COMPLAINT
via U.S. Mail

Incline Village General Improvement District – Board of Trustees
Kendra Wong, Chair
895 Southwood Boulevard
Incline Village, NV 89451

Re: Incline Village General Improvement District – Open Meeting Law Complaint, OAG File No. 13897-263

Dear Chair Wong:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML). NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the Incline Village General Improvement District Board of Trustees (Board).

The OAG requests that the Board prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the Board’s response including, but not limited to, audio and/or video recordings, or transcripts, of the Board’s September 13, 2017, September 26, 2017, and December 13, 2017, meetings. Please also provide a copy of the agenda and support materials from the December 13, 2017 meeting.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before March 9, 2018.

Should you have any questions, please contact Althea Zayas at (702) 486-3224 or via email at azayas@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
Chief Deputy Attorney General
Boards and Open Government Division

CB:arz
Enclosure
OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law - NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

**COMPLAINANT INFORMATION**

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<td>P.O. BOX 3022</td>
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<td>[ ] Under 18 [ ] 18-29 [ ] 30-39 [ ] 40-49 [ ] 50-59 [ ] 60 or older</td>
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**ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST**

<table>
<thead>
<tr>
<th>Name of Public Body:</th>
<th>Incline Village General Improvement District</th>
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<td>(i.e., specific board, commission, agency, or person(s) etc.)</td>
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<th>Date of meeting where alleged violation occurred (mm/dd/yyyy):</th>
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SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:

See attached written statement/exhibits.

SECTION 3.

Sign and date this form. The Attorney General’s Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is not my private attorney, but rather represents the public. I am filing this complaint to notify the Attorney General’s Office of alleged violations of the Open Meeting law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General’s Office to send my complaint and supporting documents to the public body identified in this complaint.

Signature

02/12/2018

Date (m/dd/yyyy)

AARON L'KATZ

Print Name
SECTION 4. (Optional)

Gender:  □ Male  □ Female

Have you previously filed a complaint with our office?:  □ Yes  □ No

If yes, enter the approximate filing date (mm/dd/yyyy) of your original complaint: ____________________

I am (mark all that apply):

□ Income below federal poverty guideline
□ Disaster victim
□ Person with disability
□ Medicaid recipient
□ Military service member
□ Veteran
□ Immediate family of service member/veteran

Ethnic Identification:

□ White/Caucasian
□ Black/African American
□ Hispanic/Latino
□ Native American/Alaskan Native
□ Asian/Pacific Islander
□ Other: ____________________

Primary Language:

□ English
□ Spanish
□ Other: ____________________

May we provide your name and telephone number to the media in the event of an inquiry about this matter?

□ Yes  □ No

How did you hear about our complaint form (please choose only one):

□ Called/visited Las Vegas AG Office  □ Called/visited Carson City Office  □ Called/visited Reno Office
□ Attended AG Presentation/Event  □ Another Nevada State Agency/Elected Official  □ Search Engine  □ AG Website
□ AG Social Media Sites  □ Media: Newspaper/Radio/TV  □ Other:

Return original form to:

Office of the Attorney General – ATTN: OML, Coordinator
100 N. Carson St.
Carson City, NV 89701
Fax: 775-684-1108
(Faxed copies will be accepted followed by original)
ATTACHMENT TO NEVADA ATTORNEY GENERAL
OPEN MEETING LAW COMPLAINT FORM

INTRODUCTION

The Incline Village General Improvement District ("IVGID") is a general improvement district ("GID") and governmental subdivision of the State of Nevada [NRS 318.075(1)]. On May 20, 1961 it was created by Washoe County Bill No. 57, (initiating) Ordinance No. 97 [see NRS 318.055(1)(a)]. As such it is an "administrative...executive or legislative body...created by...a...statute of this State" [see NRS 241.015(3)(a)(2)] and thus a "public body" for purposes of NRS 241 \(^1\) [the Open Meeting Law ("the OML")].

After the Washoe County Board of Commissioners ("the County Board") adopted IVGID's initiating ordinance, it appointed "five persons to serve as the first board of trustees of the district" [NRS 318.080(3)]. Thereafter, IVGID conducted, and currently conducts, biennial elections for the election of trustees who serve for terms of 4 years each. Elections for trustees are staggered so that in 2014, for instance, two trustees were elected. And in 2016, three trustees were elected [see NRS 318.095(3)].

IVGID's Board of trustees ("the Board") regularly conducts "meetings" subject to the OML in that three or more "gather...to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power" [see NRS 241.015(2)(a)(1)].

OBLIGATION TO ATTACH PREPARED WRITTEN REMARKS TO MINUTES OF PUBLIC BODY MEETINGS WHERE REQUESTED

NRS 241.035(1)(d) instructs that "each public body shall keep written minutes of each of its meetings, including...the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion."

PROLOGUE

This complaint addresses two separate incidents where the IVGID Board refused to include written remarks requested by member(s) of the public in the minutes of two different (September 13, 2017 and September 26, 2017) Board of Trustees' meetings. The minutes of both of these meetings, but for the omission of the subject written remarks, were approved by the IVGID Board at its December 13, 2017 meeting.\(^2\)

\(^1\) See NRS 241.015(4)(a)(2) and (7).

\(^2\) IVGID now livestreams its public meetings and the IVGID Board's approval of those minutes can be viewed at 4:11:54-4:12:07 of the livestream of that meeting [https://livestream.com/ivgid/events/ ("the 12/13/2017 livestream")].
In complainant’s prior OML complaint (OAG No. 13897-260), he accused IVGID staff of intentionally omitting written statements submitted by members of the public expressly requested be attached to the minutes of Board meetings, as a means of censorship. He alleged that the intent of staff was to deprive other members of the public from learning of material facts and arguments withheld on important public issues to counter staff’s deceitful and one-sided facts and arguments. He stated that these omissions would become the subject of a future OML complaint. This is that complaint.

THE IVGID BOARD’S SEPTEMBER 13, 2017 MEETING

(The Failure to Attach Written Remarks Proffered by a Member of the General Public in Person That He Prepared Jointly With Another Absent Member of the General Public)

Frank Wright is a member of the public. Mr. Wright regularly attends and offers public comment at most IVGID Board meetings. At the IVGID Board's September 13, 2017 meeting Mr. Wright addressed the IVGID Board, in person, during the period agendized for public comment. Initially, he prefaced his public comments by handing out a two page written statement to each Board member. This statement addressed GM Pinkerton’s proposed new compensation which was a matter agendized for the meeting for possible Board action.

Thereafter, Mr. Wright began his three minutes of allotted oral public comment. That comment, in part, referenced an additional written statement prepared by he and complainant pertaining to the Board’s proposed Parasol building purchase ("the additional written statement"). During this public comment Mr. Wright expressly requested that the additional written statement be included in the written minutes of that meeting.\(^3\)

The proposed minutes of the IVGID Board's September 13, 2017 meeting were agendized [as Item I(2)] for approval at the Board's meeting of December 13, 2017.\(^4\). Included in those minutes was the two page written statement initially handed out by Mr. Wright to the Board\(^5\). However omitted from those minutes, was the additional written statement.

At the IVGID Board's December 13, 2017 meeting complainant addressed the Board in person and in part, objected to its approval of the proposed minutes of its September 13, 2017 meeting, as submitted\(^6\), specifically because it omitted the additional written statement\(^7\). Complainant warned

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\(^3\) Mr. Wright’s request can be viewed at 06:24-09:33 of the livestream of that meeting [https://livestream.com/ivgid/events/7720044/videos/162784045 ("the 9/13/2017 livestream")].


\(^6\) Those minutes appear at pages 244-292 of the 12/13/2017 Board packet.

\(^7\) See 12:27-12:34 of the 12/13/2017 livestream.
that if the proposed minutes were not modified to include the omitted additional written statement prior to approval, an OML complaint would be filed\(^7\).

In addition to his oral objections, complainant submitted a written statement (attached to this complaint as Exhibit "1") he requested be included in the formal minutes of the Board's December 13, 2017 meeting\(^8\). That written statement included, as Exhibit "A" thereto, the additional written statement omitted from staff's proposed September 13, 2017 minutes. A close inspection of the additional written statement clearly reveals it was authored, in part, by Mr. Wright\(^9\). Thus the Board was given every opportunity to cure what has turned into an OML complaint.

If the foregoing weren't sufficient to give the Board every opportunity to cure what has turned into an OML complaint, prior to the Board's December 13, 2017 meeting complainant sent an e-mail to each Board member alerting him/her to complainant's objections and request that the minutes of the Board's September 13, 2017 meeting not be approved unless and until the additional statement were included\(^10\).

When the Board's chairperson, Kendra Wong, called agenda Item I concerning approval of the proposed minutes of the IVDGID Board's September 13, 2017 and September 26, 2017 meetings\(^11\) at the Board's December 13, 2017 meeting, Trustee Horan raised questions insofar as those minutes were concerned\(^12\):

Trustee Horan: "We've had some correspondence\(^10\) as to whether we're doing this right or wrong...I'd like some help on that before we vote."

Clerk Susan Herron: "So for the September 13 minutes I believe...the question was...that a member of the public turned in a submittal for another member of the public who was not present. I believe Chair Wong declined that submission, and I believe that is the issue for that particular member of the public\(^13\)...The Open Meeting Law states...that when a member of the public makes their comments and asks that things be attached to the minutes they have to be here to do that. Another member of the public can't do that for them."\(^14\)

Based upon Ms. Herron's faulty explanation (see discussion below), the proposed minutes of the Board's September 13, 2017 meeting, absent the additional written statement, were approved\(^15\).

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\(^8\) A copy of those written remarks is attached as Exhibit "A" to the written statement complainant submitted to the IVDGID Board at its meeting of December 13, 2017 meeting. That written statement is attached as Exhibit "1" to this written statement.

\(^9\) An asterisk has been placed at the last page of that statement which identifies Mr. Wright as a co-author.

\(^10\) A copy of that e-mail is attached as Exhibit "B" to Exhibit "1" to this written statement.

\(^11\) See the discussion beginning at 4:05:09 of the 12/13/2017 livestream.

\(^12\) See 4:05:19-4:05:29 of the 12/13/2017 livestream.

\(^13\) See 4:06:40-4:07:06 of the 12/13/2017 livestream.


\(^15\) See 4:11:55-4:12:00 of the 12/13/2017 livestream.
Ms. Herron's Response to Trustee Horan's Question Insofar as Chairperson Wong's Decision to Decline Mr. Wright's Submission on September 13, 2017 Were Concerned, *Was False*

Ms. Herron was confused. Her response to Trustee Horan was directed to what took place at the Board's August 22, 2017 meeting. The record demonstrates that Chairperson Wong declined *nothing* on September 13, 2017. In support of this assertion, complainant again refers the reader to the 9/13/2017 livestream where Mr. Wright submitted the additional written statement to Ms. Herron. Hearing nothing whatsoever from Ms. Wong, it is evident that Ms. Herron's representation to the contrary was *false*.

Ms. Herron's Response to Trustee Horan's Question Insofar as Mr. Wright's Lack of Standing to Submit Joint Written Remarks For Inclusion in the Written Minutes of a Public Meeting Were Concerned, *Was False*

Besides the fact Ms. Herron's assertion that "the Open Meeting Law states...that when a member of the public makes their comments and asks for things to be attached to the minutes they have to be here to do that" represents a legal opinion by a lay person, because here the proffered written remarks were prepared either in whole or in part by a member of the public who was physically present, Ms. Herron's representation to the contrary was *false*. Although NRS 241.035(1)(d) instructs that the minutes of meetings of public bodies *must* include "a copy of...prepared remarks...the member of the general public has prepared...[where as here he/she]...submits a copy for inclusion," it says *nothing* about remarks the member *prepares jointly* with others who are not physically present. Because here the additional written statement was in part prepared by Mr. Wright, and he submitted it in person for inclusion in the minutes of that meeting, Ms. Herron's representation as to what the OML states and does not state, and how it applied to the subject facts, was *false*.

NRS 241.035(1)(d) Makes Clear That Members of the General Public May "Address" a Public Body at a Public Meeting, Orally and by Means of Prepared Written Remarks, as Well as to Have Those Remarks Included in the Minutes of That Meeting

The option sits with the member of the general public rather than as here, IVGID. And if there be an doubt, because of policy concerns, that doubt should be resolved in favor of allowing those...
written remarks to be included. Given here Mr. Wright prepared written remarks and submitted them for inclusion into the minutes of the IVGID Board’s September 13, 2017 meeting, yet they were not included in those minutes, NRS 241.036 makes the IVGID Board’s approval of those minutes void. The Attorney General should order the IVGID Board’s approval of its minutes to its September 13, 2017 meeting set aside, and order the additional written statement attached to the minutes of that meeting if/when approved.

THE IVGID BOARD’S OML VIOLATION WAS WILLFUL

As recited above, the IVGID Board’s OML violation was willful. On two occasions the Board was given the truthful facts and opportunity to cure what turned into an OML violation. Yet it chose to rely upon the legal opinion of a lay person while IVGID’s attorney sat at the table and did nothing to counsel the Board as to the simple fix.

THE IVGID BOARD’S SEPTEMBER 26, 2017 MEETING

(The Failure to Attach Written Remarks Proffered by an Absent Member of the General Public)

Complainant is a member of the public. He regularly attends and offers public comment at most IVGID Board meetings. However due to an out-of-state travel conflict, he was unable to attend the IVGID Board’s September 26, 2017 meeting. Notwithstanding, he wanted to "address" the Board concerning an item agendized for that meeting; a list of issues created by Chairperson Wong insofar as the proposed purchase of the Parasol Building were concerned. So on September 21, 2017 complainant sent the Board an e-mail which included his written remarks17 ("the additional e-mailed statement"). In those remarks he "expressly requested that a copy...be attached as a written statement to the written minutes to be prepared of the Board’s September 26, 2017 meeting."18

The proposed minutes of the IVGID Board’s September 26, 2017 meeting were agendized [see Item I(3)] for approval by the Board at its meeting of December 13, 2017. Omitted from the proposed minutes was the additional e-mailed statement.

At the IVGID Board’s December 13, 2017 meeting complainant addressed the Board in person. In part, he orally objected to its approval of the proposed minutes of its September 26, 2017 meeting, as submitted19, specifically because it omitted the additional e-mailed statement20. Complainant stated that if the proposed minutes were not modified to include the omitted additional e-mailed statement prior to approval, an OML complaint would be filed21.

17 A copy of those written remarks is attached as Exhibit "2" to this complaint.
18 Complainant has placed an asterisk next to the portion of his written remarks where he made this request.
19 Those minutes appear at pages 293-326 of the 12/13/2017 Board packet.
20 See 11:55-12:45 of the 12/13/2017 livestream.
21 See 12:35-12:44 of the 12/13/2017 livestream.
In addition to complainant's oral objections, he submitted a written statement he requested be included in the formal minutes of the Board's December 13, 2017 meeting (see Exhibit "2"). Thus again, the Board was given every opportunity to cure what has turned into another OML complaint.

Moreover if the foregoing weren't sufficient, prior to the Board's December 13, 2017 meeting complainant sent an e-mail to each Board member alerting him/her to his objections and request the minutes of the Board's September 13, 2017 meeting not be approved unless/until the additional e-mailed statement were included.

As aforesaid when the Board's chairperson, Kendra Wong, called agenda item I at the Board's December 13, 2017 meeting and Trustee Horan asked for "help." Responding to this agenda item in particular, Clerk Susan Herron stated as follows:

"On September 26 that member of the public has said that he submitted an e-mail and asked those be attached to the minutes. That's highly unusual. You typically do not take an e-mail and attach it to the minutes like that because...the Open Meeting Law states...that when a member of the public makes their comments and asks for things to be attached to the minutes they have to be here to do that."

Based upon this faulty explanation (see discussion below), the proposed minutes of the Board's September 16, 2017 meeting, absent the additional e-mailed statement, were approved.

Ms. Herron's Response to Trustee Horan's Question Insofar as Complainant's Lack of Standing to Submit Written Remarks For Inclusion in the Minutes of a Public Meeting Because He Was Not Physically Present to "Address" the Board, Was False

Besides the fact Ms. Herron's assertion that "the Open Meeting Law states...that when a member of the public makes their comments and asks for things to be attached to the minutes they have to be here to do that" represents a legal opinion by a lay person, it is false. Although NRS 241.035(1)(d) instructs that the minutes of meetings of public bodies must include "a copy of...prepared remarks...the member of the general public has prepared...(where as here he/she)...submits a copy for inclusion," it says nothing about "how" a member of the general public can "address" a public body at a public meeting. Nor does it state "how" a member of the general public can submit prepared remarks for inclusion in the minutes of that meeting. In other words, the OML does not limit a member of the general public to "addressing" a public body in person, nor does it limit how he/she can submit prepared written remarks for inclusion in the minutes of that meeting. Nor does the OML speak to the mode of submitting prepared written remarks (whether in person, by e-mail or otherwise) for inclusion in the minutes of public meetings.

22 A copy of that e-mail is attached as Exhibit "A" to Exhibit "2" to this complaint. It also appears at pages 112-113 of the packet of materials prepared by staff in anticipation of the Board's October 25, 2017 meeting [[the 10/25/2017 Board packet]] (https://www.yourtahoeplace.com/uploads/pdf-lvgid/BOT_Packet_Regular_10-25-17.pdf).

23 See 4:07:05-4:07:40 of the 12/13/2017 livestream.

24 See 4:12:01-4:12:07 of the 12/13/2017 livestream.
What Ms. Herron Finds to be "Unusual" is Not Only Itself Unusual, But Insofar as the OML is Concerned, it is Irrelevant

Complainant finds it incredulous that when the IVGID Board asks for answers to legal questions, the person who provides the answer is typically a lay staff person; even when IVGID's attorney is sitting at the dais. Here Trustee Horan asked for guidance as to whether written statements submitted by members of the general public must be attached to the minutes of Board meetings when requested? And in response, lay person Susan Herron proffered the following legal advice: "when a member of the public makes their comments and asks that things be attached to the minutes they have to be here to do that." It is "highly unusual (for a)...member of the public (to)... submit an e-mail and ask (it)...be attached to the minutes...because...the Open Meeting Law states... that when a member of the public makes their comments and asks for things to be attached to the minutes they have to be here to do that." Is this what the OML states?

The common thread to both of these comments is that according to Ms. Herron, no one can submit written remarks to the IVGID Board at a public meeting and have those remarks attached to the minutes of that meeting unless he/she is physically present to make that submission. Why is Ms. Herron giving this advice when IVGID's attorney, Jason Guinasso, is sitting at the same table as the IVGID Board as if he were a "bump on a log?" And why is Ms. Herron's advice being accepted as gospel when it is a misstatement of law (see discussion below)?

But more bothersome, Ms. Herron has a history of giving bad legal advice to the IVGID Board. For another example of that advice, the reader is referred to OAG File No. 13897-260. There Ms. Herron wrongly informed the IVGID Board that the minutes of Board meetings need not be approved within forty-five (45) days of a meeting contrary to the express language of NRS 241.035(1)(e). And she has wrongly informed the IVGID Board as to what constitutes a "public record" for purposes of NRS 239. What Ms. Herron finds as unusual is irrelevant to this complaint and complainant asks she be reprimanded by the Attorney General.

The General Public's Right to Address Public Bodies at Public Meetings is Fundamental and to be Construed Liberally Rather Than as Here, Narrowly

The Attorney General has time and time again observed that the public's right to freedom of speech during public meetings is vigorously protected under both the U.S. and Nevada Constitutions. Thus according to §11.03 at page 94 of the Attorney General's OML Manual ("the OML Manual"); "a statute enacted for the public benefit, such as a...public meeting law, should be construed liberally in favor of the public." Therefore "every citizen may freely speak, write and publish his sentiments on all subjects" during those meetings. Although public bodies may adopt "reasonable restrictions (as) to the time, place and manner of comments," any practice or policy which discourages or prevents public comment during public meetings, even if technically in compliance

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23 See §8.05, page 82 of the OML Manual.
with the law, violates the spirit of the Open Meeting Law. Stated differently, "unnecessarily restricting public comment...does not comport with the spirit and intent of the Open Meeting Law."  

Here an unelected staff member (Susan Herron) has gone out of her way to instruct the IVGID Board that this fundamental right must be construed narrowly and against the public's right to address the Board at public meetings. Although arguably the IVGID Board impliedly accepted Ms. Herron's views because they approved the minutes of that meeting without including the additional e-mail statement, at no time has the Board adopted a policy nor made the express decision that the only members of the public who can "address" the Board at public meetings and to have their comments included in the minutes of that meeting, are those who are physically present. Complainant asserts this view unnecessarily and unreasonably interferes with every citizen's right to "freely speak, write and publish his sentiments on all subjects" during those meetings.

The Fact NRS 241.035(1)(c) Allows Members of a Public Body to "Address" Fellow Members at Public Meetings and Have Their Comments/Votes Recorded in the Minutes of Those Meetings Notwithstanding They Themselves May Not be Physically Present, is Testament to the Fact Members of the Public Have That Same Right

§5.05 at page 46 of the Attorney General's OML Manual ("the OML Manual") makes clear that nothing in the OML prohibits a quorum of members of a public body from conducting public meetings amongst one another where they are not physically present, such as via a telephone conference call or video conference [see NRS 241.010(2)]. In fact, §5.06 at page 47 of the OML Manual makes clear that remote telephone, facsimile and e-mail polls are all permissible, as long as done as a part of an open meeting. In fact in today's digital age, members of the public can similarly call into a public meeting and "address" a public body over the telephone. Or they can "address" public bodies in real time via e-mail, face time, Skype or social media (such as Facebook, Instagram, Instachat, twitter, etc.). This view is buttressed by NRS 241.035(b) which instructs that the minutes of public bodies must reflect those members who are present, "whether in person or by means of electronic communication." Simply stated, one need not be physically present in the same room as a majority of trustees at, in order to "address" those trustees at a public meeting.

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27 See §8.05, page 83 of the OML Manual.

28 The absence of any statement of policy regarding such restriction is an OML violation (see OAG File No. 07-020).

29 §11.04 at page 84 of the OML Manual instructs that "in circumstances where the Open Meeting Law provides no clear standards or guidelines, public bodies must consider themselves as being governed by a standard of reasonableness."


31 "Any member of a public body (may be)...present...at any meeting of the public body...by means of teleconference or videoconference" in lieu of physical presence. And so may "members of the public (who)...can hear or observe and participate in the meeting" in lieu of being physically present.
In support of these views complainant points to §5.01 at page 43 of the OML Manual which recognizes that the term "present" at a public meeting may be either actual or constructive. Complainant asserts that being constructively "present" means "addressing" a public body, either orally or by means of written remarks, "whenever the attendant acts, circumstances, and conduct demonstrate that (its) members (are)...deemed by the law as being together for the purpose of conducting the business of the public."

Therefore even if a member of the general public who is not physically present at a public meeting wants to "address" his/her public body at a public meeting, he/she should be encouraged rather than discouraged to do so. And given that "address" may be either orally, by means of prepared written remarks, or both, such member of the general public should be allowed to submit written remarks he/she expressly asks be made a part of the written minutes of that meeting; just the same as if he/she were physically present at that public meeting and made the same request.

Given the purposes of open public meetings and the free exchange of public comment, if it is appropriate for members of a public body to "address" the Board as a whole at a public hearing and to have their comments reflected in the minutes of that meeting notwithstanding they are constructively and not physically present, why aren't members of the general public accorded the very same right? Stated differently, where does it expressly state in NRS 241.035(1)(d) that members of the general public who choose to address public bodies at public meetings must be physically present to do so? Therefore even if a member of the general public who is not physically present at a public meeting wants to "address" his/her public body at that meeting, he/she should be encouraged rather than discouraged to do so. And given that "address" may be either orally, by means of prepared written remarks, or both, such member should be allowed to submit written remarks he/she expressly asks be made a part of the written minutes of that meeting. To limit comment to only those who are physically present is unnecessarily and unreasonably restrictive.

Moreover, in the Past the IVGID Board Has Routinely Allowed Members of the Board to Address the Board as a Whole at Public Meetings and to Have Their Comments Recorded in the Minutes of Those Meetings, Notwithstanding They Are Not Physically Present

By way of example, the reader is invited to look at the minutes of the IVGID Board's June 12, 2017 meeting. At page 469 (of the 8/22/2017 Board packet) you will see where Trustee Callicrater was allowed to appear by means of telephone. And the minutes of that meeting reflect that time and time again he was permitted to "address" the Board, and to have the substance of his comments (especially when voting) recorded in those minutes.

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Moreover, on Numerous Past Occasions the IVGID Board Has Accepted and Attached to the Minutes of Public Meetings Written Remarks Authored by Members of the General Public Not in Attendance

Complainant offers several examples:

**Paul Smith:** On June 28, 2017 resident Paul Smith addressed the IVGID Board. Part of his comment consisted of written remarks he asked be included in the minutes of that meeting. Those remarks made reference to a June 16, 2017 article in the Wall Street Journal titled "A Town’s Creative Accounting Leads to Fraud Conviction." At pages 715-716 of the 8/22/2017 Board packet the reader will see that the referenced article was actually attached to the minutes of that meeting. In other words, Mr. Smith was allowed to submit written remarks authored by someone other than himself who was not physically "present" at that public meeting, and to have those remarks included in the written minutes of the Board’s June 28, 2017 meeting.

**Linda Newman:** On July 20, 2017 resident Linda Newman addressed the IVGID Board. Part of her comment consisted of written remarks she asked be included in the minutes of that meeting. Those remarks made reference to a June 29, 2017 Nevada Supreme Court Opinion. And at pages 196-200 of the 9/13/2017 Board packet, the reader will see that the referenced Opinion was actually attached to the minutes of that meeting. In other words, Ms. Newman was allowed to submit written remarks authored by someone other than herself who was not physically "present" at that public meeting, and to have those remarks included in the written minutes of the Board’s July 20, 2017 meeting.

**Judith Miller:** On August 2, 2017 resident Judith Miller addressed the IVGID Board. Part of her comment consisted of written remarks she asked be included in the minutes of that meeting. Those remarks made reference to a July 20, 2017 Incline Village/Crystal Bay News article. And at pages 73-
74 of the 9/26/2017 Board packet the reader will see that the referenced article was actually attached to the minutes of that meeting. In other words, Ms. Miller was allowed to submit written remarks authored by someone other than herself who was not physically "present" at that public meeting, and to have them included in the written minutes of the Board's August 2, 2017 meeting.

The only differences between these examples and complainant's proffered written remarks are twofold. First, complainant is a member of the Incline Village/Crystal Bay community, whereas the authors of the above-referenced written remarks are not. And second, the written remarks of those not physically present at public meetings were submitted for inclusion in the minutes of those meetings by persons who were physically present. Complainant submits this represents a distinction without a difference. Moreover, the reader is harkened back to Ms. Herron's earlier wrongful assertion "that when a member of the public makes their comments and asks that things be attached to the minutes they have to be here to do that. Another member of the public can't do that for them." Didn't Chairperson Wong permit the exact opposite in the three examples cited above? Which takes complainant to his next observation:

Complainant is Aware of Other Nevada Public Agencies Which Routinely Allow Members of the General Public to Address Their Governing Bodies as a Whole at Public Meetings Notwithstanding They Are Not Physically Present

The Truckee Meadows Water Authority ("TMWA") is a public body subject to the OML. It is aware of the fact that members of the general public may not be able to physically attend public meetings, yet they may "still wish to comment on a topic or agenda item." For this reason members of the public are informed they "can do so by submitting (their) comment(s) online at least one full week before the date of any public meeting." Stated differently, "If you are requesting that your comments be read at the next board meeting, they must be received one-week prior to the meeting." All you need do is "simply fill out the 'Comments to the Board' form" at tmwa.com/about_us/comments.

How can this be? According to Susan Herron "when a member of the public makes their comments and asks that things be attached to the minutes they have to be here to do that." It is "highly unusual (for a)...member of the public (to)...submit an e-mail and ask (it)...be attached to the minutes...because...the Open Meeting Law states...that when a member of the public makes their comments and asks for things to be attached to the minutes they have to be here to do that."

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41 If those comments are read at a Board meeting, they must be included in the minutes of that meeting. And therefore if the writer asked they be attached to the minutes of that meeting, NRS 241.085(1)(d) would mandate they be attached.

42 A copy of the TMWA's February 2018 newsletter is attached as Exhibit "A" to this Attachment.
Notwithstanding Public Comment Cannot be Censored Based Upon its Author or View Point\textsuperscript{43}, Isn't That Exactly What Has Taken Place Here?

It is no secret that complainant is IVGID’s number one critic. To freely allow others not physically present at IVGID Board meetings to have their written remarks included in the minutes of those meetings, yet to deny that same privilege when it comes to complainant, cannot be reconciled any other way than to condone impermissible viewpoint discrimination.

Since the IVGID Board Has a Policy of Including All Written Communications in the Materials Regularly Provided to Trustees and Others Making Request, Even Though They Are Neither Proffered at Public Meetings Nor by Persons Physically Present, What Justification Can There Be For Censoring Them From Meeting Minutes?

IVGID Board’s agendas include a section (for its December 13, 2017 meeting refer to ¶14) for "Correspondence Received by the District."	extsuperscript{44} Routinely, written comments are submitted by members of the general public via USPS/e-mail. And routinely, that correspondence is published in Board packets shared with the IVGID Board and the public. Therefore if it is acceptable for a member of the public address the Board via written remarks under the guise of "written communications" without being physically present at Board meetings, and asking they be made a part of the minutes of an upcoming Board meeting, what is the justification for not allowing a member of the public to address the Board similarly, however, asking that his/her comments be expressly included in the minutes of a Board meeting?

Frank Wright's September 13, 2017 Written Statement to the IVGID Board (aka Exhibit "A" to Exhibit "1" to This Attachment\textsuperscript{5}): The IVGID Board's next regular meeting after its September 13, 2017 meeting took place on September 26, 2017\textsuperscript{34}. Correspondence received by the district on/after September 13, 2017 was included at pages 75-89 of the 9/26/2017 Board packet. Conspicuously absent was the subject written statement.

The IVGID Board's next regular meeting after its September 26, 2017 meeting took place on October 25, 2017\textsuperscript{22}. Correspondence received by the district on/after September 26, 2017 was included at pages 110-116 of the 10/25/2017 Board packet. Conspicuously absent was the subject written statement.

Because it was obvious to complainant that the subject written statement had been censored from the IVGID Board and the public by IVGID staff, at the IVGID Board's regular meeting of December 13, 2017 it was attached to a new written statement prepared by complainant\textsuperscript{44}, and then included at pages 338-365 of the 1/24/2018 Board packet. In other words, since the statement was eventually

\textsuperscript{43} See §5.02() at page 43 and §7.05 at page 70 of the OML Manual.

shared with the IVGID Board and the public, what was the harm in including it in the minutes of the Board’s September 13, 2017 meeting as originally requested?

Complainant’s September 21, 2017 E-Mail to the IVGID Board (aka Exhibit “A” to Exhibit “2” to This Attachment17): The IVGID Board’s next regular meeting after September 21, 2017 took place on September 26, 201729. As aforesaid, correspondence received by the district on/after September 13, 2017 was included at pages 75-89 of the 9/26/2017 Board packet. Absent was the subject e-mail.

The IVGID Board’s next regular meeting after its September 26, 2017 meeting took place on October 25, 201722. Correspondence received by the district on/after September 26, 2017 was included at pages 110-116 of the 10/25/2017 Board packet. Here the subject e-mail appears at pages 112-113. It was also attached to a new written statement prepared by complainant46, and then included at pages 372-373 of the 1/24/2018 Board packet. In other words, since the e-mail was eventually shared with the IVGID Board and the public, what was the harm in including it in the minutes of the Board’s September 26, 2017 meeting as originally requested?

Because Board Meeting Minutes Must be Retained as a Public Record Forever, this explains the harm in excluding these two sets of written statements from the minutes of the Board’s September 13 and 26, 2017 meetings. NRS 241.035(2) instructs that because the "minutes of public meetings are public records...the(y)...shall be deemed to have permanent value and must be retained by the public body for at least 5 years. Thereafter, the(y)...may be transferred for archival preservation in accordance with NRS 239.080 to 239.125, inclusive."

There are at least three reasons why it is important to require IVGID to attach the written remarks submitted to the IVGID Board in connection with a public hearing on a specific subject matter, where requested. First, they have a timeliness element to them. Even if they are included in a Board packet prepared for a subsequent IVGID Board meeting, they can be untimely when read in connection with the minutes themselves. Second, written correspondence to the IVGID Board which is not attached to the minutes of meetings need not be preserved, let alone permanently. By attaching them to the minutes of meetings themselves, they are retained forever. Finally, as the reader should know, there is no requirement that the minutes themselves accurately depict what occurred at the meeting itself, or the comments of those speaking thereat. Given the propensity of IVGID staff to write what has occurred at a public meeting in a biased and selective manner, it is important that members of the public submitting written remarks to the IVGID Board at a public meeting to have their actual remarks included in the permanent minutes.

Notwithstanding Public Comment Cannot be Censored Based Upon the Nature of its Content or Author, Censorship is the Reason Why the IVGID Board Refused to Attach the Additional E-Mailed Statement to the Minutes of its September 26, 2017 Meeting

46 A public body's restrictions (on public comment) must be neutral as to the viewpoint

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45 See pages 368-377 of the 1/24/2018 Board packet.
expressed. Given it is no secret that complainant is IVGID's number one critic, for Chairperson Wong to have allowed the above written remarks authored by persons other than themselves to be included in the minutes of those meetings, and not allowed complainant to have his remarks included in the minutes of the IVGID Board’s meeting of September 26, 2017, amounts to nothing short of censorship based upon the author and the perceived nature of his remarks.

CONCLUSION

According to Ms. Herron, the only members of the public with standing to "address" the IVGID Board, in writing, at a public hearing, and to have their remarks made a part of the minutes of that meeting, are those who:

1. Are physically present;

2. Submit their own written remarks (rather than someone else's or rather jointly with someone else);

3. In a format other than e-mail; and,

4. Expressly request that those written remarks be included in the minutes of that meeting.

Complainant submits that Ms. Herron's view neither comports with the spirit nor letter of the OML. Although "public bodies may adopt reasonable restrictions...on individual comment," here not only are the subject restrictions unreasonable, but they were never adopted by the public body. Rather, they were manufactured and applied on a non-uniform basis by IVGID staff and the IVGID Board because of the written remarks' perceived (critical) viewpoint. For these reasons the IVGID Board was informed there would be an OML complaint.

Complainant has shared his views of IVGID on several past occasions; an enterprise run by non-elected and mostly nonresident staff which has a callous disregard for the rights of its citizens. In the words of the late George Carlin, its "arrogance is stunning." Part of the reason is because IVGID staff does not consider IVGID to be "public." According to them IVGID is only "quasi-public" and for this reason they can pretty much do anything they want without repercussion or consequence. Given this complaint does not represent the first instance of IVGID's OML violations, I and others believe something more is required to "get its attention" and protect the public.

For these reasons in addition to reversing the IVGID Board's approval of its September 13 and 26, 2017 meetings, the time has come to subject IVGID, its public officers, its staff and attorneys (as accessories) to which the Board has abdicated all powers, to real consequence. Given only "the Attorney General shall investigate and prosecute any violation of...[NRS] 241...[NRS 241.039(1)]; and, he "may sue in any court of competent jurisdiction...for an injunction against any

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46 See §5.02(l) at page 43 and §7.05 at page 70 of the OML Manual.
47 See https://www.yourtshoeplace.com/ivgid/about-ivgid.
public body or person to require compliance with or prevent violations of the provisions of this chapter" [NRS 241.037(1)]; amongst other remedies, complainant feels that the time has come to obtain an injunction which permanently enjoins future violations of NRS Chapter 241 by IVGID. This way should they continue, the perpetrator(s) will be in contempt of court and for the first time face very real consequences.
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
DECEMBER 13, 2017 REGULAR IVGID BOARD MEETING — AGENDA ITEM
I(2) — APPROVAL OF MINUTES OF THE IVGID BOARD'S REGULAR
MEETING OF SEPTEMBER 13, 2017

Introduction: Here the IVGID Board is presented with proposed minutes of its September 13, 2017 meeting to approve. NRS 241.035(1) instructs that "within 45 days after the meeting or at the next meeting of the public body, whichever occurs later...a public body shall approve the minutes of (that) meeting (which shall)...include: (a) the date, time and place of the meeting; (b) those members of the public body who were present, whether in person or by means of electronic communication, and those who were absent; (c) the substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote; (d) the substance of (written) remarks made by any member of the general public who addresses the public body if (he/she)...submits a copy for inclusion; (and, e) any other information which any member of the public body requests to be included or reflected in the minutes."

Given the proposed minutes fail to include prepared written remarks jointly drafted by Frank Wright and Aaron Katz, and physically submitted by Frank Wright when he addressed the IVGID Board, in person, on September 13, 2017, and asked that those written remarks be included in the minutes of that meeting, I object. And that's the purpose of this written statement.

Facts: At the IVGID Board's September 13, 2017 meeting, Frank Wright prefaced his public comments by handing out a two page written statement to each Board member. This statement addressed GM Pinkerton's proposed new compensation.

Thereafter Mr. Wright began his three minutes of allotted oral public comment. That comment, in part, referenced an additional written statement jointly prepared by he and I pertaining to the proposed Parasol building purchase. Although the proposed minutes of the September 13, 2017 meeting include the two page written statement handed out by Mr. Wright, they omit the joint written statement prepared by Mr. Wright and me. Hence the Open Meeting Law ('OML') violation.

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2 Go to https://www.leg.state.nv.us/NRS/NRS-241.html#NRS241Sec035.
3 See 06:24-09:33 of the livestream of that meeting at https://livestream.com/IVGID/events/7720044/videos/162784045.
4 See pages 269-270 of the 12/13/2017 Board packet.
The Written Remarks Frank Wright Submitted to Susan Herron When He Asked be Included in the Minutes of the Board’s September 13, 2017 Meeting: are attached as Exhibit "A" to this written statement.

Given NRS 241.035(1) Makes Clear Members of the General Public May "Address" a Public Body Either Orally or by Means of Prepared Written Remarks, I ask the omitted written remarks be attached to the proposed minutes for a second reason. There is nothing in the NRS which declares a member of the general public can only "address" a public body in person. This subject is discussed in my companion written statement objecting to approval of the proposed minutes of the Board’s August 22, 2017 meeting, and it is incorporated by reference as though set forth more fully herein.

Moreover, There is Nothing in NRS 241.035(1) Which Mandates That the Prepared Written Remarks a Member of the General Public Submits for Inclusion in the Minutes of That Meeting Must be His/Her Own Prepared Written Remarks: Yet notwithstanding, the written statement Frank Wright gave to Susan Herron for inclusion in the minutes of the September 13, 2017 meeting were in part, his and in part my written remarks. To the extent those written remarks were mine rather than Mr. Wright’s, I incorporate my discussion on this topic in my companion written statement, and I ask it be incorporated by reference as though set forth more fully herein.

For These Reasons I Formally Request That the Board NOT Approve the Proposed Written Minutes Until the Omitted Written Remarks Reference Above are Attached to Those Minutes:

Public Comment Cannot be Denied Based Upon its Content or Author: Yet here that’s exactly what Chairperson Wong and attorney Guinasso have done...yet again.

The Public’s Right to Address Public Bodies is a Fundamental Right to be Construed Liberally:

On December 10, 2017 the Board Was Given Advance Notice of the Deficiencies to its Proposed Minutes, and the Opportunity to Correct Them: I have attached a copy of my e-mail of even date as Exhibit "B" to this written statement, which gave such notice.

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5 As further evidence Chairperson Wong’s and staff’s intent is to censor communications to the Board which are shared with the public by not attaching them to the minutes of meetings where they are presented for inclusion in those minutes, the Board’s agenda regularly includes a section labeled "Correspondence Received by the District." One would have thought that the omitted written statement might be included in the next Board packet following the Board’s September 13, 2017 meeting. But it wasn’t. The Board’s next packet of materials was the one prepared by staff in anticipation of the Board’s regular September 26, 2017 meeting ["the 9/26/2017 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-lgid/BOT_Packet_Regular_9-26-17.pdf)]. The "Correspondence Received by the District" section appears at pages 75-89. A review of those pages reveals that Frank Wright’s and my joint September 13, 2017 written statement does not appear here either. In other words it has been censored altogether. *If the subject correspondence has been censored, what other correspondence has been censored?*
If the Board disregards its obligations and an OML complaint ensues, it will have no one to blame but itself.

Conclusion: The fix is easy. Add all written remarks to the proposed minutes before they are approved by the Board, including Frank Wright’s and my joint September 13, 2017 written remarks. Because this of course will embarrass IVGID staff because our written remarks directly discuss an agenda item for that meeting, Chairperson Wong and staff want to do anything in their power to censor criticism. But sometimes you must bite your lower lip to do the right thing, even though it hurts. I ask the Board to do the right thing.

The money to defend against another OML complaint is going to come from our recreational facility fee because ad valorem and consolidated taxes are spent on employee salaries and benefits. Therefore You Wonder Why the Recreation Facility Fee is as High as it is? I’ve now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).
WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN MINUTES OF THE IVGID BOARD'S REGULAR SEPTEMBER 13, 2017 MEETING – AGENDA ITEM E(1) – PROPOSED MODIFICATION TO THE GROUND LEASE BETWEEN IVGID AND THE PARASOL TAHOE COMMUNITY FOUNDATION ("PARASOL")

Introduction: Here, again, the IVGID Board's chairperson continues to shepherd this agenda item forward notwithstanding our community is overwhelmingly opposed. The purpose of this written statement is to summarize what we've learned in the hope the Board sees there is no reason to pay the Parasol anything for those improvements [the Donald W. Reynolds Non-Profit Center Building ("the building")] constructed upon IVGID's 2.36 acres of land.

This written statement represents a summary of facts disclosed in my prior April 13, 2017\(^1\), May 10, 2017\(^2\), June 12, 2017\(^3\) and July 20, 2017\(^4\) written statements submitted to the IVGID Board and attached to the written minutes of those meetings.

Underlying Facts: As Ms. Wong's April 4, 2017 memorandum\(^5\) admits,

1. The land underneath the building (2.36 acres) is owned by IVGID\(^6\);

2. Parasol currently has a $1/year ground lease with IVGID\(^7\) ("the lease"). The lease commenced January 12, 2000, for an "initial term" of thirty (30) years, "with three (3) additional, twenty-three (23) year options to renew/extend;"\(^8\)

\(^1\) See pages 159-184 of the packet of materials prepared by staff in anticipation of the IVGID Board’s regular May 10, 2017 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-10-17.pdf ("the 5/10/2017 Board packet")].


\(^3\) See pages 494-512 of the packet of materials prepared by staff in anticipation of the IVGID Board’s regular August 22, 2017 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/0822small.pdf ("the 8/22/2017 Board packet")].


\(^6\) See page 179 of the 5/10/2017 Board packet.

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3. ¶IV(A) of the lease\(^7\) requires Parasol to "use the premises for the purposes of conducting thereon a Nonprofit Center, and related facilities; activities, seminars, workshops, lectures, and occasional fund raising events" and no "other purpose or purposes, without the express prior written consent of" IVGID;

4. The lease was amended approximately 2 years later on January 24, 2002\(^10\) ("the lease amendment"), and at ¶XXV(C)(3) thereof expanded the limitations on Parasol's use of the building as "more particularly set forth in its Business Plan - 2001 attached (t)hereto as Exhibit C...as said Business Plan may be amended from time to time in the future,"\(^11\)

5. Notwithstanding ¶XXV(C)(3) of the lease instructs that "any material modification to (Parasol's) purposes and the Business Plan, which would affect (its) actions under th(e) lease, (can) be made only with (IVGID's) consent," In 2009 Parasol modified its 2001 Business Plan\(^12\) ("the 2009 Business Plan") without IVGID's consent;

6. ¶XIII(A)(3) of the lease instructs that Parasol's "failure to operate the facility to (IVGID's) satisfaction, including but not limited to... (b) a significant reduction in use from what is contemplated in Parasol's Long-term Business Plan,"

¶XIII(A)(6) of the lease instructs that "should (Parasol's) primary use of the property for a purpose or for purposes other than as intended hereunder, (which) include(s) ancillary activities associated with the facility, such as rock bands, destructive behavior of patrons, parking lot abuses, or any other behavior deemed inappropriate by (IVGID's) Board of Trustees... persist(s)... after thirty (30) day's written notice to cease and desist;"

¶XIII(A)(6) of the lease instructs that "should (Parasol) vacate or abandon the leased property during the term of th(e) lease;"

¶XXV(D) of the lease amendment instructs that the "lease... terminate(s)... if the (use) requirements (there)under... are not met," or if (IVGID's) consent as required herein is not obtained;

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\(^8\) See sections II(A)-(B) at pages 277-278 of the 4/25/2017 Board packet.


\(^12\) See pages 350-369 of the 4/25/2017 Board packet.
¶XIII(A) of the lease instructs that "the occurrence of any of the (se)vent events ... shall constitute a default by" Parasol. IVGID's remedies appear at ¶¶XIII(A)(6) and XIII(B) of the lease. ¶XIII(A)(6) declares that "the property, including all improvements thereon, shall revert to IVGID's full use and ownership." ¶XIII(B) of the lease instructs that in the event of a default or breach, IVGID shall have the following rights "to be exercised separately, cumulatively and/or in combination...at its sole option:"

a) To terminate all of the rights of Lessee in and to the leased property;

b) Without declaring the term of this Lease ended, to reenter the leased property and to occupy the same, or any portion thereof;

c) To relet the whole or any portion of the leased property, for and on account of itself or others; and/or

d) To require Parasol to remove the Nonprofit Center facility from the leased premises, and return said real estate to its former, natural state/condition; and,

7. Because Parasol proposes a lease back "for the purpose of providing grants and other support to local charities and non-profit organizations,"\textsuperscript{13} according to Chairperson Wong, Parasol's proposed modifications to the lease will no longer meet the lease's use requirements.

In addition to Ms. Wong's April 4, 2017 admissions\textsuperscript{5}, I note the following facts:

8. IVGID's 2.36 acres, which are the subject of the lease, were originally part of a larger 26.6 acre parcel purchased from Boise Cascade Home & Land Corporation ("Boise Cascade") on November 16, 1977 for $114M\textsuperscript{14};

9. Although the subject 26.6 acres was initially purchased with (what may very well have been an impermissible) a loan from the IVGID's utility capital reserves (funded as a result of rates and charges paid by IVGID's water and sewer services customers), that loan was subsequently repaid with Recreation Facility Fee ("RF"") monies;

10. In addition to this $114M cost, paragraph XIII(A)(10) of the lease\textsuperscript{15} reveals that IVGID paid 50% of the costs for an Environmental Impact Statement and TRPA Air and Water Quality Mitigation

\textsuperscript{13} See ¶IV(A) at page 135 of the packet of materials prepared by staff in anticipation of the IVGID Board's regular May 24, 2017 meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-24-17.pdf ("the 5/24/2017 Board packet")].

\textsuperscript{14} See ¶1 of that September 26, 1977 "Purchase Agreement and Escrow Instructions" ("the purchase agreement") between IVGID and Boise Cascade (this portion of the purchase agreement can be viewed at page 165 of the 5/10/2017 Board packet).
on Parasol's behalf. Since IVGID staff have still not shared the full extent of these additional costs, for purposes of this written statement, I am going to assume an additional $15,000;

11. Thus the public's pro-rata 1977 cost for Parasol's 2.36 acres was very likely close to $125K of the RFF. And what have local property owners assessed the RFF received in consideration? $1/year for the past 15 years, or a whopping $15;

12. At the time of IVGID's purchase of the subject 26.6 acres, Covenants, Conditions and Restrictions\textsuperscript{16} ("the CC&Rs") were recorded against the property which protected the public by expressly restricting their use "only for park and recreational and related purposes, and for no other purposes."\textsuperscript{17} In other words, since the RFF was used to purchase the subject 26.6 acres, their use had to be expressly \textit{limited}\textsuperscript{18} to "park and recreational (availability)...purposes, and...no other purposes;"

13. Because ¶18(b) of the purchase agreement\textsuperscript{19} instructs that IVGID's purchase of the subject 26.6 acres is "contingent upon (IVGID) obtaining final court approval\textsuperscript{20} of the purchase)...prior to the close of escrow,"\textsuperscript{19} or IVGID's "waive(r) in writing" of this contingency. I have made at least two public records request for examination of that court approval, identity of the case number for which that approval was sought, and/or evidence of any written waiver of this approval requirement by IVGID. Because IVGID's Public Records Officer ("PRO") has provided NOTHING in response, as far as I am concerned, \textit{IVGID's purchase of this land for the purpose represented was invalid from day one;}

14. There was another condition of sale which it turns out is very relevant to the subject issue, and that was: Mansel Ocheltree's purchase of an adjacent 31+ acres from Boise Cascade ("the

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\textsuperscript{15} See pages 303-304 of the 4/25/2017 Board packet.

\textsuperscript{16} Who prepared the CC&Rs? Likely not Boise Cascade because the type font used for the purchase agreement and the deed conveying title to the subject 26.6 acres differs markedly from the type font used for the CC&Rs. I intend to return to this question below.

\textsuperscript{17} See page 180 of the 5/10/2017 Board packet. Notwithstanding, I have attached a copy of the CC&Rs as Exhibit "A" to this written statement.

\textsuperscript{18} According to IVGID, the RFF is an annual NRS 318.197(1) "standby service charge" which pays for nothing more than the parcels'/residential dwelling units' which are involuntarily assessed "availability of use of the (public's) recreational facilities" (see ¶1 of the latest "Report for Collection on the County Tax Roll of Recreation Standby and Service Charges" at page 103 of the 5/24/2017 Board packet).

\textsuperscript{19} See page 166 of the 5/10/2017 Board packet.

\textsuperscript{20} In other words, a NRS 43.100(1) action to determine the validity of proposed governmental action ("the governing body may file or cause to be filed a petition at any time in the district court...praying a judicial examination and determination of the validity of any...instrument, act or project of the municipality").
Ocheltree property"), and his contemporaneous conveyance of those lands to IVGID by gift deed21;

15. On December 7, 1977 Mansel and Patricia Ocheltree gift deeded the Ocheltree property to IVGID. And just like the 26.6 acres IVGID purchased from Boise Cascade, Mr. and Mrs. Ocheltree subjected the Ocheltree property to the "very same use restrictions" as those in the CC&Rs22 ("the Ocheltree CC&Rs"). Since IVGID has not seen fit to share the Ocheltree gift deed or the Ocheltree CC&Rs with the Board and the public, I have attached copies of both as Exhibit "B" to this written statement23.

16. Let's fast forward 5½ years to June 6, 1983. IVGID wants to lease approximately ¾ acre of the former Ocheltree property to the Reno-Sparks Visitors and Convention Bureau24 ("the RSVCB") for its use as a Visitors Center. Since IVGID's attorney realized this use would violate the restrictions included in the Ocheltree CC&Rs (Exhibit "B"), putting aside the question of whether CC&Rs can be unilaterally amended by a former owner 5½ years after the fact when members of the public will be directly affected, "someone" decided to circumvent those restrictions by seeking an amendment. And on June 6, 1983, Mr. and Mrs. Ocheltree gave that "amendment" ("the amended Ocheltree CC&Rs") to the Ocheltree CC&Rs25. Since IVGID has not seen fit to share the amended Ocheltree CC&Rs with the Board and the public, I have attached another copy as Exhibit "C" to this written statement;

17. There are several interesting aspects to the amended Ocheltree CC&Rs. First of all, according to the top portion of Exhibit "C," the attorney who recorded them, if he didn't also draft them as well, was Gino Menchetti;

18. After the amended Ocheltree CC&Rs were recorded, on July 17, 1984, IVGID entered into a ground lease with the RSVCB for the subject ¾ acre ("the RSVCB lease"). Notably unlike ¶XV of the lease26, there is no provision in the RSVCB lease whereby the RSVCB waives and releases any claims it may have against IVGID relating to represented permissible uses in light of the Ocheltree CC&Rs and amended Ocheltree CC&Rs. Nor does it include a provision, unlike ¶XV of the lease, where the RSVCB

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21 See ¶18(a) at page 166 of the 5/10/2017 Board packet.
22 Who prepared the Ocheltree CC&Rs? I submit likely the same person who represented the Ocheltrees in their purchase of the Ocheltree property, and their contemporaneous gift deed to IVGID. That person apparently drafted a written "gift offer" and amended "gift letter" to IVGID to secure its approval. Although I have asked the PRO to examine both, so far, they have not been made available for my examination.
23 I ask the reader examine the CC&Rs (Exhibit "A") and the Ocheltree CC&Rs. They are nearly identical.
24 Just like Parasol, at $1/year for up to ninety-nine (99) years.
25 See page 181 of the 9/13/2017 Board packet.
26 See page 310 of the 4/25/2017 Board packet.
agrees to indemnify and hold IVGID harmless from any claims, demands or lawsuits should any persons challenge the RSVCB’s use because of the Ocheltree CC&Rs and amended Ocheltree CC&Rs\textsuperscript{27};

19. Let’s fast forward another 16 years to July 1, 1999. Now IVGID wants to lease the subject 2.36 acres to Parasol for its use as a Non-Profit Center\textsuperscript{9}. Since IVGID realizes this use will violate the CC&Rs use restrictions (Exhibit "A"), "someone" decides to circumvent those restrictions by seeking an amendment. Again putting aside the question of whether CC&Rs can be unilaterally amended by a former owner 22 or more years after the fact, especially when members of the public are directly affected, on July 1, 1999, Irving Littman ("Littman"), purportedly on behalf of Gardena, gives the requested "amendment"\textsuperscript{28} to the CC&Rs\textsuperscript{29} ("the amended CC&Rs");

20. And that amendment modifies ¶1 of the CC&Rs to now read as follows:

"The property shall be used only for park and recreational and related purposes and for no other purposes except for the construction of a building for the use of the Parasol Foundation, Parasol Foundation collaborators or the Parasol Foundation legal successors."

21. The amended CC&Rs were recorded on November 30, 1999 as document #2402584, at the request of D.G. Menchetti, Ltd. Since IVGID has not seen fit to share the recorded amended CC&Rs with the Board and the public, I have attached a copy as Exhibit "E" to this written statement;

22. Barely 1½ months after the amended CC&Rs were recorded (Exhibit "E"), the parties entered into the lease. And tellingly, ¶XV\textsuperscript{28} recites as follows:

\begin{flushleft}
\textsuperscript{27} In other words, why was IVGID not concerned about the effect of the amended Ocheltree CC&Rs, and so concerned about the amended CC&Rs?

\textsuperscript{28} See page 182 to the 5/10/2017 Board packet. I have attached a copy of this document as Exhibit "D" to this written statement.

\textsuperscript{29} I ask the reader examine the amended CC&Rs (Exhibit "D") and the amended Ocheltree CC&Rs (Exhibit "C"). They are nearly identical.
\end{flushleft}
IVGID and Parasol "have full knowledge of the existence of the November 16, 1977, Deed from Boise Cascade Home & Land Corporation, a Delaware corporation, to (IVGID), which Deed contains a restrictive covenant which affects the reality being leased hereunder; that the 1977 Deed's Covenants, Conditions and Restrictions limit the use of said reality to the following uses: 'park and recreational and related purposes and for no other purposes,' that, the restrictions have been amended twice; that the relevant amendment, executed July 1, 1999, was signed by Irving Littman, President of Gardena Service Company, a California corporation, with the latter corporation being the successor of Boise Cascade Home & Land Corporation; that said amendment reiterates the foregoing mentioned restriction, excepting however, construction of a building for the use of the Parasol Foundation, Parasol Foundation collaborators or the Parasol Foundation legal successors. Although the referenced Amendment To Covenants, Conditions and Restrictions appears to resolve any concerns about the use to which the subject property may not be put, (Parasol) hereby assumes full and complete responsibility regarding said issue, and hereby agrees to hold (IVGID) free and harmless of any claims, demands or lawsuits by any persons who may challenge the Amendment. (Parasol) further agrees to indemnify (IVGID) concerning any such claims, including orders, judgments, attorney's fees and costs;"

23. Notwithstanding ¶XIII(A)(3)(b) of the lease,\(^{30}\) prohibits "a significant reduction in use from what (was) contemplated in Parasol's Long-term (2001) Business Plan," Parasol has significantly reduced (by 80% or more) the number of resident non-profits. Although page 7 of the 2001 Business Plan\(^{31}\) represents that "resident collaborators" will occupy 7,608 square feet\(^{32}\) of the building's 9,067.5 square feet of total office space\(^{33}\), today those resident collaborators occupy but a "shell" of what Parasol originally represented. Moreover according to Parasol's proposed "lease amendments," it contemplates reducing office space square used by those resident collaborators by over 71% to 2,200 square feet\(^{34}\) for 6 years (until December 31, 2023), and then to nothing thereafter\(^{35}\). I submit that these facts evidence an anticipatory, if not outright, lease "default by the Lessee;"

24. Notwithstanding ¶XXIV(C)(3) of the amended lease\(^{36}\) instructs that "any material modification to (Parasol's) purposes and the Business Plan which would affect (its) actions under th(e) lease, (can) be made only with (IVGID's) consent," as aforesaid, in 2009 Parasol modified its 2001 Business Plan\(^{12}\) without securing IVGID's consent. I submit this evidences "default by the Lessee;"

\(^{30}\) See page 299 of the 4/25/2017 Board packet.

\(^{31}\) See page 332 of the 4/25/2017 Board packet.

\(^{32}\) See page 331 of the 4/25/2017 Board packet.

\(^{33}\) See ¶IV(E)(2) at page 136 of the 5/24/2017 Board packet.

\(^{34}\) See ¶I(D)(4) at page 134 of the 5/24/2017 Board packet.

\(^{35}\) See page 346 of the 4/25/2017 Board packet.
25. Since, according to Chairperson Wong, on March 17, 2017, Parasol "sent a letter to the IVGID Board indicating an interest in possibly modifying the existing ground-lease," here we are.

**Because the Amended CC&Rs Which Purportedly Permit Parasol to Use the Subject 2.36 Acres Are Phony, Parasol is Currently in Violation of the CC&Rs:** If one reads the amended CC&Rs (Exhibit "E"), one learns: Gardena is "a California corporation;" it is the "successor by merger to Boise Cascade;" and, that Littman is its president. *How did the drafter of the amended CC&Rs know these recitals of fact*, let alone know them to be true? Let alone 22 years after the fact? Let me suggest how.

1. If one examines the California Secretary of State's business entities search page, one can learn quite a bit of history about any California corporation, expressly including Gardena. For instance, on December 11, 1989 Boise Cascade filed its "merger" with Gardena with the California Secretary of State. On January 30, 1990 Gardena filed an "election to dissolve." And on that same day, the California Secretary of State issued a certificate of "dissolution" for Gardena.

2. But if the drafter of the amended CC&Rs learned of these facts as I have suggested, *when did he/she learn of them?* It had to be sometime after January 30, 1990, didn't it? And why would that drafter have gone looking for this information until it was necessary (i.e., once the decision was made to draft the amended CC&Rs)? Thus I submit that person went looking for this information only shortly before July 1, 1999; probably June of 1999;

3. If one examines Exhibit "F," I believe one will conclude that if the drafter of the amended CC&Rs learned of the particulars of Gardena and Boise Cascade's merger after January 30, 1990, *as he/she had to do in order to recite the facts that are recited therein, then he/she also had to learn that Gardena no longer existed;*

4. These facts caused me to question why someone like Littman would place his signature to a document on behalf of Gardena when he knew Gardena was dissolved nearly 10 years before? Because there had to be money involved, and I suspect a *lot of money,* I made a public records request to examine records evidencing payments to Gardena, Littman or anyone else on behalf of the two occurring in 1999 prior to Littman's execution of the amended CC&Rs. The PRO responded IVGID has no such records;

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36 See page 274 of the 4/25/2017 Board packet.
37 I have attached a copy of that page as Exhibit "F" to this written statement.
38 See pages 164-174 of the 9/13/2017 Board packet.
39 See page 176 of the 9/13/2017 Board packet.
5. So this response caused me to search a bit further. My search took me back to October 29, 1997 where I examined the minutes of a regular IVGID Board meeting of even date. After protest by local residents, then GM Pat Finnigan "made it clear to the Parasol Foundation that it (would be) ... their duty to resolve the deed restriction issue" which I suspect is exactly what occurred.

6. So with all of this said, let's return to Exhibit "C." If one compares this CC&R amendment (the amended Ocheltree CC&Rs) to Exhibit "D" (the unrecorded amended CC&Rs), besides the fact the language in the two is almost identical, one sees that Exhibit "C" has recording information at the top of the document, whereas Exhibit "D" does not. Nor does Exhibit "D" include language identifying to whom that recorded document should be mailed after its recordation. I submit that this document was intentionally "doctored" by one or more IVGID employees to hide this missing information;

7. Only recently did I discover the amended CC&Rs had been recorded (Exhibit "E"). [and this is where things get interesting]. Upon learning of this fact, I made a public records request to examine the recorded amended CC&Rs. Given IVGID continues to be the owner of what remains of the original 26.6 acres, surely it must have a copy of the actual recorded instrument, must it not?

The reader of this written statement may be asking him/herself why I would ask for a copy of a document I already had? Because I wanted evidence IVGID staff were in fact in possession of that document and rather than making it available to the Board and the public for their consideration, they elected to only make a falsified version of the document (Exhibit "D"). Nevertheless, so far the PRO has not substantively responded to my request. She states she needs additional time. Although I will certainly give the PRO the additional time she legitimately requires, I predict she will ultimately respond that IVGID "has no public records which respond to my request." Because if she responds otherwise, I submit she will in essence be admitting Exhibit "E" has been falsified.

8. Nevertheless, once I compared the recorded amended CC&Rs (Exhibit "E") to the unrecorded version (Exhibit "D"), here is what I saw:

Apparently someone placed a piece of paper over the top of Exhibit "D" in order to hide Mr. Menchetti's identity as well as the document's recording information. And then that someone made a copy of the falsified page and then made it available to the Board and the public as if this were the actual document when we now see it was not. I submit Exhibit "D" represents that falsified page;

9. Now that we know who recorded the amended CC&Rs (attorney Menchetti), if he did not in fact draft them, we can ask the question who represented Parasol insofar as negotiating and drafting

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41 I have attached the relevant portions of the IVGID Board's October 29, 1997 meeting as Exhibit "H" to this written statement.

42 NRS 239.300(1) makes it unlawful for any person to falsify a public record. NRS 239.330 makes it unlawful for any person to offer a falsified public record.
of the lease? It turns out he is the same attorney, Gino Menchetti\textsuperscript{43};

10. Who recorded the amended Ocheltree CC\&Rs (Exhibit "C")? The same attorney Menchetti. Who drafted the amended Ocheltree CC\&Rs? I can't tell you the answer, however, since we know attorney Menchetti recorded them, I suggest we compare the font type used for the Ocheltree gift deed and CC\&Rs (Exhibit "B") to the amended Ocheltree CC\&Rs (Exhibit "C");

11. Whose obligation was it to "resolve the deed restriction issue?" Parasol's\textsuperscript{43};

12. Let's return to the signature page of the lease where attorney Menchetti's signature appears\textsuperscript{43}. Note where attorney Menchetti has inserted the words below his signature "as to form only." Why would the attorney for Parasol insert such words in a document he was approving on his/her client's behalf? What was he trying to "limit" by inserting these words? And to put this question in perspective, take a look at Judge Manoukian's signature as IVGID's attorney. Conspicuously, no such "limitation" insofar as his signature is concerned appears;

13. Continuing, only recently did the public learn that on July 1, 1999 when Gardena amended the CC\&Rs, \textit{Gardena did not legally exist}! Examining California Secretary of State records (Exhibit "F"), nearly 10 years before (January 30, 1990), we can see Gardena elected to dissolve itself and distribute its then remaining assets\textsuperscript{39}. I submit this means \textit{the amended CC\&Rs are completely void and unenforceable};

14. Let's return to \S\textit{XV} of the lease\textsuperscript{26} where both IVGID and Parasol have acknowledged they have "full knowledge of the existence of the CC\&Rs, their use restrictions ("park and recreational and related purposes and...no other purposes"), that those restrictions have been amended twice, that the relevant amendment, executed July 1, 1999, was signed by Littman, President of Gardena, a California corporation, and that Gardena was the successor of Boise Cascade. \textit{But didn't they all know that Gardena had not legally existed for nearly 10 years?} How could any competent attorney have learned of all of the above-recited facts and not known Gardena did not exist? What competent attorney would have accepted all of the above-recited facts and not independently confirmed them to be true? What competent attorney would have accepted Littman's representation he was Gardena's President without verifying the same along with Littman's authority to execute the amended CC\&Rs? And, what competent attorney for IVGID would blindly accept the truthfulness of any of the above-recited facts after making clear on October 29, 1997 that it would be "Parasol's...duty to resolve the deed restriction issue?"\textsuperscript{41}

Under agency law, whatever attorneys Menchetti and Manoukian knew, their clients knew, even if their clients had no actual knowledge. In other words, everyone knew except the IVGID Board at the time, and the public;

\begin{footnotesize}
\footnote{43 See page 317 of the 4/25/2017 Board packet.}
\end{footnotesize}
15. Now that we know the truth, don’t these facts now explain why it was so important IVGID staff secured a written release and indemnification from Parasol should "any persons (make) claims, demands or lawsuits...challenging the (CC&R) Amendment?" And don’t they explain why Parasol was required to "assume...full and complete responsibility regarding said issue" if it wanted to benefit from this "sweet deal" at local property owners’ expense? And don’t they explain why attorney Menchetti only placed his signature on the lease in his capacity of approving the document as to form only? But wait, there’s more;

16. Let’s return to the language in to ¶115 of the lease where both parties have acknowledged the CC&R restrictions have been amended twice. Certainly the amended CC&Rs represent one of those two amendments. But what about the other one? I made a public records request to examine the first alleged amended CC&Rs (again, given IVGID continues to be the owner of what remains of the subject 26.6 acres, surely it must have a copy, must it not?). After I made my-first request, the PRO disingenuously queried where I had gotten information concerning two sets of amendments because she was only aware of one. Once I pointed her to ¶115 of the lease, she responded IVGID "has no public records which respond to my request;"

17. So this answer got me thinking. If all parties to the lease knew about two CC&R amendments, what was the first? Given I knew that IVGID had sold approximately 6 acres from the subject 26.6 acres to the Washoe County School District ("the WCSD") for the Incline Middle School in 1980, perhaps someone had executed a CC&R amendment which permitted use of these restricted lands for public school purposes? So, I made a public records request to examine the sales/purchase contract between IVGID/the WCSD for the Middle School land. If there were a first amendment to the CC&Rs, surely it would be disclosed in the body of that agreement the way it was disclosed in the lease; wouldn’t it? But again the PRO responded she "has no public records which respond to my request."

That was before I obtained IVGID’s public records retention policy. After examination of that policy I noticed that contracts like the one requested are supposed to be scanned and stored with other archived records. So armed with this new knowledge, I renewed my request pointing to IVGID’s public records retention policy. So far the PRO has provided nothing. And I suspect she never will because if she responded before that she has no such records, how can she respond differently now?

18. So next my wife examined Washoe County’s development records for the subject Middle School parcel. She found no amendment to the CC&Rs;

19. Next I made a public records request upon the WCSD for the same sales/purchase agreement together with any title insurance policy for that purchase. So far the WCSD has not been able to discover the agreement itself. Notwithstanding, it has located a title policy and that policy evidences that there was no amendment of the CC&Rs (a copy of that policy is attached as Exhibit "J" to this written statement);

44 Who does this unless he/she has something to hide?
20. So who can we say for sure had first hand knowledge that there had been two CC&R amendments? Attorney Menchetti. After all, he was the one who recorded the amended Ocheltree CC&R (Exhibit "B"), as well as the amended CC&R (Exhibit "E"). Could it be that although Mr. Menchetti recalled there had been two CC&R amendments, he forgot they applied to two different parcels? Given the lapse of 16 years between the two recordings, I have concluded this is exactly what occurred, and,

21. Given the amended CC&R are completely void and unenforceable; they were likely prepared by attorney Menchetti, Parasol's attorney; because they were definitely prepared after January 30, 1990, they could not have recited the facts they did without the drafter knowing that Gardena had been dissolved nearly 10 years beforehand; and, Parasol has given IVGID a complete waiver, release and indemnification insofar as this issue is concerned; Parasol is, and since entering into the lease has been in violation of the CC&Rs and needs to be forthwith ejected from the subject 2.36 acres. Moreover, it is now clear the Board has no power to enter into any future transaction or agreement which allows Parasol, its resident collaborators or even IVGID itself, to use the building for purposes other than those expressly allowed in the CC&Rs. In other words, not an office building occupied by persons other than Parasol, not a non-profit center, and not an IVGID administrative building.

This Proposal is NOT a "Lease Amendment." But Rather, Termination of the Current Lease, Outright Purchase of the Parasol Building's Leasehold Improvements, and a Seller Lease Back to Parasol: Staff represents that what is before the Board is nothing more than a "lease amendment agreement." This is an intentional misrepresentation of fact! Parasol's current lease is a 2.36 acre ground lease. What is proffered has nothing to do with that real property ground lease. Rather, it has everything to do with the:

1. Purchase of "all real property leasehold improvements (defined as 'the building constructed in 2002 and all real property improvements at 948 Incline Way, Incline Village...commonly known as the Donald W. Reynolds Community Non-Profit Center') in an "as is" condition," 45

2. Purchase of all "personal property, other than the excluded property (expressly) excluded... located in the building and on the grounds of the real property," 46

3. Seller lease back of "approximately 1,700 square feet (of) office space," 47 an unidentified portion of the building's approximate 2,400 square feet of storage space, "defined as storage cages #11, #12 and #13," 48 "all utilities, parking, and access through (at least) 7,482 square feet of common

45 See page 132 of the 5/24/2017 Board packet.
46 See ¶¶III(A) and III(A) at page 134 of the 5/24/2017 Board packet.
47 See ¶¶II(B) at page 134 of the 5/24/2017 Board packet.
48 See ¶IV(E)(1) at page 136 of the 5/24/2017 Board packet.
areas\(^\text{49}\) (approximately 6,022 square feet of lobby, etc. space, 906 square feet of restroom space, and approximate 554 square feet of "first-floor kitchen space"\(^\text{50}\)), non-exclusive "use of all (approximately 11,270 square feet of) meeting rooms,"\(^\text{50}\) and "access to and use of the current building internet fiber connection,"\(^\text{51}\) **ALL FOR A PALTRY $1/YEAR FOR TWENTY (20) YEARS**\(^\text{52}\);  

4. Seller lease back\(^\text{53}\) of an additional "approximately 2,200 square feet (of) office space,\(^\text{54}\) an unidentified portion of the building's approximate 2,400 square feet of storage space [defined as "nine (9) storage cages"\(^\text{54}\)], "all utilities, parking, and access through (at least 7,482 square feet of) common areas"\(^\text{49}\) (approximately 6,022 square feet of lobby, etc. space, 906 square feet of restroom space, and approximate 554 square feet of "first-floor kitchen space"\(^\text{50}\)), non-exclusive "use of all (approximate 11,270 square feet of) meeting rooms,"\(^\text{50}\) and "access to and use of the current building internet fiber connection,"\(^\text{52}\) **ALL FOR $2,500/MONTH FOR SIX (6) YEARS**\(^\text{52}\); and,  

5. In other words, the purchase price pays for the **value of building improvements, non-excluded tangible personal property, and a seller lease back.**

The Payment Provisions of the Subject Proposal Represent an Installment-Purchase Agreement Which Requires the Affirmative Vote of Four of IVGID's Five Trustees: Although the parties have artfully labeled the subject transaction to be a "lease amendment agreement,"\(^\text{45}\) the payment provisions make clear that it is an "installment-purchase agreement." Consider that:  

1. Because ¶¶(A) to the proposed agreement given to the IVGID Board ("the proposed agreement") recites that "upon the full execution of this Agreement, the (current)...lease...shall terminate,"\(^\text{55}\) there is nothing to "amend;"

2. Moreover, consider GM Pinkerton's April 17, 2017 memorandum on this very subject: "PTFC would like to receive adequate consideration (i.e., payment) for the remaining life of the (building's) improvements."\(^\text{56}\) In other words, the $5.5M purchase price pays for (or according to Mr. Pinkerton) "tap(s) the **value of the building improvements**;"

\(^{49}\) See ¶¶(G) at page 137 of the 5/24/2017 Board packet.  
\(^{50}\) See ¶¶(J) at page 137 of the 5/24/2017 Board packet.  
\(^{51}\) See ¶¶(H) at page 137 of the 5/24/2017 Board packet.  
\(^{52}\) See ¶¶(A) at page 133 of the 5/24/2017 Board packet.  
\(^{53}\) See ¶¶(D)(2) at page 133 of the 5/24/2017 Board packet.  
\(^{54}\) See ¶¶(E)(2) at page 136 of the 5/24/2017 Board packet.  
\(^{55}\) See ¶¶(A) at page 134 of the 5/24/2017 Board packet.  
\(^{56}\) See page 256 of the 4/25/2017 Board packet.
3. In addition, ¶III(B) of the proposed agreement\(^{57}\) recites that "personal property, other than the excluded property listed below...on the grounds of the real property shall be included in the transfer;"

4. According to GM Pinkerton's August 16, 2017 memorandum pertaining to the retention of Holland and Hart, LLP, attorneys, with respect to legal services related to the proposed agreement\(^{58}\), the scope of work to be performed by those attorneys includes "preparation of proposed lease amendment revisions, (a) bill of sale...for building improvements\(^{59}\)...and financing documents;"

5. ¶IV(B), (C) and (D) to the proposed agreement\(^{60}\) recite that the $5.5M purchase price shall be paid with a $1.6M down payment, and a $3.9M interest (4.4%) bearing promissory note which calls for "five (5) annual installment payments of $780,000 principle or more and accrued interest." As a consequence, I and others know are of the opinion the payment terms of this transaction represent a NRS 350.0055(2)(a) "installment purchase agreement" because they call for "an agreement for the purchase of real or personal property by installment or lease...which is...not required to be counted against any limit upon the debt of a local government and exceeds...$100,000 for a local government in a county whose population is 100,000 or more;" and,

6. Although the decision to purchase the building may only require a simple majority vote of the IVGID Board, because the above installment payment arrangements represent an "installment purchase agreement," NRS 350.087(1) mandates that before "the governing body of any local government...may authorize a(n)...installment-purchase agreement...it must first) adopt...a resolution...by two-thirds of its members." Because more than 2/3 of the IVGID Board has already announced it will be voting no to entering into such an agreement, I submit that no purpose is served by spending more Board, staff and public time, effort and taxpayer money in pursuit of this folly.

**Since Parasol Admits IVGID Already Owns the Building, Why Pay It Anything?** Parasol has previously represented to the County Board of Equalization ("the CBOE") that the subject leasehold improvements are owned by IVGID. And that's exactly what the Washoe County Assessor ("the Assessor") has assumed for assessed valuation purposes. For fiscal year 2010-11 the Assessor assessed Parasol for the value of the building notwithstanding the land underneath is owned by IVGID. Parasol objected and appealed that assessment alleging it did not own the building. Rather, it alleged the building was owned by IVGID ["Parasol (was) not been taxed (in the past) because the

\(^{57}\) See page 134 of the 5/24/2017 Board packet.

\(^{58}\) See page 244 of the 8/22/2017 Board packet.

\(^{59}\) Given the subject transaction contemplates preparation of a bill of sale "for building improvements," and IVGID owns the land under those improvements, the bill of sale must apply to personal property. Consequently, NRS 350.2255(2)(a) applies.

\(^{60}\) See page 135 of the 5/24/2017 Board packet.
assumption was *both the building and the land were owned by IVGID.* If that is not the case, Parasol should be taxed. Based upon Parasol's admission, the fact IVGID is exempt from payment of county, *ad valorem* taxes, and Parasol is a non-profit organization, Parasol successfully argued it was exempt from paying taxes based upon the building's assessed valuation.

Given Claudia Anderson, Parasol's CEO, testified at that CBOE appeal and advanced Parasol's exemption claim based upon IVGID's ownership of leasehold improvements, how can she now claim Parasol owns these same improvements it proposes selling to IVGID? And if she cannot, why should IVGID be paying Parasol anything?

**Since Parasol Admits the Market Value of the Building is ZERO, Why Pay it Anything?** At the August 15, 2017 forum on this very subject held at the Parasol Building, Claudia Anderson admitted that using the appraisal profession's definition of "market value," the building has a zero value because there is essentially no one other than IVGID who can use it and comply with the use restrictions mandated under the CC&Rs. I and others I know agree with that assessment. Given Ms. Anderson's admission, why should IVGID be paying Parasol anything?

**The Appraisal the IVGID Board Has Commissioned Suffers From a Number of Glaring Deficiencies Which Makes its Opinion of Market Value Lack Credibility:** As part of IVGID staff's alleged "due diligence," on May 24, 2017 the IVGID Board accepted real estate appraiser Lynn Barnett's May 15, 2017 "propo(sal) to prepare an appraisal report addressing the" market value of the building. On July 7, 2017 Ms. Barnett completed her "estimat(e of) the Market Value of the subject (building) in its 'As-Is' Condition, as of (that) current date." ("the appraisal"). Consider that:

1. Pursuant to this commission, Ms. Barnett defines "market value" as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale; the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or ...advised, and acting in what they consider their own best interests; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable

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61 See page 507 of the 8/22/2017 Board packet.
63 See page 163 of the 6/28/2017 Board packet.
64 See pages 116-122 of the 5/24/2017 Board packet.
65 See page 7 of the appraisal under "Purpose of the Appraisal Report."
thereto; and (5) the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.\(^{66}\)

2. This is the definition to which Parasol CEO Claudia Anderson objects (see discussion above) because according to her, other than IVGID, no such buyer exists;

3. Notwithstanding Ms. Barnett admits that because of the CC&Rs she cannot value "the subject property...to its highest and best use"\(^{67}\) (because development is precluded), and that because of "the Restrictive Covenant (i.e., the CC&Rs)...participate facilities...recreation centers...outdoor recreation concessions, riding and hiking trails, sport assembly, and visitor information...can possibly be allowed,"\(^{68}\) she has assumed "title to the subject property is free, clear and marketable"\(^{67}\) when it is not;

4. Ms. Barnett relies upon two industry recognized appraisal methods to come up with her estimate of value; the "Income (and)...Market Approach." She does not rely upon the "Cost Approach to Value...as it is (her) opinion that a prudent buyer would not base an investment decision on the Cost Approach;"\(^{69}\)

5. Under Market Approach to Value, Ms. Barnett relies upon four "comparable commercial building sales."\(^{70}\) But it turns out that but for a single August 4, 2015 sale\(^{71}\) ("Sale.CBS-1"), the remaining "sales" are really not actual sales but rather, mere listings for sale. Consequently, I and others I know do not understand how any credence can be given to an estimate of value founded upon comparable sales when those sales are mere listings for sale;

6. Additionally, none of Ms. Barnett's comparable sales involves the sale of improvements excluding the land under those improvements\(^{72}\). Since here IVGID owns the land under the Parasol

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\(^{66}\) See page 8 of the appraisal under "Definition of Market Value."

\(^{67}\) See page 36 of the appraisal under "Easements, Encumbrances and Restrictions."

\(^{68}\) See pages 56-57 of the appraisal under "Highest and Best Use Analysis."

\(^{69}\) See page 58 of the appraisal under "Introduction to Valuation Analysis."

\(^{70}\) See pages 78-92 of the appraisal.

\(^{71}\) See pages 87-88 of the appraisal.

\(^{72}\) Comparable Sale CBS-1 included the value of "the total land area...43,774± square feet;" listing CBL-2 includes the value of "the total land area...9,150± square feet;" listing CBL-3 includes the value of "the total land area...9,981± square feet;" and, listing CBL-4 includes the value of "the total land area...59,677± square feet." Whatever the value of the building's underlying 2.36 acres, it must be deducted from Ms. Barnett's estimate of value in order to compare "apples-to-apples."
Building, I and others I know do not understand how any credence can be given to an estimate of value founded upon comparable land sales when here IVGID's land will not be included in the sale;

7. Additionally, none of Ms. Barnett's comparable sales is burdened by restrictions such as the CC&Rs, which limit a potential purchaser's or his/her/its tenant's use to "participating sports facilities, recreation centers, outdoor recreation concessions, riding and hiking trails, sport assembly, and/or visitor information." Since here the land under the Parasol Building is so restricted, I and others I know do not understand how any credence can be given to the appraisal;

8. Additionally, none of Ms. Barnett's comparable sales involves a seller lease back; let alone one which as here prevents IVGID from taking full developmental advantage of the building's unique characteristics/improvements, let alone for less than fair rental value\(^73\), and let alone for 20 years. Since here Parasol's proposal is contingent upon a 20 year lease back, I and others I know do not understand how any credence can be given to the appraisal;

9. Anticipating the justified criticism insofar as these obvious deficiencies are concerned, Ms. Barnett asserts "consideration (wa)" given to several (unidentified) recent sales of large professional office buildings in Reno.\(^74\) With all due respect, this admission makes things worse! Anyone who knows anything about Incline Village knows that there is essentially nothing comparable to Reno, nor to the demand for professional office space in Reno. Moreover, Ms. Barnett doesn't even identify those recent sales; nor their particulars. Under these circumstances, I and others I know do not understand how any credence can be given to the appraisal;

10. Under Income Approach to Value, Ms. Barnett relies upon the "potential gross annual income analysis" method. "The first step...is to estimate the potential gross annual income the subject property should be able to generate. From this is subtracted vacancy and credit losses which would most likely occur. (And) the result is the effective gross annual income the property should be able to generate. From this figure is subtracted the expenses that would be incurred in order to generate the effective gross income. (And) the result is the net annual income. A capitalization rate will be established and applied to the net annual income by a comparison of capitalization rates illustrated by recent sales in the area,"\(^74\)

11. Putting aside the fact the sale or listing for sale of Ms. Barnett's comparable sales: largely involve listings for sale rather than actual sales themselves; include the value of the land under their buildings whereas here the land under the Parasol Building is already owned by IVGID; do not involve parcels whose uses are restricted as the subject parcel's uses are restricted; do not involve seller lease backs, let alone at less than market rent and for 20 years no less; and there essentially will be no potential gross income generated from the building after a sale to IVGID; I and others I know do not

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\(^73\) What Ms. Barnett calls the "rental rate advantage."

\(^74\) See page 59 of the appraisal.
understand how Ms. Barnett's appraisal is credible to the extent it relies upon the income approach to value;

12. Nevertheless, since ¶¶(A) to the proposed agreement\textsuperscript{75} contemplates rental income of "$1.00 per year for 1,700 square feet of office space" and an additional "$2,500 per month for 2,200 square feet of office space," I shall attempt to appraise the Parasol Building using Ms. Barnett's income approach to value. "Multiplying this figure ($2,501) by 12 months, results in the Potential Gross Annual Income for the subject's office space of" $30,001. "Subtracting the expenses, at $182,734 per year, from the effective gross annual income ($30,001)...results in the net annual income for the subject property of" a negative $152,733. "Applying the 6.50% capitalization rate to the net annual income projected for the subject property, at (negative $152,733), results in the Market Value of the subject property by the Income Approach." I don't know what that number is after applying the capitalization rate, but I am pretty sure it is negative. Meaning that rather than the $4,300,031 value Ms. Barnett has determined\textsuperscript{76}, that value as determined under the "potential gross annual income analysis" method, in my opinion, lacks credibility;

13. Additionally, Ms. Barnett relies upon a "gross income multiplier (appraisal) method." Basically, "dividing the (comparable) sale(s) price by the effective gross income that the property was...or...is capable of producing at the time of sale."\textsuperscript{77} Putting aside the fact the sale or listing for sale of Ms. Barnett's comparable sales: largely involve listings for sale rather than actual sales; Include the value of the land under their buildings whereas here the land under the Parasol Building is already owned by IVGID; do not involve parcels which are restricted as the subject parcel is restricted by the CC&Rs which effectively prohibit gross income being produced from rental of the building for at least the next ten years; and, do not involve seller lease backs, let alone and less than market rent and for 20 years no less; the value as determined under the "gross income multiplier" method, in my opinion, lacks credibility;

14. Nevertheless, since ¶¶(A) to the proposed agreement\textsuperscript{75} contemplates rental income of "$1.00 per year for 1,700 square feet of office space," and an additional "$2,500 per month for 2,200 square feet of office space;" applying (Ms. Barnett's) 10/00 gross income multiplier to the subject's projected effective gross annual income, at ($30,001), results in an indication of value of" $300,010. Meaning that rather than the $4,300,031 value Ms. Barnett has determined\textsuperscript{76}, the value as determined under the "gross income multiplier" method, in my opinion, lacks credibility;

\textbf{Notwithstanding This Lack of Credibility, if One Accepts the Appraiser's Estimate of the Market Value of the Parasol Building at Face Value, After Deducting the Value of the 2.36 Acre Parcel Upon Which It is Constructed, as Well as Parasol's Lease Back "Rental Rate Advantage," Her}

\textsuperscript{75} See page 133 of the 5/24/2017 Board packet.

\textsuperscript{76} See pages 64-74 of the appraisal.

\textsuperscript{77} See pages 93-94 of the appraisal.
Value is Basically $0.00: Regardless of whether one agrees or disagrees with Ms. Barnett's $4.4M estimate of value\(^76\), there should be little disagreement several deductions she neglected to apply to that estimate need to be made. For instance,

1. **The Value of the Land Under the Parasol Building** must be deducted from its market value. Given Ms. Barnett's comparable sales include the value of the land under their buildings, whereas here the land under the Parasol Building is already owned by IVGID; the value of the 2.36 acres under the building must be deducted therefrom. Given the size of the Parasol parcel is almost identical to that under IVGID's current administration building, and Ms. Barnett values the latter at $2.4M-$2.8M "assuming redevelopment including required development rights\(^79\)" and others I know believe the value of the 2.36 acres under the Parasol building is the same $2.4M-$2.8M;

2. Moreover, and as additional evidence of value, Ms. Barnett reports that the Assessor has valued the land under the Parasol Building at $702,975. Since "in the State of Nevada, the Assessed Value of a property is equivalent to 35% of the taxable or appraised value,\(^80\)" according to the Assessor the land under the Parasol Building is valued at $2,008,500;

2. **The Value of Parasol's Leasehold Improvement "Rental Rate Advantage:"** must also be deducted from the building's market value. The proposed agreement contemplates that IVGID assume an **additional** cost (the loss of revenue as a result of being required to grant Parasol use of portions of the building (the "rental rate advantage\(^81\)" for itself for a period of 20 years, "as a [less than market ($1/month) non-rent paying] tenant\(^82\)" including all utility\(^82\) ($90,000 annually) and building maintenance\(^83\) ($40,000 annually) costs: Given Ms. Barnett opines that the fair market level rental rate for: Parasol's portion of the building's office space is $3,402/month; yet she fails to factor in its **additional** exclusive use of approximately 1,255 square feet of storage space, and 16,974 square feet of non-exclusive shared meeting, conference, training and board room space, staff lounge, commercial kitchen space, the building's parking areas and loading dock, and "access to and use of

\(^76\) See page 96 of the appraisal.


\(^80\) See page 38 of the appraisal.


\(^82\) See page 72 of the appraisal.

\(^83\) See page 73 of the appraisal.
the...building(s)' internet fiber connection;" half the storage cages and adjoining storage space is $1,313/month; meeting/convention rooms is $7,500/month; and, utilities of $7,500/month; the total rental rate advantage to Parasol is $19,715/month for 20 years. Discounting this number, and using Ms. Barnett's estimated 5% rate of return, the present worth of this 1,700 square feet rental rate advantage (33.707%) is $1,634,752;

3. The Value of Parasol's Resident Non-Profits' Leasehold Improvement "Rental Rate Advantage:" must also be deducted from the building's market value. The proposed agreement contemplates that IVGID assume an additional "rental rate advantage" cost as a result of being required to grant Parasol's resident non-profits' use of portions of the building for a period of 6 years "as a [less than market ($2,500/month) non-rent paying] tenant" including all utility and building maintenance costs. Given Ms. Barnett opines that the fair market level rental rate for: Parasol's resident collaborators' portion of the building's office space is $4,400/month; yet she fails to factor in their additional exclusive use of approximately 1,255 square feet of storage space, and 16,974 square feet of non-exclusive shared meeting, conference, training and board room space, staff lounge, commercial kitchen space, the building's parking areas and loading dock, and "access to and use of the... building(s)' internet fiber connection;" half the storage cages and adjoining storage space is $1,313/month; meeting/convention rooms is $7,500/month; and, utilities are $7,500/month; the total rental rate advantage to Parasol for this portion of the building for its resident collaborators is an additional $2,312/month for 6 years. Discounting this number, and using Ms. Barnett's estimated 5% rate of return, the present worth of Parasol's additional 2,200 square feet advantage (74.62%) is $134,566;

4. The Value of Parasol's "Land Lease Advantage:" must be deducted from the building's market value. The proposed agreement contemplates that IVGID assumes an additional "land lease advantage" cost as a result of being required to grant Parasol use of portions of the building. Ms. Barnett has calculated that advantage at $1,028,000 for the land under the building. Discounted to today's $435,000 ($305,000 associated with Parasol's proposed 1,700 square feet lease back, and $130,000 associated with Parasol's resident collaborator's proposed 2,200 square feet lease back);

5. D.W. Reynolds Grant Requirements: According to GM Pinkerton, the $6.6M grant Parasol obtained from the D.W. Reynolds Foundation to construct the Parasol Building was and is contingent upon Parasol's continued occupancy of the building, "and that a portion of the office space (therein) continue to be dedicated to non-profits...and that the landlord...be required to charge rents at less than market rate for the non-profit tenants." Therefore these rental and land lease rate advantages are mandatory requirements of any sale of the building's leasehold improvements;

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84 See page 2 of "the rental rate advantage letter."

85 See pages 5-6 (pages 262-63 of the 4/25/2017 Board packet) of IVGID staff's April 18, 2017 "feasibility report" which appears at pages 258-272 of the 4/25/2017 Board packet.
6. Conclusion: Once these rental and land lease rate advantage (totaling $2,204,318) omissions together with land value ($22M-$27M) omissions have been properly deducted from Ms. Barnett's estimate of value, exactly what, if anything, remains that a prudent and knowledgeable buyer who intends to use the building as a "cultural facility...facility supporting a social service organization, or a recreation center" would actually pay? I submit nothing. Therefore, why pay anything?

After Making All of the Above Space Available for Parasol's/Its Resident Non-Profits' Use, Only Approximately 6,086 Square Feet of Office Space Remain For IVGID's Use: At https://www.yourtahoeplace.com/uploads/pdf-ivgid/PTCF__Reynolds_Space_Allocation.pdf IVGID staff finally share their proposed Parasol building allocation of space between Parasol, Parasol's resident non-profits and IVGID. This allocation reveals the following:

1. Although the Parasol Building consists of 31,752 square feet, only 9,800 square feet consists of "office space" (rooms 108-110, 1,076 square feet) and "open (non-profit) office space" (2,013 square feet) on the first floor, and rooms 205 (2,563 square feet), 209-216 (1,701 square feet), 217 (1,333 square feet), 220 (152 square feet) and 222-225 (963 square feet) on the second floor;

2. The balance of square footage is devoted to: 75 square feet (room 101) of reception space, 11,630 square feet of "common spaces, restrooms (and) circulation, 2,311 square feet (Trepp, rooms 203-204, 206-207, 221) of meeting rooms, 438 square feet (rooms 105-106) of conference space, 1,500 square feet of training space, a 364 square feet (room 208) Board room, 255 square feet (room 111) of maintenance & storage space, 2,510 square feet of storage room space, 618 square feet (rooms 107, 114, 116) of work room/storage space, 690 square feet of central supply & server space, a 920 square foot (room 113) commercial kitchen, and a 640 square feet (room 226) staff lounge;

3. In other words, only 30.86% of the building is devoted to "office space;"

4. And of this "office space," 2,013 square feet of downstairs open office space and 1,701 square feet of upstairs office space is proposed to be reserved for Parasol's/its resident non-profits' use;

5. Which means Parasol proposes that IVGID be left with but 6,086 square feet of "office space;"

6. IVGID staff have represented that IVGID's current administrative building on Southwood is comprised of approximately 10,500 square feet, and that they require only approximately 1,500 additional square feet (for a total of 12,000 square feet). Given IVGID staff require about 10,000

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86 A copy of this allocation is attached as Exhibit "I" to this written statement.

87 See page 10 (under "IVGID Office Space Needs") of the feasibility report (page 267 of the 4/25/2017 Board packet). Moreover, IVGID staff assert there's only about 8,165 square feet of office space in its
square feet of "office space," exactly where do they propose this missing square footage is going to come from?

7. Assuming nowhere, why purchase so much wasted space and leasehold improvements amenable to offices that do not satisfy IVGID staff's represented requirements? To boast we have another "under-utilized asset?"

If the Forgoing Were Not Sufficient to End Further Discussions Concerning the Propriety of Purchasing the Parasol Building's Leasehold Improvements, Their Cost is Going to be Prohibitive and Greatly Exceed $5.5M: Although IVGID staff represent that the cost of the building's leasehold improvements will be $5.5M\textsuperscript{88}, that cost will be considerably more. For example,

1. Given 71% of the purchase price ($3.9M) will bear interest at 4%/year, payable over 5 years\textsuperscript{89}, IVGID will be paying an additional $620,000 or more just in interest;

2. IVGID will be assuming "approximately $164,000 per year (for the entire) building(s)... utilities...grounds and maintenance staff;"\textsuperscript{90}

3. IVGID's "immediate...and not at some point in the future (expenditure of additional unspecified sums for)...staffing and...adding support staff hours...dedicated to...maintain(ing)...operat(ing)...and...property management (of)...the building...and facilities;"\textsuperscript{91}

4. IVGID's expenditure of additional funds on outside consultants to conduct "a comprehensive, condition assessment and maintenance evaluation."\textsuperscript{92} Although the full extent of that assessment and evaluation has not yet been commissioned, so far we know that:

\textsuperscript{88} See ¶IV(A) at page 135 of the 5/24/2017 Board packet.
\textsuperscript{89} See ¶IV(C) at page 135 of the 5/24/2017 Board packet.
\textsuperscript{90} See page 8 (under "Annual Building Operational Costs") of the feasibility report (page 265 of the 4/25/2017 Board packet). Many residents find this number to be grossly underestimated given IVGID's current building operational costs. Allegedly total the same number notwithstanding the current administration building does not have a commercial kitchen, and consists of approximately thirty percent (30%) of the square footage (10,000 square feet) the Parasol building (31,500 square feet) consists of.
\textsuperscript{91} See page 13 (under "Ongoing Cost of Lease Modification") of the feasibility report (page 270 of the 4/25/2017 Board packet).
5. Smith Design Group has been retained to provide space planning design at a cost of $8,789.  

6. Ballard King & Associates has been retained to provide assessment of the viability and benefits of acquiring the Parasol building at an unknown cost.  

7. Barker Rinker Seacat has been retained to provide re-purposing consultation of the Parasol building for use as programming and office spaces at an unknown cost.  

8. IVGID's expenditure of additional unidentified funds on outside consultants to "determine the need for...additional (building)...improvements and future reconfigurations (necessary) to meet (its) operational needs."  

9. IVGID's expenditure of at least an additional $493,142 on tenant improvements and future reconfigurations necessary to meet those operational needs.  

10. IVGID's expenditure of at least an additional $175,329 to remodel the Recreation Center's existing workout room in lieu of incurring similar remodel costs at the Parasol Building.  

11. IVGID's expenditure of at least an additional $7,900 in consultant costs with real estate appraiser Lynn Barnett & Associates for the Parasol Building's appraisal, a comparison of the costs to purchase versus rent, determining the net present value loss to be incurred should IVGID agree to Parasol's proposed seller lease back, and, appraising the current Southwood administrative building.  

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52 See page 14 (under "Ongoing Cost of Lease Modification") of the feasibility report (page 271 of the 4/25/2017 Board packet).  


54 Although I have made a public records request for the particulars of this cost, the PRO has replied that she will not be able to provide the requested records for some period of time (on/after September 29, 2017 at the earliest).  


12. IVGID's expenditure of another additional $15,000 in, consultant costs with real estate attorneys Holland and Hart, LLP for "Initial document review...preparation of proposed lease amendment amendments, bill of sale and financing documents" with respect to the proposed series of transactions with Parasol\textsuperscript{99};

13. IVGID's expenditure of additional unidentified funds to "get...fiber (optic cable) into the (building) from Incline Way...reconfiguring...server space and upgrading...electrical service within that space;"\textsuperscript{95}

14. IVGID's expenditure of "approximately two million dollars (as) a capital investment (for)... eventual...replace(ment of)...the building('s)...(fifteen year old) mechanical and structural systems;"\textsuperscript{100}

15. IVGID's loss of revenue [at least $2,204,318 (see discussion above)] as a result of being required\textsuperscript{85} to grant Parasol retained use of portions of the building for the next twenty years "as a (presumed non/less than fair market rent paying) tenant;"

16. IVGID's loss of revenue as a result of being required to allow the Donald W. Reynolds Foundation to retain its naming rights to the building for an unspecified period of time\textsuperscript{85}, and to allow Parasol to retain all current donor naming\textsuperscript{101}, and,

17. None of this includes the additional cost (tens if not hundreds of thousand dollars worth of IVGID staff time) devoted to this project.

\textit{All told an expenditure of many, many millions of additional dollars over the remaining term of Parasol's current ground lease!}

Moreover, the Donald Reynolds Building Cannot be Used for ANYONE's Administrative "Office Space Needs:" Such use expressly violates the underlying land's use restrictions. Moreover, that land was acquired with Rec Fee moneys for park and recreation purposes only. To now use this land for administrative office space would mean that the Rec Fee is being used for another impermissible purpose. If staff is allowed to get away with this misrepresentation and waste of public


\textsuperscript{99} See pages 243-45 of the 8/22/2017 Board packet.

\textsuperscript{100} See pages 13-14 (under "Ongoing Cost of Lease Modification") of the feasibility report (pages 270-71 of the 4/25/2017 Board packet).

\textsuperscript{101} See ¶1VII at page 137 of the 5/24/2017 Board packet.
funds it holds in trust as local property owners' bailee, then it means there are essentially no limits on what IVGID staff can use Rec Fee moneys for which as I and others have argued, is wrong!

Please remember, the ends do not justify the means. It is what is represented to local property owners that matters; something most of you seem to have forgotten.

Staff's Justification the D.W. Reynolds Building Can be Used for Recreational Programming Purposes Is Disingenuous: There are only two reasons why staff is telling the public part of the Parasol Building can be used for recreation programming. The first is so it can overcome the deed restriction on its restrictive use. Unless the building is used for park or recreational purposes, its use violates the CC&Rs. So staff tell the public it can (rather than must) use a portion of the building for recreation programming.

But IVGID does not need another Recreation Center. It already has a building for that purpose. And given essentially none of the nearly 100 so-called recreation programs staff operates out of the Recreation Center covers its costs, let alone generates positive cash flow, what justification is there for spending hundreds of thousands if not millions of dollars more to acquire use of only a portion of a building allegedly for more recreation programming purposes when those purposes already lose in excess of $1.3M annually? This is insanity.

Staff Intends to Use the Rec Fee to Pay for the Parasol Building's Acquisition/Improvement Costs Notwithstanding That Fee Has Nothing to Do With Making Recreational Facilities "Available" For Use by Those Properties Which Are Involuntarily Assessed: The second reason why staff is telling the public that part of the Parasol Building can be used for recreation programming, is really the primary reason; money! Where does the $5.5M or more of the purchase price come from? Basically the Rec Fee.

1. If one examines pages 12-13 of the feasibility report (pages 269-70 of the 4/25/2017 Board packet), one learns that IVGID staff intend to secure funding for the Parasol Building's acquisition from four sources, three of which have their genesis in the Rec Fee;

2. Source one is IVGID's excess General Fund Balance. Each year IVGID staff budget to overspend in excess of $1M in the General Fund. For 2017-18, the IVGID Board has budgeted to

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102 It is unlawful [see NRS 205.300(1)] for "any bailee of...money...(which) ha(s) been deposited or entrusted...(to) use...or appropriate...the money...or any part thereof in any manner or for any other purpose than that for which they were deposited or entrusted."

103 According to IVGID's financials it is currently losing $1M or more annually on "recreation programming." And if one adds the additional $300,000 annually assigned to recreation debt service, the number is in excess of $1.3M annually!
overspend by $1,097,000\textsuperscript{104}. This deficiency is covered by transfers from IVGID's Community Services ($722,900), Beach ($77,100) and Utility Funds ($297,000) that are disingenuously labeled allocated "central services costs."\textsuperscript{105} In fact over the last several years, staff has been transferring more to the General Fund, in the form of allocated central services costs, to intentionally build up its fund balance.

Up until 2011-12 the General Fund balance stayed level at $615,774. But thereafter that balance began growing to where it now stands ($1,837,533). Since the only way the General Fund's balance can increase is as a result of central services cost transfers, and nearly 70.5\% of those transfers come from the Rec Fee, that's the precise source of funding for purchase of the Parasol Building on an installment basis;

3. Source two is IVGID's excess Workers' Compensation Fund" Balance. For decades IVGID was self-insured for workers' compensation claims. In order to remain self-insured, IVGID had to accumulate and retain workers' compensation reserves of between $1.25M-$1.6M. Now because IVGID purchases workers' compensation insurance, it is free to release most of its reserves. Since the Board has voted to release $800,000 of those reserves, $665,000 are assignable to the Community Services Fund\textsuperscript{106}, should they be used as a source of funding for purchase of the Parasol Building on an installment basis, as aforesaid those funds will have initially come from the Rec Fee;

4. Source three is IVGID's excess Community Services Fund Balance. Like IVGID's General and Beach Funds, each year IVGID staff budget to overspend nearly $6M in the Community Services Fund. This overspending is subsidized by the Rec Fee. And according to staff, it pays for 100\% of capital improvement projects ("CIPs") assigned to the Community Services Fund. At page 270 of the 4/25/2017 Board packet Staff suggests overspending on capital projects can be "re-prioritized" to create funds to pay for the Parasol Building purchase. Thus should those monies be used as a source of funding for purchase of the Parasol Building on an installment basis, regardless of re-prioritization, that funding will have come from the Rec Fee. In fact, according to the 2017-18 Budget, the Board has already assigned $1.6M from the Community Services Fund\textsuperscript{107} to fund the Parasol Building's $1.6M down payment\textsuperscript{39};

5. In other words, all three sources for funding purchase of the Parasol Building have at their root, the Rec Fee;


\textsuperscript{105} See page 112 of the 5/24/2017 Board packet.

\textsuperscript{106} See page 12 (under "Available Funding") of the feasibility report (page 269 of the 4/25/2017 Board packet).

\textsuperscript{107} See page 22, Schedule B-13, of the 2017-18 Budget at page 46 of the 5/24/2017 Board packet.
6. Now take a close look at Resolution 1860 and the report incorporated therein which were adopted on May 24, 2017\(^{108}\). There you will see that the Rec Fee is supposed to be used for nothing more than the just and reasonable costs IVGID incurs to make its recreational facilities (and not an administrative office building) merely "available" to be used by those parcels/residential dwelling units (rather than the occupants thereof) involuntarily assessed;

7. Given the IVGID Board has already set aside $1.6M of our Rec Fee to be used for the down payment on the purchase of the Parasol Building, it is clear IVGID intends to use our Rec Fee to purchase and improve an office building having nothing to do with anyone's recreation. Isn't it about time we look behind staff's labeling to learn the truth of their real sinister purposes?

The Parasol Building Cannot Continue to be Used by Parasol Whether or Not the Proposed Sale Goes Forward: because such use expressly violates the underlying land's use restrictions. And even if it doesn't, today's use is materially different from that originally represented. Meaning that all improvements thereon (i.e., the building), shall revert to IVGID's full use and ownership without the payment of anything to Parasol\(^{109}\).

Parasol Has No Possible Suitor for its Building Other Than IVGID: Since Parasol doesn't own the land under the current building, and putting aside the fact it does not own the Parasol Building itself, the facts are clear it cannot sell the building to ANYONE. Since the current lease and CC&Rs prohibit assignment of the building to anyone other than Parasol or its successors, the simple fact of the matter is that the current lease cannot be sold to anyone. And since the current lease prohibits a use other than as Parasol's non-profit center, again, that building cannot be transferred to anyone. Simply stated, there is no one other than IVGID who can possibly take over Parasol's building or the current lease for that matter. In other words just like Parasol's CEO has admitted, the Parasol Building has a fair market value of NOTHING! Why then does IVGID propose paying Parasol anything?

Parasol's Proposal Has Nothing to Do With Modifying the Ground Lease, and Everything to Do With Bailing Parasol Out Financially: It arguably owns an asset without a value to any ready, willing and able purchaser. So Why does IVGID have to bail Parasol out?

Conclusion: If Parasol no longer intends to conform to the current lease's restrictions, then it must give up the building for no "adequate consideration for the remaining life of the building(s) improvements." If it is not willing to accept this consequence, then it must use the building as originally intended without any other compensation for the lease's remaining term. In fact, this entire transaction should be set aside because where does IVGID get off charging local property owners to acquire property represented to be used for park and recreation purposes only, and then give it away

\(^{108}\) See pages 94-107 of the 5/24/2017 Board packet.

\(^{109}\) See ¶XIII(A)(6) of the lease at page 298 of the 4/25/2017 Board packet.
to anyone at all, let alone under the guise of charity. Now the Board has the opportunity to make things right, and I and others I know demand that is, exactly what it does.

And you wonder why the RFF which has financed this colossal Mis-Use is out of control? I've now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog because no one else seems to be watching) and Frank Wright.
From:            "s4s@lx.netcom.com" <s4s@lx.netcom.com>
To:              Wong Kendra Trustee
Cc:               Callicrate Tim Trustee <callicrate_trustee@ivgid.org>, Horan Phil <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>
Subject:         Re: Objections to Agenda Item I(2) for the IVGID Board's December 13, 2017 Meeting
Date:             Dec 10, 2017 11:23 PM

Dear Chairperson Wong and the Other Honorable Members of the IVGID Board:

I object to the form of proposed written minutes submitted by staff for approval by the IVGID Board [see pages 244-292 of the Board packet of materials prepared by staff in anticipation of this meeting ("the 12/13/2017 Board packet" (https://www.yourshoepacel.com/uploads/pdf-ivgid/BOT_Packet-Regular_12-13-17.pdf))].

As your attorney should instruct each of you, NRS 241.035(1)(d) declares, in part, that "a public body shall approve the minutes of a meeting (which shall)...include...the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion."

The proposed minutes fail to reflect and include written remarks drafted jointly by Frank Wright and me, and submitted by Mr. Wright at the meeting notwithstanding he requested those remarks be included in the minutes of that meeting (see 08:24:09:33 of the livestream of that meeting at https://livestream.com/IVGID/events/7720044/videos/162784045).

So let's make it simple. Correct the proposed minutes in all respects prior to approving them, or I will file an Open Meeting Law ("OML") complaint. And I ask that at least one Board member make the formal request that the missing written statement be attached as requested. Why put the public to the added expense and inconvenience of responding to yet another OML complaint when so simple a fix exists?

And so we're clear Susan, again, please include a copy of this e-mail in the next Board packet.

Respectfully, Aaron Katz

http://webmail.earthlink.net/wem/printable.jsp?msgid=4794&w=113767257
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
DECEMBER 13, 2017 REGULAR IVGID BOARD MEETING – AGENDA ITEM
(3) – APPROVAL OF MINUTES OF THE IVGID BOARD’S REGULAR
MEETING OF SEPTEMBER 26, 2017

Introduction: Here the IVGID Board is presented with proposed minutes of its September 26, 2017 meeting to approve. NRS 241.035(1) instructs that "within 45 days after the meeting or at the next meeting of the public body, whichever occurs later...a public body shall approve the minutes of (that) meeting (which shall)...include(s): (a) the date, time and place of the meeting; (b) those members of the public body who were present, whether in person or by means of electronic communication, and those who were absent; (c) the substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member’s vote on any matter decided by vote; (d) the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion; (and, e) any other information which any member of the public body requests to be included or reflected in the minutes."

Given the proposed minutes fail to include prepared written remarks I submitted to the Board on September 21, 2017, in anticipation of the Board’s September 26, 2017 meeting, I object. And that’s the purpose of this written statement.

NRS 241.035(1) Makes Clear Members of the General Public May "Address" a Public Body Either Orally or by Means of Prepared Written Remarks:

There is Nothing in NRS 241.035(1) Which Precludes a Member of the General Public From "Addressing" the Board at a Public Meeting Via His/Her Prepared Written Remarks in Lieu of His/Her Oral Testimony, Whether/Not He/She is Physically Present: The option sits with the member of the general public. And given the public policy concerns at issue (see discussion below), any doubt should be resolved in favor of permitting those written remarks to be included.

The Public’s Right to Address Public Bodies is a Fundamental Right to be Construed Liberally: Yet here Chairperson Wong and attorney Guinasso went out of their way to construe this right narrowly against the public’s right to address the IVGID Board. In other words, according to them, the

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2 Go to https://www.leg.state.nv.us/NRS/NRS-241.html#NRS241Sec035.
3 A copy of those written remarks is attached as Exhibit "A" to this written statement. I have placed an asterisk next to the portion where I asked they be attached to the minutes of the September 26, 2017 meeting.
only members of the general public who have standing to "address" the Board at a public meeting are those who physically appear at that meeting expressly for that purpose. According to Chairperson Wong at the Board's August 22, 2017 meeting:

Mr. Katz "has to be here to make his own statement for it to be entered into the written record...he needs to be here to make his own public comment.

Public Comment Cannot be Denied Based Upon Its Content or Author: Yet here that's exactly what Chairperson Wong and attorney Guinasso have done.

Since NRS 241.035(1) Allows Members of a Public Body to Address Their Fellow Members at a Public Meeting Notwithstanding They Are Not Physically Present, Members of the Public Have the Same Right: Take a look at NRS 241.035(b): minutes of public bodies must reflect those members who are present, "whether in person or by means of electronic communication." Thus if it is appropriate for members of a public body to address the Board as a whole at a public hearing notwithstanding they are not physically present, then why can't members of the general public be allowed to do the very same thing?

Moreover in the Past the IVGID Board Has Routinely Allowed Members of the Board to Address the Board as a Whole at a Public Meeting Notwithstanding They Are Not Physically Present: By way of example, take a look at the written minutes of the Board's June 12, 2017 meeting

At page 469 the Board will see where Trustee Callicrate was allowed to appear by means of telephone. Throughout the minutes of that meeting the Board will see where Trustee Callicrate was permitted to "address" the Board; especially when voting. And unlike in the current situation, his comments were included in the written record.

So what is the justification for not extending the same right to "address" the Board as a whole to members of the general public notwithstanding they are not physically present?

Moreover, in the Past the IVGID Board Has Routinely Allowed Members of the Public to Address the Board as a Whole by Means of Prepared Written Statements Notwithstanding They Are Not Physically Present at Public Meetings: That is the very reason why the IVGID Board's agendas include a section (for this December 13, 2017 meeting refer to 11L) for "Correspondence Received by the District*." Therefore if it is acceptable for a member of the public to submit written remarks to the Board without being physically present at a Board meeting, without asking they be made a part of the minutes of that meeting, what is the justification for not allowing a member of the public to correspond via prepared written statements they wish be included in the minutes of a Board meeting?

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On December 13, 2017, Before the Evening Board Meeting, the Board Was Given Notice of the Deficiencies in the Subject Proposed Minutes and the Opportunity to Correct Them: I have attached a copy of my e-mail of even date as Exhibit "B" to this written statement, which gave the Board such notice. In that e-mail I warned Chairperson Wong and the Board that if she/it sanitized the formal written minutes of that meeting by omitting the subject written statement, there would be an Open Meeting Law ("OML") complaint. Therefore if the Board disregards its obligations and an OML complaint ensues, it will have no one to blame but itself.

Conclusion: The fix is easy. Add my written remarks to the proposed minutes before they are approved by the Board, including my September 21, 2017 written remarks. Because this of course will embarrass IVGID staff because my remarks unfavorably discuss an agenda item for that meeting, Chairperson Wong and staff want to do anything in their power to censor criticism. But sometimes you must bite your lower lip to do the right thing, even though it hurts, and this is such a case. I ask the Board do the right thing and attach the missing written statements to the formal minutes of its September 26, 2017 meeting before they are formally adopted.

Because the money to defend another OML complaint is going to come from our recreational facility fee ("RFF") because ad valorem and consolidated taxes are spent on employee salaries and benefits, is it any Wonder Why the RFF Is as High as it is?

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).
Subject: Omissions From Chairperson Wong's List of Issues Concerning IVGID's Possible Purchase of the Parasol Building in Anticipation of the IVGID Board's Regular September 26, 2017 Meeting
From: "s4s@lx.netcom.com" <s4s@lx.netcom.com>
Date: 9/21/2017 11:24 PM
To: Wong Kendra Trustee <wong_trustee@ivgid.org>
CC: Callicrate Tim Trustee <callicrate_trustee@ivgid.org>, Horan Phil <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>

Dear Chairperson Wong and the Other Honorable Members of the IVGID Board -

I am writing to you about the list of issues Ms. Wong created/presented to the IVGID Board its last meeting held September 13, 2017 insofar as the proposed purchase/sale of the Parasol Building. I am submitting this e-mail/written statement inasmuch as Judy/I are traveling and will not be able to attend the upcoming September 26, 2017 Board meeting.

Ms. Wong's issues appear at page 10 of the packet of materials prepared by staff in anticipation of the Board's September 26, 2017 meeting ("the 9/26/2017 Board packet"). But conspicuously absent are the five legal issues/sub-issues raised by Trustees Callicrate/Horan at the September 13, 2017 Board meeting. Namely,

1. The validity of the July 1, 1999 Amendment to the CC&Rs recorded against the land the subject of Parasol's current ground lease ("the land") given:
   a) It was purportedly executed by Irving Littman, President of Gardena Service Co. ("Gardena"),
      i) 22 years after the fact; and,
      ii) Nearly ten (10) years after Gardena had been formally dissolved and its assets distributed; and,
   b) The consent of local property owners who paid for the land was not first secured given the land's acquisition for park and recreational purposes, and none others, was expressly for the benefit of those property owners [see Reno v. Goldwater (1976) 92 Nev. 698, 558 P.2d 532];
2. In light of the original CC&Rs against the land, whether Parasol can permissibly use the Parasol Building for any activities whatsoever;
3. In light of the original CC&Rs against the land, whether IVGID can occupy and use any portion of the Parasol Building as an administrative office building given the CC&R use restrictions against the land;
4. Whether IVGID can use funds derived from the Recreation ("RFF") and/or Beach ("BFF") Facility Fee(s) to purchase/improve the Parasol Building given IVGID's representations the RFF/BFF pay for the "availability" to use public recreational facilities (rather than administrative office space); and,
5. Whether IVGID's proposed payment for the purchase of the Parasol Building over five years represents an installment purchase agreement which requires the affirmative vote of 2/3 of IVGID Trustees.

Although Chairperson Wong clearly represented to the Board and the public that these additional legal concerns would be added to her list of issues and presented at this and future Board meetings for discussion, conspicuously, they are absent. So that these important issues are not simply "swept under the rug" and forgotten, I ask that one or more Board members formally request Ms. Wong's list be augmented to expressly include these omitted issues.

Although Chairperson Wong may object by categorizing all of these issues as "legal" which are awaiting the outcome of the Holland & Hart firm's legal analysis, I suggest they will not be addressed. Take a close look at Ms. Fogarty's September 12, 2017 engagement letter (see pages 5-9 of the 9/25/2017 Board packet). There she expressly represents that her scope of work is limited to review of the existing ground lease, as amended, and related CC&Rs related to the leased property (as opposed to the land). That's it!

Under this limited scope of work, in no way do I expect Ms. Fogarty's review to extend to items 1(b) and 2-5 identified above. Which means that if the IVGID Board is waiting for guidance insofar as these issues are concerned, given such these issues have not been added to Ms. Wong's list of issues, they will never be addressed. That is unless the Board does something.

So in closing, I ask that the Board augment Ms. Wong's list of issues with the five issues noted above so that in going forward they will be addressed. I also ask that the Board instruct staff to inform Holland & Hart that the five legal issues identified above be expressly included in the scope of work the subject of Ms. Fogarty's September 12, 2017 engagement letter.

Thank you for your courtesies and cooperation in these matters, and I expressly request that a copy of this e-mail be attached as a written statement to the written minutes to be prepared of the Board's September 26, 2017 meeting. Not that I need remind the Board inasmuch as IVGID staff constantly tout how "transparent" they are, but NRS 241.035(1)(d) expressly allows any member of the general public to address a public body at a public meeting by means of written remarks, and to request that those remarks be reflected in the formal written minutes of that public meeting. Please consider this e-mail to represent those written remarks.

Aaron Katz
HAVE A NEW PHONE NUMBER?  
WE NEED IT IN CASE OF AN EMERGENCY

If you're like many TMWA customers, you've canceled your landline phone service and now rely exclusively on your cell phone to communicate. Sound familiar? If so, please update your primary contact number on your account. It's unlikely we'll ever have to call you regarding a water emergency; but if we do, we need your current number. All you have to do is log into your account at www.tmwa.com and update the number, or give us a call at (775) 834-8080 and let us do it for you. Simple!

TMWA'S BOARD OF DIRECTORS AND STAFF SEEK YOUR INPUT

To better serve our customers, TMWA has many ways for you to provide comments. TMWA's board of directors and staff want to hear your concerns and comments regarding your water service. We invite you to attend any of our public meetings, as there is public comment at the beginning and end of each meeting. Here is how you can express your views and be part of the process:

• Board of Directors Meetings – TMWA's board of directors meets on the third Wednesday of each month at 10 a.m. at the Sparks City Council Chambers, located at 745 Fourth St. in Sparks. Agendas are posted online at least five days in advance. View the full meeting schedule, agendas, or past meeting minutes here: www.tmwa.com/meetings.

• Standing Advisory Committee – TMWA's Standing Advisory Committee (SAC) is an oversight group made up of individuals representing all TMWA customer categories. The SAC reviews rate proposals and other items as requested by our board of directors. SAC meetings are held on the first Tuesday of the month at 3 p.m. at TMWA's main office located at 1355 Capitol Blvd. in Reno. The meetings are open to the public and are posted in the "Meeting Center" section at www.tmwa.com/meetings.

• Online at www.tmwa.com – If you are unable to attend a public meeting but still wish to comment on a topic or agenda item, you can do so by submitting your comment online at least one full week before the date of any public meeting. Simply fill out the "Comments to the Board" form here: tmwa.com/about_us/comments.

TMWA MEETINGS WATER SYSTEMS  
UPCOMING EVENTS

| GENERAL INQUIRIES | 834-3080 |
| EMERGENCY REPAIR | 834-3090 |
| WATER CONSERVATION | 834-3095 |
| WATER QUALITY | 834-3112 |
| WATER RIGHTS | 834-3035 |
| OWNERSHIP | 834-3090 |

STANDING ADVISORY COMMITTEE
March 6 at 2 p.m.
BOARD OF DIRECTORS MEETING
March 21 at 3 p.m.
IRRIGATION SYSTEM START-UP WORKSHOP
March 27 at 5 p.m.

Find locations and details for all workshops and meetings here: tmwa.com/about_us/meetings
RESPONSE
March 9, 2018

Via Electronic Mail- CBateman@ag.nv.gov
& Hand Delivery to:

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
Boards and Open Government Division
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

Re: RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES- OPEN MEETING LAW COMPLAINT OF KATZ, AARON
O.A.G. FILE NO. 13897-263

Dear Ms. Bateman:

We received your February 23, 2018, correspondence notifying the Incline Village General Improvement District (herein referenced as “IVGID” or the “District”) of the above referenced complaint submitted by Aaron Katz alleging that IVGID has violated the Nevada Open Meeting Law (“OML”). Please accept this correspondence and the referenced enclosures as IVGID’s response.

Issue Presented

1. Whether the IVGID Board of Trustees acted in accordance with the Open Meeting Law when a written statement submitted by member of the public, Frank Wright, co-authored by the complainant, Mr. Katz (who was not present during the September 13, 2017 meeting) was not included in the September 13, 2017 meeting minutes.

2. Whether the IVGID Board of Trustees acted in accordance with the Open Meeting Law when a written statement submitted via e-mail by the complainant, Mr. Katz (who was not present during the September 26, 2017 meeting) was not included in the September 26, 2017 meeting minutes.

IVGID’s Position

Issue 1:

IVGID did not fail to attach written remarks proffered by a member of the general public to the written minutes, as the Board is unable to accept joint written statements, or statements on behalf of absentee members of the public.

NRS 241.035(1)(d) is clear when it establishes the written minutes of a meeting must include remarks/written statements made by:

“...any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the
member of the general public has prepared written remarks, a copy of the prepared
remarks if the member of the general public submits a copy for inclusion.”

On September 13, 2017, member of the general public, Frank Wright, addressed the Board during the first
public comment section of the Board of Trustees meeting, attempting to submit a written statement admittedly
co-authored and on behalf of the complainant, Aaron Katz, who was not in attendance neither in person or by
acceptable form of electronic communication. (See Livestream Video Link of September 13, 2017 regular Board
of Trustees meeting beginning at time mark 23:44-27:12 at Exhibit “1”).

NRS 241.035(1)(d) does not require the Board to include jointly prepared statements, authored and
submitted on behalf of an absentee member of the public. Written statements are included in the meeting
minutes to supplement offered comment of those present during the meeting, not for the purpose of allowing
absentee participation. For the purpose of establishing authenticity of authorship, as well as consent to publish,
the Board is unable to accept statements given by one member of the public on behalf of another member of the
public to be entered into the record. All other documents authored and requested to be entered into the record by
Mr. Wright were appropriately included in the meeting’s minutes.

On August 22, 2017 Mr. Wright also addressed the Board and aggressivley and threateningly attempted
to submit a written statement on behalf of the absent Mr. Katz, at which time he was told the statement would not
be accepted and any member of the public wishing to have their written statement added to the meeting’s minutes
would have to appear and address the Board. Mr. Wright responded that an OML complaint would be filed. (See
Livestream video link of August 22, 2017 regular Board of Trustees meeting beginning at time mark 23:44-27:12
at Exhibit “2”; see also Dropbox link to audio recording of August 22, 2017 regular Board of Trustees Meeting
beginning at time mark 27:39-31:07 at Exhibit “3”).

When submitted appropriately, Mr. Katz’s statement was later recorded in the January 24, 2018 Board
packet without incident (See Notice of Meeting and pages 338-365 of the January 24, 2018 Board of Trustees
regular meeting Packet at Exhibit “4”). IVGID maintains that had this document been submitted correctly, either
at a time when both Mr. Katz and Mr. Wright could appear or with Mr. Wright listed as the sole author (and not
with or on behalf of a non-present member of the public), the statement would’ve been accepted into the meeting’s
minutes, or had the statement been submitted to be included in the Board’s packet, the statement would have
been included.

Issue 2:

IVGID did not fail to attach written remarks proffered by a member of the general public to the written
minutes, as the Board is only able include written statements given by those present at the meeting in the written
minutes.

Despite the Board advising the public nearly a month prior that all statements included into the meeting
minutes must be submitted at the meeting, by the member of the public issuing the statement, on September 21,
2017, the complainant, Mr. Katz, sent the Board an e-mail along with an additional written statement and a
requested his statement be included as a “written statement to the written minutes.” (See e-mail at Exhibit “5”).
Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
March 9, 2018

His "additional e-mail statement" which was unable to be included into the meeting’s minutes, as e-mail correspondence does not constitute meeting presence (per the OML manual) and members of the public must be present to have their statements attached.

Nevada Open Meeting Law Manual sets forth what constitutes a member of the public as “present” at a meeting:

"...A member of a public body may be present through video conference or teleconference, but not through social media, such as a chat room, or email. The public must be able to view and/or hear the public body and be able to participate in the public meeting."

This policy is in conjunction with the participation standard set for members of the Board. Members of the Board are able to participate in a meeting by means of electronic communication; however, only through telephone or video conference. Just as members of the public are unable to e-mail written statements to be included as statements given during the meeting, Board members are prohibited from e-mail comments proactively. Members of the public unable to attend the meeting but wishing to be heard are allowed the opportunity to submit e-mail correspondence to be included in the Board packets, as Mr. Katz has done on numerous occasions.

When submitted appropriately, Mr. Katz’s September 21, 2017 e-mail statement was later recorded in the January 24, 2018 Board packet without incident (See pages 372-373 of the January 24, 2018 Board of Trustees regular meeting packet at Exhibit “6”). IVGID maintains that had this document been submitted correctly the statement would’ve been accepted into the meeting’s minutes if Mr. Katz were present, or in the packet, if Mr. Katz had requested the statement be submitted with the packet in a timely manner.

Scope of Response

IVGID has not responded to each and every assertion submitted in Mr. Katz’s narrative. IVGID’s response has focused on whether there was a violation of the Nevada Open Meeting Law.

IVGID Did Not Violate the Open Meeting Law

In the event that this memorandum has failed to address an alleged violation of the Nevada Open Meeting Law due to the vagueness and ambiguity of Mr. Katz’s Complaint, IVGID denies that any such violation has occurred. IVGID has a stellar record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

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Concluding Remarks

In accordance with the foregoing, IVGID respectfully requests that the Attorney General conclude that there has been no violation of the Nevada Open Meeting Law.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Aaron Katz, O.A.G. File No. 13897-263.

Sincerely yours,

Hutchison & Steffen, LLC
Jason D. Guinasso, Esq.

Encl.
cc: Chairwoman Kendra Wong
    General Manager Steve Pinkerton
    District Clerk Susan Herron

JDG:bf
EXHIBIT 1
https://livestream.com/IVGID/events/7720044/videos/162784045
September 13, 2017 link to livestream video. Specific discussion beginning at time mark 23:44-27:12
https://livestream.com/lvclid/events/7666008
Link to Livestream video of August 22, 2017 meeting. Specific discussion beginning at time mark 23:44 and ending at 27:12.
EXHIBIT 3
https://www.dropbox.com/sh/qr6qhnsl6lse8o9/AAAl0KeUjVULvmR6v-qfBZGUa?dl=0
Dropbox link to Audio recording of August 22, 2017 meeting. Specific discussion beginning at time mark 27:39 and ending at 31:07.
EXHIBIT 4
NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6 p.m. on Wednesday, January 24, 2018 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – A public body has a legitimate interest in conducting orderly meetings. IVGID may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the line of communication open.

D. APPROVAL OF AGENDA (for possible action)

The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.

-OR-

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.

E. DISTRICT STAFF UPDATES*

1. Diamond Peak Ski Season to date (Presenting Staff Member: Diamond Peak Ski Resort General Manager Mike Bandelin)
F. GENERAL BUSINESS (for possible action)

1. Review, discuss, and possibly approve the agreement between the Diamond Peak Ski Education Foundation (DPSEF) and the Incline Village General Improvement District covering the period December 14, 2017 to June 30, 2022 (Requesting Staff Member: Diamond Peak Ski Resort General Manager Mike Bandelin) – pages 4 - 26

2. Review, discuss, and possibly provide direction on the Utility Rate Study Presentation 2018 (Requesting Staff Member: Director of Public Works Joe Pomroy) – pages 27 - 81

3. Review, discuss, and possibly approve a Sole Source Finding and review, discuss, and possibly authorize a Procurement Contract for a Replacement Articulated Tractor Snowblower and Flail Mower – 2017/2018 Capital Improvement Projects: Fund: Public Works; Division: Shared; Project # 2097HE1731; and Fund: Public Works; Division: Sewer; Project # 2523LE1720; Vendor: ASI Nevada in the amount of $175,524.78 (Requesting Staff Member Director of Asset Management Brad Johnson) – pages 82 - 88

4. Review, discuss, and possibly approve a Sole Source Finding and review, discuss, and possibly authorize a Procurement Contract for one TriFlex Mower and one Multi Pro Spray Rig – 2017/2018 Capital Improvement Projects: Fund: Community Service; Division: Golf; Project # 3242LE1730 and 3197LE1722; and Vendor: Turf Star in the amount of $111,514.66 (Requesting Staff Member Director of Asset Management Brad Johnson) – pages 89 - 95

G. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton – pages 96 - 98

H. APPROVAL OF MINUTES (for possible action)

1. Regular Meeting of October 25, 2017 – pages 99 - 224

2. Regular Meeting of November 15, 2017 – pages 225 - 291

3. Regular Meeting of December 13, 2017 – pages 292 - 403

4. Regular Meeting of January 10, 2018 – pages 404 - 505

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

   A. Update on Acquisition and Sale of Unbuildable Tax Delinquent Properties – pages 506 - 517

   B. Litigation Update:
      ❖ IVGID v. GSGI under Case No. CV17-00922 - Order Granting IVGID's Motion for Preliminary Injunctive Relief – pages 518 - 531
      ❖ Katz v. IVGID under Appeal No. 70440 - Order Submitting For Decision Without Oral Argument – page 532
NOTICE OF MEETING

Agenda for the Board Meeting of January 24, 2018 - Page 3

C. Update on the Attorney General’s Decision Finding No Open Meeting Law Violation in response to OML Complaints of Frank Wright under File Nos. 13897-242; 13897-244; 13897-245 – pages 533 - 536

J. BOARD OF TRUSTEES UPDATE (NO DISCUSSION OR ACTION) ON ANY MATTER REGARDING THE DISTRICT AND/OR COMMUNITIES OF CRYSTAL BAY AND INCLINE VILLAGE, NEVADA*

1. Receive the Annual Report from the Audit Committee (reference Policy 15.1.0, Paragraph 2.0, 6.)

K. CORRESPONDENCE RECEIVED BY THE DISTRICT*

L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see Public Comment Advisory Statement above.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action) – pages 537 - 539

N. ADJOURNMENT (for possible action)

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, January 19, 2018 at 8:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of January 24, 2018) was delivered to the post office address to the people who have requested to receive copies of IVGID’s agenda; copies were either fixed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Verderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley’s Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID’s Recreation Center
7. The Chateau at Incline Village

[Signature]

Sue A. Herron, CMC
District Clerk (e-mail: sah@ivgid.org/phone # 775-832-1207)

Board of Trustees: Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.

Notes: Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.

IVGID’s agenda packets are now available at IVGID’s web site, www.yourtahoeplace.com; go to “Board Meetings and Agendas”. A hard copy of the complete agenda packet is also available at IVGID’s Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.

*NRS 241.020(2) and (10): 2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting...10. As used in this section, “emergency” means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; (b) Any impairment of the health and safety of the public.
WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN MINUTES OF THE IVGID BOARD'S REGULAR SEPTEMBER 13, 2017 MEETING – AGENDA ITEM E(1) – PROPOSED MODIFICATION TO THE GROUND LEASE BETWEEN IVGID AND THE PARASOL TAHOE COMMUNITY FOUNDATION ("PARASOL")

Introduction: Here, again, the IVGID Board's chairperson continues to shepherd this agenda item forward notwithstanding our community is overwhelmingly opposed. The purpose of this written statement is to summarize what we've learned in the hope the Board sees there is no reason to pay the Parasol anything for those improvements [the Donald W. Reynolds Non-Profit Center Building ("the building")] constructed upon IVGID's 2.36 acres of land.

This written statement represents a summary of facts disclosed in my prior April 13, 2017¹, May 10, 2017², June 12, 2017³ and July 20, 2017⁴ written statements submitted to the IVGID Board and attached to the written minutes of those meetings.

Underlying Facts: As Ms. Wong's April 4, 2017 memorandum⁵ admits,

1. The land underneath the building (2.36 acres) is owned by IVGID⁶;

2. Parasol currently has a $1/year ground lease with IVGID⁷ ("the lease"). The lease commenced January 12, 2000, for an "initial term" of thirty (30) years, "with three (3) additional, twenty-three (23) year options to renew/extend."⁸

⁶ See page 179 of the 5/10/2017 Board packet.
3. ¶IV(A) of the lease\(^7\) requires Parasol to "use the premises for the purposes of conducting thereon a Nonprofit Center, and related facilities, activities, seminars, workshops, lectures, and occasional fund raising events" and no "other purpose or purposes, without the express prior written consent of" IVGID;

4. The lease was amended approximately 2 years later on January 24, 2002\(^10\) ("the lease amendment"), and at ¶XXV(C)(3) thereof expanded the limitations on Parasol's use of the building as "more particularly set forth in its Business Plan - 2001 attached (t)hereto as Exhibit C...as said Business Plan may be amended from time to time in the future;"\(^11\)

5. Notwithstanding ¶XXV(C)(3) of the lease instructs that "any material modification to (Parasol's) purposes and the Business Plan, which would affect (its) actions under th(e) lease, (can) be made only with (IVGID's) consent," in 2009 Parasol modified its 2001 Business Plan\(^12\) ("the 2009 Business Plan") without IVGID's consent;

6. ¶XIII(A)(3) of the lease instructs that Parasol's "failure to operate the facility to (IVGID's) satisfaction, including but not limited to...(b) a significant reduction in use from what is contemplated in Parasol's Long-term Business Plan;"

¶XIII(A)(6) of the lease instructs that "should (Parasol's) primary use of the property for a purpose or for purposes other than as intended hereunder, (which)...include(s) ancillary activities associated with the facility, such as rock bands, destructive behavior of patrons, parking lot abuses, or any other behavior deemed inappropriate by (IVGID's) Board of Trustees...persist(s)...after thirty (30) day's written notice to cease and desist;"

¶XIII(A)(6) of the lease instructs that "should (Parasol) vacate or abandon the leased property during the term of th(e) lease;"

¶XXV(D) of the lease amendment instructs that the "lease...terminate(s)...if the (use) requirements (there)under...are not met," or if (IVGID's) consent as required herein is not obtained;

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\(^8\) See sections II(A)-(B) at pages 277-278 of the 4/25/2017 Board packet.


\(^12\) See pages 350-369 of the 4/25/2017 Board packet.
¶XIII(A) of the lease instructs that "the occurrence of any of the(se events)...shall constitute a default by" Parasol. IVGID's remedies appear at ¶¶XIII(A)(6) and XIII(B) of the lease. ¶XIII(A)(6) declares that "the property, including all improvements thereon, shall revert to IVGID's full use and ownership." ¶XIII(B) of the lease instructs that in the event of a default or breach, IVGID shall have the following rights "to be exercised separately, cumulatively and/or in combination...at its sole option:" 

a) To terminate all of the rights of Lessee in and to the leased property;

b) Without declaring the term of this Lease ended, to reenter the leased property and to occupy the same, or any portion thereof;

c) To relet the whole or any portion of the leased property, for and on account of itself or others; and/or

d) To require Parasol to remove the Nonprofit Center facility from the leased premises, and return said real estate to its former, natural state/condition; and,

7. Because Parasol proposes a lease back "for the purpose of providing grants and other support to local charities and non-profit organizations," according to Chairperson Wong, Parasol's proposed modifications to the lease will no longer meet the lease's use requirements.

In addition to Ms. Wong's April 4, 2017 admissions⁵, I note the following facts:

8. IVGID's 2.36 acres, which are the subject of the lease, were originally part of a larger 26.6 acre parcel purchased from Boise Cascade Home & Land Corporation ("Boise Cascade") on November 16, 1977 for $1¼M¹⁴;

9. Although the subject 26.6 acres was initially purchased with (what may very well have been an impermissible) a loan from the IVGID's utility capital reserves (funded as a result of rates and charges paid by IVGID's water and sewer services customers), that loan was subsequently repaid with Recreation Facility Fee ("RFF") monies;

10. In addition to this $1¼M cost, paragraph XIII(A)(10) of the lease³⁵ reveals that IVGID paid 50% of the costs for an Environmental Impact Statement and TRPA Air and Water Quality Mitigation

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¹⁴ See ¶1 of that September 26, 1977 "Purchase Agreement and Escrow Instructions" ("the purchase agreement") between IVGID and Boise Cascade (this portion of the purchase agreement can be viewed at page 165 of the 5/10/2017 Board packet).
on Parasol's behalf. Since IVGID staff have still not shared the full extent of these additional costs, for purposes of this written statement, I am going to assume an additional $15,000;

11. Thus the public's pro-rata 1977 cost for Parasol's 2.36 acres was very likely close to $125K of the RFF. And what have local property owners assessed the RFF received in consideration? $1/year for the past 15 years, or a whopping $15;

12. At the time of IVGID's purchase of the subject 26.6 acres, Covenants, Conditions and Restrictions¹⁶ ("the CC&Rs") were recorded against the property which protected the public by expressly restricting their use "only for park and recreational and related purposes, and for no other purposes."¹⁷ In other words, since the RFF was used to purchase the subject 26.6 acres, their use had to be expressly limited²⁰ to "park and recreational (availability)...purposes, and...no other purposes;"

13. Because ¶18(b) of the purchase agreement²⁰ instructs that IVGID's purchase of the subject 26.6 acres is "contingent upon (IVGID) obtaining final court approval²⁰ of the purchase...prior to the close of escrow,"²⁰ or IVGID's "waive(r) in writing" of this contingency. I have made at least two public records request for examination of that court approval, identity of the case number for which that approval was sought, and/or evidence of any written waiver of this approval requirement by IVGID. Because IVGID's Public Records Officer ("PRO") has provided NOTHING in response, as far as I am concerned, IVGID's purchase of this land for the purpose represented was invalid from day one;

14. There was another condition of sale which it turns out is very relevant to the subject issue, and that was: Mansel Ocheltree's purchase of an adjacent 31+ acres from Boise Cascade ("the

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¹⁵ See pages 303-304 of the 4/25/2017 Board packet.

¹⁶ Who prepared the CC&Rs? Likely not Boise Cascade because the type font used for the purchase agreement and the deed conveying title to the subject 26.6 acres differs markedly from the type font used for the CC&Rs. I intend to return to this question below.

¹⁷ See page 180 of the 5/10/2017 Board packet. Notwithstanding, I have attached a copy of the CC&Rs as Exhibit "A" to this written statement.

¹⁸ According to IVGID, the RFF is an annual NRS 318.197(1) "standby service charge" which pays for nothing more than the parcels/residential dwelling units' which are involuntarily assessed "availability of use of the (public's) recreational facilities" (see ¶1 of the latest "Report for Collection on the County Tax Roll of Recreation Standby and Service Charges" at page 103 of the 5/24/2017 Board packet).

¹⁹ See page 166 of the 5/10/2017 Board packet.

²⁰ In other words, a NRS 43.100(1) action to determine the validity of proposed governmental action ("the governing body may file or cause to be filed a petition at any time in the district court...praying a judicial examination and determination of the validity of any...instrument, act or project of the municipality").
Ocheltree property"), and his contemporaneous conveyance of those lands to IVGID by gift deed\(^{21}\);

15. On December 7, 1977 Mansel and Patricia Ocheltree gift deeded the Ocheltree property to IVGID. And just like the 26.6 acres IVGID purchased from Boise Cascade, Mr. and Mrs. Ocheltree subjected the Ocheltree property to the \textit{very same use restrictions} as those in the CC&Rs\(^{22}\) ("the Ocheltree CC&Rs"). Since IVGID has not seen fit to share the Ocheltree gift deed or the Ocheltree CC&Rs with the Board and the public, I have attached copies of both as Exhibit "B" to this written statement\(^{23}\).

16. Let's fast forward 5½ years to June 6, 1983. IVGID wants to lease approximately ½ acre of the former Ocheltree property to the Reno-Sparks Visitors and Convention Bureau\(^{24}\) ("the RSVCB") for its use as a Visitors Center. Since IVGID's attorney realized this use would violate the restrictions included in the Ocheltree CC&Rs (Exhibit "B"), putting aside the question of whether CC&Rs can be unilaterally amended by a former owner 5½ years after the fact when members of the public will be directly affected, "someone" decided to circumvent those restrictions by seeking an amendment. And on June 6, 1983 Mr. and Mrs. Ocheltree give that "amendment" ("the amended Ocheltree CC&Rs") to the Ocheltree CC&Rs\(^{25}\). Since IVGID has not seen fit to share the amended Ocheltree CC&Rs with the Board and the public, I have attached another copy as Exhibit "C" to this written statement;

17. There are several interesting aspects to the amended Ocheltree CC&Rs. First of all, according to the top portion of Exhibit "C," the attorney who recorded them, if he didn't also draft them as well, was Gino Menchetti;

18. After the amended Ocheltree CC&Rs were recorded, on July 17, 1984, IVGID entered into a ground lease with the RSVCB for the subject ½ acre ("the RSVCB lease"). Notably unlike ¶XV of the lease\(^{26}\), there is no provision in the RSVCB lease whereby the RSVCB waives and releases any claims it may have against IVGID relating to represented permissible uses in light of the Ocheltree CC&Rs and amended Ocheltree CC&Rs. Nor does it include a provision, unlike ¶XV of the lease, where the RSVCB

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\(^{21}\) See ¶18(a) at page 166 of the 5/10/2017 Board packet.

\(^{22}\) Who prepared the Ocheltree CC&Rs? I submit likely the same person who represented the Ocheltrees in their purchase of the Ocheltree property, and their contemporaneous gift deed to IVGID. That person apparently drafted a written "gift offer" and amended "gift letter" to IVGID to secure its approval. Although I have asked the PRO to examine both, so far, they have not been made available for my examination.

\(^{23}\) I ask the reader examine the CC&Rs (Exhibit "A") and the Ocheltree CC&Rs. They are nearly identical.

\(^{24}\) Just like Parasol, at $1/year for up to ninety-nine (99) years.

\(^{25}\) See page 181 of the 9/13/2017 Board packet.

\(^{26}\) See page 310 of the 4/25/2017 Board packet.
agrees to indemnify and hold IVGID harmless from any claims, demands or lawsuits should any persons challenge the RSVCB's use because of the Ocheltree CC&Rs and amended Ocheltree CC&Rs.\footnote{In other words, why was IVGID not concerned about the effect of the amended Ocheltree CC&Rs, and so concerned about the amended CC&Rs?}

19. Let's fast forward another 16 years to July 1, 1999. Now IVGID wants to lease the subject 2.36 acres to Parasol for its use as a Non-Profit Center.\footnote{See page 182 to the 5/10/2017 Board packet. I have attached a copy of this document as Exhibit "D" to this written statement.} Since IVGID realizes this use will violate the CC&Rs use restrictions (Exhibit "A"), "someone" decides to circumvent those restrictions by seeking an amendment. Again putting aside the question of whether CC&Rs can be unilaterally amended by a former owner \textit{2 or more years after the fact}, especially when members of the public are directly affected, on July 1, 1999, Irving Littman ("Littman"), purportedly on behalf of Gardena, gives the requested "amendment"\footnote{I ask the reader examine the amended CC&Rs (Exhibit "D") and the amended Ocheltree CC&Rs (Exhibit "C"). They are nearly identical.} to the CC&Rs\footnote{"the amended CC&Rs";}.

20. And that amendment modifies \textit{1} of the CC&Rs to now read as follows:

"The property shall be used only for park and recreational and related purposes and for no other purposes except for the construction of a building for the use of the Parasol Foundation, Parasol Foundation collaborators or the Parasol Foundation legal successors."

21. The amended CC&Rs were recorded on November 30, 1999 as document #2402584, at the request of D.G. Menchetti, Ltd. Since IVGID has not seen fit to share the recorded amended CC&Rs with the Board and the public, I have attached a copy as Exhibit "E" to this written statement;

22. Barely 1½ months after the amended CC&Rs were recorded (Exhibit "E"), the parties entered into the lease. And tellingly, \textit{18} recites as follows:
IVGID and Parasol "have full knowledge of the existence of the November 16, 1977, Deed from Boise Cascade Home & Land Corporation, a Delaware corporation, to (IVGID), which Deed contains a restrictive covenant which affects the reality being leased hereunder; that the 1977 Deed's Covenants, Conditions and Restrictions limit the use of said reality to the following uses: '...park and recreational and related purposes and for no other purposes; that, the restrictions have been amended twice; that the relevant amendment, executed July 1, 1999, was signed by Irving Littman, President of Gardena Service Company, a California corporation, with the latter corporation being the successor of Boise Cascade Home & Land Corporation; that said amendment reiterates the foregoing mentioned restriction, excepting however, construction of a building for the use of the Parasol Foundation, Parasol Foundation collaborators or the Parasol Foundation legal successors.' Although the referenced Amendment To Covenants, Conditions and Restrictions appears to resolve any concerns about the use to which the subject property may not be put, (Parasol) hereby assumes full and complete responsibility regarding said issue, and hereby agrees to hold (IVGID) free and harmless of any claims, demands or lawsuits by any persons who may challenge the Amendment. (Parasol) further agrees to indemnify (IVGID) concerning any such claims, including orders, judgments, attorney's fees and costs;"

23. Notwithstanding ¶XIII(A)(3)(b) of the lease\(^{30}\) prohibits "a significant reduction in use from what (wa)s contemplated in Parasol's Long-term (2001) Business Plan," Parasol has significantly reduced (by 80% or more) the number of resident non-profits. Although page 7 of the 2001 Business Plan\(^{11}\) represents that "resident collaborators" will occupy 7,608 square feet\(^{21}\) of the building's 9,067.5 square feet of total office space\(^{32}\), today those resident collaborators occupy a "shell" of what Parasol originally represented. Moreover according to Parasol's proposed "lease amendments," it contemplates reducing office space square used by those resident collaborators by over 71% to 2,200 square feet\(^{33}\) for 6 years (until December 31, 2023), and then to nothing thereafter\(^{34}\). I submit that these facts evidence an anticipatory, if not outright, lease "default by the Lessee;"

24. Notwithstanding ¶XXIV(C)(3) of the amended lease\(^{35}\) instructs that "any material modification to (Parasol's) purposes and the Business Plan which would affect (its) actions under th(e) lease, (can) be made only with (IVGID's) consent," as aforesaid, in 2009 Parasol modified its 2001 Business Plan\(^{12}\) without securing IVGID's consent. I submit this evidences "default by the Lessee;"

\(^{30}\) See page 299 of the 4/25/2017 Board packet.

\(^{31}\) See page 332 of the 4/25/2017 Board packet.

\(^{32}\) See page 331 of the 4/25/2017 Board packet.

\(^{33}\) See ¶IV(E)(2) at page 136 of the 5/24/2017 Board packet.

\(^{34}\) See ¶1(D)(4) at page 134 of the 5/24/2017 Board packet.

\(^{35}\) See page 346 of the 4/25/2017 Board packet.
25. Since according to Chairperson Wong, on March 17, 2017 Parasol "sent a letter to the IVGID Board indicating an interest in possibly modifying the existing ground lease," here we are.

Because the Amended CC&Rs Which Purportedly Permit Parasol to Use the Subject 2.36 Acres Are Phony, Parasol is Currently in Violation of the CC&Rs: if one reads the amended CC&Rs (Exhibit "E"), one learns: Gardena is "a California corporation;" it is the "successor by merger to Boise Cascade;" and, that Littman is its president. How did the drafter of the amended CC&Rs know these recitals of fact, let alone know them to be true? Let alone 22 years after the fact? Let me suggest how.

1. If one examines the California Secretary of State's business entities search page, one can learn quite a bit of history about any California corporation, expressly including Gardena. For instance, on December 11, 1989 Boise Cascade filed its "merger" with Gardena with the California Secretary of State. On January 30, 1990 Gardena filed an "ejection to dissolve." And on that same day, the California Secretary of State issued a certificate of "dissolution" for Gardena;

2. But if the drafter of the amended CC&Rs learned of these facts as I have suggested, when did he/she learn of them? It had to be sometime after January 30, 1990, didn't it? And why would that drafter have gone looking for this information until it was necessary (i.e., once the decision was made to draft the amended CC&Rs)? Thus I submit that person went looking for this information only shortly before July 1, 1999; probably June of 1999;

3. If one examines Exhibit "E," I believe one will conclude that if the drafter of the amended CC&Rs learned of the particulars of Gardena and Boise Cascade's merger after January 30, 1990, as he/she had to do in order to recite the facts that are recited therein, then he/she also had to learn that Gardena no longer existed;

4. These facts caused me to question why someone like Littman would place his signature to a document on behalf of Gardena when he knew Gardena was dissolved nearly 10 years before? Because there had to be money involved, and I suspect a lot of money, I made a public records request to examine records evidencing payments to Gardena, Littman or anyone else on behalf of the two occurring in 1999 prior to Littman's execution of the amended CC&Rs. The PRO responded IVGID has no such records;

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36 See page 274 of the 4/25/2017 Board packet.
37 I have attached a copy of that page as Exhibit "F" to this written statement.
38 See pages 164-174 of the 9/13/2017 Board packet.
39 See page 175 of the 9/13/2017 Board packet.
5. So this response caused me to search a bit further. My search took me back to October 29, 1997 where I examined the minutes of a regular IVGID Board meeting of even date. After protest by local residents, then GM Pat Finnigan "made (it) clear to the Parasol Foundation that it (would be)... their duty to resolve the deed restriction issue" which I suspect, is exactly what occurred;

6. So with all of this said, let's return to Exhibit "C." If one compares this CC&R amendment (the amended Ocheltree CC&Rs) to Exhibit "D" (the unrecorded amended CC&Rs), besides the fact the language in the two is almost identical, one sees that Exhibit "C" has recording information at the top of the document, whereas Exhibit "D" does not. Nor does Exhibit "D" include language identifying to whom that recorded document should be mailed after its recordation. I submit that this document was intentionally "doctored" by one or more IVGID employees to hide this missing information;

7. Only recently did I discover the amended CC&Rs had been recorded (Exhibit "E") [and this is where things get interesting]. Upon learning of this fact, I made a public records request to examine the recorded amended CC&Rs. Given IVGID continues to be the owner of what remains of the original 26.6 acres, surely it must have a copy of the actual recorded instrument, must it not?

The reader of this written statement may be asking him/herself why I would ask for a copy of a document I already had? Because I wanted evidence IVGID staff were in fact in possession of that document and rather than making it available to the Board and the public for their consideration, they elected to only make a falsified version of the document (Exhibit "D"). Nevertheless, so far the PRO has not substantively responded to my request. She states she needs additional time. Although I will certainly give the PRO the additional time she legitimately requires, I predict she will ultimately respond that IVGID "has no public records which respond to my request." Because if she responds otherwise, I submit she will in essence be admitting Exhibit "E" has been falsified;

8. Nevertheless, once I compared the recorded amended CC&Rs (Exhibit "E") to the unrecorded version (Exhibit "D") here is what I saw:

Apparently someone placed a piece of paper over the top of Exhibit "D" in order to hide Mr. Menchetti's identity as well as the document's recording information. And then that someone made a copy of the falsified page, and then made it available to the Board and the public as if this were the actual document when we now see it was not. I submit Exhibit "D" represents that falsified page;

9. Now that we know who recorded the amended CC&Rs (attorney Menchetti), if he did not in fact draft them, we can ask the question who represented Parasol insofar as negotiating and drafting

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41 I have attached the relevant portions of the IVGID Board's October 29, 1997 meeting as Exhibit "H" to this written statement.

42 NRS 239.300(1) makes it unlawful for any person to falsify a public record. NRS 239.330 makes it unlawful for any person to offer a falsified public record.
of the lease? It turns out he is the same attorney, Gino Menchetti\textsuperscript{43};

10. Who recorded the amended Ocheltree CC&Rs (Exhibit "C")? The same attorney Menchetti. Who drafted the amended Ocheltree CC&Rs? I can't tell you the answer, however, since we know attorney Menchetti recorded them, I suggest we compare the font type used for the Ocheltree gift deed and CC&Rs (Exhibit "B") to the amended Ocheltree CC&Rs (Exhibit "C");

11. Whose obligation was it to "resolve the deed restriction issue?" Parasol's\textsuperscript{41};

12. Let's return to the signature page of the lease where attorney Menchetti's signature appears\textsuperscript{43}. Note where attorney Menchetti has inserted the words below his signature "as to form only." Why would the attorney for Parasol insert such words in a document he was approving on his/her client's behalf? What was he trying to "limit" by inserting these words? And to put this question in perspective, take a look at Judge Manoukian's signature as IVGID's attorney. Conspicuously, no such "limitation" insofar as his signature is concerned appears;

13. Continuing, only recently did the public learn that on July 1, 1999 when Gardena amended the CC&Rs, Gardena did not legally exist! Examining California Secretary of State records (Exhibit "F"), nearly 10 years before (January 30, 1990), we can see Gardena elected to dissolve itself and distribute its then remaining assets\textsuperscript{39}. I submit this means the amended CC&Rs are completely void and unenforceable;

14. Let's return to ¶15 of the lease\textsuperscript{26} where both IVGID and Parasol have acknowledged they have "full knowledge of the existence of the CC&Rs, their use restrictions ("park and recreational and related purposes and...no other purposes"), that those restrictions have been amended twice, that the relevant amendment, executed July 1, 1999, was signed by Littman, President of Gardena, a California corporation, and that Gardena was the successor of Boise Cascade. But didn't they all know that Gardena had not legally existed for nearly 10 years? How could any competent attorney have learned of all of the above-recited facts and not known Gardena did not exist? What competent attorney would have accepted all of the above-recited facts and not independently confirmed them to be true? What competent attorney would have accepted Littman's representation he was Gardena's President without verifying the same along with Littman's authority to execute the amended CC&Rs? And what competent attorney for IVGID would blindly accept the truthfulness of any of the above-recited facts after making clear on October 29, 1997 that it would be "Parasol's)...duty to resolve the deed restriction issue?"\textsuperscript{41}

Under agency law, whatever attorneys Menchetti and Manoukian knew, their clients knew, even if their clients had no actual knowledge. In other words, everyone knew except the IVGID Board at the time, and the public;

\textsuperscript{43} See page 317 of the 4/25/2017 Board packet.
15. Now that we know the truth, don't these facts now explain why it was so important IVGID staff secure a written release and indemnification from Parasol should "any persons (make) claims, demands or lawsuits...challenging the (CC&R) Amendment?" And don't they explain why Parasol was required to "assume...full and complete responsibility regarding said issue" if it wanted to benefit from this "sweet deal" at local property owners' expense? And don't they explain why attorney Menchetti only placed his signature on the lease in his capacity of approving the document as to form only44? But wait, there's more;

16. Let's return to the language in to ¶ XV of the lease25 where both parties have acknowledged the CC&R restrictions have been amended twice. Certainly the amended CC&Rs represent one of those two amendments. But what about the other one? I made a public records request to examine the first alleged amended CC&Rs (again, given IVGID continues to be the owner of what remains of the subject 26.6 acres, surely it must have a copy, must it not?). After I made my first request, the PRO disingenuously queried where I had gotten information concerning two sets of amendments because she was only aware of one. Once I pointed her to ¶ XV of the lease, she responded IVGID "has no public records which respond to my request;"

17. So this answer got me thinking. If all parties to the lease knew about two CC&R amendments, what was the first? Given I knew that IVGID had sold approximately 6 acres from the subject 26.6 acres to the Washoe County School District ("the WCSD") for the Incline Middle School in 1980, perhaps someone had executed a CC&R amendment which permitted use of these restricted lands for public school purposes? So, I made a public records request to examine the sales/purchase contract between IVGID/the WCSD for the Middle School land. If there were a first amendment to the CC&Rs, surely it would be disclosed in the body of that agreement the way it was disclosed in the lease; wouldn't it? But again the PRO responded she "has no public records which respond to my request."

That was before I obtained IVGID's public records retention policy. After examination of that policy I noticed that contracts like the one requested are supposed to be scanned and stored with other archived records. So armed with this new knowledge, I renewed my request pointing to IVGID's public records retention policy. So far the PRO has provided nothing. And I suspect she never will because if she responded before that she has no such records, how can she respond differently now?

18. So next my wife examined Washoe County's development records for the subject Middle School parcel. She found no amendment to the CC&Rs;

19. Next I made a public records request upon the WCSD for the same sales/purchase agreement together with any title insurance policy for that purchase. So far the WCSD has not been able to discover the agreement itself. Notwithstanding, it has located a title policy and that policy evidences that there was no amendment of the CC&Rs (a copy of that policy is attached as Exhibit "J" to this written statement);

44 Who does this unless he/she has something to hide?
20. So who can we say for sure had first hand knowledge that there had been two CC&R amendments? Attorney Menchetti. After all, he was the one who recorded the amended Ocheltree CC&Rs (Exhibit "B"), as well as the amended CC&Rs (Exhibit "E"). Could it be that although Mr. Menchetti recalled there had been two CC&R amendments, he forgot they applied to two different parcels? Given the lapse of 16 years between the two recordings, I have concluded this is exactly what occurred; and,

21. Given the amended CC&Rs are completely void and unenforceable; they were likely prepared by attorney Menchetti, Parasol's attorney; because they were definitely prepared after January 30, 1990, they could not have recited the facts they did without the drafter knowing that Gardena had been dissolved nearly 10 years beforehand; and, Parasol has given IVDG a complete waiver, release and indemnification insofar as this issue is concerned; Parasol is, and since entering into the lease has been in violation of the CC&Rs and needs to be forthwith ejected from the subject 2.36 acres. Moreover, it is now clear the Board has no power to enter into any future transaction or agreement which allows Parasol, its resident collaborators or even IVDG itself, to use the building for purposes other than those expressly allowed in the CC&Rs. In other words, not an office building occupied by persons other than Parasol, not a non-profit center, and not an IVDG administrative building.

This Proposal is NOT a "Lease Amendment" But Rather, Termination of the Current Lease, Outright Purchase of the Parasol Building's Leasehold Improvements, and a Seller Lease Back to Parasol: Staff represents that what is before the Board is nothing more than a "lease amendment agreement.\textsuperscript{45} This is an intentional misrepresentation of fact! Parasol's current lease is a 2.36 acre ground lease. What is proffered has nothing to do with that real property ground lease. Rather, it has everything to do with the:

1. Purchase of "all real property leasehold improvements (defined as 'the building constructed in 2002 and all real property improvements at 948 Incline Way, Incline Village...commonly known as the Donald W. Reynolds Community Non-Profit Center') in an "as is" condition;\textsuperscript{46}

2. Purchase of all "personal property, other than the excluded property (expressly) excluded... located in the building and on the grounds of the real property;\textsuperscript{47}

3. Seller lease back of "approximately 1,700 square feet (of) office space,\textsuperscript{48} an unidentified portion of the building's approximate 2,400 square feet of storage space ("defined as storage cages #11, #12 and #13"), "all utilities, parking, and access through (at least 7,482 square feet of) common

\textsuperscript{45} See page 132 of the 5/24/2017 Board packet.

\textsuperscript{46} See ¶¶II(A) and III(A) at page 134 of the 5/24/2017 Board packet.

\textsuperscript{47} See ¶III(B) at page 134 of the 5/24/2017 Board packet.

\textsuperscript{48} See ¶IV(E)(1) at page 136 of the 5/24/2017 Board packet.
areas\textsuperscript{49} (approximately 6,022 square feet of lobby, etc. space, 906 square feet of restroom space, and
approximate 554 square feet of "first-floor kitchen space\textsuperscript{50}"), non-exclusive "use of all (approximate
11,270 square feet of) meeting rooms,\textsuperscript{50} and "access to and use of the current building internet fiber
connection,\textsuperscript{51} ALL FOR A PALTRY $1/YEAR FOR TWENTY (20) YEARS\textsuperscript{52};

4. Seller lease back\textsuperscript{53} of an additional "approximately 2,200 square feet (of) office space,\textsuperscript{54} an
unidentified portion of the building's approximate 2,400 square feet of storage space (defined as
"nine (9) storage cages\textsuperscript{54}), "all utilities, parking, and access through (at least 7,482 square feet of)
common areas\textsuperscript{49} (approximately 6,022 square feet of lobby, etc. space, 906 square feet of restroom
space, and approximate 554 square feet of "first-floor kitchen space\textsuperscript{50}), non-exclusive "use of all
(approximate 11,270 square feet of) meeting rooms,\textsuperscript{50} and "access to and use of the current building
internet fiber connection,\textsuperscript{52} ALL FOR $2,500/MONTH FOR SIX (6) YEARS\textsuperscript{52}; and,

5. In other words, the purchase price pays for the value of building improvements, non-
excluded tangible personal property, and a seller lease back.

The Payment Provisions of the Subject Proposal Represent an Installment-Purchase
Agreement Which Requires the Affirmative Vote of Four of IVGID's Five Trustees: Although the
parties have artfully labeled the subject transaction to be a "lease amendment agreement,\textsuperscript{45} the
payment provisions make clear that it is an "installment-purchase agreement." Consider that:

1. Because ¶¶II(A) to the proposed agreement given to the IVGID Board ("the proposed
agreement") recites that "upon the full execution of this Agreement, the (current)...lease...shall
terminate,\textsuperscript{55} there is nothing to "amend;"

2. Moreover, consider GM Pinkerton's April 17, 2017 memorandum on this very subject:
"PTFC would like to receive adequate consideration (i.e., payment) for the remaining life of the
(building's) improvements.\textsuperscript{56} In other words, the $5.5M purchase price pays for (or according to Mr.
Pinkerton) "tap(s) the value of the building improvements;"

\textsuperscript{49} See ¶IV(G) at page 137 of the 5/24/2017 Board packet.
\textsuperscript{50} See ¶IV(J) at page 137 of the 5/24/2017 Board packet.
\textsuperscript{51} See ¶IV(H) at page 137 of the 5/24/2017 Board packet.
\textsuperscript{52} See ¶II(A) at page 133 of the 5/24/2017 Board packet.
\textsuperscript{53} See ¶II(D)(2) at page 133 of the 5/24/2017 Board packet.
\textsuperscript{54} See ¶IV(E)(2) at page 136 of the 5/24/2017 Board packet.
\textsuperscript{55} See ¶II(A) at page 134 of the 5/24/2017 Board packet.
\textsuperscript{56} See page 256 of the 4/25/2017 Board packet.
3. In addition, ¶III(B) of the proposed agreement recites that "personal property, other than the excluded property listed below...on the grounds of the real property shall be included in the transfer;"

4. According to GM Pinkerton's August 16, 2017 memorandum pertaining to the retention of Holland and Hart, LLP, attorneys, with respect to legal services related to the proposed agreement, the scope of work to be performed by those attorneys includes "preparation of proposed lease amendment revisions, (a) bill of sale...for building improvements...and financing documents;"

5. ¶IV(B), (C) and (D) to the proposed agreement recite that the $5.5M purchase price shall be paid with a $1.6M down payment, and a $3.9M interest (4.75%) bearing promissory note which calls for "five (5) annual installment payments of $780,000 principal or more and accrued interest." As a consequence, I and others I know are of the opinion the payment terms of this transaction represent a NRS 350.0055(2)(a) "Installment purchase agreement" because they call for "an agreement for the purchase of real or personal property by installment or lease...which is...not required to be counted against any limit upon the debt of a local government and exceeds...$100,000 for a local government in a county whose population is 100,000 or more;" and,

6. Although the decision to purchase the building may only require a simple majority vote of the IVGID Board, because the above installment payment arrangements represent an "Installment purchase agreement," NRS 350.087(1) mandates that before "the governing body of any local government...may authorize a(n)...installment-purchase agreement...it must first adopt...a resolution...by two-thirds of its members." Because more than ½ of the IVGID Board has already announced it will be voting no to entering into such an agreement, I submit that no purpose is served by spending more Board, staff and public time, effort and taxpayer money in pursuit of this folly.

Since Parasol Admits IVGID Already Owns the Building, Why Pay it Anything? Parasol has previously represented to the County Board of Equalization ("the CBOE") that the subject leasehold improvements are owned by IVGID. And that's exactly what the Washoe County Assessor ("the Assessor") has assumed for assessed valuation purposes. For fiscal year 2010-11 the Assessor assessed Parasol for the value of the building notwithstanding the land underneath is owned by IVGID. Parasol objected and appealed that assessment alleging it did not own the building. Rather, it alleged the building was owned by IVGID ["Parasol (was) not been taxed (in the past) because the

57 See page 134 of the 5/24/2017 Board packet.
58 See page 244 of the 8/22/2017 Board packet.
59 Given the subject transaction contemplates preparation of a bill of sale "for building improvements," and IVGID owns the land under those improvements, the bill of sale must apply to personal property. Consequently, NRS 350.2255(2)(a) applies.
60 See page 135 of the 5/24/2017 Board packet.
assumption was *both the building and the land were owned by IVGID.* If that is not the case, Parasol should be taxed. Based upon Parasol's admission, the fact IVGID is exempt from payment of county *ad valorem* taxes, and Parasol is a non-profit organization, Parasol successfully argued it was exempt from paying taxes based upon the building's assessed valuation.

Given Claudia Anderson, Parasol's CEO, testified at that CBOE appeal and advanced Parasol's exemption claim based upon IVGID's ownership of leasehold improvements, how can she now claim Parasol owns these same improvements it proposes selling to IVGID? And if she cannot, why should IVGID be paying Parasol *anything*?

**Since Parasol Admits the Market Value of the Building is ZERO, Why Pay It Anything?** At the August 15, 2017 forum on this very subject held at the Parasol Building, Claudia Anderson admitted that using the appraisal profession's definition of "market value," *the building has a zero value because there is essentially no one other than IVGID who can use it and comply with the use restrictions mandated under the CC&Rs.* I and others I know agree with that assessment. Given Ms. Anderson's admission, why should IVGID be paying Parasol *anything*?

**The Appraisal the IVGID Board Has Commissioned Suffers From a Number of Glaring Deficiencies Which Makes its Opinion of Market Value Lack Credibility:** As part of IVGID staff's alleged "due diligence," on May 24, 2017 the IVGID Board accepted real estate appraiser Lynn Barnett's May 15, 2017 "propos(al) to prepare an appraisal report addressing the" market value of the building. On July 7, 2017 Ms. Barnett completed her "estimat(e of) the Market Value of the subject (building) in its 'As-Is' Condition, as of (that) current date" ("the appraisal"). Consider that:

1. Pursuant to this commission, Ms. Barnett defines "market value" as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or...advised, and acting in what they consider their own best interests; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable

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61 See page 507 of the 8/22/2017 Board packet.


63 See page 163 of the 6/28/2017 Board packet.

64 See pages 116-122 of the 5/24/2017 Board packet.

65 See page 7 of the appraisal under "Purpose of the Appraisal Report."
thereof; and (5) the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale;66

2. This is the definition to which Parasol CEO Claudia Anderson objects (see discussion above) because according to her, other than IVGID, no such buyer exists;

3. Notwithstanding Ms. Barnett admits that because of the CC&Rs she cannot value "the subject property...to its highest and best use"67 (because development is precluded), and that because of "the Restrictive Covenant (i.e., the CC&Rs)...participant sports facilities...recreation centers...outdoor recreation concessions, riding and hiking trails, sport assembly, and visitor information c(an) possibly be allowed,"68 she has assumed "title to the subject property is free, clear and marketable"69 when it is not;

4. Ms. Barnett relies upon two industry recognized appraisal methods to come up with her estimate of value; the "Income (and)...Market Approach." She does not rely upon the "Cost Approach to Value...as it is (her) opinion that a prudent buyer would not base an investment decision on the Cost Approach;"69

5. Under Market Approach to Value, Ms. Barnett relies upon four "comparable commercial building sales."70 But it turns out that but for a single August 4, 2015 sale71 ("Sale CBS-1"), the remaining "sales" are really not actual sales but rather, mere listings for sale. Consequently, I and others I know do not understand how any credence can be given to an estimate of value founded upon comparable sales when those sales are mere listings for sale;

6. Additionally, none of Ms. Barnett's comparable sales involves the sale of improvements excluding the land under those improvements72. Since here IVGID owns the land under the Parasol

66 See page 8 of the appraisal under "Definition of Market Value."
67 See page 36 of the appraisal under "Easements, Encumbrances and Restrictions."
68 See pages 56-57 of the appraisal under "Highest and Best Use Analysis."
69 See page 58 of the appraisal under "Introduction to Valuation Analysis."
70 See pages 78-92 of the appraisal.
71 See pages 87-88 of the appraisal.
72 Comparable Sale CBS-1 included the value of "the total land area...43,774± square feet;" listing CBL-2 includes the value of "the total land area...9,150± square feet;" listing CBL-3 includes the value of "the total land area...9,981± square feet;" and, listing CBL-4 includes the value of "the total land area...59,677± square feet." Whatever the value of the building's underlying 2.36 acres, it must be deducted from Ms. Barnett's estimate of value in order to compare "apples-to-apples."
Building, I and others I know do not understand how any credence can be given to an estimate of value founded upon comparable land sales when here IVGID's land will not be included in the sale;

7. Additionally, none of Ms. Barnett's comparable sales is burdened by restrictions such as the CC&Rs, which limit a potential purchaser's or his/her/its tenant's use to "participant sports facilities...recreation centers...outdoor recreation concessions, riding and hiking trails, sport assembly, and/or visitor information." Since here the land under the Parasol Building is so restricted, I and others I know do not understand how any credence can be given to the appraisal;

8. Additionally, none of Ms. Barnett's comparable sales involves a seller lease back, let alone one which as here prevents IVGID from taking full developmental advantage of the building's unique characteristics/improvements, let alone for less than fair rental value73, and let alone for 20 years. Since here Parasol's proposal is contingent upon a 20 year lease back, I and others I know do not understand how any credence can be given to the appraisal;

9. Anticipating the justified criticism insofar as these obvious deficiencies are concerned, Ms. Barnett asserts "consideration (wa)s given to several (unidentified) recent sales of large professional office buildings in Reno." With all due respect, this admission makes things worse! Anyone who knows anything about Incline Village knows that there is essentially nothing comparable to Reno, nor to the demand for professional office space in Reno. Moreover, Ms. Barnett doesn't even identify those recent sales, nor their particulars. Under these circumstances, I and others I know do not understand how any credence can be given to the appraisal;

10. Under Income Approach to Value, Ms. Barnett relies upon the "potential gross annual income analysis" method. "The first step...is to estimate the potential gross annual income the subject property should be able to generate. From this is subtracted vacancy and credit losses which would most likely occur. (And) the result is the effective gross annual income the property should be able to generate. From this figure is subtracted the expenses that would be incurred in order to generate the effective gross income. (And) the result is the net annual income. A capitalization rate will be established and applied to the net annual income by a comparison of capitalization rates illustrated by recent sales in the area;"74

11. Putting aside the fact the sale or listing for sale of Ms. Barnett's comparable sales: largely involve listings for sale rather than actual sales themselves; include the value of the land under their buildings whereas here the land under the Parasol Building is already owned by IVGID; do not involve parcels whose uses are restricted as the subject parcel's uses are restricted; do not involve seller lease backs, let alone at less than market rent and for 20 years no less; and there essentially will be no potential gross income generated from the building after a sale to IVGID; I and others I know do not

73 What Ms. Barnett calls the "rental rate advantage."
74 See page 59 of the appraisal.
understand how Ms. Barnett's appraisal is credible to the extent it relies upon the income approach to value;

12. Nevertheless, since ¶11(A) to the proposed agreement\(^{25}\) contemplates rental income of "$1,00 per year for 1,700 square feet of office space" and an additional "$2,500 per month for 2,200 square feet of office space," I shall attempt to appraise the Parasol Building using Ms. Barnett's income approach to value. "Multiplying this figure ($2,501) by 12 months, results in the Potential Gross Annual Income for the subject's office space of" $30,001. "Subtracting the expenses, at $182,734 per year, from the effective gross annual income ($30,001)...results in the net annual income for the subject property of" a negative $152,733. "Applying the 6.50% capitalization rate to the net annual income projected for the subject property, at (negative $152,733), results in the Market Value of the subject property by the Income Approach." I don't know what that number is after applying the capitalization rate, but I am pretty sure it is negative. Meaning that rather than the $4,300,031 value Ms. Barnett has determined\(^{26}\), that value as determined under the "potential gross annual income analysis" method, in my opinion, lacks credibility;

13. Additionally, Ms. Barnett relies upon a "gross Income multiplier (appraisal) method." Basically, "dividing the (comparable) sale(s) price by the effective gross income that the property was...or...is capable of producing at the time of sale."\(^{77}\) Putting aside the fact the sale or listing for sale of Ms. Barnett's comparable sales; largely involve listings for sale rather than actual sales; include the value of the land under their buildings whereas here the land under the Parasol Building is already owned by IVGID; do not involve parcels which are restricted as the subject parcel is restricted by the CC&Rs which effectively prohibit gross income being produced from rental of the building for at least the next ten years; and, do not involve seller lease backs, let alone and less than market rent and for 20 years no less; the value as determined under the "gross income multiplier" method, in my opinion, lacks credibility;

14. Nevertheless, since ¶11(A) to the proposed agreement\(^{25}\) contemplates rental income of "$1,00 per year for 1,700 square feet of office space," and an additional "$2,500 per month for 2,200 square feet of office space," "applying (Ms. Barnett's) 10/00 gross income multiplier to the subject's projected effective gross annual income, at ($30,001), results in an indication of value of" $300,010. Meaning that rather than the $4,300,031 value Ms. Barnett has determined\(^{26}\), the value as determined under the "gross income multiplier" method, in my opinion, lacks credibility;

Notwithstanding This Lack of Credibility, if One Accepts the Appraiser's Estimate of the Market Value of the Parasol Building at Face Value, After Deducting the Value of the 2.36 Acre Parcel Upon Which it is Constructed, as Well as Parasol's Lease Back "Rental Rate Advantage," Her

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\(^{25}\) See page 133 of the 5/24/2017 Board packet.

\(^{26}\) See pages 64-74 of the appraisal.

\(^{77}\) See pages 93-94 of the appraisal.
Value is Basically $0.00: Regardless of whether one agrees or disagrees with Ms. Barnett's $4½M estimate of value\(^7\), there should be little disagreement several deductions she neglected to apply to that estimate need to be made. For instance,

1. The Value of the Land Under the Parasol Building: must be deducted from its market value. Given Ms. Barnett's comparable sales include the value of the land under their buildings, whereas here the land under the Parasol Building is already owned by IVGID, the value of the 2.36 acres under the building must be deducted therefrom. Given the size of the Parasol parcel is almost identical to that under IVGID's current administration building, and Ms. Barnett values the latter at $2½M-$2¾M "assuming redevelopment including required development rights"\(^7\), I and others I know believe the value of the 2.36 acres under the Parasol building is the same $2½M-$2¾M;

2. Moreover, and as additional evidence of value, Ms. Barnett reports that the Assessor has valued the land under the Parasol Building at $702,975. Since "in the State of Nevada, the Assessed Value of a property is equivalent to 35% of the taxable or appraised value,"\(^8\) according to the Assessor the land under the Parasol Building is valued at $2,008,500;

2. The Value of Parasol's Leasehold Improvement "Rental Rate Advantage." must also be deducted from the building's market value. The proposed agreement contemplates that IVGID assume an additional cost (the loss of revenue as a result of being required to grant Parasol use of portions of the building (the "rental rate advantage"\(^8\)) for itself for a period of 20 years "as a [less than market ($1/year) non-rent paying] tenant" including all utility\(^8\) ($90,000 annually) and building maintenance\(^8\) ($40,000 annually) costs. Given Ms. Barnett opines that the fair market level rental rate for: Parasol's portion of the building's office space is $3,402/month; yet she fails to factor in its additional exclusive use of approximately 1,255 square feet of storage space, and 16,974 square feet of non-exclusive shared meeting, conference, training and board room space, staff lounge, commercial kitchen space, the building's parking areas and loading dock, and "access to and use of

\(^7\) See page 96 of the appraisal.


\(^8\) See page 38 of the appraisal.


\(^8\) See page 72 of the appraisal.

\(^8\) See page 73 of the appraisal.
the...building(s) internet fiber connection;" half the storage cages and adjoining storage space is $1,313/month; meeting/convention rooms is $7,500/month; and, utilities of $7,500/month; the total rental rate advantage to Parasol is $19,715/month for 20 years. Discounting this number, and using Ms. Barnett's estimated 5% rate of return, the present worth of this 1,700 square feet rental rate advantage (33.707%) is $1,634,752;

3. The Value of Parasol's Resident Non-Profits' Leasehold Improvement "Rental Rate Advantage:" must also be deducted from the building's market value. The proposed agreement contemplates that IVGID assume an additional "rental rate advantage"84 cost as a result of being required to grant Parasol's resident non-profits' use of portions of the building for a period of 6 years "as a [less than market ($2,500/month) non-rent paying] tenant" including all utility85 and building maintenance85 costs. Given Ms. Barnett opines that the fair market level rental rate for: Parasol's resident collaborators' portion of the building's office space is $4,400/month; yet she fails to factor in their additional exclusive use of approximately 1,255 square feet of storage space, and 16,974 square feet of non-exclusive shared meeting, conference, training and board room space, staff lounge, commercial kitchen space, the building's parking areas and loading dock, and "access to and use of the... building(s) internet fiber connection;" half the storage cages and adjoining storage space is $1,313/month; meeting/convention rooms is $7,500/month; and, utilities are $7,500/month; the total rental rate advantage to Parasol for this portion of the building for its resident collaborators is an additional $2,312/month for 6 years. Discounting this number, and using Ms. Barnett's estimated 5% rate of return, the present worth of Parasol's additional 2,200 square feet advantage (74.62%) is $134,566;

4. The Value of Parasol's "Land Lease Advantage:" must be deducted from the building's market value. The proposed agreement contemplates that IVGID assumes an additional "land lease advantage"81 cost as a result of being required to grant Parasol use of portions of the building. Ms. Barnett has calculated that advantage at $1,028,000 for the land under the building84. Discounted to today's $435,000 ($305,000 associated with Parasol's proposed 1,700 square feet lease back, and $130,000 associated with Parasol's resident collaborator's proposed 2,200 square feet lease back);

5. D.W. Reynolds Grant Requirements: According to GM Pinkerton, the $6.6M grant Parasol obtained from the D.W. Reynolds Foundation to construct the Parasol Building was and is contingent upon Parasol's continued occupancy of the building, "and that a portion of the office space (therein) continue to be dedicated to non-profits... (and that) the landlord... be required to charge rents at less than market rate for the non-profit tenants.85. Therefore these rental and land lease rate advantages are mandatory requirements of any sale of the building's leasehold improvements;

84 See page 2 of "the rental rate advantage letter."

85 See pages 5-6 (pages 262-63 of the 4/25/2017 Board packet) of IVGID staff's April 18, 2017 "feasibility report" which appears at pages 258-272 of the 4/25/2017 Board packet.
6. **Conclusion:** Once these rental and land lease rate advantage (totaling $2,204,318) omissions together with land value ($2%^M-$2%^M) omissions have been properly deducted from Ms. Barnett's estimate of value, exactly what, if anything, remains that a prudent and knowledgeable buyer who intends to use the building as a "cultural facility...facility supporting a social service organization, or a recreation center"\(^{86}\) would actually pay? I submit nothing. Therefore, why pay anything?

After Making All of the Above Space Available for Parasol's/Its Resident Non-Profits' Use, **Only Approximately 6,086 Square Feet of Office Space Remain For IVGID's Use:** At https://www.yourtahoeplace.com/uploads/pdf-lvgid/PTCF_-_Reynolds_-_Space_Allocation.pdf IVGID staff finally share their proposed Parasol building allocation of space between Parasol, Parasol's resident non-profits and IVGID\(^{86}\). This allocation reveals the following:

1. Although the Parasol Building consists of 31,752 square feet, only 9,800 square feet consists of "office space" (rooms 108-110 (1,076 square feet) and "open (non-profit) office space" (2,013 square feet) on the first floor, and rooms 205 (2,563 square feet), 209-216 (1,701 square feet), 217 (1,333 square feet), 220 (152 square feet) and 222-225 (963 square feet) on the second floor);

2. The balance of square footage is devoted to: 75 square feet (room 101) of reception space, 11,630 square feet of "common spaces, restrooms (and) circulation, 2,311 square feet (Trepp, rooms 203-204, 206-207, 221) of meeting rooms, 438 square feet (rooms 105-106) of conference space, 1,500 square feet of training space, a 364 square feet (room 208) Board room, 255 square feet (room 111) of maintenance & storage space, 2,510 square feet of storage room space, 618 square feet (rooms 107, 114, 116) of work room/storage space, 690 square feet of central supply & server space, a 920 square foot (room 113) commercial kitchen, and a 640 square feet (room 226) staff lounge;

3. In other words, only 30.86% of the building is devoted to "office space;"

4. And of this "office space," 2,013 square feet of downstairs open office space and 1,701 square feet of upstairs office space is proposed to be reserved for Parasol's/Its resident non-profits' use;

5. Which means Parasol proposes that IVGID be left with but 6,086 square feet of "office space;"

6. IVGID staff have represented that IVGID's current administrative building on Southwood is comprised of approximately 10,500 square feet, and that they require only approximately 1,500 additional square feet (for a total of 12,000 square feet)\(^{87}\). Given IVGID staff require about 10,000

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\(^{86}\) A copy of this allocation is attached as Exhibit "I" to this written statement.

\(^{87}\) See page 10 (under "IVGID Office Space Needs") of the feasibility report (page 267 of the 4/25/2017 Board packet). Moreover, IVGID staff assert there's only about 8,165 square feet of office space in its
square feet of "office space," exactly where do they propose this missing square footage is going to come from?

7. Assuming nowhere, why purchase so much wasted space and leasehold improvements amenable to offices that do not satisfy IVGID staff's represented requirements? To boast we have another "under-utilized asset?"

If the Foregoing Were Not Sufficient to End Further Discussions Concerning the Propriety of Purchasing the Parasol Building's Leasehold Improvements, Their Cost Is Going to be Prohibitive and Greatly Exceed $5.5M: Although IVGID staff represent that the cost of the building's leasehold improvements will be $5.5M\textsuperscript{88}, that cost will be considerably more. For example,

1. Given 71% of the purchase price ($3.9M) will bear interest at 4.45%, payable over 5 years\textsuperscript{89}, IVGID will be paying an additional $620,000 or more just in interest;

2. IVGID will be assuming "approximately $164,000 per year (for the entire) building's... utilities...grounds and maintenance staff;"\textsuperscript{90}

3. IVGID's "immediate...and not at some point in the future (expenditure of additional unspecified sums for)...staffing and...adding support staff hours...dedicated to...maintaining...operating...and...property management (of)...the building...and facilities;"\textsuperscript{91}

4. IVGID's expenditure of additional funds on outside consultants to conduct "a comprehensive condition assessment and maintenance evaluation."\textsuperscript{92} Although the full extent of that assessment and evaluation has not yet been commissioned, so far we know that:


\textsuperscript{88} See ¶IV(A) at page 135 of the 5/24/2017 Board packet.

\textsuperscript{89} See ¶IV(C) at page 135 of the 5/24/2017 Board packet.

\textsuperscript{90} See page 8 (under "Annual Building Operational Costs") of the feasibility report (page 265 of the 4/25/2017 Board packet). Many residents find this number to be grossly under estimated given IVGID's current building operational costs, allegedly total the same number notwithstanding the current administration building does not have a commercial kitchen, and consists of approximately thirty percent (30%) of the square footage (10,000 square feet) the Parasol building (31,500 square feet) consists of.

\textsuperscript{91} See page 13 (under "Ongoing Cost of Lease Modification") of the feasibility report (page 270 of the 4/25/2017 Board packet).
5. Smith Design Group has been retained to provide space planning design at a cost of $8,789\(^93\);

6. Ballard*King & Associates has been retained to provide assessment of the viability and benefits of acquiring the Parasol building at an unknown cost\(^94\);

7. Barker Rinker Seacat has been retained to provide re-purposing consultation of the Parasol building for use as programming and office spaces at an unknown cost\(^94\);

8. IVGID's expenditure of additional unidentified funds on outside consultants to "determine the need for...additional (building)...improvements and future reconfigurations (necessary) to meet (its) operational needs;"\(^95\)

9. IVGID's expenditure of at least an additional $493,142 on tenant improvements and future reconfigurations necessary to meet those operational needs\(^96\);

10. IVGID's expenditure of at least an additional $175,329 to remodel the Recreation Center's existing workout room in lieu of incurring similar remodel costs at the Parasol Building\(^97\);

11. IVGID's expenditure of at least an additional $7,900 in consultant costs with real estate appraiser Lynn Barnett & Associates for the Parasol Building's appraisal, a comparison of the costs to purchase versus rent, determining the net present value loss to be incurred should IVGID agree to Parasol's proposed seller lease back, and, appraising the current Southwood administrative building\(^98\);

\(^93\) See page 14 (under "Ongoing Cost of Lease Modification") of the feasibility report (page 271 of the 4/25/2017 Board packet).


\(^95\) See page 14 (under "Moving Expense") of the feasibility report (page 271 of the 4/25/2017 Board packet).

12. IVGID's expenditure of another additional $15,000 in consultant costs with real estate attorneys Holland and Hart, LLP for "initial document review...preparation of proposed lease amendment amendments, bill of sale and financing documents" with respect to the proposed series of transactions with Parasol;

13. IVGID's expenditure of additional unidentified funds to "get...fiber (optic cable) into the (building) from Incline Way...reconfiguring...server space and upgrading...electrical service within that space;"

14. IVGID's expenditure of "approximately two million dollars (as) a capital investment (for)...eventual...replacement of...the building(s)...(fifteen year old) mechanical and structural systems;"

15. IVGID's loss of revenue [at least $2,204,318 (see discussion above)] as a result of being required to grant Parasol retained use of portions of the building for the next twenty years "as a (presumed non/less than fair market rent paying) tenant;"

16. IVGID's loss of revenue as a result of being required to allow the Donald W. Reynolds Foundation to retain its naming rights to the building for an unspecified period of time, and to allow Parasol to retain all current donor naming, and,

17. None of this includes the additional cost (tens if not hundreds of thousand dollars worth of IVGID staff time) devoted to this project.

All told an expenditure of many, many millions of additional dollars over the remaining term of Parasol's current ground lease.

Moreover, the Donald Reynolds Building Cannot be Used for ANYONE's Administrative "Office Space Needs:" Such use expressly violates the underlying land's use restrictions. Moreover, that land was acquired with Rec Fee moneys for park and recreation purposes only. To now use this land for administrative office space would mean that the Rec Fee is being used for another impermissible purpose. If staff is allowed to get away with this misrepresentation and waste of public

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99 See pages 243-45 of the 8/22/2017 Board packet.

100 See pages 13-14 (under "Ongoing Cost of Lease Modification") of the feasibility report (pages 270-71 of the 4/25/2017 Board packet).

101 See ¶61 at page 137 of the 5/24/2017 Board packet.
funds it holds in trust as local property owners’ bailee\(^{102}\), then it means there are essentially no limits on what IVGID staff can use Rec Fee moneys for which as I and others have argued, is wrong.

Please remember, the ends do not justify the means. It is what is represented to local property owners that matters; something most of you seem to have forgotten.

**Staff’s Justification the D.W. Reynolds Building Can be Used for Recreational Programming Purposes is Disgenuous:** There are only two reasons why staff is telling the public part of the Parasol Building can be used for recreation programming. The first is so it can overcome the deed restriction on its restrictive use. Unless the building is used for park or recreational purposes, its use violates the CC&Rs. So staff tell the public it can (rather than must) use a portion of the building for recreation programming.

But IVGID does not need another Recreation Center. It already has a building for that purpose. And given essentially none of the nearly 100 so-called recreation programs staff operates out of the Recreation Center covers its costs, let alone generates positive cash flow\(^{103}\), what justification is there for spending hundreds of thousands if not millions of dollars more to acquire use of only a portion of a building allegedly for more recreation programming purposes when those purposes already lose in excess of $1.3M annually? This is insanity.

**Staff Intends to Use the Rec Fee to Pay for the Parasol Building’s Acquisition/Improvement Costs Notwithstanding That Fee Has Nothing to Do With Making Recreational Facilities “Available” For Use by Those Properties Which Are Involuntarily Assessed:** The second reason why staff is telling the public that part of the Parasol Building can be used for recreation programming, is really the primary reason; money! Where does the $5.5M or more of the purchase price come from? Basically the Rec Fee.

1. If one examines pages 12-13 of the feasibility report (pages 269-70 of the 4/25/2017 Board packet), one learns that IVGID staff intend to secure funding for the Parasol Building’s acquisition from four sources, three of which have their genesis in the Rec Fee;

2. Source one is IVGID’s excess General Fund Balance. Each year IVGID staff budget to overspend in excess of $1M in the General Fund. For 2017-18, the IVGID Board has budgeted to

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\(^{102}\) It is unlawful [see NRS 205.300(1)] for “any bailee of...money...(which) ha(s) been deposited or entrusted...(to) use...or appropriate...the money...or any part thereof in any manner or for any other purpose than that for which they were deposited or entrusted.”

\(^{103}\) According to IVGID’s financials it is currently losing $1M or more annually on "recreation programming." And if one adds the additional $300,000 annually assigned to recreation debt service, the number is in excess of $1.3M annually!
overspend by $1,097,000. This deficiency is covered by transfers from IVDG’s Community Services ($722,900), Beach ($77,100) and Utility Funds ($297,000) that are disingenuously labeled allocated "central services costs." In fact over the last several years, staff has been transferring more to the General Fund, in the form of allocated central services costs, to intentionally build up its fund balance.

Up until 2011-12 the General Fund balance stayed level at $615,774. But thereafter that balance began growing to where it now stands ($1,837,533). Since the only way the General Fund’s balance can increase is as a result of central services cost transfers, and nearly 70.5% of those transfers come from the Rec Fee, that’s the precise source of funding for purchase of the Parasol Building on an installment basis;

3. Source two is IVDG’s excess Workers’ Compensation Fund” Balance. For decades IVDG was self-insured for workers’ compensation claims. In order to remain self-insured, IVDG had to accumulate and retain workers’ compensation reserves of between $1.25M-$1.6M. Now because IVDG purchases workers’ compensation insurance, it is free to release most of its reserves. Since the Board has voted to release $800,000 of those reserves, $665,000 are assignable to the Community Services Fund, should they be used as a source of funding for purchase of the Parasol Building on an installment basis, as aforesaid those funds will have initially come from the Rec Fee;

4. Source three is IVDG’s excess Community Services Fund Balance. Like IVDG’s General and Beach Funds, each year IVDG staff budget to overspend nearly $6M in the Community Services Fund. This overspending is subsidized by the Rec Fee. And according to staff, it pays for 100% of capital improvement projects (“CIP”) assigned to the Community Services Fund. At page 270 of the 4/25/2017 Board packet Staff suggests overspending on capital projects can be "re-prioritized" to create funds to pay for the Parasol Building purchase. Thus should those monies be used as a source of funding for purchase of the Parasol Building on an installment basis, regardless of re-prioritization, that funding will have come from the Rec Fee. In fact, according to the 2017-18 Budget, the Board has already assigned $1.6M from the Community Services Fund to fund the Parasol Building’s $1.6M down payment;

5. In other words, all three sources for funding purchase of the Parasol Building have at their root, the Rec Fee;

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105 See page 112 of the 5/24/2017 Board packet.


107 See page 22, Schedule B-13, of the 2017-18 Budget at page 46 of the 5/24/2017 Board packet.
6. Now take a close look at Resolution 1860 and the report incorporated therein which were adopted on May 24, 2017. There you will see that the Rec Fee is supposed to be used for nothing more than the just and reasonable costs IVGID incurs to make its recreational facilities (and not an administrative office building) merely "available" to be used by those parcels/residential dwelling units (rather than the occupants thereof) involuntarily assessed;

7. Given the IVGID Board has already set aside $1.6M of our Rec Fee to be used for the down payment on the purchase of the Parasol Building, it is clear IVGID intends to use our Rec Fee to purchase and improve an office building having nothing to do with anyone’s recreation. Isn’t it about time we look behind staff’s labeling to learn the truth of their real sinister purposes?

The Parasol Building Cannot Continue to be Used by Parasol Whether or Not the Proposed Sale Goes Forward: because such use expressly violates the underlying land’s use restrictions. And even if it doesn’t, today’s use is materially different from that originally represented. Meaning that all improvements thereon (i.e., the building), shall revert to IVGID’s full use and ownership without the payment of anything to Parasol.

Parasol Has No Possible Sui tor for its Building Other Than IVGID: Since Parasol doesn’t own the land under the current building, and putting aside the fact it does not own the Parasol Building itself, the facts are clear it cannot sell the building to ANYONE. Since the current lease and CC&Rs prohibit assignment of the building to anyone other than Parasol or its successors, the simple fact of the matter is that the current lease cannot be sold to anyone. And since the current lease prohibits a use other than as Parasol’s non-profit center, again, that building cannot be transferred to anyone. Simply stated, there is no one other than IVGID who can possibly take over Parasol’s building or the current lease for that matter. In other words just like Parasol’s CEO has admitted, the Parasol Building has a fair market value of NOTHING! Why then does IVGID propose paying Parasol anything?

Parasol’s Proposal Has Nothing to Do With Modifying the Ground Lease, and Everything to Do With Bailing Parasol Out Financially: It arguably owns an asset without a value to any ready, willing and able purchaser. So Why does IVGID have to bail Parasol out?

Conclusion: If Parasol no longer intends to conform to the current lease’s restrictions, then it must give up the building for no “adequate consideration for the remaining life of the building(s) improvements.” If it is not willing to accept this consequence, then it must use the building as originally intended without any other compensation for the lease’s remaining term. In fact, this entire transaction should be set aside because where does IVGID get off charging local property owners to acquire property represented to be used for park and recreation purposes only, and then give it away

to anyone at all, let alone under the guise of charity\textsuperscript{110}? Now the Board has the opportunity to make things right, and I and others I know demand that is exactly what it does.

And You Wonder Why the RFF Which Has Financed This Colossal Mis-Use is Out of Control? I've now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching) and Frank Wright.

\textsuperscript{110} See Exhibit "H" attached to this written statement.
EXHIBIT 5
Subject: Omissions From Chairperson Wong's List of Issues Concerning IVGID's Possible Purchase of the Parasol Building in Anticipation of the IVGID Board's Regular September 26, 2017 Meeting

From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>

Date: 9/21/2017 11:24 PM

To: Wong Kendra <wong_trustee@ivgid.org>
CC: Callicrate Tim <callicrate_trustee@ivgid.org>, Horan Phill <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>

Dear Chairperson Wong and the Other Honorable Members of the IVGID Board -

I am writing to you about the list of issues Ms. Wong created/presented to the IVGID Board its last meeting held September 13, 2017 insofar as the proposed purchase/sale of the Parasol Building. I am submitting this e-mail/written statement inasmuch as Judy/ I are traveling and will not be able to attend the upcoming September 26, 2017 Board meeting.

Ms. Wong’s issues appear at page 10 of the packet of materials prepared by staff in anticipation of the Board’s September 26, 2017 meeting (“the 9/26/2017 Board packet”). But conspicuously absent are the five legal issues/sub-issues raised by Trustees Callicrate/Horan at the September 13, 2017 Board meeting. Namely,

1. The validity of the July 1, 1999 Amendment to the CC&Rs recorded against the land the subject of Parasol’s current ground lease (“the land”) given:
   a) It was purportedly executed by Irving Littman, President of Gardena Service Co. (“Gardena”),
   1) 22 years after the fact; and,
   ii) Nearly ten (10) years after Gardena had been formally dissolved and its assets distributed; and,

   b) The consent of local property owners who paid for the land was not first secured given the land’s acquisition for park and recreational purposes, and none others, was expressly for the benefit of those property owners [see Reno v. Goldwater (1976) 92 Nev. 698, 558 P.2d 532];

2. In light of the original CC&Rs against the land, whether Parasol can permissibly use the Parasol Building for any activities whatsoever;

3. In light of the original CC&Rs against the land, whether IVGID can occupy and use any portion of the Parasol Building as an administrative office building given the CC&R use restrictions against the land;

4. Whether IVGID can use funds derived from the Recreation ("RFF") and/or Beach ("BFF") Facility Fee(s) to purchase/improve the Parasol Building given IVGID’s representations the RFF/BFF pay for the "availability" to use public recreational facilities (rather than administrative office space); and,
5. Whether IVGID’s proposed payment for the purchase of the Parasol Building over five years represents an installment purchase agreement which requires the affirmative vote of 2/3 of IVGID Trustees.

Although Chairperson Wong clearly represented to the Board and the public that these additional legal concerns would be added to her list of issues and presented at this and future Board meetings for discussion, conspicuously, they are absent. So that these important issues are not simply "swept under the rug" and forgotten, I ask that one or more Board members formally request Ms. Wong’s list be augmented to expressly include these omitted issues.

Although Chairperson Wong may object by categorizing all of these issues as "legal" which are awaiting the outcome of the Holland & Hart firm’s legal analysis, I suggest they will not be addressed. Take a close look at Ms. Fogarty's September 12, 2017 engagement letter (see pages 5-9 of the 9/26/2017 Board packet). There she expressly represents that her scope of work is limited to review of the existing ground lease, as amended, and related CC&Rs related to the leased property (as opposed to the land). That’s it!

Under this limited scope of work, in no way do I expect Ms. Fogarty’s review to extend to items 1(b) and 2-5 identified above. Which means that if the IVGID Board is waiting for guidance insofar as these issues are concerned, given such these issues have not been added to Ms. Wong’s list of issues, they will never be addressed. That is unless the Board does something.

So in closing, I ask that the Board augment Ms. Wong’s list of issues with the five issues noted above so that in going forward they will be addressed. I also ask that the Board instruct staff to inform Holland & Hart that the five legal issues identified above be expressly included in the scope of work the subject of Ms. Fogarty’s September 12, 2017 engagement letter.

Thank you for your courtesy and cooperation in these matters, and I expressly request that a copy of this e-mail be attached as a written statement to the written minutes to be prepared of the Board’s September 26, 2017 meeting. Not that I need remind the Board inasmuch as IVGID staff constantly tout how "transparent" they are, but NRS 241.095(1)(d) expressly allows any member of the general public to address a public body at a public meeting by means of written remarks, and to request that those remarks be reflected in the formal written minutes of that public meeting. Please consider this e-mail to represent those written remarks.

Aaron Katz
Subject: Omissions From Chairperson Wong's List of Issues Concerning IVGID's Possible Purchase of the Parasol Building in Anticipation of the IVGID Board's Regular September 26, 2017 Meeting
From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>
Date: 9/21/2017 11:24 PM
To: Wong Kendra Trustee <wong_trustee@ivgid.org>
CC: Callicrate Tim Trustee <callcrate_trustee@ivgid.org>, Horan Phil <horan_trustee@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>, Herron Susan <Susan_Herron@ivgid.org>
BCC: Wright Frank <alpinesportss@gmail.com>, Newman Linda <linda@marknewman.net>, Dobler Cliff <cfdobler@aol.com>, Olmer Robert <orobert216@aol.com>, "pupfarm1@gmail.com" <pupfarm1@gmail.com>

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1. The validity of the July 1, 1999 Amendment to the CC&Rs recorded against the land the subject of Parasol's current ground lease ("the land") given:
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   i) 22 years after the fact; and,
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5. Whether IVGID's proposed payment for the purchase of the Parasol Building over five
years represents an installment purchase agreement which requires the affirmative vote
of 2/3 of IVGID Trustees.

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additional legal concerns would be added to her list of issues and presented at this
and future Board meetings for discussion, conspicuously, they are absent. So that these
important issues are not simply "swept under the rug" and forgotten, I ask that one or
more Board members formally request Ms. Wong's list be augmented to expressly include
these omitted issues.

Although Chairperson Wong may object by categorizing all of these issues as "legal"
which are awaiting the outcome of the Holland & Hart firm's legal analysis, I suggest
they will not be addressed. Take a close look at Ms. Fogarty's September 12, 2017
engagement letter (see pages 5-9 of the 9/26/2017 Board packet). There she expressly
represents that her scope of work is limited to review of the existing ground lease, as
amended, and related CC&Rs related to the leased property (as opposed to the land).
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to items 1(b) and 2-5 identified above. Which means that if the IVGID Board is waiting
for guidance insofar as these issues are concerned, given such these issues have not
been added to Ms. Wong's list of issues, they will never be addressed. That is unless
the Board does something.

So in closing, I ask that the Board augment Ms. Wong's list of issues with the five
issues noted above so that in going forward they will be addressed. I also ask that the
Board instruct staff to inform Holland & Hart that the five legal issues identified
above be expressly included in the scope of work the subject of Ms. Fogarty's September
12, 2017 engagement letter.

Thank you for your courtesies and cooperation in these matters, and I expressly request
that a copy of this e-mail be attached as a written statement to the written minutes to
be prepared of the Board's September 26, 2017 meeting. Not that I need remind the Board
inasmuch as IVGID staff constantly tout how "transparent" they are, but NRS
241.035(1)(d) expressly allows any member of the general public to address a public
body at a public meeting by means of written remarks, and to request that those remarks
be reflected in the formal written minutes of that public meeting. Please consider this
e-mail to represent those written remarks.

Aaron Katz
OPINION
Via U.S. Mail

Mr. Aaron L. Katz
Post Office Box 3022
Incline Village, Nevada 89450

Re: Open Meeting Law Complaint, OAG File No. 13897-263
Incline Village General Improvement District

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaints alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) regarding an alleged failure to include written statements in its minutes as required by law.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. In response to your complaints, the OAG reviewed your complaint and attachments; your supplemental complaint and attachments; the Board’s response; video from the Board’s September 13, 2017, meeting; and, minutes from the Board’s meetings of September 13, 2017, September 26, 2017, and February 21, 2018.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015(4) and subject to the OML.

The allegations of the complaint are the Board failed to include three (3) written statements as part of its minutes as required by law.

The first written statement was entitled “WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN MINUTES OF THE
Mr. Aaron L. Katz
Page 2
June 26 2018

IVGID BOARD'S REGULAR SEPTEMBER 13, 2017 MEETING – AGENDA ITEM E(1) – PROPOSED MODIFICATION TO THE GROUND LEASE BETWEEN IVGID AND THE PARASOL TAHOE COMMUNITY FOUNDATION ('PARASOL')” (September 13th Statement). (Capitalization as in original title). The September 13th Statement was written by you and Frank Wright. Mr. Wright appeared at the Board’s meeting of September 13, 2017. You were not present at the Board’s meeting of September 13, 2017. Mr. Wright spoke during the public comment period concerning the performance of a Mr. Pinkerton. Mr. Wright presented the Board with an evaluation checklist concerning Mr. Pinkerton, which reflected the remarks made by Mr. Wright during the public comment period. Mr. Wright mentioned in passing during his comments that he worked on something with you concerning Parasol and that the Board could read it later. Mr. Wright did not request the minutes reflect any of his remarks.

The evaluation checklist reflecting Mr. Wright’s remarks during public comment were made a part of the minutes. The September 13th Statement was not made a part of the minutes. Mr. Wright’s passing mention of Parasol was reflected in the minutes.

The second written statement was an e-mail from you to the trustees of the Board sent on September 21, 2017, with the subject “Omissions From Chairperson Wong’s List of Issues Concerning IVGID’s Possible Purchase of the Parasol Building in Anticipation of the IVGID Board’s Regular September 26, 2017 Meeting” (September 21st e-mail). The September 21st e-mail requested inclusion in the minutes of the Board’s meeting of September 26, 2017. You did not attend the Board’s meeting of September 26, 2017. The Board did not include the September 21st e-mail in its minutes for its meeting of September 26, 2017.

The third written statement was not included with the complaint or supplemental complaint but was referenced in e-mails attached to the supplemental complaint. The e-mails requested the Board include a written statement from Linda Newman and Clifford Dobbler (Newman/Dobbler Statement) in the minutes concerning the Board’s meeting of February 21, 2018. Ms. Newman and Mr. Dobbler were not present at the Board’s meeting of February 21, 2018. The Board did not include the third written statement in its minutes for its meeting of February 21, 2018.

DISCUSSION AND LEGAL ANALYSIS

The complaint alleges the Board did not include copies of written statements in its minutes as required by NRS 241.035(1)(d). NRS 241.035(1)(d) sets out minutes shall include:

The substance of remarks made by any member of the general public who addresses the public body if the member of the general
public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.

The complaint argues NRS 241.035(1)(d) means any written statement submitted for inclusion in a public body’s minutes must be so included. The Board, in its response, argues a member of the public must be present and address the public body in order to submit written statements and the written statements must supplement the comment offered by the member of the public at the meeting.

The OAG agrees with the Board’s analysis of NRS 241.035(1)(d).

NRS 241.035(1)(d) was added to law by S.B. 140 in the 65th Session of the Nevada Legislature (1989). The language as originally proposed would have simply added “or general public” to what is now NRS 463.035(1)(e): “[a]ny other information which any member of the body or general public requests to be included or reflected in the minutes.” If this language had made it into law, a member of the general public could submit a statement without attending a meeting and the statement would have to be made a part of a public body’s minutes if so requested by the member the general public. However, the Nevada Legislature did not pass the language giving a member of the general public the same power to require the inclusion of information in a public body’s minutes as a member of that public body.

Rather, the language codified was narrower: a member of the general public must address the public body if he wants his remarks or a written statement containing his remarks made a part of the public body’s minutes. NRS 241.035(1)(d). This conclusion is supported by the stated purpose of the language: “[t]he evil you are trying to cure is to make sure that if someone comes to testify before the board or one of the state regulatory agencies, that what they have to say will somehow get into the minutes.” Testimony on S.B. 140 Before the Ass’ly Comm. on Gov’t Affairs, 65th Leg. (May 10, 1989) (Statement of Assemblyman Gary A. Sheerin).

In short, NRS 241.035(1)(d) requires inclusion of the prepared written remarks of a member of the general public in the minutes of a public body only if the member of the general public makes remarks to the public body during a meeting and requests his remarks be reflected in the minutes.

At the Board’s meeting of September 13, 2017, Mr. Wright spoke of Mr. Pinkerton. Mr. Wright did mention Parasol in passing during his remarks, and the minutes reflect this passing comment. Mr. Wright did not request his remarks be included in the minutes. Thus, the September 13th Statement was not required to be included in the minutes for the meeting of September 13, 2017.

The September 21st e-Mail and the Newman/Dobbler Statement did not
reflect remarks made by you, Ms. Newman, or Mr. Dobbler at the Board’s meetings of September 26, 2017, and February 21, 2018. Thus, these statements were not required to be included in the minutes for the meetings of September 26, 2017, or February 21, 2017.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:

JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division

JSM:sd
c: Jason D. Guinasso, Esq.