FIRST JUDICIAL DISTRICT OF NEVADA

IN AND FOR STOREY COUNTY

* * * * *

SWITCH, LTD., a Nevada limited liability company; and SUPERNAP RENO, LLC, a Nevada limited liability company,

Plaintiffs,

v.

NVLCO STOREY COUNTY, LLC, a foreign limited liability company; PSO NEVADA, LLC, a foreign limited liability company; TRACT MANAGEMENT COMPANY LP, a Delaware limited partnership, TRACT (LANDCO) I, LP, a Delaware limited partnership; NVPRU01, Inc., a Delaware corporation; NVPRU01, Inc., a Delaware corporation; NVPRU03, Inc., a Delaware corporation; DOES I through X, inclusive; and ROE ENTITIES XI through XX, inclusive,

Defendants.

NVLCO STOREY COUNTY, LLC, a foreign limited liability company,

Counterclaimant,

v.

SWITCH, LTD., a Nevada limited liability company; and SUPERNAP RENO, LLC, a Nevada limited liability company,

Counterdefendants.

Case No. 23 RP 00005 1E

Dept. No. 1

ORDER DENYING PLAINTIFFS/ COUNTERDEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANTS/ COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT ON NVLCO'S COUNTERCLAIM FOR DECLARATORY JUDGMENT

On August 15, 2025, Plaintiffs/Counterdefendants Switch, Ltd. and SUPERNAP Reno, LLC ("Switch") filed their *Plaintiffs/Counterdefendants' Motion for Partial Summary Judgment*

on Plaintiffs' Claims and for Summary Judgment on Defendants/Counterclaimant's Counterclaim ("MPSJ"). On August 29, 2025, Defendants/Counterclaimants NVLCO Storey County, LLC (individually, "NVLCO"), PSO Nevada, LLC, Tract Capital Management, LP, Tract (LandCo) I, LP, NVPRU01, Inc., NVPRU02, Inc., and NVPRU03, Inc. (collectively, "Tract") filed their *Defendants' Opposition to Switch's Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment on NVLCO's Counterclaim for Declaratory Judgment* ("Cross-Motion"). On September 5, 2025, Switch filed a reply in support of their MPSJ. On September 17, 2025, Switch filed its *Plaintiffs/Counterdefendants' Opposition to Defendants/Counterclaimant's Cross-Motion for Summary Judgment on NVLCO's Counterclaim for Declaratory Judgment*. On September 18, 2025, the Court heard arguments on Switch's MPSJ and Tract's Cross-Motion.

Having reviewed and considered the pleadings and papers on file herein, and having heard and considered arguments from the parties, the Court finds, concludes, and ORDERS as follows:

I. Summary of Decision

This case requires interpretation of a restrictive covenant ("Covenant") in the Tahoe Reno Industrial Center ("TRIC"). The language that defines the Covenant is not ambiguous and not disputed. That the Covenant restricts otherwise permissible uses on the Peru Shelf, which Tract owns, is also not in dispute. The meaning of the Covenant's language, which defines the scope of restricted uses, is the primary issue in this case. Under these circumstances, that issue is a pure question of law, suitable for adjudication through summary judgment by the Court.

The undisputed facts in this case are fairly summarized as follows. In 2015, Tahoe Reno Industrial Center, LLC ("TRI") owned a substantial amount of property in TRIC, and Switch was in the data center business. Switch was interested in buying some of TRI's property, and negotiations began. Securing the Covenant was a deal point for Switch in the transaction. Before committing to its significant investment in TRIC, Switch wanted to secure reliable and sufficient access to the area's limited resources in power and water, essential to the operation of data centers. It also wanted to get a leg up on competitors who might be inclined to build facilities in TRIC.

TRI had different priorities. It was a motivated seller, but did not want to excessively impair the marketability of its other TRIC property. Thus, the Covenant was negotiated at arm's length. Switch wanted a broad restrictive covenant. TRI wanted a narrow one. They ultimately agreed to language prohibiting colocation facilities on certain property in TRIC. The parties defined "Colocation Facility" as "any building or other structure in which a party provides access to space for, and/or manages, computer infrastructure, voice and/or data networking and other communications for more than one third-party customer."

In its *Order Granting in Part and Denying in Part Plaintiff's Motion for Preliminary Injunction* issued March 29, 2024, this Court held, "All Colocation Facilities are data centers, but not all data centers are Colocation Facilities." 18 months of discovery has illuminated but not altered that foundational conclusion in this case. Data centers come in a few different varieties. One kind serves a single company. That's generally referred to as an enterprise data center when the company owns the data center building and computer infrastructure inside, and a wholesale data center when the company owns the computer infrastructure but the data center building is owned by a separate company. Another data center model is a single building that leases physical space to multiple tenants to house their independent computer infrastructure. That's generally known as a retail data center. Others utilize physical computer infrastructure owned by a single customer and housed in the data center to provide virtual services to end-users who do not own or lease anything physical in the data center. These types of data centers are usually called cloud-based data centers when they are small or regular-size, and hyperscalers when they are large.

The definition of "Colocation Facility" under review clearly captures a traditional retail data center. It clearly excludes an enterprise data center or wholesale data center that serves a single customer. Switch and Tract have different interpretations about the definition's application to cloud-based data centers and hyperscalers. The Court agrees with Tract's interpretation.

Fairly read, the definition of "Colocation Facility" establishes a five-part test, and a data center must satisfy all five parts to be a "Colocation Facility" prohibited by the Covenant. First, the restriction applies only to a "building or other structure." The final restriction applies only when there is "more than one third-party customer" in the building or other structure. Second, third and

fourth, the owner of the "Colocation Facility" must "provide[] access to space for and/or manage[]" all three of the following things "in" the restricted "building or other structure": (1) computer infrastructure; (2) voice and/or data networking; and (3) other communications. This means single-tenant operations, whether enterprise, wholesale, cloud-based or hyperscaler data centers, are not prohibited by the Covenant.

An examination of the plain language used to define "Colocation Facility" is sufficient to resolve the disputed reach of the Covenant. But even if the language was ambiguous, that is, genuinely susceptible to two or more reasonable interpretations, the result would not change. It is blackletter law that "restrictive covenants are strictly construed." *Diaz v. Ferne*, 120 Nev. 70, 73 84 P.3d 664, 666 (2004) (internal quotation marks and citation omitted). Even if Tract's interpretation was wrong, it is certainly not unreasonable. Therefore, the outcome would be the same.

II. Findings of Fact

1. In 2015, TRI sold approximately 900 acres of land to Switch for approximately $23 million (the "Supernap Transaction"). In connection with the Supernap Transaction, Switch and TRI entered into a restrictive covenant known as the "Colocation Covenant" ("Covenant") burdening certain parcels of land in TRIC (the "Restricted Parcels"). Cross-Motion, Ex. 5.
2. The Covenant states:

> In order to promote the highest and best development potential of [Switch's] Parcels, and to protect [Switch's] Parcels, TRI intends hereby to restrict any owner's or occupant's right to use, improve or develop the Restricted Parcels as specified herein.
>
> ....
>
> A Colocation Facility, as defined below, shall not be operated on the Restricted Parcels, or any portion thereof, and no portion of the Restricted Parcels shall be used, improved or developed for a Colocation Facility without the express written consent of the owner(s) of [Switch's] Parcels recorded in the office of the Recorder of Storey County, Nevada. A "Colocation Facility" shall mean any building or other structure in

which a party provides access to space for, and/or manages, computer infrastructure, voice and/or data networking and other communications for more than one third-party customer.

Covenant § 1(C), 2.

3. In a series of subsequent transactions, TRI sold approximately 66,000 acres of its land to Blockchains, Inc. ("Blockchains"). A portion of that land, known as the Peru Shelf, included Restricted Parcels.

4. In August 2023, Blockchains sold more than 2,200 acres of its undeveloped land in Storey County to NVLCO Storey County, LLC ("NVLCO"). NVLCO is a special purpose entity created to acquire title to the Peru Shelf, subdivide it, then transfer title of the subdivided parcels to real estate investment trusts—NVPRU01, Inc., NVPRU02, Inc., and NVPRU03, Inc. (the "REITs"). Title to the Peru Shelf parcels has since been transferred to the REITs. Tract's Answer at ¶ 11.

5. Tract was aware of the Covenant from its earliest diligence concerning land within TRIC. E.g., Cross-Motion, Ex. 26.

6. The crafting of the Covenant was the result of arm's length negotiations between Switch and TRI that started with the purchase and sale agreement before being memorialized in a separate document recorded against the Restricted Parcels. Adam Kramer was one of the principals involved on behalf of Switch. Cross-Motion, Ex. 7 at 45:25-46:13 ("I was in charge of procuring this land and negotiating this deal."); see also id., Ex. 3, TRI 30b6 Tr. at 131:4-9, 188:23-189:2 ("Adam Kramer was the face of Switch in this transaction[.]"). For TRI, the team involved in negotiating the Covenant included Don Roger Norman, Robert Sader, Lance Gilman, and Kris Thompson. Cross-Motion, Ex. 7, Kramer Dep. Tr. at 45:25-48:2.

7. On October 1, 2014, Kris Thompson sent to Switch a form Purchase and Sale Agreement for the Supernap Transaction (the "PSA"). Cross-Motion, Ex. 8. On December 31, 2014, Switch sent back a marked-up draft of the PSA as well as the key deal points. Id., Ex. 9 (Switch's "key points"); Id., Ex. 10. TRI rejected Switch's

proposed restriction on single-customer data centers in that draft. Id., Ex. 3, TRI 30b6 Tr. at 235:14-236:11 ("TRI rejected this whole clause as drafted by Switch in Exhibit 77 [Cross-Motion, Ex. 10] and in this -- this was my involvement personally. I -- my colleagues on the team were agreeable to a use restriction for a colocation facility.")

8. The number of permitted tenants was an "important difference" to TRI, and TRI "drew the line" in order to permit uses where "one entity was leasing the whole center to another entity as a data center[.]" Cross-Motion, Ex. 3 at 238:16-239:14 ("When you got to two or more, then -- and this was a real give-and-take back and forth on the terms – we agreed to that."). In response to Switch's deal points, TRI was adamant that any use restriction be narrow and, on January 10, 2015, Mr. Gilman relayed TRI's response further limiting Switch's proposal of a restriction on colocation facilities. Id., Ex. 11.
9. In seeking a land use covenant, Switch was concerned about operation of a nearby competing colocation facility. Id. Switch understood that TRI would only agree to a limited restriction. Id., Ex. 7, Kramer Dep. Tr. at 80:12-82:8.
10. On June 30, 2015, TRI and Switch executed the PSA, which required the parties to record a restrictive covenant on those parcels specifically listed on the covenant document. Cross-Motion, Ex. 9.
11. On July 2, 2015, using language from the PSA that restricted operation of a colocation facility, the parties began to work on the restrictive land covenant that they called the "Colocation Covenant." Cross-Motion, Exs. 15-16; Id., Ex. 3, TRI LLC 30b6 Dep. Tr. at 135:12-21 (language from the PSA was imported to the Colocation Covenant). The first draft of the Covenant departed from the PSA by specifying that the restriction applied to a "building or other structure" rather than a "location." Id., Ex. 7, Kramer Dep. Tr. at 124:4-21. The change "add[ed] [a] level of specificity to it that may not have otherwise been there." Id. at 126:6-23.
12. On August 7, 2015, having reached agreement on the language, the parties recorded the Covenant with the operative definition of Colocation Facility intact: "A Colocation Facility shall mean any building or other structure in which a party provides access to

space for, and/or manages, computer infrastructure, voice and/or data networking and other communications for more than one third-party customer." Cross-Motion, Ex. 5 at -2023, § 2.

13. In 2015, Switch was only in the business of building and operating colocation facilities. Id. at 31:4-32:22; Id., Ex. 2, Aug. 26, 2025 Switch 30b6 (Roy) Dep. (Rough) Tr. at 99:5-100:5. The only facilities it had built were multi-tenant facilities. Id., Ex. 2 at 216:7-21 ("Q. And if somebody were to ask you in 2015, Mr. Roy, have you ever done anything other than build a multi-tenant facility? You would have to say, no, wouldn't you? Correct."). Switch's business is "providing telecommunication services, co-locations services, and operating facilities for computers and telecommunication equipment of others." *Switch Commc'ns Grp., LLC v. Banks*, No. 2:11-CV-01810-GMN, 2011 WL 5854610, at *1 (D. Nev. Nov. 17, 2011). That business requires renting floor space to businesses who bring in their own computer infrastructure and install it alongside other businesses. *See Cyrus One LLC v. Levinsky*, No. 4:19-CV-00043, 2019 WL 4305613, at *1 (E.D. Tex. Sept. 11, 2019) ("Plaintiffs . . . are in the industry of data center colocation operations . . . which along with floor space and cooling, offer telecommunications and power connectivity thereby allowing other businesses to rent space to securely house their services [sic] and other computing equipment to connect that equipment to the rest of the world."); id. at *5 ("Switch's CEO, Rob Roy, took [Defendant] to tour a data center colocation facility in Reno").

14. Mr. Kramer testified that there was no doubt at Switch about what it meant by "colocation": "Co-location meant somebody who was either owning and operating a data center in which there were multiple clients co-located inside of that, so they would have operational control and/or ownership of servers and equipment inside of the facility or would be developing sites in which there would be more than one end user on that site that wasn't the owner/operator." Cross-Motion, Ex. 7 Kramer Dep. Tr. at 50:11-50:24.

15. In negotiating for the Covenant, "Switch wanted an exclusive on . . . colocation data[] centers[.]" Cross-Motion, Ex. 3, TRI 30b6 Tr. at 88:6-8. The Covenant was "essentially a restriction against competitive business practices[,]" i.e. "data center owner/operators or data center developers that were going to be offering services to other – to companies other than themselves for data centers on site there." Id., Ex. 7, Kramer Dep. Tr. at 49:9-16.

16. Switch agrees that the Covenant does not prohibit the construction or operation of all data centers on Peru Shelf. Cross-Motion, Ex. 23, 2023.11.06 Roy Decl. at ¶ 17 ("When I negotiated the Covenant, I did intend to allow the development of a proprietary enterprise data center at TRIC[.]"); Aug. 26, 2025 Switch 30b6 (Roy) Tr. 218:8-220:2, 224:9-225:13 ("So FedEx's private cloud, if it were built on the Peru Shelf, would not violate the colocation covenant? A. Correct.").

17. On October 5, 2023, Switch filed its original Complaint in this Court. On January 3, 2025, Switch filed its Third Amended Complaint. Count I of Switch's Third Amended Complaint, like its predecessors, seeks a declaratory judgment construing the Covenant. On January 17, 2025, Tract filed its Answer and Counterclaim seeking a declaratory judgment construing the Covenant.

III. Conclusions of Law

1. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). "That an action seeks declaratory or equitable relief does not prevent its adjudication on summary judgment." *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. 49, 55, 366 P.3d 1105, 1109 (2016); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005); *see also* 10B Charles Alan Wright et al., Federal Practice & Procedure: Civil § 2731 (3d ed.2014).

2. Here, the Court is being asked to address solely a question of contract interpretation and thus must "discern the intent of the contracting parties'" when they drafted the Covenant. *Brennan v. Brennan*, 132 Nev. 949 (Nev. App. 2016) (quoting *Am. First*

Fed. Credit Union v. Soro, 131 Nev. 737, 359 P.3d 105 (2015)); *Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395, 398, 329 P.3d 614, 616 (2014). The Court must consider the contract as a whole and give reasonable and harmonious meaning to the entire contract. *Id.* at 398 ("we consider the policy as a whole to give reasonable and harmonious meaning to the entire policy.") (internal citations omitted).

3. Under well-established Nevada law, the meaning of the Covenant "should not be construed so as to lead to an absurd result" but rather "should be given a reasonable and fair interpretation." *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 325, 182 P.2d 1011, 1017 (1947); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18–19, 900 P.2d 619 (1995), *as modified on denial of reh'g* (Oct. 26, 1995) ("language in a contract must be interpreted as a whole, and in the circumstances of the case, and cannot be found to be ambiguous in the abstract. Courts will not strain to create an ambiguity where none exists.") (internal citations omitted).
4. "Summary judgment is appropriate when a contract is clear and unambiguous, meaning that the contract is not reasonably susceptible to more than one interpretation." *University of Nev., Reno v. Stacey*, 116 Nev. 428, 431, 997 P.l2d 812, 814 (Nev. 2000) (citations omitted).
5. Summary judgment is also appropriate "when the language is ambiguous and there is relevant extrinsic evidence, but the extrinsic evidence creates no genuine issue of material fact and permits interpretation of the agreement as a matter of law." *Nycal Corp. v. Inoco PLC*, 988 F. Supp. 296, 299 (S.D.N.Y. 1997).
6. The Nevada Supreme Court has made clear that "[r]estrictive covenants are strictly construed," and "[t]he words in a restrictive covenant, like those in a contract, are construed according to their plain and popular meaning." *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 666-67 (2004); *see also Nevada Food King, Inc. v. Reno Press Brick Co.*, 81 Nev. 135, 138, 400 P.2d 140, 142 (1965) (noting the "well established rule that a restrictive covenant, being in restraint of trade, is to be strictly construed"); *see also* 20 Am. Jur. 2d Covenants, Etc. § 171 ("Covenants and agreements restricting the free

use of property are not favored by the law and are subject to a strict construction ... against the person seeking the restriction and in favor of the person being restricted; thus, doubt will be resolved in favor of the unrestricted use of the property."); 21 C.J.S. Covenants § 26 ("Covenants intended to limit property use must be clearly stated, and because restrictions on the free use of property are at odds with common law right to use land for all lawful purposes, the court will enforce such restrictions only when clearly expressed.")

7. Strict construction is "'1) An interpretation that considers only the literal words of a writing. 2) A construction that considers words narrowly, [usually] in their historical context.'" *7-Eleven, Inc. v. Durango Sahara, LLC*, No. 14A698018, 2015 WL 1412304, at *2 (Nev. Dist. Ct. Feb. 11, 2015) (quoting *Black's Law Dictionary* 332 (Bryan A. Gamer ed., 8th ed. West 2004)).
8. "A contract may include a definition of a term to express the parties' intention." *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947).
9. Courts may not substitute words in a contract because to do so "would be virtually creating a new contract for the parties, which they have not created or intended themselves, and which, under well settled rules of construction, the court has no power to do." *Reno Club v. Young Inv. Co.*, 64 Nev. at 323, 182 P.2d at 1016 (1947).

IV. Analysis

1. The Covenant is unambiguous in restricting the operation and use of the Restricted Parcels, including the parcels comprising the Peru Shelf, to facilities that are Colocation Facilities. The term Colocation Facility is defined by the recorded Covenant to give notice to subsequent purchasers of Restricted Parcels about what they may not do. To read the words in the Covenant more broadly than the plain meaning of those words is not permitted by controlling authority.
2. Tract's construction of the Covenant is appropriately narrow. Switch's reading, while not conceptually illogical, is not a natural reading of the Covenant's plain language and stretches the scope more broadly than the text of the Covenant reasonably allows.

Tract's is a workable construction supported by the terms of the Covenant: multi-tenant data centers are restricted, single-tenant and owner-occupied data centers are not.

3. If Switch and TRI had intended the scope of restrictions for which Switch argues, alternative language, more clearly articulating that intent, was necessary.

4. Because a restrictive covenant is meant to apply to subsequent purchasers of land, the interpretation of the covenant's scope must be limited to the words that articulate the restrictions. A subsequent purchaser, like Tract, cannot be bound by the internal intentions of the party restricting the use of the land to create a broader covenant. *Diaz*, 120 Nev. at 75 ("a grantee can only be bound by what he had notice of, not the secret intentions of the grantor.") (*quoting Caughlin Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268, 849 P.2d 310, 312 (1993) (internal marks omitted)). If there is any doubt as to the meaning of the Covenant, the doubt is resolved in favor of the party seeking the narrower construction and against the party seeking enforcement. *Caughlin Club*, 109 Nev. at 268, 849 P.2d at 312 ("When construing real property covenants of doubtful import, they should be construed against the person seeking enforcement.").

5. In defining a "Colocation Facility," the text of the Covenant sets a five-part test; a data center must satisfy all five parts of the "Colocation Facility" test to be prohibited. First, the restriction applies only to a "building or other structure." The final restriction applies only when there is "more than one third-party customer" in the building or other structure. Second, third and fourth, the owner of the "Colocation Facility" must "provide[] access to space for and/or manage[]" all three of the following things "in" the restricted "building or other structure": (1) computer infrastructure; (2) voice and/or data networking; and (3) other communications.

6. All data centers are buildings that contain computer infrastructure, and involve voice and/or data networking, and other communications. But not all data centers "provide[] access to space for and/or manage" all three for multiple tenants—i.e. "more than one third-party customer." That is what the Covenant restricts and, not coincidentally, that was the only business in which Switch was engaged at the time it purchased land in

TRIC and agreed to the Covenant with TRI. See Switch 30b6 (Roy) Dep. Tr. at 293:24-294:8.

7. In coming to this conclusion, the Court looks first to who is the "party" that is restricted. Here, the Court concludes that the most natural reading of the Colocation Covenant is that the owner or occupant of the facility in question is the "party" restricted by the language of the Colocation Covenant.

8. "Third-party customer" and "end user" are not synonymous. The term "third-party customer," as written in the Covenant, begs the question: "third-party customer of whom?" Third-party customers, for the purposes of the Covenant, are those who place their "computer infrastructure" in the physical space inside the data center. The end users of services provided by the company that owns or occupies the data center are not the "third-party customers" referred to in the Covenant.

9. When all the space in a leased data center is dedicated to a single tenant, there is only one "third-party customer," the tenant. Thus, the use is permissible under the Covenant.

10. In plain English, a Colocation Facility as defined in the Covenant is a multi-tenant data center facility; single-tenant data centers have one or fewer "third-party customers" as that term is utilized in the Covenant. In this regard, the Court agrees with Tract and finds that Tract's construction is the correct reading of the Covenant according to its unambiguous terms.

11. A single-tenant data center is permitted by the Colocation Covenant because there is only one third-party customer. The argument advanced by Switch that the Covenant prohibits wholesale, single-tenant data centers is explicitly precluded by the Colocation Covenant's application strictly to "buildings" with "more than one third-party customer." Applying Nevada law requiring that restrictive covenants be "strictly construed," Switch's urged reading of the Colocation Covenant is not a natural one.

12. Based on a plain reading of the Covenant, the Court concludes that the term "Colocation Facility" restricts the use, improvement or development of Restricted Parcels for multi-

tenant data centers. Multi-tenant data centers are buildings or other structures in which the owner or occupant of the building provides access to space for, and/or manages, all the following for more than one occupant or tenant in that building: (1) computer infrastructure, (2) voice and/or data networking and (3) other communications.

13. Single-tenant and owner-occupied data centers that provide cloud services to end users are not Colocation Facilities and are therefore not restricted by the Covenant.

14. Switch's urged restriction on cloud data centers is not a fair interpretation of the language of the Covenant; subsequent purchasers of land in TRIC are not put on notice that a cloud data center is restricted because the word cloud does not appear. There is no legal support for expanding the Covenant beyond the natural reading of the words in the Covenant. *See Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268, 849 P.2d 310, 312 (1993) (*quoting Lakeland Prop. Owners Ass'n v. Larson*, 121 Ill. App. 3d 805, 812, 459 N.E.2d 1164, 1170 (1984)) ("[A] grantee can only be bound by what he had notice of, not the secret intentions of the grantor.").

15. The Covenant, by its plain terms, does not prohibit a data center from offering cloud services to multiple end users. End users differ from "customers" of a data center in that they do not lease space in the data center, do not own or control any of the equipment inside the data center, have no rights to access the data center and, at bottom, have no access to the servers or other components of the data center for which a "customer" would have contractual responsibilities. E.g., Cross-Motion, Ex. 34, Jamsa Dep. Tr. (Rough) at 55:12-56:5 ("Q Typically the customers of a cloud provider would not be able to physically touch the computer infrastructure that's providing services to them, correct? A Correct."). Switch's reading would render virtually anyone, anywhere in the world who uses the internet a "third-party customer" of a data center operator, which is contrary to the plain language of the Covenant.

16. When all of the space in a leased data center is dedicated to a single tenant, there is only one "third-party customer" of that data center owner, and thus the use is permissible under the Covenant. Cross-Motion, Ex. 3, TRI 30b6 Tr. at 244:14-18

("[I]f you're leasing a facility and it's to one party, then, if you're the lessor, the lessee would be one more -- it would be less than one third-party customer, so you could do that . . ."). This arrangement is sometimes called a "wholesale" data center—where the lessee has operational control of the entire facility. Id., Ex. 32 at ¶ 45 ("Mr. Goolsbee and I agree on two key points regarding wholesale data centers—that it involves the allocation of a very large amount of space, and that it may involve a single party."); Id., Ex. 33, Dec. 4, 2023 Decl. of G. Williams at ¶ 25 (a "single-tenant wholesale data center (e.g., speculatively built facilities or built-to-suit), [is] where the owner of the data center leases the entire facility to just one customer, rather than to multiple customers. The sole occupant of a single-tenant wholesale data center does not own the data center facility, but also does not share it with any other customers").

17. To the extent that Switch internally intended to restrict single-tenant facilities—whether cloud providers, hyperscalers, or wholesale data centers—that intent was not mutual, was not manifested in the Covenant, and does not control the Court's interpretation here. *See* 21 C.J.S. Covenants § 26 ("Covenants intended to limit property use must be clearly stated, and because restrictions on the free use of property are at odds with common law right to use land for all lawful purposes, the court will enforce such restrictions only when clearly expressed.").

18. For all of these reasons, pursuant to Nev. R. Civ. P. 56, Tract is entitled to summary judgment on Count I of its Amended and Restated Counterclaims.

V. Order

Therefore, good cause appearing, **IT IS HEREBY ORDERED**:

(1) Switch's *Plaintiffs/Counterdefendants' Motion for Partial Summary Judgment on Plaintiffs' Claims and for Summary Judgment on Defendants/Counterclaimant's Counterclaim* filed August 15, 2025 is **DENIED**.

(2) Tract's *Cross-Motion for Summary Judgment on NVLCO's Counterclaim for Declaratory Judgment* is **GRANTED**.

(3) Pursuant to Nev. R. Civ. P. 58, the Clerk of Court is **DIRECTED TO ENTER JUDGMENT** in favor of Counterclaimant, NVLCO STOREY COUNTY, LLC, as to Count I of its Amended and Restated Counterclaims.

(a) The definition of "Colocation Facility" in the Covenant only restricts operation of multi-tenant data centers on Restricted Parcels;

(b) Multi-tenant data centers are buildings or other structures in which the owner or occupant of the building provides access to space for, and/or manages, all the following for more than one occupant or tenant in that building or structure: (1) computer infrastructure, (2) voice and/or data networking, and (3) other communications; and

(c) The Peru Shelf parcels owned by NVPRU01, Inc., NVPRU02, Inc. and NVPRU03, Inc., may not be used, improved or developed for multi-tenant data centers.

IT IS HEREBY FURTHER ORDERED that Defendants shall serve notice of entry of this order on all other parties and affected third parties and file proof of such service within seven (7) days after the date the Court sends this order to the attorneys of record.

Dated this 29th day of September, 2025.

Jason D. Woodbury
DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 19 day of September, 2025, I served the foregoing Order by placing a copy in the United States Mail, postage prepaid, addressed as follows:

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