the Corporate Defendants) with regard
17 to the Project.

18 34. Upon information and belief, Marchiano has significant financial interests in the
19 Project and purchase of the Land from the BLM by Silver State Land, separate and apart from
20 his ordinary fees for representing Milam and the Corporate Defendants (which were substantial).

21 35. Ford is a land and energy consultant with Abbey, Stubbs & Ford, LLC. Ford was
22 previously employed by the BLM for twenty-five (25) years.

23 36. Upon information and belief, Ford has significant financial interests in the Project
24 and purchase of the Land from the BLM by Silver State Land, separate and apart from his
25 ordinary compensation for providing consulting work for Milam and the Corporate Defendants
26 (which was substantial).

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1 37. Ford purported to represent the City in the transaction with Milam—having done
2 work for the City in the past—but failed to disclose the significant financial interests that he had
3 in the transaction.

4 38. Stephens is a California licensed attorney, who is not admitted to practice law in
5 the State of Nevada. Despite this legal impediment, Stephens holds himself out as a shareholder
6 in the Las Vegas office of a national law firm and regularly engages in the unauthorized practice
7 of law in Nevada, including his acts with regard to the Project.

8 39. Upon information and belief, Stephens earned significant fees for representing
9 Milam and the Corporate Defendants with respect to the Project and purchase of the Land from
10 the BLM by Silver State Land.

11 40. Haney works in the field of lobbying and public relations, and is closely tied to
12 Milam.

13 41. Upon information and belief, Haney earned significant fees for lobbying on behalf
14 of Milam and the Corporation Defendants with respect to the Project and purchase of the Land
15 from the BLM by Silver State Land.

16 **Milam Approaches the City of Henderson**

17 42. In or around June 2011, Milam approached the City to discuss the possibility of
18 entering into an agreement with the City to develop and construct one or more sports arenas and
19 mixed-use entertainment facilities in Henderson, Nevada.

20 43. On June 10, 2011, Milam prepared a memorandum for the City outlining the
21 benefits that the Project (to be developed by IDM and operated by LVNSC) would bring to the
22 City and its citizens.

23 44. On June 16, 2011, Milam and his agents met with the City's representatives,
24 including Mayor Andy Hafen, to discuss the Project.

25 45. The Project was to include, among other uses, four venues consisting of: (i) an
26 arena designed to host games of the National Basketball Association and/or National Hockey
27 League; (ii) a stadium to host games of Major League Soccer and the National Finals Rodeo; (iii)

1 a ballpark designed to host games of Major League Baseball; and (iv) a stadium capable of
2 hosting games of the National Football League.

3 46. During meetings on June 16, 2011; June 29, 2011; and July 19, 2011, Milam,
4 Marchiano, Stephens, Haney, and Ford repeatedly represented to the City that the Project was
5 viable and that they were committed to completing the development of the Land in a timely
6 manner.

7 47. In reliance upon the representations and assurances of Milam, Marchiano,
8 Stephens, Haney, and Ford, on July 21, 2011, the City entered into a Project Negotiation
9 Agreement with LVNSC (an entity controlled by Milam), giving LVNSC the exclusive right to
10 negotiate an agreement with the City to develop one or more sports arenas in Henderson,
11 Nevada, for a period of forty-five (45) days.

12 48. During additional meetings on August 3, 2011 (multiple); August 4, 2011;
13 September 1, 2011; September 6, 2011 (multiple); October 10, 2011; October 14, 2011; and
14 October 18, 2011, Milam, Marchiano, Stephens, Haney, and Ford continued to represent to the
15 City that the Project was viable and that they were committed to completing the development of
16 the Land in a timely manner.

17 49. At a City Council meeting on September 6, 2011, Haney explained how the first
18 arena to be built (part of Phase 1 of the Project) was designed to accommodate an NBA team, "as
19 well as over 190 other event nights."

20 50. In an article posted in the *Las Vegas Review-Journal* on October 31, 2011, Haney
21 was quoted saying that "every square foot" of the Land would be used for the sports venues and
22 mixed-use facilities.

23 51. From the start, City officials made it clear to the Individual Defendants that the
24 Land was not intended to be used and would not be rezoned for single-family residential use.
25 The Individual Defendants affirmed and acknowledged that the Land was intended for
26 commercial use (specifically, development of multiple sports arenas and other mixed-use
27 facilities – the Project).

The Master Project Agreement

52. Relying upon the ongoing and continuous representations from Milam, Marchiano, Stephens, Haney, and Ford, on October 18, 2011, the City and LVNSC entered into the MPA.

53. Under the MPA, LVNSC affirmatively represented that it “desires to plan, design, develop, construct, complete and operate the [arenas], related entertainment facilities and other on-site and off-site improvements,” and that it “intends that the [Land] will be constructed and operated as a first-class facility on par with other comparably-sized multi-use outdoor/indoor sports and entertainment venue projects in North America.”

54. In furtherance of the Project, the MPA provided that the City would sponsor LVNSC in its effort to purchase the Land from the BLM. Specifically, the City agreed to initiate the process to nominate the Land for disposition by the BLM and to cooperate with LVNSC and the BLM to effectuate the sale of the Land to LVNSC through a modified sale process.

55. LVNSC further agreed in the MPA that once the Project was complete, it would sell the Land (as developed) back to the City. Contemporaneously, the City and LVNSC would enter into a fifty (50) year lease governing the operation and management of the Land (as developed).

56. Finally, under Section 4.1 of the MPA, following the closing on the sale of the Land, the City and LVNSC agreed to pursue good faith negotiations toward the adoption of a comprehensive development agreement for the Project.

The City Meets its Initial Obligations Under the MPA

57. Staying true to its word, the City initiated the process to effectuate the sale of the Land to commence development of the Project, which was intended to provide long-term benefits to the City and its citizens, by moving forward with rezoning the Land.

58. On October 13, 2011, in accordance with the intent to develop the Land for future use as a sports-haven, the City’s Planning Commission recommended for approval a comprehensive plan amendment changing the City’s Land Use Policy Plan for the Land to

1 “Commercial.” The Planning Commission also recommended for approval a zoning change for
2 the Land to Regional Mixed Use with Master Plan Overlay.

3 59. On October 18, 2011, the City Council, consistent with the recommendation of
4 the City’s Planning Commission, approved the rezoning of the Land, subject to various
5 conditions.

6 60. On November 2, 2011, the City adopted Ordinance No. 2941, approving the
7 zoning change for the Land and setting forth conditions for the amendment to the zoning map.

8 **The City Nominates LVNSC to Purchase the Land from the BLM**

9 61. On September 7, 2011, the City nominated the Land for sale by the BLM in
10 accordance with the Southern Nevada Land Management Act (“SNLMA”) to provide for
11 community expansion and use consistent with the purpose of the Project. The City further
12 nominated LVNSC to the BLM for either a direct sale of the Land or as the designated bidder for
13 the Land in accordance with the provisions of the Federal Land Policy and Management Act
14 (“FLPMA”).

15 62. In its nomination letter, the City explained that a direct sale of the Land to
16 LVNSC was warranted in conjunction with a project “of public importance” and to avoid
17 speculative bidding by other parties “seeking to profiteer or delay the project.”

18 63. On or about October 4, 2011, the BLM responded to the City’s nomination letter.
19 Although the BLM would not approve a direct sale of the Land to LVNSC, the BLM agreed to
20 utilize a modified competitive sale, “if that method [was] acceptable to the City,” which would
21 “incorporate flexibility through appropriate procedures, such as offering to designated bidders
22 the right to meet the highest bid, and also limiting the persons permitted to bid.” Thus, the BLM
23 recognized the City’s interest in having LVNSC acquire the Land for the purposes stated in the
24 Notice of Realty Action (“NORA”), as further described below.

25 64. LVNSC substituted Silver State Land (an entity controlled by Milam) as the
26 designated bidder for the sale of the Land.

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1 65. On information and belief, one or more of the Milam Defendants instructed Ford
2 (who was acting as an agent for both the City and Silver State Land) to lobby the BLM on the
3 Milam Defendants' behalf to publish the BLM's NORA in the Federal Register.

4 66. The City, in its capacity as the nominating party, instructed Ford to instruct the
5 BLM not to publish the NORA until the City conducted further investigations into Milam and
6 the Corporate Defendants.

7 67. Despite the City's instructions, and in violation of his duties to the City, Ford
8 instructed the BLM to publish the NORA in the Federal Register.

9 68. On April 4, 2012, the BLM published its NORA in the Federal Register. The
10 BLM stated in the NORA, in part, as follows: "Silver State Land LLC and the City of Henderson
11 have developed an agreement that provides for long-term public benefits to the City and local
12 residents. Through collaboration and partnership with the City of Henderson, Silver State Land
13 LLC agrees to develop the property for public recreation and commercial uses approved by the
14 City of Henderson. Silver State Land LLC proposes to build enclosed covered stadiums to create
15 a distinctive sports venue and mixed-use facilities. The project would provide an economic
16 diversification for southern Nevada and is proposed to be a national and international sports
17 complex. After considering the City of Henderson's request, the BLM determined that a
18 modified competitive sealed-bid sale will be the appropriate method for disposal of this parcel."

19 69. The BLM expressly relied upon the existence of the MPA and the Project when it
20 approved the modified competitive bidding process for sale of the Land, which gave Silver State
21 Land a significant advantage and leg up over any competing bidders. The BLM published in the
22 Federal Registry that "[SSL] agrees to develop the property for public recreation and commercial
23 uses approved by the City of Henderson."

24 70. When the City expressed concern over Ford's efforts to have the NORA
25 published, he advised the City that the City could withdraw its nomination before the sale of the
26 Land was completed.

27 71. Upon information and belief, Ford knew his advice regarding the City's ability to
28 withdraw its nomination to be false and was acting contrary to the interests of the City and on

1 behalf of Silver State Land and Milam in order to facilitate the Milam Defendants' acquisition of
2 the Land for their own personal gain, contrary to the terms of the MPA.

3 **LVNSC Announces that it has Secured Funding for the Project**

4 72. On or about February 8, 2012, LVNSC prepared a press release stating that Silver
5 State Land had signed a memorandum of understanding with CSST Smart Cities International
6 Ltd. ("CSST"), a Chinese company, providing for the full funding and construction of a
7 seventeen thousand, five hundred (17,500) seat multi-purpose arena to be built on the Land (the
8 "MOU").

9 73. In the MOU, CSST purported to commit six hundred fifty million dollars
10 (\$650,000,000.00) to the Project.

11 74. On or about February 13, 2012, Haney was quoted as saying that the MOU "lays
12 out the groundwork by which to go to contract and paves the way for construction to begin."

13 75. On information and belief, the MOU was secured by IDM in an attempt to
14 continue to maintain an appearance of legitimacy to Milam's fraudulent scheme.

15 **The Milam Defendants—through Misrepresentation—Quell the City's Concerns about**
16 **Land Speculation and Request an Amendment to the MPA**

17 76. Milam, Marchiano, Stephens, Haney, and Ford (the Individual Defendants)
18 participated in a series of meetings with the City's representatives conducted on November 1,
19 2011 (multiple); November 23, 2011; December 12, 2011; January 25, 2012 (multiple); February
20 23, 2012; March 1, 2012; March 7, 2012 (multiple); March 19, 2012; March 20, 2012 (multiple);
21 and March 29, 2012.

22 77. During each of these meetings, the City's representatives expressed concerns over
23 the Milam Defendants' intentions regarding the Land (e.g., that it was being acquired for land
24 speculation) and whether the Milam Defendants intended, or had the ability, to proceed with the
25 Project as contemplated by the MPA.

26 78. In each meeting, the Individual Defendants continued to reassure and represent to
27 the City: (i) that Milam was committed to the development of the Project; (ii) that Milam and the
28

1 Corporate Defendants had no interest in land speculation; and (iii) that Milam and the Corporate
2 Defendants would not sell the Land to a third party for a quick profit (*e.g.*, flip it).

3 79. Further, at the January 25, 2012 meeting with the City Council, Milam stated that
4 he had rights to be the next expansion franchise for Major League Soccer. He further stated that
5 he was in discussions with several team owners from the National Basketball Association. He
6 also stated that he had been in talks with Larry Ellison, the founder of Oracle, who was interested
7 in the Project given the close proximity of the Land to the Henderson airport. Finally, Milam
8 represented that even if he could not bring a professional basketball team to the arena, he could
9 guarantee two hundred (200) annual events.

10 80. In order to assuage the City's concerns, on or about March 18, 2012, Milam
11 instructed Marchiano, Stephens, and Haney to deliver a five-page memorandum to the City's
12 representatives (the "March 18 Memorandum").

13 81. In the March 18 Memorandum, Milam acknowledged and addressed a number of
14 the City's concerns, repeatedly confirming his belief regarding the viability of the Project and his
15 intent to pursue it.

16 82. The following representations, among others, regarding Milam's belief in the
17 viability of the Project and the Milam Defendants' intentions regarding the Land were contained
18 in the March 18 Memorandum:

19 a. The Milam Defendants had secured a CSL Market and Financial
20 Feasibility Study with regard to the Land, which they represented as "the gold standard" in
21 analyzing stadium and arena projects around the world. The 6-month study found that "Las
22 Vegas is the number one market in the United States for the NBA."

23 b. With regard to whether the Project would remain viable if the City could
24 not secure an NBA franchise as a tenant for the sports arena, "[t]he answer is yes, and the basis
25 for this is not speculative, but factual, current, relevant and local, being Thomas & Mack." To
26 substantiate this claim, Milam separately provided the City with a list of events to hold at the
27 arena, including, but not limited to, the Tony Awards and Daytime Emmy's.

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1 c. Responding to the City's concerns about land speculation, Milam affirmed
2 that it "is not and would never be our intent" to resell the Land for a profit. He further stated and
3 represented as follows: "First, my objective in acquiring this land is to see it developed pursuant
4 to the intent of the entitlements which we ourselves created for the site and asked the City to
5 approve by contract and ordinance. ***I am not and have never been a land speculator.*** I am a
6 professional developer on my own account of large scale projects and take great pride in being
7 able to create highly specialized and sophisticated properties where others cannot. Second, ***I do***
8 ***not believe the land in question has any profit potential*** to me or anyone else for that matter in
9 this economy and for a very long time to come absent the development of LVNSC. ***Any***
10 ***thinking along those lines ignores the economic realities and the constraints*** which will be
11 imposed by the capital markets for at least a generation to come. Consequently, ***there is no***
12 ***realism in a flip of the land for a profit at some later time***, unless by later is meant something
13 like in the next 20 years. . . . I believe the ***true objective of both LVNSC and the City is to***
14 ***facilitate the development and construction of the project . . .***" (Emphasis added).

15 83. The March 18 Memorandum also suggested that the parties execute an
16 amendment to the MPA—a proposal which, on information and belief, was meant to falsely
17 reassure the City that the Project was on track.

18 84. The suggested amendment (the First Amendment) was supposedly designed to
19 provide the City with additional protections against possible land speculation by Silver State
20 Land and to prevent Milam and the Corporate Defendants from having the unrestricted right or
21 incentive to resell the Land to a third party for profit once acquired from the BLM.

22 85. For example, the First Amendment conferred upon the City an option to purchase
23 the Land at LVNSC's cost in the event that LVNSC had not demonstrated by March 4, 2013 that
24 it had executed the necessary closing documents to construct and develop the first arena on the
25 Land.

26 86. The First Amendment also conferred upon the City a right of first refusal whereby
27 the City could purchase the Land in the event of a proposed sale of the Land to a third party or,
28

1 alternatively, allow the City to collect one hundred percent (100%) of the net proceeds of the sale
2 of the Land to any third party.

3 87. The First Amendment further required LVNSC to deposit into escrow one million
4 dollars (\$1,000,000) toward the purchase price of the Land from the BLM. And, in the event
5 that LVNSC or its affiliate (Silver State Land) failed to close on the sale of the Land from the
6 BLM by the time prescribed by the NORA, the deposit was to be immediately paid to the City as
7 liquidated damages.

8 88. On information and belief, the Milam Defendants requested, recommended, and
9 promoted the First Amendment to the MPA—which they represented was required to implement
10 the Project.

11 89. On information and belief, the Milam Defendants requested, recommended, and
12 promoted the First Amendment to the MPA to dissuade the City from exercising its rights under
13 the MPA, from withdrawing its nomination, and to prevent the City from discovering their
14 fraudulent scheme.

15 90. Based upon the representations contained in the March 18 Memorandum and
16 other statements previously made by the Individual Defendants to the City, on April 17, 2012,
17 the City and LVNSC executed the First Amendment to the MPA.

18 91. That same day, Milam made the following statements to City representatives at a
19 City Council meeting:

20 a. “To go directly to, I think, an area of real interest, which is the
21 construction financing. CSST, our lender, approved the project at their investment committee a
22 week ago Monday. So it’s fully approved and they have engaged US coun[se]l in San Francisco
23 who have begun preparation of the documents. They’re providing the majority of the money in a
24 construction loan as a senior lender.”

25 b. “In addition, we reached an agreement with Penn National Gaming to
26 provide mezzanine finance for a small portion of the financing. We felt that Penn’s
27 participation, financial participation, in the project was key. They are a very strategic investor
28

1 for us. And we're looking forward to a very long and prosperous relationship between LVNSC
2 and The M Resort, specifically, and gaming in general."

3 c. "So in a very real sense, the project is financed now. It has to be
4 documented. Those documents will be extensive. It is a more than a \$650 million dollar
5 construction project. So there's going to be a lot of work to do. But we're, actually, very happy
6 to be, you know, at this early stage financed."

7 d. "Importantly, the CSST commitment, what attracted us to them, more than
8 anything else, that it's not contingent upon having an anchor tenant. It's not contingent upon
9 having an NBA franchise."

10 e. "So our current objective is to be under construction in October. And it
11 doesn't matter where we are in franchise negotiations. That helps us significantly in the
12 franchise negotiations. And it also just allows us to proceed with the project either way."

13 f. "With respect to the NBA - - which is, I think, the other thing that
14 everyone is interested in - - we are in detailed discussions with two franchises at this time
15 concurrently. And we are probably going to add a third franchise soon. So the project, for a
16 whole variety of reasons, has come to the surface in the professional sports world. And we offer
17 a very good market. I think the number one market in the country by a number of measures, but
18 to only one franchise."

19 g. "With respect to other events, Mr. Porter covered there's a whole host of
20 other events from the NBA - - or I'm sorry, the NCAA basketball championships to all the other
21 events that are currently in town and the ones that would like to come."

22 h. "So we just ask for your continued support as we move forward, because
23 we cannot do this without you. It is - - just the first phase alone is almost three-quarters of a
24 billion dollars. And it is happening. It is financed and we are having a tremendous amount
25 success. But it is a 24-hour-a-day job. And we need your help and participation to get it done."

26 i. "[O]ur current objective is to be under construction in the fourth quarter of
27 '12."

1 j. "So, like I said, we have to be hand in hand. Otherwise we're not going to
2 get there. But if we are, we will. We absolutely will."

3 k. "I'm not doing this - - I haven't spent three years of my life and all of this
4 money and gone through all this pain to not do the deal. We are doing the deal as quickly as we
5 can. So all I can tell you is that that's our intent. Right? And we have tried to advance things on
6 every front as quickly as we can."

7 l. "Including their chairman, who, remember, CSST was publically traded
8 on the New York Stock Exchange and it was taken private by Guoshen Tu, who is now the
9 individual owner of the company who is on the Forbes 400 list of wealthiest Chinese. So out of,
10 you know, a billion-and-a-half people, he's in the top 400. That's pretty good. He's been
11 involved in all the discussions. He was in the meeting. He voted the project. It was voted for
12 unanimously. It was approved. They now have moved into documentation."

13 92. The City relied upon Milam's repeated misrepresentations that he would not
14 engage in land speculation, that he was committed to the success of the Project, and that he
15 would remain faithful to the terms and conditions of the Master Project Agreement by refraining
16 from taking any actions to terminate the Master Project Agreement or to avert the sale of the
17 Land to Silver State Land by the BLM.

18 **Silver State Land, a Milam Affiliate, is the Winning Bidder on the Land**

19 93. On May 14, 2012, Silver State Land opened escrow at Nevada Title and IDM
20 (acting on behalf or for the benefit of Silver State Land) deposited the required \$1,000,000.00
21 toward the purchase of the Property from the BLM.

22 94. On June 4, 2012, Silver State Land submitted a sealed-bid to the BLM for the
23 purchase of the Land. The sealed-bid was in the amount of ten million, five hundred thousand
24 dollars (\$10,500,000.00) and included a certified check for two million one hundred thousand
25 dollars (\$2,100,000.00). The purchase price was approximately twenty-one thousand six
26 hundred fifty dollars (\$21,650.00) per acre, or approximately fifty cents (\$0.50) per square foot.

27 95. The modified competitive sealed-bid process for the sale of the Land closed on
28 June 4, 2012, pursuant to the NORA.

1 96. As expected, Silver State Land's bid to purchase the Land was the only bid
2 received by the BLM.

3 97. On or shortly after June 4, 2012, the BLM confirmed that Silver State Land was
4 the successful bidder for the Land.

5 98. On or about June 18, 2012, Milam again advised the City Council that "[i]n a very
6 real sense, the [P]roject is financed now," and that construction would begin in October 2012.

7 99. On or about August 17, 2012, the BLM and Silver State Land entered into Escrow
8 Instructions related to the sale of the Land. Specifically, Silver State Land was required to
9 deposit with Nevada Title funds in the amount of eight million four hundred twenty-eight
10 thousand dollars (\$8,428,000.00) on or before December 3, 2012. Within 30 days thereafter, it
11 was contemplated that the BLM would provide a patent for the Land to Silver State Land
12 containing a legal description and disclosing the interests vested in the United States subject to
13 certain prescribed rights, easements and reservations.

14 **The Milam Defendants' Fraudulent Scheme is Exposed**

15 100. Following the BLM-certified bidding, during meetings with the City's
16 representatives on April 9, 2012; April 17, 2012; May 17, 2012; May 18, 2012; May 21, 2012;
17 July 16, 2012; September 12, 2012; November 13, 2012; and November 15, 2012, the Individual
18 Defendants, and each of them, consistently and repeatedly represented to the City: (i) that the
19 Project was viable; (ii) that the Project was funded; and (iii) that they were committed to the
20 Project.

21 101. On November 15, 2012, contrary to the Individual Defendants' prior
22 representations to the City, the City obtained information from residential developers in Clark
23 County, Nevada, demonstrating that the Milam Defendants were marketing the Land to third
24 parties for future single-family residential use.

25 102. The City was provided with marketing materials for the Land. Upon information
26 and belief, these marketing materials were prepared and being distributed by the Milam
27 Defendants.

103. In the marketing materials, the Milam Defendants represented that the Land “could likely be re-entitled” for residential use and that residential use “will be developed” if an arena is not built.

104. The marketing materials also touted the profitability of the Land: “With the extremely low land basis and proximity to installed infrastructure, it can generate significant returns even if it is able to achieve just a fraction of what the Inspirada builders are currently asking. Not only is the land an excellent parcel for development, at an exceptional basis, but the situation with respect to the proximity, availability and connectivity to roadway and utility infrastructure is unparalleled.”

105. The marketing materials were false, misleading and contrary to the City’s repeated warnings to the Milam Defendants that the Land would not be approved for residential development. The marketing materials further contradicted the continuous representations by the Individual Defendants that the Project was being pursued by them in a manner faithful to the purposes designated in the Master Project Agreement, and that the Land would not be sold to third parties for a profit.

106. On November 26, 2012, the City Attorney sent a letter to Milam (the “November 26 Letter”) expressing concerns about the marketing materials.

107. In the November 26 Letter, the City Attorney reiterated to Milam that the City had no interest in rezoning the Land for single-family residential use. The City Attorney requested an explanation from Milam regarding the language in the marketing materials regarding the Land, and demanded that Milam immediately cease marketing the Land for residential development.

108. Milam did not respond to the November 26 Letter.

The Milam Defendants Fund the Sale of the Land and Terminate the Master Project Agreement—on the Same Day

109. On November 28, 2012, IDM (on behalf or for the benefit of Silver State Land) caused the balance of the purchase price for the Land to be wired into escrow to complete its funding of the proposed sale of the Land by the BLM.

1 110. That same day, November 28, 2012, LVNSC delivered a letter to the City
2 Manager after the close of business purporting to terminate the Master Project Agreement (the
3 “November 28 Letter”).

4 111. LVNSC failed to address any of Milam’s actions taken in contravention of the
5 Master Project Agreement and the Project as described in the November 26 Letter.

6 112. Instead, without any support, and squarely contradicting the Milam Defendants’
7 prior representations, LVNSC suddenly claimed that the Project was “not viable,” and attempted
8 to terminate the Master Project Agreement pursuant to Section 3.2.

9 113. Under Section 3.2 of the Master Project Agreement, LVNSC’s determination of
10 the viability of the Project must be based upon its review of the “Project Materials” as well as
11 applicable law.

12 114. Unsurprisingly, LVNSC failed to identify any way in which its review of the
13 Project Materials (prepared by LVNSC) or applicable law demonstrated a lack of viability for the
14 Project.

15 115. The November 28 Letter further stated that LVNSC would move forward with
16 reshaping the Project “into a development we will all be proud of,” thus admitting that the Milam
17 Defendants had plans for the Land that were different from those the parties agreed to and
18 manifested in the Master Project Agreement.

19 116. In the very same letter in which he stated that the Project was not viable, Milam
20 represented that the Milam Defendants were “fully committed to achieving development of the
21 arena complex and accompanying development in a way that will greatly enhance the City and
22 surrounding areas” and that they would “continue to spend significant time and resources to
23 achieve this goal.”

24 117. Because LVNSC failed to identify any way in which its review of the Project
25 Materials or applicable law demonstrated a lack of viability of the Project, LVNSC’s purported
26 termination of the Master Project Agreement is ineffective and void *ab initio*.

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1 118. Based on the Milam Defendants' own representations, the Project is in fact viable
2 and the November 28 Letter was mere pretext to further the Milam Defendants' fraudulent
3 scheme.

4 119. Milam, through LVNSC, attempted to terminate the Master Project Agreement
5 prior to obtaining title to the Land to thwart and frustrate the primary purpose of acquiring the
6 Land (e.g., in furtherance of the Project), thereby securing ownership thereof without any of the
7 obligations associated with the Master Project Agreement upon which the acquisition from the
8 BLM was premised.

9 120. On information and belief, Marchiano, Stephens, Haney and Ford knew or had
10 reason to know that Milam deceived the City with regard to the Project, and each of them helped
11 facilitate his scheme to defraud the City by creating an appearance of legitimacy.

12 121. The City Attorney subsequently met with Marchiano to discuss the Project. At
13 the meeting, when asked about the marketing materials and what Milam was doing, Marchiano
14 admitted that Milam had been lying regarding his intentions to develop the Land consistent with
15 the Master Project Agreement. Marchiano subsequently delivered a letter to the City Attorney
16 professing ignorance regarding Milam's fraudulent scheme.

17 122. Haney has also approached the City proclaiming that she knew nothing about
18 Milam's fraudulent scheme.

19 **Ford Pressures the BLM to Issue the Land Patent to Silver State Land**

20 123. On information and belief, Ford has attempted to pressure the BLM into issuing
21 the Patent to the Land to the detriment of the City and to the benefit of the Milam Defendants.

22 124. On November 30, 2012, in a phone conversation with the City Attorney, Ford
23 threatened the City Attorney by stating that he and the City should not interfere with the transfer
24 of the Land to Milam, and indicated that there was nothing that the City could do to prevent the
25 BLM from issuing a patent for the Land to Milam. At no time during the conversation did Ford
26 disclose that he stood to gain a substantial fee upon the transfer of the Land from the BLM.

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Milam Pledges His Interest in the Land to DOE LENDERS I-X

125. In or around December 2012, City officials began receiving inquiries from appraisers with respect to the Land.

126. On information and belief, Milam and/or the Corporate Defendants obtained funding from DOE LENDERS I-X, whether related to the Land or otherwise, in excess of the amount bid to purchase the Land, and pledged the Land to DOE LENDERS I-X as collateral to secure repayment of the funding, even though Silver State Land has yet to receive title to and ownership of the Land.

127. On information and belief, DOE LENDERS I-X intend to secure their respective interests in the Land as soon as Silver State Land acquires it, and are having the Land appraised to determine its value.

The City Will Suffer Irreparable Harm if Silver State Land Were to Sell the Land to Third Parties or Have it Encumbered by DOE LENDERS I-X

128. On December 20, 2012, Silver State Land and the BLM executed a document entitled “Modifications for Escrow Instructions for N-9045,” which extended the closing date for the sale of the Land and transfer of the land patent through and including February 6, 2013.

129. To date, the BLM has not yet issued a land patent to Silver State Land. Issuance of the land patent is the final action that the BLM must take to formally transfer title to and ownership of the Land to Silver State Land.

130. Upon information and belief, Marchiano, Stephens, Haney and Ford have already earned thousands of dollars in fees in furtherance of Milam’s fraudulent scheme, and Marchiano and Ford stand to gain hundreds of thousands, if not millions, of dollars more if the Land is sold to Silver State Land—compensation which is separate and apart from their ordinary fees for representing Milam and the Corporate Defendants with respect to the Master Project Agreement.

131. On information and belief, Milam and the Corporate Defendants intend to resell the Land on a piecemeal basis for pecuniary gain shortly after the BLM issues a land patent to Silver State Land.

1 132. If the Milam Defendants were sell the Land, in whole or in part, the City will
2 suffer immediate, irreparable harm as the City would be divested of its option to purchase the
3 Land or, alternatively, to obtain the sole benefit of the proceeds of any sale of the Land, as stated
4 in the Master Project Agreement. Further, DOE LENDERS I-X will secure interests in the Land
5 as soon as it is acquired by Silver State Land, to the detriment of the City.

6 **FIRST CAUSE OF ACTION**

7 **(Breach of Contract – the City v. LVNSC)**

8 133. The City realleges and incorporates by reference the averments contained in
9 Paragraphs 1 through 132, inclusive, as though fully set forth herein.

10 134. The City entered into a valid and existing contract with LVNSC—the Master
11 Project Agreement.

12 135. The City performed all obligations required of it under the Master Project
13 Agreement, save and except those that it was excused from performing.

14 136. LVNSC breached the Master Project Agreement by repudiation and non-
15 performance of its obligations.

16 137. As the direct and proximate result of LVNSC's breach and repudiation of the
17 Master Project Agreement, the City has been damaged in an amount in excess of ten thousand
18 dollars (\$10,000.00), according to proof.

19 138. The City was forced to retain the services of legal counsel to prosecute this claim;
20 therefore, it is entitled to attorneys' fees and costs related to this action.

21 **SECOND CAUSE OF ACTION**

22 **(Breach of the Implied Covenant of Good Faith and Fair Dealing – the City v. LVNSC)**

23 139. The City realleges and incorporates by reference the averments contained in
24 Paragraphs 1 through 138, inclusive, as though fully set forth herein.

25 140. The City entered into a valid and existing contract with LVNSC—the Master
26 Project Agreement.

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1 141. The Master Project Agreement contains an implied covenant of good faith and
2 fair dealing, which prohibits a party from deliberately contravening the intention and spirit of an
3 agreement.

4 142. LVNSC breached the implied covenant of good faith and fair dealing in the
5 following ways:

6 a. By making representations to City officials that the Project was viable;

7 b. By making false representations to City officials that the Milam
8 Defendants had obtained financing for the Project;

9 c. By making false representations to City officials that the Milam
10 Defendants were committed to completing the Project in a timely manner;

11 d. By making false representations to City officials that the Milam
12 Defendants had no intention of land speculation;

13 e. By devising a scheme to induce the City to sponsor Silver State Land to
14 purchase the Land from the BLM under the false belief that the Corporate Defendants would
15 develop the Land in accordance with the Master Project Agreement;

16 f. By securing debt in the form of Deeds of Trust in favor of DOE
17 LENDERS I-X, which would be placed upon the Land once acquired from the BLM, in direct
18 violation of the Master Project Agreement;

19 g. By marketing the Land for single-family residential use to third parties
20 without the express consent or approval of the City; and

21 h. By purporting to terminate the Master Project Agreement immediately
22 prior to obtaining title in and to the Land from the BLM for the purpose of obtaining the Land
23 free and clear of the obligations under the Master Project Agreement.

24 143. As a direct and proximate result of LVNSC's breach of the implied covenant of
25 good faith and fair dealing arising out of the Master Project Agreement, the City's justified
26 expectations under the Master Project Agreement have been frustrated and denied.

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1 144. As the direct and proximate result of LVNSC's breach of the implied covenant of
2 good faith and fair dealing, the City has been damaged in an amount in excess of ten thousand
3 dollars (\$10,000.00), according to proof.

4 145. The City was forced to retain the services of legal counsel to prosecute this claim;
5 therefore, it is entitled to attorneys' fees and costs related to this action.

6 **THIRD CAUSE OF ACTION**

7 **(Fraudulent Misrepresentation – the City v. the Milam Defendants)**

8 146. The City realleges and incorporates by reference the averments contained in
9 Paragraphs 1 through 145, inclusive, as though fully set forth herein.

10 147. On numerous occasions, the Corporate Defendants, through the Individual
11 Defendants, made numerous false and misleading representations to the City as described above,
12 including, but not limited to:

- 13 a. That the Project was viable;
14 b. That they had obtained funding for the Project;
15 c. That they were committed to completing the Project in a timely manner;

16 and

17 d. That they had no intention of land speculation or of reselling the Land to
18 third parties for pecuniary gain.

19 148. The Individual Defendants knew that the above representations were false and
20 materially misleading and would induce the City to proceed with the Project as contemplated by
21 the Master Project Agreement under false pretenses or, at the very least, had an insufficient basis
22 for making these representations to the City. Either way, the Individual Defendants intended to
23 induce the City to rely on these representations, among others, with regard to the Project and to
24 assist them in acquiring the Land from the BLM.

25 149. The Corporate Defendants, through the Individual Defendants, failed to disclose
26 material information to the City, including, but not limited to:

- 27 a. That they were re-marketing the Land for residential use;
28 b. That they did not have funding to develop the Project;

1 c. That they were intending to acquire the Land free and clear of the
2 obligations set forth in the Master Project Agreement; and

3 d. That they were intending to resell the Land for pecuniary gain.

4 150. The City justifiably and detrimentally relied upon each Individual Defendant's
5 false and misleading representations and omissions by:

6 a. Entering into the First Amendment to the MPA;

7 b. Nominating LVNSC to the BLM to acquire the Land;

8 c. Refraining from exercising its rights under the Master Project Agreement;
9 and

10 d. Expending valuable time and resources in furtherance of the Project.

11 151. Upon information and belief, the Individual Defendants, and each of them, has a
12 personal interest in the scheme to defraud the City—each reaped substantial gains through
13 representing Milam and the Corporate Defendants, and some of them stand to reap significant
14 additional fees upon Silver State Land's acquisition of the Land from the BLM.

15 152. The Individual Defendants, and each of them, acted outside the course and scope
16 of their agency or employment by making knowingly false and misleading representations to the
17 City and concealing material information from the City in order to cover up their fraudulent
18 scheme.

19 153. The Corporate Defendants approved of, ratified, condoned, and/or acquiesced to
20 each of the false and misleading representations and omissions made by each of the Individual
21 Defendants.

22 154. The acts of the Milam Defendants, and each of them, were characterized by fraud,
23 oppression, or malice, express or implied, which justifies an award of punitive damages in order
24 to deter the Milam Defendants and others similarly situated from engaging in like conduct in the
25 future.

26 155. As a direct and proximate result of the Milam Defendants' fraudulent
27 misrepresentations and omissions, the City has suffered damages in an amount in excess of ten
28 thousand dollars (\$10,000.00), according to proof.

1 156. Separate and apart from recovering damages, the City reserves the right to seek to
2 rescind the transaction with the Milam Defendants, which would include, without limitation,
3 unwinding any sale of the Land by the BLM to Silver State Land.

4 157. The City was forced to retain the services of legal counsel to prosecute this claim;
5 therefore, it is entitled to attorneys' fees and costs related to this action.

6 **FOURTH CAUSE OF ACTION**

7 **(Negligent Misrepresentation – the City v the Milam Defendants)**

8 158. The City realleges and incorporates by reference the averments contained in
9 Paragraphs 1 through 157, inclusive, as though fully set forth herein.

10 159. The Milam Defendants, and each of them, in the course of inducing the City to
11 proceed with the Project by entering into the Master Project Agreement and to nominate Silver
12 State Land to acquire the Land from the BLM, failed to exercise reasonable care or competence
13 in obtaining or communicating information to the City regarding:

- 14 a. The viability of the Project;
15 b. Funding for the Project;
16 c. Their commitment to completing the Project in a timely manner; and
17 d. Their intentions with regard to the Land, including their intent to re-sell
18 the Land to third parties for pecuniary gain.

19 160. The Milam Defendants, and each of them, had a pecuniary interest in the Project
20 and the Land as described above, separate and apart from the interests of the City.

21 161. The City justifiably and detrimentally relied upon the false and misleading
22 information provided by the Milam Defendants, and each of them, by:

- 23 a. Entering into the First Amendment to the MPA;
24 b. Nominating LVNSC to the BLM to acquire the Land;
25 c. Refraining from exercising its rights under the Master Project Agreement;
26 and
27 d. Expending valuable time and resources in furtherance of the Project.

1 162. As a direct and proximate result of negligently misrepresenting the facts
2 underlying the Project and the Master Project Agreement, the City has suffered damages in an
3 amount in excess of ten thousand dollars (\$10,000.00), according to proof.

4 163. The City was forced to retain the services of legal counsel to prosecute this claim;
5 therefore, they are entitled to attorneys' fees related to this action.

6 **FIFTH CAUSE OF ACTION**

7 **(Civil Conspiracy – the City v. the Milam Defendants)**

8 164. The City realleges and incorporates by reference the averments contained in
9 Paragraphs 1 through 163, inclusive, as though fully set forth herein.

10 165. The Milam Defendants, and each of them, agreed and intended to accomplish an
11 unlawful objective for the improper purpose of harming the City.

12 166. The Milam Defendants acted in concert taking on the form of a civil conspiracy to
13 commit specific wrongful acts and/or torts, including, but not limited to, improperly repudiating
14 and terminating the Master Project Agreement, breaching the implied covenant of good faith and
15 fair dealing arising from the Master Project Agreement, intentionally and/or negligently making
16 numerous fraudulent misrepresentations and omissions to the City, and perpetrating a fraud as
17 detailed above.

18 167. The acts of the Milam Defendants, and each of them, were characterized by fraud,
19 oppression, or malice, express or implied, which justifies an award of punitive damages in order
20 to deter these individuals and others similarly situated from engaging in like conduct in the
21 future.

22 168. As a direct and proximate result of the wrongful acts and/or torts arising from the
23 civil conspiracy formed by and among the Milam Defendants, the City has suffered damages in
24 an amount in excess of ten thousand dollars (\$10,000.00), according to proof.

25 169. The City was forced to retain the services of legal counsel to prosecute this claim;
26 therefore, they are entitled to attorneys' fees related to this action.

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1 **SIXTH CAUSE OF ACTION**

2 **(Aiding and Abetting – the City v. the Milam Defendants)**

3 170. The City realleges and incorporates by reference the averments contained in
4 Paragraphs 1 through 169, inclusive, as though fully set forth herein.

5 171. The Milam Defendants, and each of them, substantially assisted and encouraged
6 each other to commit specific wrongful acts and/or torts, including, but not limited to,
7 improperly repudiating and terminating the Master Project Agreement, breaching the implied
8 covenant of good faith and fair dealing arising from the Master Project Agreement, intentionally
9 and/or negligently making numerous fraudulent misrepresentations and omissions to the City,
10 and perpetrating a fraud as detailed above.

11 172. The Milam Defendants, and each of them, were aware of their respective roles in
12 promoting each wrongful act and/or tort described above.

13 173. The Milam Defendants knowingly and substantially assisted each other in
14 committing each wrongful act and/or tort described above.

15 174. The acts of the Milam Defendants, and each of them, were characterized by fraud,
16 oppression, or malice, express or implied, which justifies an award of punitive damages in order
17 to deter these individuals and others similarly situated from engaging in like conduct in the
18 future.

19 175. As a direct and proximate result of the wrongful acts and/or torts committed in
20 concert and through substantial assistance and encouragement by each of the Milam Defendants,
21 the City suffered damages in an amount in excess of ten thousand dollars (\$10,000.00),
22 according to proof.

23 176. The City was forced to retain the services of legal counsel to prosecute this claim;
24 therefore, it is entitled to attorneys' fees related to this action.

25 **SEVENTH CAUSE OF ACTION**

26 **(Unjust Enrichment – the City v. the Milam Defendants)**

27 177. The City realleges and incorporates by reference the averments contained in
28 Paragraphs 1 through 176, inclusive, as though fully set forth herein.

1 178. The Milam Defendants have unjustly received benefits at the expense of the City
2 through their wrongful and fraudulent conduct.

3 179. It would be unjust and inequitable for the Milam Defendants, and each of them, to
4 retain any economic benefit that they have obtained through their wrongful and fraudulent
5 conduct as described above.

6 180. The City is entitled to full restitution of all amounts in which the Milam
7 Defendants have been unjustly enriched at the City's expense, including, but not limited to,
8 amounts paid in furtherance of the fraudulent scheme and title to the Land acquired from the
9 BLM.

10 EIGHTH CAUSE OF ACTION

11 **(Declaratory Relief – the City v. LVNSC and Silver State Land)**

12 181. The City realleges and incorporates by reference the averments contained in
13 Paragraphs 1 through 180, inclusive, as though fully set forth herein.

14 182. A justiciable controversy now exists among the City, LVNSC, and Silver State
15 Land pursuant to the Uniform Declaratory Judgment Act, NRS 30.010 *et seq.* Such a
16 controversy exists where a claim of right is asserted against one who has an interest in contesting
17 the claim.

18 183. The City has a legally protectable interest in prosecuting this claim, and its
19 interest is adverse to the interests of LVNSC and Silver State Land.

20 184. This dispute over the wrongful termination of the Master Project Agreement by
21 LVNSC and ownership of the Land by Silver State Land is ripe for judicial determination, and
22 declaratory relief may terminate the controversy or remove any uncertainty among the City,
23 LVNSC, and Silver State Land. Specifically, if the purported termination of the Master Project
24 Agreement is invalid, the City may exercise its option to purchase the Land should Silver State
25 Land acquire it from the BLM and attempt to resell it to others. Further, because Silver State
26 Land seeks to acquire the Land under false pretenses, it may not be entitled to take possession or
27 ownership of the Land from the BLM.

1 185. The Court has the power to declare the rights, status and other legal relationships
2 among the City, LVNSC, and Silver State Land pursuant to NRS 30.030.

3 186. The City seeks declaratory relief as follows:

4 a. That the Master Project Agreement remains in full force and effect, such
5 that LVNSC is bound by its terms and conditions; and

6 b. That LVNSC's attempt to terminate the Master Project Agreement was
7 improper and void.

8 187. Pursuant to N.R.C.P. 57, the City requests a speedy hearing and advancement on
9 the Court's calendar with regard to this claim.

10 **NINTH CAUSE OF ACTION**

11 **(Injunctive Relief – the City v. all Defendants)**

12 188. The City realleges and incorporates by reference the averments contained in
13 Paragraphs 1 through 187, inclusive, as though fully set forth herein.

14 189. The continuing acts of the Milam Defendants, and each of them, constitute a
15 continuing and irreparable injury to the City by depriving the City of its right to demand that the
16 Land be used solely for development of the Project and not be sold in piecemeal for private gain.

17 190. The anticipated acts of DOE LENDERS I-X will cause irreparable injury to the
18 City by depriving the City of its interests in the Land—including, without limitation, its option to
19 purchase the Land or, alternatively, to obtain the sole benefit of the net proceeds of any sale of
20 the Land—as set forth in the Master Project Agreement.

21 191. The City would suffer immediate and irreparable harm if the Defendants, or any
22 of them, were to encumber and/or sell the Land, because the City would be divested of its option
23 to purchase the Land or, alternatively, to obtain the sole benefit of the net proceeds of any sale of
24 the Land, as contemplated by the Master Project Agreement.

25 192. Absent injunctive relief, the Defendants, and each of them, are likely to continue
26 to injure the City by encumbering the Land, selling the Land for residential development, and/or
27 other purposes inconsistent with the Project.

1 193. To avoid the likelihood of further irreparable injury to the City during the
2 pendency of these proceedings and afterward, and to preserve the possibility of effective final
3 relief, the City seeks preliminary and permanent injunctive relief forbidding the Defendants, and
4 each of them, (i) from selling the Land, in whole or in part, (ii) from developing the Land for use
5 other than in furtherance of the Project and intent and spirit of the Master Project Agreement,
6 and (iii) from encumbering the Land.

194. The City was forced to retain the services of legal counsel to prosecute this claim; therefore, it is entitled to attorneys' fees related to this action.

TENTH CAUSE OF ACTION

(Constructive Trust – the City v. Silver State Land)

11 195. The City realleges and incorporates by reference the averments contained in
12 Paragraphs 1 through 194, inclusive, as though fully set forth herein.

13 196. A confidential relationship exists between the City and Silver State Land.
14 Specifically, the City justifiably and detrimentally relied on Silver State Land to acquire the
15 Land from the BLM for the express purpose of effectuating the Project between the City and
16 LVNSC.

17 197. Further, a confidential relationship exists between Ford and the City. The City
18 detrimentally relied on Ford's fraudulent misrepresentations and omissions, which, on
19 information and belief, were made partially on behalf of Milam and Silver State Land.

198. Assuming that the BLM issues Silver State Land a patent for the Land, retention of legal title to the Land by Silver State Land unencumbered by the obligations set forth in the Master Project Agreement would be unjust and inequitable.

199. The existence of a constructive trust over the Land (should Silver State Land obtain title to the Land from the BLM) is essential to the effectuation of justice and to avoid completion of the final phase of Milam's scheme to defraud the City.

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WHEREFORE, Plaintiff prays for the following relief:

1. Judgment in its favor and against LVNSC on the First Cause of Action in excess of \$10,000.00, according to proof;

2. Judgment in its favor and against LVNSC on the Second Cause of Action in excess of \$10,000.00, according to proof;

3. Judgment in its favor and against the Milam Defendants on the Third Cause of Action in excess of \$10,000.00, according to proof;

4. Judgment in its favor and against the Milam Defendants on the Fourth Cause of Action in excess of \$10,000.00, according to proof;

5. Judgment in its favor and against the Milam Defendants on the Fifth Cause of Action in excess of \$10,000.00, according to proof;

6. Judgment in its favor and against the Milam Defendants on the Sixth Cause of Action in excess of \$10,000.00, according to proof;

7. Judgment in its favor and against the Milam Defendants on the Seventh Cause of Action in excess of \$10,000.00, according to proof;

8. For a judgment declaring that the Master Project Agreement remains in full force and effect and that LVNSC's prior attempt to terminate the Master Project Agreement was invalid and void;

9. For a temporary restraining order and/or preliminary and permanent injunction enjoining the Defendants, and each of them, from selling and/or encumbering the Land or developing the Land for use other than in furtherance of the Project consistent with the terms and conditions set forth in the Master Project Agreement;

10. For issuance of a constructive trust over the Land;

11. For an award of punitive damages against the Milam Defendants in an amount to be proven at trial;

12. For an award of costs and attorneys' fees incurred in bringing this action as may be permitted by law;

1 13. For an award of prejudgment interest at the highest rate allowed by law until paid
2 in full; and

3 14. For such other and further relief as the Court deems just and proper.

4 DATED this 28th day of January, 2013.

5 BAILEY ♦ KENNEDY

6 By: 

7 DENNIS L. KENNEDY

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