

1 **2. Pardee Kept Plaintiffs Informed as to Matters Relating to Their**
2 **Commission Payments.**

3 Plaintiffs have also alleged that Pardee breached the Commission Agreement by
4 failing to keep Plaintiffs informed of sales and purchases of real property governed by
5 the Commission Agreement. See Amended Complaint, ¶ 7. The Commission
6 Agreement states:

7 Pardee shall provide to each of you a copy of each written option exercise
8 notice given **pursuant to paragraph 2 of the Option Agreement**,
9 together with information as to the number of acres involved and the
 scheduled closing date. In addition, Pardee shall keep each of you
 reasonably informed as to all matters relating to the amount and due
 dates of your commission payments.

10 Id. (emphasis added). Pardee has fulfilled all of its obligations under this specific
11 requirement of the Commission Agreement.

12 First, paragraph 2 of the Option Agreement specifically covers Pardee's right to
13 purchase the Option Property from CSI. As already established, Pardee has not
14 purchased any Option Property. See Lash Depo. (Exhibit C) at 95:18-22; 96:9-14.
15 Therefore, Pardee had no written option exercise notices or acreage information to
16 provide to Plaintiffs.

17 Second, Pardee has kept Plaintiffs informed as to all matters relating to their
18 commission due dates and payment. In fact, over the course of the multiple
19 Takedowns, Plaintiffs were paid their commissions pursuant to the terms of the
20 Commission Agreement through escrow. See Wolfram Depo. (Exhibit A) at 70:16-71:7;
21 106:7-11; 133:19-25; see also Wilkes Depo. (Exhibit B) at 94:13-95:23; see also Exhibit
22 I and Exhibit J. In addition, representative of Pardee sent multiple correspondence to
23 Plaintiffs explaining the status of the Takedowns and their related commissions. On
24 August 23, 2007, Lash sent a letter to Plaintiffs which referenced the Commission
25 Agreement. A copy of this letter is attached to the Appendix as **Exhibit K**. In this letter,
26 Mr. Lash explained that "The Commission Agreement applies to the original Option
27 Agreement covering single-family land at Coyote Springs which included both of
28 [Plaintiffs'] involvement." Id. at p. 2.

1 On March 14, 2008, Mr. Lash sent Plaintiff another letter attempting to explain
2 and clarify the status of land purchases and Plaintiffs' commissions. A copy of this
3 letter is attached to the Appendix as **Exhibit L**. In this letter, Mr. Lash explained that
4 "Pardee has not exercised any option to purchase the Option Property." Id. at p. 2. Mr.
5 Lash assured Plaintiffs that if such an exercise were to occur they would each be
6 provided with copies of each written option exercise notice in a timely fashion. Id.

7 On April 6, 2009, Mr. Stringer, Director of Land Acquisition for Pardee, sent a
8 letter to Wolfram explaining that Pardee made its last payment to CSI for its purchase
9 of real estate. A copy of this letter is attached to the Appendix as **Exhibit M**. Mr.
10 Stringer pointed out that Plaintiffs have been paid in full with respect to the Purchase
11 Property under the Commission Agreement. Id. Further, Mr. Stringer attached three
12 closing statements for the land acquired by Pardee. Id.

13 Finally, on November 24, 2009, Mr. Lash again responded to Plaintiffs' ongoing
14 inquiries regarding Pardee's land purchases from CSI. A copy of this letter is attached
15 to the Appendix as **Exhibit N**. The letter contained a narrative description of each
16 Takedown with express references to color coded maps. Id. It also provided a
17 breakdown of the amounts Pardee paid to CSI at the closing of each Takedown, which
18 ultimately reflected the Purchase Property Price. Id. at p. 2. In sum, it provided
19 documentation and proof that Plaintiffs have been paid their full commissions related to
20 the Commission Agreement. Id.

21 This string of correspondence from Pardee to Plaintiffs shows that Pardee kept
22 Plaintiffs reasonably informed as to all matters relating to their commission payments.
23 As to Pardee's obligation to inform Plaintiffs of any purchase of Option Property, there
24 is nothing to report. Therefore, Pardee has fulfilled its obligations under the
25 Commission Agreement.

1 **3. Plaintiffs Have No Evidence to Substantiate Their Alleged**
2 **Damages.**

3 Pardee is also entitled to judgment as a matter of law on Plaintiffs' breach of
4 contract claim because they do not have any evidence that indicates they have suffered
5 any damages. "The party seeking damages has the burden of proving both the fact of
6 damages and the amount thereof." Mort Wallin v. Commercial Cabinet Co., 105 Nev.
7 855, 857, 784 P.2d 954, 955 (1989). "The latter aspect of the burden need not be met
8 with mathematical exactitude, but there must be an evidentiary basis for determining a
9 reasonably accurate amount of damages." *Id.* "[T]here must be substantial evidence
10 as to the amount of damage, as the law does not permit arriving at such amount by
11 conjecture; that to prove a right to damages without proving the amount, entitles a
12 plaintiff to nominal damages only." Alper v. Stillings, 80 Nev. 84, 87, 389 P.2d 239, 240
13 (1964). Accordingly, to survive summary judgment, Plaintiffs must show that they have
14 some evidence of damages or show that there is a genuine material issue of fact for
15 trial on the issue of damages.

16 The evidence in this case shows that Pardee fully performed under the terms of
17 the Commission Agreement by paying a total of \$2,632,000 in commissions to Plaintiffs
18 related to Pardee's purchase of single-family production residential property from CSI.
19 This amount constitutes all commissions owed to Plaintiffs. Plaintiffs are incapable of
20 establishing damages as they lack any evidence that Pardee purchased any Option
21 Property and failed to pay additional commissions. Plaintiffs admit as much. See
22 Wilkes Depo. at 102:13-20. As previously stated, Pardee has not exercised its option
23 to purchase any portion of the Option Property defined in the Option Agreement and
24 referred to in the Commission Agreement. In sum, Plaintiffs have not been damaged
25 and therefore have no evidence of damage.

1 **C. Plaintiffs’ Claim for an Accounting Fails Under Nevada Law.**

2 This cause of action requires a showing that a relationship exists between a
3 plaintiff and defendant that requires an accounting, and that some balance is due the
4 plaintiff that can only be ascertained by an accounting. See Teselle v. McLoughlin, 173
5 Cal. App.4th 156, 179 (2009). The right to an accounting can arise from defendant’s
6 possession of money or property which, because of the defendant’s relationship with
7 the plaintiff, the defendant is obliged to surrender. Id.

8 In Nevada, an “account stated may be broadly defined as an agreement based
9 upon prior transactions between the parties with respect to the items composing the
10 account and the balance due, if any, in favor of one of the parties.” Old West Enters.,
11 Inc. v. Reno Escrow Co., 86 Nev. 727, 729, 476 P.2d 1, 2 (1970). “To affect an account
12 stated, the outcome of the negotiations must be the recognition of a sum due from one
13 of the parties to the other with a promise, express or implied, to pay that balance.” Id.
14 (emphasis added). In the case at bar, Plaintiffs cannot demonstrate any sum that is
15 due from Pardee.

16 In Young v. Johnny Ribeiro Bldg., Inc., the Nevada Supreme Court found that
17 the production of a summary of disbursement, receipts, liabilities and assets constituted
18 substantial evidence to satisfy a prima facie claim for an accounting. 106 Nev. 88, 94-
19 95, 787 P.2d 777, 781 (1990). In the case at bar, prior to and during the course of
20 discovery, Plaintiffs have received all the documents in Pardee’s possession and
21 control related to the transactions involving Pardee’s purchase of property from CSI
22 under the Option Agreement. See Declaration of Aaron D. Shipley in Support of
23 Motion, at ¶ 18, filed contemporaneously with this Motion. In addition, Plaintiffs have
24 subpoenaed documents from third parties directly involved in these transactions. Id. at
25 ¶ 19. On or about November 8, 2011 Plaintiffs served a subpoena on Stewart Title
26 requesting documents related to the Takedowns. Id. On or about January 18, 2012
27 Plaintiffs produced Stewart Title’s documents in this litigation. Id. On or about
28 November 9, 2011 Plaintiff served a subpoena on Chicago Title requesting documents

1 related to the Takedowns. Id. On or about February 6, 2012 Plaintiffs produced
2 Chicago Title's documents in this litigation. Id. Stewart Title and Chicago Title were the
3 only escrow companies to handle the closings associated with Pardee's purchase of
4 the property from CSI. On or about November 8, 2011 Plaintiffs also subpoenaed
5 documents from CSI related to its sale of any and all property to Pardee. Id. On or
6 about August 27, 2012 Plaintiffs produced CSI's documents in this litigation. Id. In
7 essence, Plaintiffs have access to all of the same information as Pardee pertaining to
8 documentation of Pardee's purchase of property from CSI. Put simply, access to
9 information and documents obviates the need for a cause of action for an accounting.
10 Moreover, without owing any obligation to Plaintiffs, Pardee has no duty to account for
11 anything. Therefore, Pardee is entitled to judgment as a matter of law on this cause of
12 action.

13 **D. Breach of Good Faith and Fair Dealing.**

14 Plaintiffs are unable to satisfy the elements required to establish a valid claim for
15 breach of the implied covenant of good faith and fair dealing. The Nevada Supreme
16 Court has stated that "[i]t is well established within Nevada that every contract imposes
17 upon the contracting parties the duty of good faith and fair dealing." Hilton Hotels Corp.
18 v. Butch Lewis Prod. Inc., 109 Nev. 1043, 1046, 862 P.2d 1207, 1209 (1993) ("Hilton
19 II"). Thus, "a wrongful act which is committed during the course of a contractual
20 relationship may give rise to both tort and contractual remedies." Id. "The duty not to
21 act in bad faith or deal unfairly thus becomes a part of the contract, and, as with any
22 other element of the contract, the remedy for its breach generally is on the contract
23 itself." Id. at 1047 (quoting Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370,
24 383, 710 P.2d 1025, 1038 (1985)).

25 In order to properly allege a contractual breach of the implied covenant of good
26 faith and fair dealing, the claimant must show that: (1) plaintiff and defendant were
27 parties to the contract; (2) the defendant owed a duty of good faith to the plaintiff; (3)
28 the defendant breached that duty by performing in a manner that was unfaithful to the

1 purpose of the contract; and (4) the plaintiff's justified expectations were thus denied.
2 See Perry v. Jordan, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995); Hilton Hotels Corp.
3 v. Butch Lewis Prod. Inc., 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991) ("Hilton I").

4 In this case, Plaintiffs cannot prove that Pardee performed in a manner that was
5 unfaithful to the purpose of the Commission Agreement. Further, Plaintiffs cannot
6 prove that their justified expectations regarding the Commission Agreement were thus
7 denied. Plaintiffs were paid quite handsomely, pursuant to the Commission Letter, for
8 their assistance introducing Pardee and CSI. In fact, they (or the broker entities to
9 which they were affiliated) received over \$2.6 Million dollars in commissions for their
10 work. There is absolutely no part of the Commission Agreement that has not been
11 complied with. Pardee acted in good faith and fulfilled every obligation it had with
12 regard to the Commission Agreement.

13 Plaintiffs do not specify whether their cause of action is for contractual breach of
14 the covenant of good faith and fair dealing or for an alleged tortious breach of the
15 implied covenant of good faith and fair dealing. However, if the claim is for a tortious
16 breach of the covenant it equally fails as to Pardee in this case. Put simply, Plaintiffs
17 lack any legal foundation supporting the assertion of claims for tortious breach of the
18 covenant of good faith and fair dealing against Pardee. Where a contract does exist, a
19 "special element of reliance or fiduciary duty" must exist to give rise to the tort-based
20 cause of action. Great American Insurance Company v. General Builders, Inc., 113
21 Nev. 346, 354, 934 P.2d 257, 263 (1997). Specifically, a special element of reliance or
22 fiduciary duty is limited to circumstances "involving special relationships characterized
23 by elements of public interest, adhesion, and fiduciary responsibility." Id. at 113 Nev.
24 355, 934 P.2d 263; see also, Kmart Corp. v. Ponsock, 103 Nev. 39, 49-50, 732 P.2d
25 1364, 1369-70 (1987) (explaining that a tort action for bad-faith lies only in those cases
26 where "the party in the superior, trusted position" is required to "make the aggrieved,
27 weaker, trusting party whole"); see also Aluevich v. Harrah's, 99 Nev. 215, 218, 660
28 P.2d 986, 987 (1983) (holding that a cause of action in tort for the breach of an implied

1 covenant of good faith and fair dealing where the relationship was between a lessor
2 and lessee and did not involve a “special element of reliance such as that found in
3 partnership, insurance and franchise agreements.”).

4 The agreement between the parties in this case is not of the “rare and
5 exceptional” type generally recognized as giving rise to a claim for tortious breach of
6 the implied covenant. General Builders, at 355, 934 P.2d at 263. Nothing about the
7 Commission Agreement places Pardee in a “superior or entrusted position” relative to
8 Plaintiffs. See Ponsock, at 49, 732 P.2d at 1364); see also Aluevich, at 218, 660 P.2d
9 at 987. The requisite allegations of special relationship or fiduciary duty are absent
10 from Plaintiffs’ pleading.

11 **E. In the Alternative, Summary Judgment in Favor of Pardee is**
12 **Appropriate Because Plaintiffs Lack Standing to Bring this Action**
13 **Against Pardee.**

14 At the time the Commission Agreement was negotiated and executed, Wilkes
15 was an agent of General Realty Group, Inc. and Wolfram was an agent of Award Realty
16 Group. See Wolfram Depo. (Exhibit A) at 63:5-14; see also Wilkes Depo. (Exhibit B) at
17 72:11-23. In their Complaint, Plaintiffs allege that Wolfram has been assigned all of
18 Award Realty’s rights, title and interest in the Commission Agreement. See Amended
19 Complaint at ¶ 2. Similarly, Plaintiffs allege that Wilkes has been assigned all of
20 General Realty’s rights, title and interest in the Commission Agreement. Id. at ¶ 3.
21 However, neither Wilkes, nor Wolfram has produced documentation establishing the
22 validity of these alleged assignments. Further, in deposition both admit that they had
23 not received any such assignment. See Wolfram Depo. (Exhibit A) at 9:1-21; see also
24 Wilkes Depo. (Exhibit B) at 44:13-46:13; 123:19-124:11.

25 Aside from Plaintiffs’ claims against Pardee failing on the merits, Plaintiffs have
26 also failed to establish that they have actual standing to bring this action. Both Plaintiffs
27 allege that they have received assignments from the real estate brokers with whom
28 they were respectively affiliated at the time the Commission Letter was executed,

1 thereby acknowledging the need for such an assignment. Wolfram alleges that Award
2 Realty assigned all its "rights, title and interest" in the Commission Letter to him.
3 Similarly, Wilkes alleges that General Realty assigned all its "rights, title and interest" in
4 the Commission Letter to him. It is upon these alleged assignments that Plaintiffs
5 initiated this litigation against Pardee. However, discovery is now closed and Plaintiffs
6 have failed to establish that Award Realty and General Realty actually made these
7 alleged assignments.

8 Plaintiffs may pursue their claims of relief against Pardee as the real parties in
9 interest under NRCP 17(a) only if Award Realty and General Realty effected valid
10 assignments of their rights under the Commission Letter. Pursuant to NRCP 17(a),
11 only a real party in interest may institute an action. The purpose of this rule is to insure
12 that the party bringing suit is actually the proper party entitled to recover so that the
13 defendant is protected "against a subsequent action by the party actually entitled to
14 recover, and to insure generally that the judgment will have its proper effect as res
15 judicata." Easton Business Opportunities, Inc. v. Town Executive Suites-Eastern
16 Marketplace, LLC, 126 Nev. ___, ___, 230 P.3d 827, 831 (2010) (quoting FRCP 17(a)
17 advisory committee's notes (1966)). An assignee can be a real party in interest, but
18 only if the assignor has effected a valid assignment. Id.

19 In this case, there is no evidence that Award Realty or General Realty assigned
20 any rights in the Commission Agreement to Plaintiffs. Absent such proof, Plaintiffs'
21 attempt to assert claims pursuant to these assignments must fail because they are not
22 the real parties in interest under NRCP 17(a). Without a valid assignment, NRCP 17(a)
23 cannot properly protect Pardee against subsequent claims, and any judgment rendered
24 will not have the proper res judicata effect.

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III. CONCLUSION

Based upon the foregoing, it is apparent that no genuine issue of material fact is in dispute concerning Plaintiffs' claims. Thus, summary judgment is appropriate and Pardee respectfully requests the Court enter summary judgment in favor of Pardee and against Plaintiffs on all causes of action in the Complaint.

RESPECTFULLY SUBMITTED this 24th day of October, 2012.

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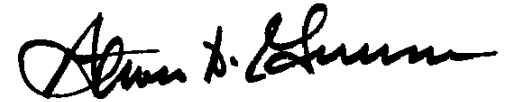
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 24th day of October, 2012, I served a true and correct copy of the foregoing **DEFENDANT’S MOTION FOR SUMMARY JUDGMENT** via hand delivery on the following:

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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,
15 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**APPENDIX OF EXHIBITS IN SUPPORT
OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

16
17 RESPECTFULLY SUBMITTED this 24th day of October, 2012.

18
19 McDONALD CARANO WILSON LLP



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**APPENDIX OF EXHIBITS TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Exhibit	Document	Page Nos.
A	Certified transcript of the deposition of James Wolfram which was taken on November 8, 2011	1-26
B	Certified transcript of the deposition of Walter Wilkes which was taken on November 28, 2011	27-54
C	Certified transcript of the deposition of Jon Lash which was taken on September 26, 2012	55-69
D	Option Agreement for the Purchase of Real Property and Joint Escrow Instructions ("Option Agreement") – <i>Filed Under Seal</i>	70-149
E	Amendment to Option Agreement dated July 28, 2004 – <i>Filed Under Seal</i>	150-152
F	Amendment No. 2 to Option Agreement dated August 31, 2004 – <i>Filed Under Seal</i>	153-162
G	letter from Jon Lash, Sr. Vice President of Pardee Homes ("Lash"), to Walt Wilkes ("Wilkes") of General Realty Group and Jim Wolfram ("Wolfram") of Award Realty Group dated September 1, 2004, which was countersigned by Wolfram and Wilkes ("Commission Agreement")	163-166
H	Certified Transcript of the deposition of Harvey Whittemore which was taken on October 19, 2012	167-185
I	"Buyer(s) Final Closing Statement" prepared by Stewart Title of Nevada. This document bears a date stamp of April 13, 2005 – <i>Filed Under Seal</i>	186
J	"Chicago Title Escrow Ledger Listing" dated April 6, 2009 <i>Filed Under Seal</i>	187-190
K	Letter from Lash to Wolfram and Wilkes dated August 23, 2007	191-192
L	Letter from Lash to Wolfram and Wilkes dated March 14, 2008	193-194
M	Letter from Jim Stringer, Jr. of Pardee Homes to Wolfram dated April 6, 2009 – <i>enclosures Filed Under Seal</i>	195-198
N	Letter from Lash to Wolfram dated November 24, 2009	199-202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP
and that on the 24th day of October, 2012, I served a true and correct copy of the
foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT** via hand delivery on the following:

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EXHIBIT A



CERTIFIED
COPY

Las Vegas
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Carson City

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

)
)
)
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)
) CASE NO.: A-10-632338-C
) DEPT. NO.: IV
)
)
)
)

DEPOSITION OF JAMES WOLFRAM
LAS VEGAS, NEVADA
TUESDAY, NOVEMBER 8, 2011

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809

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1 DEPOSITION OF JAMES WOLFRAM, taken at 2300
2 West Sahara Avenue, Suite 1000, Las Vegas, Nevada on
3 TUESDAY, NOVEMBER 8, 2011 at 10:00 a.m., before
4 Jackie Jennelle, Certified Court Reporter, in and
5 for the State of Nevada.

6
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25

1 Q. All right. In this litigation, have you
2 received any assignments to bring claims on behalf
3 of Award Realty?

4 A. I don't think so. I believe, I don't think
5 so.

6 Q. What about on behalf of D&W Real Estate,
7 have you received any assignments to bring claims on
8 their behalf?

9 A. What do you mean by claims? Give me an
10 example of what you're talking about.

11 Q. Typically, an assignment is a contractual a
12 document where it's in writing where a company will
13 assign to you the right to bring claims or bring
14 litigation to assert causes of action on their
15 behalf.

16 A. No.

17 Q. So you don't have anything like that?

18 A. No.

19 Q. From either D&W or from Award, is that
20 correct?

21 A. That's right. As far as I can remember.

22 Q. Okay. In this case, it's my understanding
23 that your primary dispute with Pardee Homes, which
24 is my client, concerns what you believe is a breach
25 of contract.

1 Is that right?

2 A. Yes.

3 Q. That contract was in writing, correct?

4 A. Yes.

5 Q. It was the commission letter. I think it
6 bears the date of September 1 of 2004.

7 Is that right?

8 A. September 4th.

9 Q. September 4th of 2000?

10 MS. LUNDVALL: Let's mark this then, this
11 document.

12 (Exhibit No. 1, Commission Letter Dated September 1,
13 2004, marked.)

14 BY MS. LUNDVALL:

15 Q. Mr. Wolfram, I'm going to hand you what's
16 been marked as Exhibit 1 to your deposition.

17 My question to you is whether or not
18 Exhibit 1, which is a letter that bears a date of
19 September 1 of 2004, is the commission letter that
20 is the contract at issue in this litigation?

21 A. That's it.

22 Q. Is that?

23 A. Yes, that's it.

24 Q. And that commission letter then, after you
25 entered into that contractual arrangement with

1 Pardee Homes of Nevada, did you ever have another
2 written agreement with Pardee after you entered into
3 the one --

4 A. After this agreement?

5 Q. Yes.

6 A. No.

7 Q. Okay. So what we're talking about from a
8 contractual standpoint then is this September 1,
9 2004 commission letter, correct?

10 A. Yes.

11 Q. Can you tell me generally what prompted you
12 to file this lawsuit?

13 A. I have no information on anything. As you
14 can see in here, it calls -- they're supposed to
15 keep me informed as to what's happening.

16 I have no maps, I have no parcel numbers,
17 I've got no things from escrow, information from
18 escrow. I have no clue as to how to track any of
19 this.

20 And that's how it all started. I can't
21 track a thing.

22 Q. Okay. What is it that you hope to gain out
23 of this litigation?

24 A. I hope to gain maps, parcel numbers, things
25 that I can understand to track what land is being

1 Q. Any of them work within your trade or your
2 profession?

3 A. Not my children.

4 Q. Okay. Do you have grandchildren?

5 A. I do.

6 Q. Are any of your grandchildren adults?

7 A. No. They're all little.

8 Q. Good for you.

9 While this may take you back just a little
10 bit, can you give me your educational background,
11 please?

12 A. High school, college and bachelor's degree
13 in industrial forestry, and that's basically it.

14 Q. Where were you born and raised?

15 A. Weston, West Virginia.

16 Q. How long was it before you came out here to
17 Las Vegas?

18 A. 1973.

19 Q. Now, you say you went to high school.

20 I take it that was back in West Virginia,
21 is that correct?

22 A. I did.

23 Q. You went to college where?

24 A. I went to college at West Virginia
25 University.

1 Q. All right. And you got a degree then in
2 forestry, is that correct?

3 A. Industrial forestry.

4 Q. What does that mean?

5 A. I didn't sit in a tower out in some forest
6 somewhere. I was working for industry. I worked
7 for a paper mill, a large paper mill.

8 Q. Is that a bachelor's of science or
9 bachelor's of arts degree?

10 A. Science.

11 Q. What year was that?

12 A. I graduated 1964.

13 Q. Okay. Did you do any post secondary
14 education after that?

15 A. No.

16 Q. Can you trace then what your employment
17 history has been?

18 A. My employment?

19 Q. Yes.

20 A. You want to trace that from when I got
21 here?

22 Q. Some people finds it easier to pick a time
23 and move forward. Other people find it easier to
24 pick a time and move back. Your choice.

25 A. When I first got here, I didn't know what I

1 Q. It's not an inch?

2 A. No.

3 Q. And those materials that you have in your
4 file, have you shared those with your attorneys?

5 A. Yes.

6 Q. Everything that's in your file have you
7 shared with your attorneys?

8 A. I had to. That's the reason I got
9 Mr. Jimmerson. I had to give him that stuff so he
10 could help me out.

11 Q. How is it you came to be involved with
12 Coyote Springs Investment, LLC?

13 A. Jon Lash was looking for a large property.
14 They were looking for a large property to develop.
15 He asked us -- when I say "us," Walt Wilkes and
16 myself -- if we could find something.

17 We knew of a few properties. We went over
18 to White Hills across the dam, across Boulder Dam.
19 We had that in escrow. It didn't work out between
20 Leonard Mardian, the owner, and Jon Lash. They got
21 to the point where they just couldn't work together
22 any more and that one went down.

23 So then Jon asked us, said, what else you
24 got? We went to Sandy Valley and did extensive work
25 on all of the private ownership up there.

1 We could come up with a bunch of land like
2 he wanted in Sandy Valley, but there was a water
3 rights issue. And that one went down because I
4 guess the Petersons were buying up all water rights
5 and taking them up to Stateline up in that area. So
6 we left that one because of a water rights issue.

7 Coyote Springs, I'd been calling Harvey on
8 Coyote Springs. I knew someday that was going to be
9 available. Harvey is a very smart man. I knew he
10 was going to get his water someday, and I would call
11 and I said, I told Jon we have another one.

12 I called Harvey. He said, yeah, we have
13 our water rights more or less straightened out now.
14 I told him I had a buyer. He said fine. I told him
15 Pardee. I went to Jon. Jon -- we put them
16 together, sat down and had a mutual agreement.

17 Q. And for purposes of my record today, when
18 you make reference to Jon, you're referring to Jon
19 Lash, correct?

20 A. I am.

21 Q. And when you make reference to Harvey,
22 you're referring to Harvey Whitemore?

23 A. Harvey Whitemore.

24 Q. How is it that you knew Mr. Lash?

25 A. We've done -- Pardee owns a lot of land in

1 Las Vegas, and Walt and I were in the land business.
2 We had talked to him on different parcels of land
3 and property, you know, trying to bind some land for
4 him or from him if he had lots that he wanted to
5 sell, that type of thing.

6 Q. Now, you and Mr. Wilkes, then had you
7 previously done sales either to or from Pardee?

8 A. Did we sell any of his property, do you
9 mean?

10 Q. Yes.

11 A. I don't think we sold any of his.

12 Q. How about acquiring property for Pardee?

13 A. Let me see if we acquired. I'm not certain
14 if for this one. I really don't remember on that.
15 I'm not certain if for this one we acquired any land
16 for him or not. I really don't remember.

17 Q. I guess what I'm getting to, did you have
18 any other kind of commission letters with Pardee
19 Homes of Nevada?

20 A. It was verbal. We just talked with Jon.
21 He'd come over and we'd meet with Jon, but it wasn't
22 anything done that I can remember offhand in
23 writing. If there was, I don't remember.

24 Q. I take it then also you wouldn't recall
25 whether or not there was any disputes then over any

1 Q. When you say that you kept following it,
2 are you talking about through the newspaper as well
3 as the public record?

4 A. You read things in the newspaper, but
5 mostly I'd just call Harvey. It's been several
6 times I called him.

7 Q. Harvey liked to talk about his project,
8 didn't he?

9 A. I just talked about his project: Do you
10 have water yet? Is it ready for sale?

11 He'd just say, no, it's not ready for sale
12 because it wasn't ready. But this time when I
13 called him, it was ready.

14 Q. So I take it somewhere along line then you
15 put Mr. Lash and Mr. Whitemore together?

16 A. Yes.

17 Q. Okay. And tell me what you did then after
18 you put the two of them together.

19 A. Well, we put them together, and Walt and I
20 sat in early on, but then Jon Lash said they didn't
21 want Harvey to think we're ganging up on him.

22 He asked us, says, I'm bringing a bunch of
23 attorneys and what have you, and I'd prefer that he
24 doesn't feel like he's getting ganged up. Our
25 attorneys are probably going to take over from here

1 anyway. We would prefer maybe that you don't come
2 to the meetings.

3 That's basically what happened.

4 Q. Why don't you describe at least the first
5 meeting when you put Mr. Lash and Mr. Whitmore
6 together?

7 A. Well, I can't remember everything, but to
8 the best of my recollection, they went in, they
9 talked about the water, they talked about the
10 acreage.

11 There was going to be a land swap because
12 there was public land right in the middle of the
13 original tract. They talked about that.

14 They talked about water rights and those
15 types of things.

16 Q. Where was the meeting held?

17 A. At Pardee offices out off of -- their
18 offices over on the southeast side.

19 Q. Okay. And who do you recall being in
20 attendance at those meetings?

21 A. Cliff Andrews, who is Jon Lash's right-hand
22 man over here, Harvey and Walt and myself.

23 Q. Did the Pardee folks seem to get along well
24 with the CSI folks?

25 A. Oh, yeah.

1 Q. Okay. At that point in time, Harvey,
2 Mr. Whitmore had formed Coyote Springs Investment,
3 LLC, is that right?

4 A. Yes.

5 Q. Okay. And so if I refer to CSI, you know
6 that I'm making reference to that limited liability
7 company?

8 A. Yes.

9 Q. The Pardee folks seemed to hit it off with
10 the CSI folks, is that right?

11 A. I didn't understand you.

12 Q. I said the Pardee folks seemed to hit it
13 off with the CSI folks at that first meeting?

14 A. Yes.

15 Q. Okay. And after that first meeting, did
16 you or Mr. Wilkes attend any meetings thereafter?

17 A. Not to my recollection.

18 Q. Mr. Lash informed you that, in fact, his
19 real estate attorneys were likely to step in at that
20 point?

21 A. Yes. They would put something together
22 because of their development wanting to develop
23 everything, which Walt and I didn't know.

24 Q. Okay. And, thereafter, were you or
25 Mr. Wilkes involved in any of the contractual

1 A. You're talking about the commission letter
2 here, right?

3 Q. I'm not talking about the commission letter
4 I'm talking actually about any of the agreements
5 themselves between Pardee and CSI.

6 Did you have any involvement in those?

7 A. No. They did all that.

8 Q. Okay. Did you have any involvement in any
9 of the amendments to those agreements?

10 A. I didn't even know there were amendments.

11 Q. Turning your attention then to the
12 commission letter, how is it that that commission
13 letter came about?

14 A. Just dickering back and forth to where we
15 came to something that we could agree upon. Started
16 out maybe on a straight price, and then it, you
17 know, Jon might not want something and he'd send
18 something, and basically we ended up with this. I
19 went to Mr. Jimmerson, and this is what ended up
20 with.

21 Q. Okay. Mr. Jimmerson represented you in the
22 negotiations then with Pardee that led to the
23 commission letter?

24 A. Yes.

25 Q. All right. When you say you dickered back

1 Q. Keep going one more to the last page of
2 Exhibit 1.

3 Is that your signature, sir?

4 A. That's my signature.

5 Q. All right. And Award Realty Group was the
6 group you were working with at the time, correct?

7 A. Yes.

8 Q. And you were signing this commission letter
9 then on behalf of Award Realty Group?

10 A. Right.

11 Q. This is the contractual arrangement with
12 Pardee that you contend they have breached, is that
13 right?

14 A. Yes.

15 Q. Did you have any type of a contractual
16 arrangement with CSI?

17 A. No.

18 Q. So there was no agreement with CSI for them
19 to pay you anything out of this deal?

20 A. No.

21 Q. Let me make sure my record is clean on that
22 because that may be a double negative.

23 You didn't have a side deal then with CSI
24 concerning the transaction between CSI and Pardee,
25 correct?

1 breached or the obligation that Pardee had that you
2 believe they have not lived up to, please.

3 A. Okay. Let me read here.

4 I might not remember everything, but I see
5 two areas there.

6 Q. Now, you understand your contractual
7 relationship with Pardee was dictated by the terms
8 of this commission letter, is that correct?

9 A. Yes.

10 Q. They had to live up to these terms.
11 You understood that?

12 A. Yes. And I did, too.

13 Q. And, equally, you did, too?

14 A. Yes.

15 Q. And you've read this a few times before, is
16 that right?

17 A. Yes.

18 Q. Do you mind if I take a look at what you've
19 marked on here, sir?

20 Anything on page one?

21 A. Well, you know, maybe because I don't know
22 how to say that. I know what I want to say.

23 I don't completely agree on the way we've
24 been paid. We've been paid. We got our full two
25 million four hundred from the 50 million, the first,

1 Q. All right. So I want to clarify. You have
2 received at least \$2.4 million in commission?

3 A. I think that's what it came out to.

4 MS. HANSEN: You and Walt.

5 A. Yeah, Walt and myself. But I think it was
6 two million four if you paid it off like this right
7 here.

8 Q. Okay. And then there was an additional
9 \$232,000 that you and Mr. Wilkes received as well?

10 A. But that's what my figures are. I went to
11 the bank, set down in the archives, did all kinds of
12 stuff to try to figure out what the overpayment was
13 for.

14 I really don't know if that's the exact
15 correct figure because nobody would tell me. I
16 couldn't even find -- I couldn't tell you. They
17 wouldn't tell me what it was for.

18 Q. Okay. So let me see if you and I can
19 create a little bit of a cleaner record.

20 A. Okay.

21 Q. If I take the 2.4 million and I add 232,000
22 to it, I end up with \$2,632,000.

23 Is my math okay?

24 A. Yeah, if that's what the math adds up to.

25 Q. Okay. And that \$2,632,000, then that was

1 split between you and Mr. Wilkes, correct?

2 A. It was.

3 And I thought it might be for the extra
4 acreage up to the 2,112 acres, but they say no
5 because this \$84 million thing came up and said
6 you're paid out \$84 million and you get nothing on
7 that, you know, so -- because I knew it wouldn't
8 come out to exactly 1,950 acres.

9 Q. Okay. So --

10 A. And I didn't know that, again, until
11 November of 2009.

12 I tried to find out what that was all
13 about, but when Jon Lash sent me that letter in
14 November 2009, then I finally saw a figure,
15 2,112 acres.

16 Q. Those monies that you have received along
17 with Mr. Wilkes, those have been received directly
18 from the escrow company, correct?

19 A. Yes.

20 Q. There has not been any checks that have
21 been issued to you from Pardee Homes of Nevada?

22 A. No.

23 Q. Or any other Pardee company?

24 A. Not that I can remember.

25 Q. And none of the checks have come to you

1 from CSI or any CSI affiliate?

2 A. Not that I can remember.

3 Q. So, in other words, it's the escrow agent
4 sending you a commission check along with your
5 understanding sending a commission check to
6 Mr. Wilkes as well, correct?

7 A. Yes.

8 MS. LUNDVALL: All right. We've been going
9 about an hour, almost an hour and a half. I'm going
10 to take a short break here if that's okay and come
11 back in about ten minutes.

12 (Thereupon, a break was taken.)

13 A. I don't know where I am on the money, so
14 I'm going to yellow that one, also.

15 Q. Okay. So after the break and having an
16 opportunity to speak with your counsel, then
17 you're --

18 A. No.

19 Q. Let me finish my question.

20 -- adding some additional highlight, is
21 that correct?

22 A. Okay. But when we were in here, I told you
23 I didn't know where I was with the money. It was a
24 complete mystery to me where some of that money
25 went. So that's the reason I probably should have

1 upon the terms and conditions hereinafter set
2 forth."

3 Do you see where I'm making reference?

4 A. Yes.

5 Q. That gives you the definition then of the
6 option property. All right?

7 A. Yes.

8 Q. And, once again, you're not aware or at
9 least let me ask you this: Are you aware that
10 Pardee has never taken down any of the option
11 property?

12 A. I'm not aware.

13 Q. All right. I'm making that representation
14 to you here today that Pardee has not taken down any
15 of the option property and will be able to get you
16 an affidavit or declaration from the party
17 representatives themselves. Okay?

18 Let me continue on as far as with a couple
19 of additional questions that I have.

20 A. Okay. You say they haven't taken down the
21 option property, right?

22 Q. Yes, sir.

23 A. I don't know that I agree with everything,
24 but let's go ahead.

25 Q. Well, as you sit here today, you don't have

1 any evidence to suggest that they have exercised and
2 taken down any of the option property, do you?

3 A. No. They don't give me any information.

4 Q. Okay. Turning your attention then back to
5 the Exhibit No. 1, which is the commission letter in
6 front of you.

7 A. Okay.

8 Q. I want you direct your attention then to
9 page two if I could, please.

10 A. All right.

11 Q. I want to focus on the paragraph that you
12 highlighted, which is that second full paragraph.
13 I'm going to read it out loud for purposes the
14 record.

15 "Pardee shall provide to each of you a copy
16 of each written option exercise notice given
17 pursuant to paragraph two of the Option Agreement,
18 together with information as to the number of acres
19 involved in the scheduled closing date."

20 Did I read that correctly?

21 A. You did.

22 Q. Now, you haven't received any written
23 option exercise notices from Pardee, correct?

24 A. I've received nothing.

25 Sorry.

1 months now, have you had an opportunity to take a
2 look at them?

3 A. I did.

4 Q. And so what you saw was the amount property
5 purchase price was \$84 million, correct?

6 A. I didn't know that until Jon Lash sent me a
7 letter on November of 2009.

8 Q. Okay. And you knew that then before you
9 brought this litigation, did you not?

10 A. Knew what?

11 Q. You knew that before you brought this
12 litigation, did you not?

13 A. Yes.

14 Q. That the property purchase price was
15 \$84 million, correct?

16 A. Yes.

17 Q. Did you run the calculations on
18 \$84 million?

19 A. Calculations as to what?

20 Q. Did you take your commission letter and
21 take (i) and (ii) and run your calculations based
22 upon that?

23 A. You know, what you're saying is all the
24 property comes out of the \$84 million. It's not
25 done on acreage.

1 I have nothing to run. What am I going to
2 run? I don't even know what's been taken down. I
3 don't even know the 1,950 acres.

4 Q. Well, let me ask you this: The commission
5 letter has (i) and (ii), correct?

6 A. Correct.

7 Q. And you've got percentages that are based
8 upon the property purchase price?

9 A. I've been paid on those.

10 Q. Okay. Been paid on those, right?

11 A. Yes.

12 Q. All right. You indicated that you
13 also needed some letters.

14 What letters is it that you're interested
15 in obtaining?

16 A. Let me explain it this way: Anything
17 that's pertinent. It says here I'm to be
18 well-informed. Nobody ever gave me anything.

19 Any letters to do with my commissions or
20 the takedowns or anything like that, I think I
21 should be informed so I can see what's going on, how
22 the project is developing. Nobody sent me any of
23 that stuff.

24 MS. LUNDVALL: Would you read my question
25 back, please?

1 Q. Feel free. Any of the documents I hand
2 you, feel free to spend as much time with them as
3 you wish.

4 A. Okay. Yeah, I received that letter.

5 Q. Okay. After having an opportunity to
6 review the letter and take a look at the closing
7 statements that were attached to it, did you call
8 Mr. Stringer to ask him any questions?

9 A. I don't remember which times I called
10 Mr. Stringer, but I probably called him more than
11 one time, and I couldn't get an answer. That's the
12 reason I had my attorney give Mr. Stringer a call,
13 which you have letters to that effect, also.

14 Q. Okay. Do you have information that, in
15 fact, Pardee has paid more than \$84 million to CSI
16 to take down any property?

17 A. I didn't even know about the \$84 million
18 until November from Jon Lash.

19 Q. So the answer to my question then is that
20 you don't have any evidence or any facts to indicate
21 that Pardee has paid more than \$84 million to CSI to
22 take the property?

23 A. No.

24 (Exhibit No. 8 Letter Dated November 24, 2009,
25 marked.)

1 A. Yes.

2 Q. Tell me why you believe they've acted in
3 bad faith.

4 A. I can't track anything. Put yourself in my
5 place. Would you take someone's word for it?

6 You got to take my word for it that all
7 this stuff is happening. Would you do that if you
8 were sitting in my chair?

9 No. You would want some information, some
10 maps, some parcel numbers, some takedowns, things
11 that we didn't get. We don't have a clue as to
12 where we are on it.

13 Q. Well, let me start with from the top as far
14 as what you had to say.

15 Your commission letter indicates you're
16 going to be paid commissions then on the property
17 purchase price, correct?

18 A. Correct.

19 Q. You got a letter from Mr. Stringer
20 identifying the total \$84 million that had been paid
21 by Pardee to CSI, correct?

22 A. Correct.

23 Q. As well as the dates when those monies were
24 paid, correct?

25 A. Correct.

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Jackie Jennelle, a duly commissioned
Notary Public, Clark County, State of Nevada, do
hereby certify: That I reported the deposition of
JAMES WOLFRAM, commencing on TUESDAY, NOVEMBER 8,
2011, at 10:00 a.m.

That prior to being deposed, the witness was
Duly sworn by me to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
complete, true and accurate transcription of my said
shorthand notes.

I further certify that I am not a relative
or employee of counsel, of any of the parties, nor a
relative or employee of the parties involved in said
action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
10th day of November, 2011.



JACKIE JENNELLE, RPR, CCR #809

EXHIBIT B



CERTIFIED
COPY
DISTRICT COURT

Las Vegas
Reno
Carson City

CLARK COUNTY, NEVADA

JAMES WOLFRAM,)	
WALT WILKES,)	
)	
Plaintiffs,)	
)	CASE NO.: A-10-632338-C
vs.)	DEPT. NO.: IV
)	
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	
_____)	

DEPOSITION OF WALTER WILKES

LAS VEGAS, NEVADA

MONDAY, NOVEMBER 28, 2011

REPORTED BY: CARRE LEWIS, NV CCR NO. 497, CA CSR NO. 13337

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1 DEPOSITION OF WALTER WILKES,
2 taken at 2300 West Sahara, Las Vegas, Nevada, on
3 Monday, November 28, 2011, at 9:00 a.m., before
4 Carre Lewis, Certified Court Reporter, in and for
5 the State of Nevada.

6
7 APPEARANCES:

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17 Also Present:

18 James Wolfram
19
20
21
22
23
24
25

1 vacation. This was back in, I think, it 2002,
2 approximately. Jim was on vacation. I had a great
3 relationship with Jon Lash at that time, of Pardee.

4 Jim had been tracking property that Harvey
5 Whitmore had. So I saw another article in the
6 paper. We already saw one just before Jim went on
7 vacation. So I called Jim. I said, Jim, you are
8 going to be gone for a week, ten days? Why don't I
9 run this by Jon Lash and see if he is interested in
10 this property? And Jim says that's a great idea, go
11 right ahead.

12 So I believe -- I don't remember for sure
13 if I called Harvey first and asked him if the
14 property was still available but I think I did.
15 That was number one.

16 Number two, I called Jon Lash and I says,
17 John, I says, I would like to take a run at this
18 property with Coyote Springs for you, but I want to
19 represent me as the buyer and he said absolutely.
20 He says you just -- you tell Harvey that you
21 represent Pardee Homes and set up a meeting. Okay.
22 And I says, okay, but we want 4 percent commission
23 like we talked about on other properties and he says
24 that was okay. All right.

25 So I called up Harvey with the

1 understanding. I told Harvey that I was
2 representing Pardee Homes. They were paying my
3 commission and would he like to talk to them about
4 the property. He says yes. So it led to me making
5 a few more calls and setting up a meeting. Jim came
6 back. We went down to the Pardee office. Where was
7 it? Over by Warm Springs?

8 MS. HANSEN: You can't ask him to answer
9 questions.

10 THE WITNESS: Anyway, I think it's over by
11 the Warm Springs area, over there in their beautiful
12 new office building over there. So we set up the
13 meeting. We set up the meeting and Jim and I,
14 Harvey Whitemore, Jon Lash and brought in Klif
15 Andrews, and I don't think there is anybody else.
16 And we had a meeting. It went very, very well.

17 BY MS. LUNDVALL:

18 Q. What else did you talk with Mr. Wolfram
19 about?

20 A. We talked about how the commission letter
21 was dated September 4 -- no, September 1, 2004, and
22 we talked about how the hell did they slip in this
23 other leader commission thing that went up to 84
24 million that we didn't get paid on, which we never
25 agreed upon. We didn't see that until long after

1 We think that they did this just to get out of
2 paying us the money on the options and that they
3 never told us about it. We called them. Jim called
4 them especially. He even -- he wrote letters to
5 them. And basically that's looking at Jim's map,
6 trying to find parcel numbers, trying to find
7 anything which they never provided us and they
8 agreed in that contract to provide to us.

9 Q. Back to my question. Do you have any facts
10 or do you have any evidence that, in fact, Pardee
11 took down option property from CSI?

12 A. Only Jim's maps and the fact that they
13 didn't tell us anything.

14 Q. Do you have any option property deeds that
15 ran from CSI to Pardee?

16 A. No, they never gave us anything. We asked
17 for all of that stuff but they would never give it
18 to us. The only thing we saw from them was that
19 map.

20 Q. It's my understanding, Mr. Wilkes, that
21 your primary claim in this litigation was one for
22 breach of contract; is that right?

23 A. Yes.

24 Q. And the contract that is at issue is the
25 commission letter between yourself and Pardee?

1 A. Yes.

2 Q. Is there only one commission letter that's
3 at issue under your relationship between Pardee?

4 A. Well, there was other letters that came
5 about later that we -- I didn't see until -- I think
6 the first time I saw them is in the lawyer's office.
7 Mr. Jimmerson tried very hard to get the information
8 from them, from lawyer Stringer, from lawyer Curtis,
9 I think was the other one.

10 Anyway, they kept stalling him for months
11 and months and months and months. And finally he
12 sent them a letter saying that they hadn't done
13 anything. And they gave us some stuff, but it
14 wasn't anything.

15 Q. I want to go back to my question to you.

16 Is there any other contract between you and
17 Pardee, other than the September 1, 2004 commission
18 letter?

19 A. That we have signed?

20 Q. That you have signed.

21 A. No, not to the best of my knowledge.

22 Q. Do you have any contract with CSI?

23 A. No.

24 Q. And you know CSI to be Coyote Springs
25 Investments, LLC?

1 me how it is that you became to be involved in the
2 transaction between Pardee and CSI?

3 A. I thought that first answer was pretty
4 descriptive from the beginning.

5 Q. Let me see if I can go back, then, and put
6 a little flesh on the bones of what you gave me.

7 A. Thank you.

8 Q. You indicated that you had a great
9 relationship with Jon Lash; is that right?

10 A. Absolutely, at that time.

11 Q. How is it that you came to meet Mr. Lash?

12 A. When he took over his job as vice president
13 for Pardee Homes, I had called -- I had called the
14 other guy I was working with and he says, no, I have
15 got his job now, he is gone. I said, well, would
16 you have any interest of property that I have, could
17 we get a relationship going? He says absolutely.
18 He says I would love it. He said I want you to
19 present any property and all properties that you
20 have. And I says, well, sometimes they don't pay a
21 commission. He says don't you worry. He says I
22 paid commissions up to 10 percent, I will take care
23 of you.

24 So from that point on, we started getting
25 property, and Jim and I became -- Jim and I became

1 partners. We pushed a lot of property on to Jon
2 Lash with a lot of understanding, we showed him a
3 lot of big properties, Sandy Valley and a lot of
4 different properties, but we never got any of the
5 big ones on until Coyote Springs.

6 Q. Did you have any other transactions with
7 Pardee where either you sold property on their
8 behalf or you brought to them property that they
9 purchased?

10 A. I believe we brought to them some lots and
11 some other acreage and -- couple times.

12 Q. Did those transactions go through?

13 A. Yes.

14 Q. So then did you receive a commission?

15 A. I believe -- I believe -- I believe those
16 closed okay and we got paid by the seller.

17 Q. So in other words, then, that you were paid
18 in full on any other transactions that you did on
19 behalf of Pardee?

20 A. Outside of Coyote Springs?

21 Q. Outside of Coyote Springs.

22 A. Yes.

23 Q. And at this point in time you do not
24 believe that you have been paid in full for Coyote
25 Springs; is that right?

1 Rubicon.

2 Q. When you left General did you get
3 assignments from General?

4 A. When you say "assignments," I don't
5 understand the question.

6 Q. Did anyone assign any claims to you?

7 A. I had a -- my commission order from -- that
8 I have him sign over to me on the Coyote
9 Springs transaction because it was all mine. That
10 was our deal, that I pay -- I paid my few hundred
11 dollars a month and anything I brought in, I got to
12 keep 100 percent of.

13 Q. So in other words, you have some type of an
14 assignment, then, at least as to your commissions,
15 correct?

16 A. Yeah. He assigned them over to -- he
17 assigned them over to General Realty -- I mean,
18 Las Vegas Realty and Las Vegas Realty signed them
19 over to Rubicon. I have documentation of that, I
20 believe.

21 Q. That's why I'm asking, because I'm trying
22 to figure out what documentation there is there.

23 You are telling me that General, then,
24 did an assignment of your commissions to Las Vegas
25 Realty Center; is that right?

1 A. I can't tell you, you are wrong. I don't
2 have memory of exactly how it went down to which
3 one, but basically I would say yes.

4 Q. Is there written documentation, then, to
5 that effect?

6 A. Yes.

7 Q. Do you have copies?

8 A. Yes.

9 Q. Of those, that written documentation?

10 A. Yes.

11 Q. Have you shared it with your counsel?

12 A. My counsel is the one -- Jim Jimmerson is
13 the one that typed it up for me.

14 Q. Turning your attention back to how you
15 became involved with Pardee and the CSI property,
16 you indicated that, to your knowledge, Mr. Wolfram
17 had been tracking that particular property; is that
18 correct?

19 A. Well, there was articles in the papers that
20 Jim had picked up on and showed to me, and I believe
21 he talked to Harvey a couple times about the
22 property, but I wasn't part of that. Only thing I
23 was part of is when I said, Jim, let's go after it,
24 and he was on vacation.

25 Q. He was on vacation or getting ready to go

1 talking about the same people. Okay?

2 A. Okay.

3 Q. You indicated, then, that you are going to
4 run by this CSI property to Mr. Lash during the
5 period when Mr. Wolfram was on vacation; is that
6 correct?

7 A. Yes.

8 Q. Do you have a recollection of the
9 conversation that you had with Mr. Lash when you
10 presented it to him?

11 A. I just told you that in the beginning. I
12 told him and he said go after the property. Okay.
13 He says tell them that you are going to represent
14 Pardee. Tell them we are going to pay your
15 4 percent commission. He said tell them you are
16 going to pay a commission to him. We talked about
17 the 4 percent commission later on. And tell him
18 that we would like to set up a meeting.

19 I did everything that Mr. Lash asked for
20 and we got the meeting going and we were very proud
21 to be at that meeting representing the property of
22 that size. That's the biggest land parcel I have
23 ever sold in Nevada, and Jim and I were very proud
24 of that.

25 Q. When you discussed your commissions with

1 Mr. Lash, it's my understanding that you later
2 negotiated down to a commission letter, correct?

3 A. Yeah.

4 Q. And you understand that that commission
5 letter then dictates the terms of your contractual
6 relationship with Pardee, do you not?

7 A. Yes.

8 Q. Somebody then contacted Harvey Whitmore
9 saying that you were representing Pardee; is that
10 right?

11 A. That was me.

12 Q. That was you.

13 Do you recall your conversation, then, with
14 Mr. Whitmore?

15 A. I said, Mr. Whitmore, I said, I have a
16 company that's interested in taking down your
17 property at Coyote Springs. I said -- no, I just --
18 I said Mr. Whitmore, I represent Pardee Homes and
19 they are hiring me to take -- to get the information
20 on your property. They have an interest in your
21 property and they want to know if we can sit down
22 and talk about a meeting. And when he heard
23 "Pardee," he was extremely interested.

24 Q. Then what happened?

25 A. Then we set up the meeting.

1 Q. Did you attend the meeting?

2 A. We are going over the same stuff. You know
3 that, right? I told you Jim and I, Klif Andrews,
4 Jon Lash and Harvey all sat down in that meeting.

5 Q. Tell me what happened at the meeting.

6 A. Well, they discussed property, they
7 discussed water. They discussed all kinds of stuff.
8 Jim and I just sat there like -- you know. Builders
9 do not have much use for you once you bring them the
10 property. They like to do these things themselves.
11 Okay. But anyway, they discussed everything that
12 would be an advantage for them with the property.

13 Q. Are were you involved in any other meetings
14 between representatives and Pardee and Coyote
15 Springs after that initial meeting?

16 A. Jon Lash had called us and said, listen,
17 I'm going to ask you guys not to attend these other
18 meetings. We were disappointed, but, of course,
19 they didn't want us there. At that point they
20 went -- they went ahead and had several meetings
21 without us. And it was sometime later that Jon Lash
22 called up and said, hey, we got a deal. We got this
23 thing together. And we were excited and everything.
24 Then it comes out that he wants to give us a hundred
25 thousand dollars for commission, you know. He

1 Q. How much in total have you been paid?

2 A. I believe the figure is 1 million -- I
3 think I got 1 million 240 [sic], plus I think there
4 was another 232,000, approximately.

5 Q. Those are about the same numbers that
6 Mr. Wolfram testified to in his deposition. Do you
7 recall that portion of his depo?

8 A. I -- yes.

9 Q. And so the two of you then believe that you
10 were paid then the same amounts; is that correct?

11 A. Oh, of course.

12 Q. If my recollection serves me of his
13 testimony, he believed that there was \$2.4 million
14 that had been paid plus an additional 232,000 that
15 had been paid and the two of you then split that
16 50/50; is that right?

17 A. Yeah.

18 Q. So what we are looking at if you totaled
19 2.4 million with 232,000, you get \$2,632,000; is
20 that right?

21 A. To the best of my knowledge.

22 Q. And then you split that 50/50 with
23 Mr. Wolfram; is that right?

24 A. Absolutely.

25 Q. Have you run the calculations under the

1 to it. I think it was 2007.

2 Q. You are referring to amendments between the
3 contractual arrangement between Pardee and CSI,
4 correct?

5 A. No, I'm referring to the amendment where
6 the commission went to 84 million that we never saw.

7 Q. This is my question. Let me see if I can't
8 focus you.

9 A. Okay.

10 Q. You and Pardee signed a contract, correct?

11 A. That's correct.

12 Q. And Exhibit 1 is a copy of that contract
13 that's in front of you?

14 A. Correct.

15 Q. After September 1, 2004, did you and Pardee
16 sign any subsequent contracts?

17 A. To the best of my knowledge, no.

18 Q. And any of the terms under this contract
19 are what you contend is at issue in this litigation,
20 correct?

21 A. Yes, ma'am.

22 Q. Nothing more, nothing less?

23 A. Well, any takedowns that they take down.

24 You know, they -- for example, on the commission --

25 let me see if I can put this right. Give me a

1 word that you have said.

2 A. Just making sure.

3 Better turn this thing off. I'm going to
4 run over the court reporter.

5 Q. I would like you to keep that in front of
6 you, please.

7 A. Okay.

8 Q. I would like for you to turn to the third
9 page back.

10 A. Third page back. I can do that.

11 Q. About halfway down the page does your
12 signature appear there?

13 A. Yeah, General Realty Group.

14 Q. Does your signature appear there?

15 A. Yes.

16 Q. And you were signing on behalf of General
17 Realty Group, Inc.?

18 A. Well, yes.

19 Q. When you signed this particular agreement,
20 did you first read it?

21 A. Of course.

22 Q. Did you understand this commission letter?

23 A. Yes.

24 Q. Do you believe that there is any ambiguity
25 contained within this commission letter?

1 said, Harvey, we want to do it this way and this
2 way. Harvey may not have known about our commission
3 and done it a different way and switched it and then
4 it all of a sudden they took down a different type
5 of property. They called it a different type of
6 property and they didn't have to pay us a commission
7 on a different type of property.

8 Q. Do you have any evidence, any evidence that
9 in fact that Pardee has paid more than \$84 million
10 to Coyote Springs Investment, LLC?

11 A. Not to the best of my knowledge. That
12 doesn't mean they didn't.

13 (Exhibit 3 marked.)

14 BY MS. LUNDVALL:

15 Q. Mr. Wilkes, I'm going to hand you what's
16 been marked as Exhibit 3 to your deposition.

17 A. Yes, ma'am.

18 Q. The Exhibit 3 is an "Amendment to Option
19 Agreement For the Purchase of Real Property and
20 Joint Escrow Instructions." The date on this is the
21 28 day of July of 2004. Do you see that at the top?

22 A. I do.

23 Q. And this is between Coyote Springs and
24 Pardee Homes of Nevada?

25 A. I do.

1 A. Yes.

2 Q. Are you aware that you have been paid
3 commissions on \$84 million?

4 A. No, I'm not. In fact, I think we should be
5 paid commissions on 84 million. We didn't see any
6 of this stuff until after we signed the other. It's
7 like they slipped it in on us.

8 Q. If the purchase price went up and you were
9 getting a percentage, then, of the purchase price,
10 that would be a good thing for you, right?

11 A. Say that again.

12 Q. If the purchase price went up under these
13 amendments and, as your commission letter indicates
14 you were getting paid on the purchase property
15 price, you believe you are entitled to that
16 increase, right?

17 A. Absolutely.

18 Q. And you believe that you should be entitled
19 to the increase up to whatever the definition is
20 found within these amendments, correct?

21 A. I believe I'm entitled -- we are entitled
22 to the purchase price of 84, which should be payable
23 as follows, I guess.

24 Q. All right.

25 A. You know, I'm not really good in these

1 option agreements or their amendments that
2 have been provided to your counsel?")

3 THE WITNESS: I do remember that we -- I do
4 remember that we skimmed through them, but we did
5 not understand all the legal stuff on them so we
6 took them to Jimmerson. So we did kind of -- when
7 we got the escrow instructions, we did -- and the --
8 and the -- we didn't get any amendments, but we got
9 the escrow instructions. We did skim through those,
10 and it was too confusing for us so we took them to
11 Jimmerson.

12 BY MS. LUNDVALL:

13 Q. Any of the commission payments that you
14 received, you received those directly from the
15 escrow company, correct?

16 A. Absolutely.

17 Q. You are aware that your commission letter
18 had been supplied to the escrow company, correct?

19 A. From Pardee to the escrow company, yes.

20 Q. And that's a fairly typical arrangement as
21 part of an escrow company's obligations in opening
22 an escrow, correct?

23 A. Yes, especially if you are representing the
24 buyer.

25 Q. So to the extent that your commission

1 letter was provided, then, to the escrow company,
2 your payments then were received from the escrow
3 company, correct?

4 A. Yes.

5 Q. At no point in time did you receive any
6 payments directly from Pardee?

7 A. Absolutely not.

8 Q. At no time did you receive payments
9 directly from CSI, Coyote Springs?

10 A. No, the only payments came through the
11 title company.

12 Q. So each time, then, that there was some
13 type of land takedown, an exchange of monies between
14 Pardee and CSI, the escrow company was involved in
15 that transaction --

16 A. Yes.

17 Q. -- were you aware of that?

18 A. Yes.

19 Q. That's fairly typical, correct?

20 A. Yes.

21 Q. And the escrow company then was paying
22 pursuant to escrow instructions, correct?

23 A. Yes.

24 Q. And your commission letter then was part of
25 those escrow instructions, to your knowledge?

1 property price continues to be \$84 million?

2 A. Okay.

3 Q. Do you see where I'm at?

4 A. No.

5 Q. About halfway down the page.

6 A. Oh, there it is, second paragraph. Okay.

7 Q. Do you have any facts or evidence to
8 suggest that the purchased property price that was
9 paid by Pardee to CSI was more than \$84 million?

10 A. No, but I would like to know where our
11 commission is on it. And I don't think I have ever
12 seen this document either.

13 (Exhibit 10 marked.)

14 BY MS. LUNDVALL:

15 Q. Sir, I hand you what's been marked as
16 Exhibit 10 to your deposition.

17 A. Yeah.

18 Q. Mr. Wolfram indicated during his deposition
19 that in fact the handwritten portion of this is in
20 his handwriting.

21 A. Okay.

22 Q. Do you recognize Mr. Wolfram's handwriting?

23 A. Yes.

24 Q. And do you recognize this to be
25 Mr. Wolfram's handwriting?

1 A. Yes, ma'am.

2 Q. There is a two-sentence paragraph that
3 starts "In the event any sum of money is due."

4 A. Where are you at?

5 Q. I'm on Page 2, sir.

6 A. Oh. Last paragraph.

7 MS. HANSEN: No, right here.

8 BY MS. LUNDVALL:

9 Q. Second to the last paragraph.

10 A. "In the event any sum of money due remains
11 unpaid for a period of 30 days shall bear the rate
12 of 10 percent per annum from the date until paid."

13 Q. Do you contend that there is a sum of money
14 due to you?

15 A. Based on the maps and information we
16 certainly -- we certainly think that there could be.
17 There is more property. There is more property, we
18 haven't been able to identify them.

19 Q. How much?

20 A. Oh, I have no idea.

21 Q. Second sentence reads "In the event either
22 party brings an action to enforce his rights under
23 this agreement, the prevailing party shall be
24 awarded reasonable attorneys fees and costs."

25 Did I read that correctly?

1 could get access to it, couldn't you?

2 A. Yes.

3 MS. LUNDVALL: Counsel, we will make a
4 request for that. And I'm going to object to the
5 authenticity of this particular document because it
6 is unsigned.

7 MS. HANSEN: You are the one that offered
8 it into the record.

9 MS. LUNDVALL: There is no record here
10 other than the deposition transcript.

11 MS. HANSEN: That's what I'm talking about.

12 MS. LUNDVALL: So on the record I'm
13 objecting to the authenticity of this document.

14 MS. HANSEN: You can object to anything you
15 want, but if you want to request the document, you
16 need to do it in a formal manner.

17 (Exhibit 13 marked.)

18 BY MS. LUNDVALL:

19 Q. Mr. Wilkes, I'm going to hand you what's
20 been marked as Exhibit 13 to your deposition. This
21 too is an unsigned copy of a document that bears a
22 title "Assignment of Real Estate Commission and
23 Personal Certification Agreement."

24 A. From General Realty, yes.

25 Q. And General Realty was the realty company

1 that you were with at the time that you entered into
2 the commission agreement with Pardee, correct?

3 A. Correct.

4 Q. Is there a signed version of this
5 particular document somewhere?

6 A. Yes.

7 Q. Have you seen it?

8 A. Of course.

9 Q. Have you provided it to your counsel?

10 A. I did, but apparently he didn't want to
11 provide the signed ones to you.

12 MS. LUNDVALL: Once again, Counsel, we will
13 be making a request for this, and we will do it in a
14 formal thirty-four request for a signed version, and
15 I'm objecting to the authenticity of this particular
16 document as well.

17 BY MS. LUNDVALL:

18 Q. Mr. Wilkes, back to my question to you.

19 Do you have access to the files and records
20 then of General Realty Group?

21 A. Just somewhere I transferred out of there
22 and on this letter. Okay.

23 Q. Okay. And so if, in fact, that there was
24 an original of this document that had been signed by
25 both yourself as well as General Realty Group, you

1 would have had access, then, to that document?

2 A. I have access to it, yes.

3 THE WITNESS: Could we take a break?

4 MS. LUNDVALL: Absolutely.

5 (Off the record.)

6 BY MS. LUNDVALL:

7 Q. Mr. Wilkes, do you contend that your
8 relationship with Pardee is anything other than a
9 contractual relationship?

10 A. Not at this point, no.

11 Q. In other words, you were never an employee
12 of Pardee?

13 A. No. But we -- no, we never were an
14 employee of them, but we met and have the nicest
15 times and all friends, I thought.

16 Q. You were represented by counsel, then,
17 going into the commission letter; is that right?

18 A. Yes.

19 Q. And you entered into the commission letter,
20 then, based upon the advice of counsel; is that
21 correct?

22 A. Yes.

23 Q. Would you consider that to have been an
24 arms-length transaction between your counsel and
25 counsel for Pardee?

1 A. Yes. When you say arms-length, you mean up
2 front, right?

3 Q. That's right.

4 A. My arm is longer than --

5 Q. That it is.

6 How tall are you when you stand?

7 A. Six-four. I can walk but can't walk very
8 far, my back kills me and my knee and everything
9 else, and arthritis.

10 MS. HANSEN: There is no question pending.

11 THE WITNESS: Okay, sorry. Can't help it.
12 I like her.

13 BY MS. LUNDVALL:

14 Q. I asked you this, but I just want to
15 clarify, it's your personal belief that you are owed
16 some additional commissions; is that right?

17 A. Yes.

18 Q. But you don't have a number to give me?

19 A. Well, you got to remember. We got -- I
20 think we should be paid for the 84 million, like I
21 said. Okay. And also the representation was made
22 to Jim by Jon Lash that we had 300 more acres to be
23 taken down. Okay. And also there was 300 more
24 acres per year that were supposed to be taken down.
25 So that goes along with the proof that you keep

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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* * * * *

I, Walter Wilkes, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action;
under penalty of perjury; that I have read,
corrected and do hereby affix my signature to said
deposition.

Walter Wilkes, Deponent	Date
-------------------------	------

EXHIBIT C



CERTIFIED
COPY

Las Vegas
Reno
Carson City

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM AND WALT WILKES,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	A-10-632338-C
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	
<hr/>		

DEPOSITION OF JON LASH
Taken on September 26, 2012
At 11:07 A.M.
415 South Sixth Street, Suite 100
Las Vegas, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422
Job No.: 166137

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3770 Howard Hughes Pkwy, Suite 300
Las Vegas, Nevada 89169



1 Deposition of Jon Lash, taken at Jimmerson Hansen,
2 located at 415 South Sixth Street, Suite 100,
3 Las Vegas, Nevada, on September 26, 2012, at
4 11:07 A.M., before Jennifer A. Clark, RDR, CRR,
5 CCR #422.

6
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22 Also Present:

23 James Wolfram
24
25

1 A. Yes.

2 Q. Was there any decisions or actual deals
3 made in that meeting?

4 A. No.

5 Q. How was the meeting -- how was the issue
6 left at the end of the meeting?

7 A. We agreed to meet again to further the
8 discussions.

9 Q. Was there an actual date set or no?

10 A. I don't recall.

11 Q. And was there a second meeting?

12 A. Yes.

13 Q. And when did that take place, if you can
14 recall?

15 A. Within 30 days.

16 Q. And I think that you have said that the
17 first meeting took place sometime in early 2004; is
18 that right?

19 A. I believe so.

20 Q. And so this next meeting was within a
21 month of that meeting?

22 A. Yes.

23 Q. And where did that meeting take place,
24 the second meeting?

25 A. It was either a phone call or back in

1 Las Vegas.

2 Q. You can't -- it could have been a
3 conference call?

4 A. Could have been.

5 Q. And do you know who attended that
6 meeting, either by phone or in person?

7 A. I don't recall.

8 Q. Were the brokers present?

9 A. No.

10 Q. And what was the purpose of this
11 meeting, the second meeting? To continue the
12 negotiations?

13 A. Yes.

14 Q. And do you recall what occurred at that
15 meeting?

16 A. No.

17 Q. Was there a deal struck at that meeting?

18 A. No.

19 Q. And how was it left at the end of that
20 meeting?

21 A. Scheduled another follow-up meeting.

22 Q. Now, was it only Harvey Whittemore for
23 Coyote Springs, or did he ever bring anybody else?

24 A. Initially it was Harvey.

25 Q. Okay. In these two meetings, it was

1 Harvey; is that right?

2 A. Don't recall. He may have brought an
3 attorney with him the second.

4 Q. And was there a third meeting?

5 A. Yes.

6 Q. And do you recall when that took place?

7 A. Shortly after the last meeting.

8 Q. So there wasn't, like, six months' gap
9 between meetings.

10 A. No.

11 Q. They were within a month or weeks of
12 each other?

13 A. This was a very complex deal, so it
14 took -- I think we signed it June or July, August
15 of 2004. It took, you know, really working on the
16 deal weekly.

17 Q. It was June of 2004, so these
18 meetings --

19 A. Yeah, to get it all together, right.

20 Q. So these meetings had to take place
21 before that first signing; right?

22 A. Yes, absolutely.

23 Q. And where was the third meeting?

24 A. Las Vegas.

25 Q. At Pardee?

1 A. Yes.

2 Q. And do you recall who was present?

3 A. Harvey Whittemore, Cliff Andrews,
4 myself. I believe Cliff started to bring some of
5 his design -- or his local people into the meetings,
6 but I don't recall who they were.

7 Q. People that might be working on the
8 project?

9 A. Yes.

10 Q. And was a deal struck or any meeting of
11 the minds take place at the third meeting?

12 A. No.

13 Q. Well, I assume there was a subsequent
14 meeting or a phone conference. Which was it?

15 A. Don't recall.

16 Q. Could have been a phone conference?

17 A. Yes.

18 Q. And would that be with the Pardee people
19 all in the same room and then perhaps Harvey on the
20 phone or --

21 A. Not necessarily.

22 Q. You're just not sure.

23 A. It could have been Harvey and myself.
24 If there was an issue with the property itself, it
25 could have been Cliff and his team talking to Harvey

1 without me.

2 Q. Okay.

3 A. It could have been Harvey and our team
4 and a bunch of outside consultants working on an
5 issue.

6 Q. So there were multiple meetings, then, I
7 take it.

8 A. Yes.

9 Q. Not just the ones that we've gone
10 through.

11 A. Right. And as we started to get under
12 contract, I believe our legal counsel was talking
13 directly with his legal counsel. So, I mean,
14 there's a series of meetings which -- I wasn't
15 involved in every one of them but --

16 Q. And who was your counsel for this
17 particular project?

18 A. It's a company called Sandler & Rosen.

19 Q. And where are they out of?

20 A. They're in Century City, California.

21 Q. In California.

22 And do you remember who Harvey had
23 representing him?

24 A. I don't.

25 Q. Do you happen to know if it was a Nevada

1 Q. That's enough for one day, right.

2 And were the brokers present at any of
3 the meetings other than the first meeting?

4 A. No.

5 Q. Do you know why?

6 A. Didn't really see any value. We knew we
7 owed them the commission, and so we didn't see how
8 they could help necessarily -- you know, they
9 brought us together and started us discussing the
10 deal, so we didn't see, going forward, how they
11 would add any value.

12 Q. Now, while these meetings were taking
13 place, you didn't have a signed commission
14 agreement; is that correct?

15 A. We certainly didn't have a signed
16 commission agreement at the initial meeting, and
17 there was probably a couple thereafter or more that
18 we didn't.

19 Q. Okay.

20 A. You'd have to look at the chronological
21 time from when we started the negotiation until when
22 the agreement was signed.

23 Q. The commission agreement was signed in
24 September of 2004, but the first option agreement
25 was signed in June of 2004. So during these

1 MS. LUNDVALL: Hold on. I don't believe
2 that that's accurate.

3 MS. HANSEN: Well, it's accurate if we
4 go by the title company documents.

5 MS. LUNDVALL: It's not accurate as far
6 as if you go by the contractual arrangement, because
7 by in the first amendment --

8 MS. HANSEN: Well, I find that the
9 contractual often do not comport with the facts,
10 which is not atypical.

11 THE WITNESS: Right, right.

12 MS. LUNDVALL: Exhibit 2 is the document
13 that you referenced as to the released amount of the
14 \$125,000 to Mr. Whittemore, CSI, and that bears a
15 date of July 28, 2004.

16 MS. HANSEN: We don't have a payment,
17 though, to Jim and Walt until April of 2005.

18 MS. LUNDVALL: The amounts as far as --
19 I'm not going to quarrel with you regarding the
20 language of these documents. It's been conceded by
21 both these gentlemen that they got full payment --
22 their full commission payment on the \$84,000 that
23 was paid -- \$84 million that was paid by Pardee to
24 CSI and so to the extent that there's no need for me
25 to quarrel as to which of these payments were made

1 at what point in time.

2 MS. HANSEN: Well, would not the
3 commission be paid through the title company?

4 MS. LUNDVALL: The commission was paid
5 through the title companies.

6 MS. HANSEN: Okay. Well, this chart is
7 based upon the title company records.

8 MS. LUNDVALL: Their commissions were
9 always paid through the title companies.

10 MS. HANSEN: Okay. All right.

11 BY MS. HANSEN:

12 Q. Now, looking at the terms of this
13 agreement on page 1 of Exhibit 17, you can see the
14 breakdown, the bullet points there, i, ii, and iii.
15 Do you see that?

16 A. Yes.

17 Q. So there was a contingency on certain
18 amounts. For example, the first one says:

19 "Pardee shall pay 4 percent
20 of the Purchase Property Price
21 payments made by Pardee pursuant
22 to paragraph 1 of the option
23 agreement" --

24 Which is Exhibit 1; correct?

25 A. Yes.

1 Q. -- "up to a maximum of \$50 million." Do
2 you see that?

3 A. Yes.

4 Q. And so after the \$50 million under ii,
5 it says:

6 "Then, Pardee shall pay one
7 and one half percent of the
8 remaining Purchase Property Price
9 payments made by Pardee pursuant
10 to paragraph 1 of the Option
11 Agreement in the aggregate amount
12 of \$16 million."

13 A. Yes.

14 Q. And iii:

15 "Then, with respect to any
16 portion of the Option Property
17 purchased by Pardee pursuant to
18 paragraph 2 of the Option
19 Agreement, Pardee shall pay one
20 and one half percent of the
21 amount derived by multiplying the
22 number of acres purchased by
23 Pardee by \$40,000."

24 Correct?

25 A. Yes.

1 Q. And it's your testimony that you have
2 paid pursuant to i and ii; correct?

3 A. Well, we actually did better. If you
4 add up i and ii, that's only 66 million. We -- out
5 of fairness to Jim and Walt, when the price changed
6 to 84 million, we honored our deal with them and
7 paid them 1 1/2 percent.

8 Q. And you didn't amend this agreement.
9 You just did that.

10 A. Correct.

11 Q. Because that was the purchase price.

12 A. Right.

13 Q. And then that changed from the first
14 option agreement.

15 A. Yeah. And the percentage. It's one and
16 a half percent over 50 million, so once you get
17 over -- whether it's 66 or it's 84, you're still
18 getting one and a half percent of the additional
19 money, which, like I said, we went ahead and paid
20 them on.

21 Q. Now, it says on page 2:

22 "Pardee shall make the first
23 commission payment to you upon
24 the Initial Purchase Closing
25 (which is scheduled to occur

1 placing my objection as to the form of your question
2 in that it presupposes that they were entitled to
3 receive that information.

4 MS. HANSEN: Thank you for your speaking
5 objection.

6 BY MS. HANSEN:

7 Q. You can answer.

8 A. I believe with the closing statements,
9 that's what he was trying to do.

10 Q. Well, that was before. This is after.
11 This letter came after the April 6, 2009 letter
12 requesting further information.

13 A. Right.

14 Q. Do you know if any further information
15 was provided?

16 A. Somewhere in this time frame, we
17 provided maps, colored maps, that showed takedowns
18 and appropriate acreage.

19 Q. We'll get to that. That's a little
20 further along?

21 A. All right.

22 Q. Then go to Exhibit 22.

23 A. So when he says the name of the seller,
24 they know the name of the seller. They know the
25 name of the buyer, which is us. They may not have

1 known the parcel numbers or the acres, and they know
2 the purchase price.

3 (Exhibit 22 was marked for
4 identification.)

5 BY MS. HANSEN:

6 Q. Look at Exhibit 22. It's a letter dated
7 May 19, 2009 from Jim Jimmerson to Mr. Stringer, and
8 it says:

9 "To date, you have not
10 responded to our request for
11 documentation that you had told
12 me by telephone would be
13 available to me so that my
14 clients could attempt to
15 understand whether or not they
16 have been paid appropriate
17 commissions for the purchase
18 transactions by Pardee from
19 Coyote Springs Investments,
20 LLC."

21 A. Uh-huh.

22 Q. So by this date, nothing had been
23 provided; correct?

24 A. Correct.

25 Q. And it indicates that Mr. Singer had

EXHIBIT D

Filed Under Seal

EXHIBIT E

Filed Under Seal

EXHIBIT F

Filed Under Seal

EXHIBIT G



JOHN E. LASH
Sr. Vice President
(310) 475-3525 ext. 251
(310) 446-1295

September 1, 2004

Mr. Walt Wilkes
General Realty Group, Inc.
10761 Turquoise Valley Dr.
Las Vegas, Nevada 89144-4141

Mr. Jim Wolfram
Award Realty Group
10761 Turquoise Valley Dr.
Las Vegas, Nevada 89144-4141

Re: Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of June 1, 2004, as amended (the "Option Agreement") between Coyote Springs Investment LLC ("Coyote") and Pardee Homes of Nevada ("Pardee")

Gentlemen:

This letter is intended to confirm our understanding concerning the pending purchase by Pardee from Coyote of certain real property located in the Counties of Clark and Lincoln, Nevada pursuant to the above-referenced Option Agreement. Except as otherwise defined herein, the capitalized words used in this Agreement shall have the meanings as set forth in the Option Agreement.

In the event Pardee approves the transaction during the Contingency Period, Pardee shall pay to you (one-half to each) a broker commission equal to the following amounts:

- (i) Pardee shall pay four percent (4%) of the Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining Purchase Property Price payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the amount derived by multiplying the number of acres purchased by Pardee by Forty Thousand Dollars (\$40,000).

PH 000135

Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 2

Pardee shall make the first commission payment to you upon the Initial Purchase Closing (which is scheduled to occur thirty (30) days following the Settlement Date) with respect to the aggregate Deposits made prior to that time. Pardee shall make each additional commission payment pursuant to clauses (i) and (ii) above concurrently with the applicable Purchase Property Price payment to Coyote. Thereafter, Pardee shall make each commission payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's purchase of the applicable portion of the Option Property; provided, however, that in the event the required Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into escrow concurrently with Pardee's deposit of the Option Property Price into Escrow and the commission shall be paid directly from the proceeds of said Escrow.

Pardee shall provide to each of you a copy of each written option exercise notice given pursuant to paragraph 2 of the Option Agreement, together with information as to the number of acres involved and the scheduled closing date. In addition, Pardee shall keep each of you reasonably informed as to all matters relating to the amount and due dates of your commission payments.

In the event the Option Agreement terminates for any reason whatsoever prior to Pardee's purchase of the entire Purchase Property and Option Property, and Pardee thereafter purchases any portion of the Entire Site from Seller, at the closing of such purchase, Pardee shall pay to you a commission in the amount determined as described above as if the Option Agreement remained in effect.

For purposes of this Agreement, the term "Pardee" shall include any successor or assignee of Pardee's rights under the Option Agreement, and Pardee's obligation to pay the commission to you at the times and in the manner described above shall be binding upon Pardee and its successors and assigns. Pardee, its successors and assigns, shall take no action to circumvent or avoid its obligation to you as set forth in the Agreement. Nevertheless, in no event shall you be entitled to any commission or compensation as a result of the resale or transfer by Pardee or its successor in interest of any portion of the Entire Site after such property has been acquired from Seller and commission paid to you.

In the event any sum of money due hereunder remains unpaid for a period of thirty (30) days, said sum shall bear interest at the rate of ten percent (10%) per annum from the date due until paid. In the event either party brings an action to enforce its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs.

This Agreement represents our entire understanding concerning the subject matter hereof, and all oral statements, representations, and negotiations are hereby merged into this Agreement and are superseded hereby. This Agreement may not be modified except by a written instrument signed by all of us. Nothing herein contained shall create a partnership, joint venture or employment relationship between the parties hereto unless expressly set forth to the contrary. The language of this Agreement shall be construed under the laws of the State of Nevada according to its normal and usual meaning, and not strictly for or against either you or Pardee.

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PH 000136

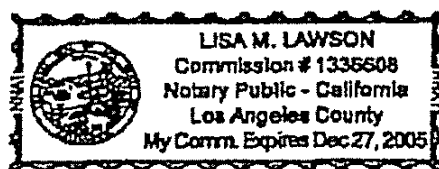
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 3

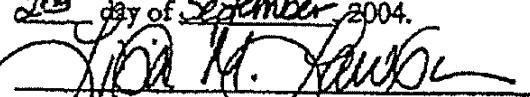
Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation

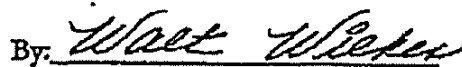
By: 
Jon E. Lash
Senior Vice President

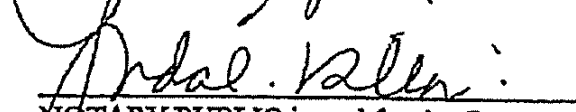


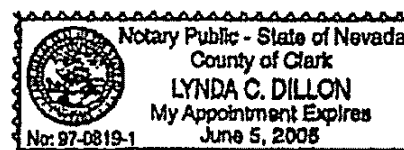
SUBSCRIBED and SWORN to before me this
20th day of September, 2004.

NOTARY PUBLIC in and for the County of
Los Angeles, State of California

Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By: 
Walt Wilkes

SUBSCRIBED and SWORN to before me
this 4th day of September, 2004.

NOTARY PUBLIC in and for the County
of Clark, State of Nevada



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PH 000137

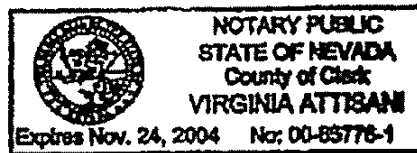
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: Jim Wolfram
Jim Wolfram

SUBSCRIBED and SWORN to before me
this 6 day of SEPT, 2004.

Virginia Attisani
NOTARY PUBLIC in and for the County
of Clark, State of Nevada



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PH 000138

EXHIBIT H



CERTIFIED
COPY

Las Vegas
Reno
Carson City

DISTRICT COURT
CLARK COUNTY, NEVADA

-oOo-

JAMES WOLFRAM AND WALT
WILKES,

Plaintiff,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

Case No. A-10-632338-C
Department No. IV

DEPOSITION OF
HARVEY WHITEMORE, ESQ.
OCTOBER 19, 2012
RENO, NEVADA

REPORTED BY: AMY JO TREVINO, CCR #825, CSR #5296, RPR

JOB NO. 167740

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Las Vegas, Nevada 89169



A P P E A R A N C E S

FOR THE PLAINTIFF:

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LYNN M. HANSEN, ESQ.
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(702) 388-7171

FOR THE DEFENDANT:

PAT LUNDVALL, ESQ.
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Suite 1000
Las Vegas, NV 89102
(702) 873-9966

1 A I know of one joint meeting. I can recall that.
2 Separate meetings I know I had conversations and I don't recall
3 whether they were telephone conversations or whether they were
4 meetings. I do believe that Walt and Jim proposed to me some
5 idea involving them doing additional work in terms of
6 completing the development of Coyote Springs.

7 Q Can you elaborate on what you mean by additional work?

8 A I think that they wanted to be involved in selling or
9 developing parcels of land that would be potentially used for
10 commercial or multi-family purposes.

11 Q And the reason they that would be considered
12 additional work is because they were already involved with the
13 transaction regarding the single family homes?

14 A I was advised and we put into our contracts that
15 Pardee would be responsible for any commission that would have
16 to be paid. I was aware that Jim and Walt had some
17 involvement. I was not specifically aware at that time what
18 the level of the involvement was or what the commission
19 arrangement was or wasn't.

20 Q But it was for single family homes as opposed to
21 multifamily or commercial?

22 A The original transaction as contemplated by Pardee and
23 Coyote Springs was an Option Agreement that gave Pardee the
24 right to buy the entire developable lands, which we
25 characterized as approximately 30,000 acres. During the

1 process of negotiating that option it became clear that we
2 needed to modify the option and focus on parcels that could be
3 created and parcels for which Pardee wanted immediate access
4 to, and those were single family production homes.

5 Q And that was the agreement that you referred to
6 earlier that Mr. Wolfram and Mr. Wilkes would receive a
7 commission payment?

8 A My understanding from Jon and his agents was that
9 there were in fact other people involved, but that they would
10 take care of those, and my understanding is that there was such
11 an agreement.

12 Q Now, back to the meetings, the phone calls you had
13 with our clients. How many meetings or phone calls would you
14 say that you had regarding the Coyote Springs development?

15 A I would like to break that down into two components if
16 I could.

17 Q Uh-huh.

18 A The first component being the transaction that I have
19 described as the original Pardee acquisition, and the other
20 pieces involving our retained properties that could be used for
21 commercial or multi-family or were in my mind the developable
22 land around the golf course, the custom home lots that we had
23 developed internally as things that we wanted to retain some
24 ownership of and participate with buyers on due premiums, those
25 sorts of things, golf course premiums.

1 So the answer after that long explanation is that we
2 might have had one or two, maybe three conversations regarding
3 the Pardee transaction, and we probably had again two or three
4 on the other part having to do with the commercial or
5 multi-family. I considered those two separate sorts of
6 transactions.

7 Q Okay. As to the original Pardee acquisition, when was
8 the last meeting or phone conversation that you had with our
9 clients?

10 A Again for purposes of the deposition can you refer to
11 the first component or the Pardee component?

12 Q Yes. The first component.

13 A The original party, probably sort of a check up call
14 between our first meeting and a question as how were things
15 going between Pardee and us, and it was sort of how are things
16 going, Harvey, are you guys going to be able to do a deal with
17 Pardee, and I expressed a positive sort of response.

18 Q Do you remember when that was?

19 A It would have been approximately three to six months
20 after the meeting that I described at Pardee; and again, I can
21 probably give you an exact date when and if I can find a
22 document. I know that there was one there.

23 Q So it would be fair to say it would be sometime in
24 2004?

25 A Yes, I think that is fair. End of 2003, early 2004.

1 Q That would have been, because you said that was when
2 the first meeting was, so I was just saying that three to six
3 months later would probably be in 2004?

4 A That's likely.

5 Q Okay. Now on the second component of the answer the
6 retained properties, the golf course, custom homes, commercial
7 property, when was the first time you spoke to our clients
8 about that on that topic?

9 A I think that was probably six to 12 months after we
10 had entered into the first Pardee transaction, because I
11 believe Walt and Jim wanted to wait to see whether that,
12 whether the development was going to occur and what the
13 likelihood of this was in terms of putting in hundreds of
14 millions of dollars of resources.

15 Q And when was the last time you spoke to them on the
16 second component of the retained properties, golf courses,
17 commercial lots?

18 A I can't recall a conversation after that period so
19 probably end of 2004, early 2005.

20 Q Okay. Are you aware of any conversations or meetings
21 between people at Pardee and our clients after the
22 conversations the last meeting you had with Mr. Wolfram or
23 Mr. Wilkes?

24 A It was disclosed to me post transaction that Pardee
25 was in fact going to pay a commission to Walt and Jim based

1 upon the, what I call the production residential properties,
2 sort of the first phase, everything having to do with single
3 family homes.

4 Q Did you understand this to be the whole relationship
5 between Pardee and our clients after 2004?

6 A I was advised by the folks from Pardee, either Jon or
7 Cliff or someone at that level that the commission structure
8 only applied to what I call the, again the production single
9 family homes. I haven't had a chance to look at the documents,
10 but I would have to go back and check to see if there is a
11 reference to commissions or brokers in any subsequent contracts
12 that we entered into with Pardee.

13 Q Okay. As we go through the documents that you have
14 reviewed I'm going to ask you if Mr. Wolfram or Mr. Wilkes were
15 involved in certain parts of the transaction. Hopefully
16 looking at the documents you will be able to give us, you know
17 as to this particular manner, this particular change, you know
18 Mr. Wolfram or Mr. Wilkes were involved here or weren't
19 involved there.

20 I guess we will begin with looking at Exhibit 1, the
21 original Option Agreement. Do you want to take that out so
22 that she can mark it? If you like we can use that binder for
23 her.

24 A Whatever is easiest for you.

25 MS. HANSEN: Did you mark that? We will just mark

1 crosshatched area that is the option property prior to BLM
2 reconfiguration; is that right?

3 A I think the best way to characterize it is the
4 crosshatched property plus the little area in the lower left is
5 the entire site.

6 Q Okay. So the little area in the lower left is the
7 purchase property as we saw earlier, right?

8 A That's correct.

9 Q So the rest is the option property, correct?

10 MS. LUNDVALL: I will object to your question. It
11 once again runs contrary to the definitions contained within
12 the agreement.

13 MR. JIMMERSON: I understand that and I was going to
14 allow him to make the correction.

15 THE WITNESS: Well, sorry, I'm not being very clear
16 apparently. I understand this agreement and I look at this
17 property and I say as of the time that this happened there were
18 in everybody's contemplation that the land which I owned, which
19 Coyote Springs owned was everything that was crosshatched here.
20 And this other parcel which has, if it was drawn you would say
21 okay, that's the entire site and everybody would say yes,
22 because it includes the donut hole which is the leased land.
23 And therefore, if the parties had meant that the entire site
24 equaled 100% of the option property, those terms only matched,
25 only matched when Pardee was going to exercise an option to

1 acquire the entire parcel, which they didn't do.

2 Now, whether they negotiate, renegotiate and say I
3 want to acquire the entire parcel, that's a different story.
4 But at the time those terms only matched at a very specific
5 point in time.

6 Now, drop one step down. After your option expires
7 with respect to your ability to acquire the entire site, you
8 then have other options which were provided for in the
9 agreement to continue to acquire pursuant to the terms of the
10 agreement, additional land. Up to ultimately the total number
11 of acres which the parties agreed to for a purchase price of
12 \$84 million.

13 So we can go from A to A.1, to A.3, to A.4 or A.5; or
14 we can go to A, to B, to C, to D, because ultimately at the end
15 of this transaction in my judgment these documents reflect the
16 sale of \$84 million worth of property if you put it all in
17 together.

18 Q I understand that.

19 A Okay.

20 Q I need you to then tell me --

21 A I will do that.

22 Q -- what the crosshatched area is.

23 A In my judgment plus the little area in the lower
24 left-hand corner, which is not part of the donut hole, that
25 represents the entire site.

1 purposes transferred to an entity which was the entity which
2 ultimately sold those properties and transferred the properties
3 to the ultimate purchaser.

4 Q And at the time of your departure then has the chief
5 officer from CSI, to your knowledge had Pardee ever built a
6 home at Coyote Springs?

7 A No.

8 Q Had it ever sold a home at Coyote Springs?

9 A No.

10 Q To your knowledge any investment that Pardee had made
11 in Coyote Springs at the time there had been no sales to third
12 parties for which they could have received a return on that
13 investment, is that accurate?

14 A None that I'm aware of.

15 Q The original purchase price for the residential
16 production property was \$84 million, is that accurate?

17 A Yes, as modified from the original option which was in
18 effect, effective only as to bind the parties that they were
19 going to create a document which was effective to describe
20 specifically certain things and ultimately get to the \$84
21 million, that's correct.

22 Q For those single family production home lots then CSI
23 received \$84 million, is that accurate, from Pardee Homes of
24 Nevada?

25 A That's true. I would have to go to the schedule,

1 counsel, because the question, the question at Pardee's level
2 is whether or not they received the full acreage for the \$84
3 million, because there had to be adjustments, and therefore
4 what I'm saying is Pardee was entitled pursuant to their
5 agreement with Coyote Springs to receive certain other land and
6 to receive the benefit of a lower price on certain other land
7 for like parks and other things. We negotiated those prices.

8 So what I'm trying to say is you just simply can't
9 divide in 1,950 into \$84 million and say that's the price per
10 acre, or the reverse, simply say here is the number on a price
11 per acre and that's how many acres you get. It was a very
12 complex negotiation, which decided the ratios that each party
13 would pay with respect to certain facilities that had to be in
14 effect donated ultimately to either GIDs or road systems or
15 things like that.

16 Q So, in other words, what I understand you to be saying
17 is that you can't take the acreage and divide it by certain
18 numbers to come up with a purchase price or work backwards to
19 determine how many acres?

20 A That's correct, counsel. It's very important that you
21 look at the schedules in the documents that show the various
22 adjustments that were made by the parties with respect to a
23 wide variety of categories. They are in here, I can find them
24 if they are attached; but the bottom line also there was a
25 schedule that talked about percentages.

1 Q Now, you made reference in response to questions to
2 counsel that by about the end of 2003 or maybe early 2004, you
3 had created a list of production home builders that you wanted
4 to interview; is that right?

5 A Yes. Beginning in 2002 I started that process, got
6 real serious about it after we got the development agreement
7 approved. Identified Pardee Homes, Poulty, Meritage, the
8 American Nevada, Del Webb, a wide variety of people on the
9 list, and I narrowed that down to about five and Pardee was
10 really one of my top choices.

11 Q And at some point in time then that you had a meeting
12 then with representatives of Pardee Homes of Nevada; is that
13 right?

14 A I did. I had calls with representatives just to get a
15 sense of who they were and then we set up a meeting. Met Jon
16 for the first time in person, Jon Lash, excuse me, in person in
17 Las Vegas. Met his executive team, and we started to get
18 serious about the prospect of doing a deal together.

19 Q And at that initial meeting then was Mr. Wilkes and
20 Mr. Wolfram in attendance with those party representatives?

21 A At one of those initial meetings, counsel, that's
22 correct. Again, that was at Pardee's office and with your
23 folks' indulgence I will do my best to specifically identify
24 the date again. I know that I had it in notes and on a memo,
25 and so I will be able to put my hands on it once I'm able to

1 acquire all my documents back.

2 Q After that initial meeting at which time that you
3 recall Mr. Wolfram and Mr. Wilkes to be in attendance do you
4 have any recollection that they attended any other meetings at
5 which time you began negotiating with Pardee Homes of Nevada?

6 A Not with respect to specific negotiations but with
7 respect to general concepts. There might have been one meeting
8 that they were in, but it wasn't in terms of negotiating as
9 part of the deal and saying this, what we need to do this, or I
10 recommend that; that was really the effort of Jon and myself
11 with input from our staffs.

12 It was very time consuming, long, multiple, multiple
13 meetings, multiple calls to try to work these details out.
14 This was not an easy transaction.

15 Q And at anywhere in that point in your negotiations
16 with Pardee Homes did they discuss with you the commission that
17 they intended to pay to brokers, did they discuss numbers,
18 anything of that nature?

19 A The answer is yes. I was worried about it only in the
20 sense that I didn't want to on behalf of CSI be exposed to any
21 brokerage commission. I felt if there was any due it would
22 have been as a result of someone approaching Pardee, because
23 again, I didn't think that there was anybody acting on my
24 behalf certainly with respect to that. And Jon made it clear
25 to me that that was something that was going to be not a

1 making reference to there?

2 A Yes, I do, the small double I and small triple I.

3 Q All right, that will simply set the stage for a few
4 questions that I have then for those documents from the Option
5 Agreement itself, okay?

6 A Okay.

7 Q Since you didn't negotiate or draft the Commission
8 Agreement I intend to ask you no further questions concerning
9 that.

10 May I direct your attention then to Exhibit No. 1.
11 Exhibit No. 1 is captioned the Option Agreement for the
12 Purchase of Real Property and Joint Escrow Instructions. Was
13 this the culmination of your initial negotiations with Pardee?

14 A Yes.

15 Q And as we set forth already during your deposition
16 then this agreement deals with single family detached
17 production residential use lots; is that correct?

18 A Production homes, that's right.

19 Q So if we use a shortened term for this agreement, what
20 shortened term would be comfortable to you?

21 A Oh, single family production homes.

22 Q All right. And this, the recitals in this agreement
23 then, particularly recital A, make reference to the fact that
24 basically the maps and the parcel maps aren't fixed at the
25 time; is that right?

1 Q As a result of this Option Agreement and the two
2 amendments that we have seen already or that were subsequent to
3 this, prior to the Restated Option Agreement, would it be fair
4 to say that Pardee at that point in time had an interest in the
5 development then of a single family production property?

6 A Yes.

7 Q And that any of the other properties, the commercial
8 properties, the multi-family property, the custom lots, the
9 golf course, that development then was being held or being
10 retained then by CSI?

11 A Yes. I was -- yes, I was trying like heck to sell and
12 they were trying like heck not to buy.

13 Q Okay. And so at that point --

14 A I was trying, I was trying to bring money in, and so
15 all of these things were open and I knew that they required
16 under this agreement that I put a ton of money back into the
17 project, and that I was going to need to develop cash flow by
18 selling other pieces of property through whoever it was going
19 to be.

20 Q The first paragraph, and let me back up and see if I
21 can't use your expertise a little bit. There is a few recitals
22 that are found within this agreement. Can you just briefly
23 explain then what a recital is, please?

24 A Sure. A recital is part of an agreement that sets the
25 stage for further definition that is really found by the terms,

1 Q And this first step as you described it ultimately
2 under paragraph number four defined then the property that
3 Pardee was purchasing for the single family production home
4 development, correct?

5 A Well, let me get to paragraph four. Oh, excuse me.

6 Q Just looking under paragraph one.

7 A Excuse me, I looked all the way to four. You are
8 talking about sub four?

9 Q I'm just talking in general.

10 A Oh, yes, in general that's correct.

11 Q And we know that the subsequent amendments this price
12 tag then on the purchase property went up to \$84 million,
13 correct?

14 A Yes.

15 Q And as we have described before, CSI received at least
16 to your knowledge \$84 million from Pardee; is that correct?

17 A That's correct.

18 Q All right. Now, turning your attention then to
19 paragraph number two, and it's found on page five of the
20 agreement.

21 A Yes.

22 Q There is a reference that is made to the grant of the
23 option.

24 A Yes.

25 Q And to your knowledge has Pardee ever exercised this

1 grant of option so as to take down additional single family
2 production homes?

3 A Not within paragraph A, which was the entire site
4 option. That didn't happen. And with respect to paragraph B,
5 which the additional option property which talked about the
6 property outside of the first five-year period would be then
7 purchased at a scheduled price. So unless you went to and said
8 I'm going to buy additional property beyond what was
9 contemplated by the parties in the first transaction and paid a
10 scheduled price, if they came today and said we would like to
11 buy residential production property, the only way to determine
12 that was if you would look at the schedule. To my knowledge
13 they have not.

14 Q And that was particularly to your knowledge as of
15 through March of 2011?

16 A 2000 -- August of 2010 and pretty darn confident, high
17 level of confidence through March 2011.

18 Q There we go.

19 Now very briefly, Exhibit No. 2 was shown to you as
20 the amendment then to the Option Agreement. In general do you
21 have a recollection of what the purpose was as to this first
22 option?

23 A This was to extend the period in which number one, the
24 contingency period would be extended and that the close of
25 escrow was scheduled to occur on August 1, 2007. So what we

1 Q Turning your attention then to what's been marked as
2 Exhibit 5, I believe to deposition. Exhibit 5 is the Amended
3 and Restated Option Agreement for the purchase of real property
4 and joint escrow instructions. This particular agreement once
5 again memorialized the fact that \$84 million was the purchase
6 property price that Pardee was paying for the purchased
7 property, is that accurate?

8 A That's correct.

9 Q Now, at this point in time do you have any knowledge
10 that the brokers had any involvement in the Amended and
11 Restated agreement between CSI and Pardee?

12 A I don't recall any involvement of the brokers other
13 than as I previously testified to which I believe was that it
14 might have been three to six months post, and I may have to --
15 I may have to correct this answer, but it may have only been
16 three to six months after the first set of meetings and first
17 real down to Earth negotiating sessions that I had with Jon
18 Lash, and it was a sort of check up call, how are things going,
19 what's happening; Harvey, is this going to happen type of
20 thing. And then, you know, just I can't recall the specific
21 occurrence when the commission or the deal structure was ever
22 an issue, it just didn't happen. No one called me.

23 Q Turning your attention, and I'm going to now get into
24 probably a little bit of a tedious portion of your deposition
25 because I will ask you very similar questions regarding each

1 STATE OF NEVADA)
2 WASHOE COUNTY) ss.

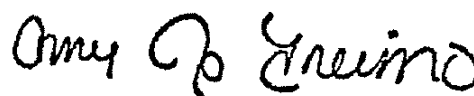
3 I, AMY JO TREVINO, a Certified Court Reporter in and
4 for Washoe County, State of Nevada, do hereby certify;

5 That on Friday, October 19, 2012, at the hour of 1:15
6 p.m. of said day, at 555 South Center Street, Reno, Nevada,
7 personally appeared HARVEY WHITTEMORE, ESQ., who was duly sworn
8 by me to testify the truth, the whole truth and nothing but the
9 truth, and thereupon was deposed in the matter entitled herein;

10 That said deposition was taken in verbatim stenotype
11 notes by me and thereafter transcribed into typewriting as
12 herein appears;

13 That the foregoing transcript, consisting of pages 1
14 through 117, is a full, true and correct transcription of my
15 stenotype notes of said deposition.

16 DATED: At Reno, Nevada, this 24th day of October,
17 2012.

18
19 

20 AMY JO TREVINO, CCR #825,
21 CSR #5296, RPR
22
23
24
25

EXHIBIT I

Filed Under Seal

EXHIBIT J

Filed Under Seal

EXHIBIT K



10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024-4101

JON E. LASH
SVP Vice President
(310) 475-3525 ext. 251
(310) 446-1235

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7002 0840 0006 6425 6578

August 23, 2007

7004 2510 0004 4585 5181

Mr. Walt Wilkes
General Realty Group Inc.
10761 Turquoise Valley Dr.
Las Vegas, NV 89144-4141

Mr. Jim Wolfram
Award Realty Group
10761 Turquoise Valley Dr.
Las Vegas, NV 89144-4141

Re: Letter Agreement dated September 1, 2004 (the "Commission Agreement") between General Realty Group, Inc. and Award Realty Group (collectively "Brokers") and Pardee Homes of Nevada ("Pardee")

Gentlemen:

The above-referenced Commission Agreement for Coyote Springs obligates Pardee to pay to Brokers the following amounts with respect to the "Option Agreement" defined therein:

- (i) Four percent (4%) of the Purchase Price payments pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, one and one-half percent (1-1/2%) of the remaining Purchase Price payments pursuant to paragraph 1 of the Option Agreement on the next Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the amount derived by multiplying the number of acres purchased by Pardee by Forty Thousand Dollars (\$40,000).

\\netadm\fileserver\del\Legal\my documents\Land Acq.\JEL\letters\2007\letters\WILKES 07.08.23.doc

PH 000133

Mr. Walt Wilkes
Mr. Jim Wolfgram
August 23, 2007
Page 2

It has come to our attention that you have received an overpayment of \$50,000 pursuant to the Commission Agreement. Beginning with the next land purchase payment scheduled for September 1, 2007, Pardee will credit the overpayment against future commission payments until the overpayment has been recovered. The revised payment schedule for the next three (3) months will be as follows:

Date	Scheduled Commission Payment	Credit	Revised Commission Payment
September 1, 2007	\$22,500	<\$22,500>	\$0
October 1, 2007	\$22,500	<\$22,500>	\$0
November 1, 2007	\$22,500	<\$5,000>	\$17,500
	<u>\$67,500</u>	<u>\$50,000</u>	<u>\$17,500</u>

The Commission Agreement applies to the original Option Agreement covering single-family land at Coyote Springs which included both of your involvement. Since the execution of the original single-family land Option Agreement, the Seller of Coyote Springs has decided not to pursue building the multi-family land and custom lot parcels. Recently, Pardee entered into separate agreements under different values per acre and terms than the original deal to purchase this additional acreage at Coyote Springs. Currently the Seller of Coyote Springs still has the exclusive right to all commercial and golf related acreage at Coyote Springs. Pardee may also ultimately purchase the right to this acreage in the future.

As land is purchased under these other agreements, you will not be entitled to any commissions related to these other agreements. However, we will continue to honor our obligation to you for future commissions under the original single-family land deal.

Please call me if you have any questions regarding the Commission Agreement or your future commission payments.

Sincerely,

PARDEE HOMES,
a California corporation

Jon E. Lash
Sr. Vice President

JEL:lnl

Verlaingfischerstadtflanzunilny documentsLand Acq. jet letters 2007 letters index 070823.doc

PH 000134

EXHIBIT L



10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024-4101

JON R. LASH
Executive Vice President
Chief Operating Officer
(310) 475-3525, ext. 251
(310) 448-1295

March 14, 2008

Mr. Jim Wolfram
D & W REAL ESTATE, LLC
(formerly Award Realty Group)
212 Canyon Dr.
Las Vegas, NV 89107

Mr. Walt Wilkes
GENERAL REALTY GROUP, INC.
212 Canyon Dr.
Las Vegas, NV 89107

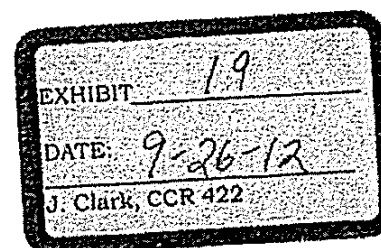
Re: That certain broker agreement dated September 1, 2004 (the "Agreement"), by and between Pardee Homes of Nevada ("Pardee") and D & W Real Estate, LLC (successor to Award Realty Group) and General Realty Group, Inc. (collectively "Brokers"), regarding the Coyote Springs Development.

Gentlemen:

Thank you for your February 1, 2008 correspondence, in which you assert that the above-referenced Agreement is applicable to all transactions related to the Coyote Springs development. Pardee respectfully disagrees.

As you might expect, Pardee has reviewed the Agreement for clarification of its responsibilities for paying commissions. Pursuant to the Agreement, you are entitled to only that compensation related to the Purchase Property and the Option Property, as those terms are defined in the Agreement. Pardee has already paid you more than Two Million Dollars (\$2,000,000) for your efforts on the Purchase Property. In addition, you will receive one and one-half percent (1.5%) of the value of the Option Property that Pardee purchases.

Pardee's purchase of the Purchase Property and Option Property, both of which are intended for single family detached residential development, is a separate and distinct



001

193

JA000197

Mr. Wolfram
D&W REAL ESTATE, LLC; and
Mr. Wilkes
GENERAL REALTY GROUP, INC.
March 14, 2008
Page 2

transaction from the purchase of any other property. Brokers were not involved in any subsequent purchases, nor are any subsequent purchases related to the type of property covered by the Agreement. Therefore, we cannot justify application of the Agreement to include unrelated property.

As of this date, Pardee has not exercised any option to purchase the Option Property. As required by the Agreement, we will provide you with copies of each written option exercise notice in a timely fashion. However, we respectfully decline your request to provide surveyed plat maps. There should be no confusion over what property has been purchased. All commissions and purchase monies have been paid through the same escrow account simultaneously. Thus, production of the documentation you request serves no purpose of mutual benefit.

I am hopeful this letter provides the clarification you need. Naturally, if there is additional information to consider, please pass it along. In the meantime, thank you for your ongoing professional courtesy.

Sincerely,

PARDEE HOMES NEVADA

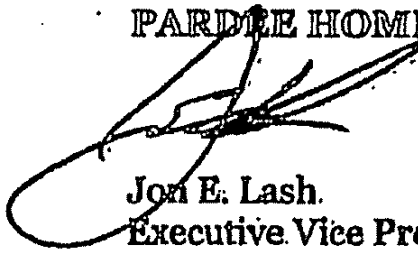

Jon E. Lash
Executive Vice President &
Chief Operating Officer

EXHIBIT M



10880 Wilshire Boulevard, Suite 1800
Los Angeles, California 90024-4101

JIM STRINGER, JR., Esq.
Director, Land Acquisition
(310) 475-3525 ext. 209
(310) 446-1295

April 6, 2009

Mr. Jim Wolfram
212 Canyon Drive
Las Vegas, NV 89107

Re: Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated as of March 28, 2005, as amended (the "Agreement"), between Pardee Homes of Nevada ("Pardee") and Coyote Springs Investment LLC (the "Coyote")

Dear Jim:

On April 1, 2009, Pardee made its last land payment to Coyote for the "Purchase Property" pursuant to the above-referenced Agreement in the amount of \$2,000,000 (for a total of \$84,000,000). Both General Realty Group, Inc. and D&W Real Estate, LLC (formerly Ayward Realty Group) have now been paid in full with respect to the Purchase Property under the Commission Agreement dated September 1, 2004, as supplemented by Pardee's letter dated August 23, 2007.

As you will recall, Pardee has been paying your commissions as the land payments are made, rather than upon the later date when Pardee receives legal title to the property. I have attached for your files three closing statements for land acquired by Pardee. We are in the process of closing on the final parcel later this month. As you can see, the entire purchase price at each closing has been paid by applying the land payments previously made by Pardee.

Please let me know if you have any questions.

Very truly yours,

PARDEE HOMES
a California corporation

By: 

Jim Stringer, Jr.

Enclosures

PH 000128

Filed Under Seal

EXHIBIT N



10880 Wilshire Blvd., Suite 1900
Los Angeles, California 90024
Tel (310) 475-3525
Fax (310) 446-1295
jon.lash@pardeehomes.com

Received

NOV 25 2009

Jon E. Lash
Executive Vice President

Pardee Homes Legal

November 24, 2009

Mr. Jim Wolfram
D & W Real Estate
212 Canyon Drive
Las Vegas, NV 89107

Dear Mr. Wolfram:

This letter follows our recent telephone conversation during which I explained why you have been fully compensated for your professional services in relation to Coyote Springs pursuant to the Real Estate commission letter ("Commission Letter") dated September 1, 2004, which you executed. As we discussed, I agreed to provide this letter in response to your ongoing inquiries and that of your attorney regarding the commission payments.

This letter should satisfy your ongoing requirements, and those of your attorney, for information and documentation relating to all commission payments regarding the Coyote Springs project.

The transaction was amended on March 28, 2005 to reflect an adjusted acquisition price of \$84 Million. Pardee has been purchasing acreage for supporting land uses such as parks, utilities, rights of way and open space at a price per acre significantly below the price per acre Pardee has been paying for residential land. **The adjustment in price per acre, for these non-residential uses, has increased the 1950 acres originally described in the Purchase and Sale Agreement, but has not changed the original purchase price. Your commission is based on a percentage of the total price and not the number of acres.**

Listed below is a narrative description of the land takedowns as well as a corresponding color coded map:

- Initial Takedown. Since a separate parcel of land did not exist to match the monthly land payments, Pardee acquired a larger parcel of land at the initial closing with the obligation to deed back to the seller the excess acreage once a parcel map was recorded. This is reflected on the enclosed map as a "cross hatched" area.

- Takedowns #1 and #2. In one increment in 2006 and a second in 2007, Pardee took title to an 822.87-acre parcel; this parcel's boundary was adjusted, reducing its size to 810.05-acres. This amount is reflected in the attached exhibits as Takedowns #1 and #2 in the "gold" color. However, when this land is adjusted for the required transfer of lands (golf parcels) back to Coyote Springs, Pardee nets 618.74-acres.
- Takedown #3. Takedown #3 in 2008 required two deed transfers due to release issues with Wells Fargo Bank, seller's lender. These parcels are shown in "red" on the exhibits. They amount to 859.93-acres acquired by Pardee.
- Takedown #4. Takedown #4 was a single deed transfer and is shown in "green" on the attached exhibits. This amounts to 393.45-acres acquired by Pardee.
- Takedown #5. Takedown #5, shown in "blue" on the exhibits, was documented by two deeds which were recorded on the same date. It also included some "clean up" adjustments within the purchase price to allow for trail connectivity from other Pardee-owned lands. Takedown #5 accounts for 240.75-acres acquired by Pardee.

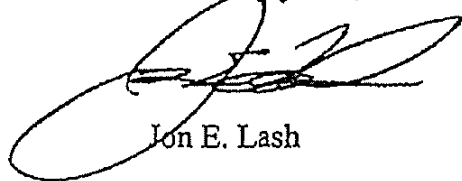
The attached exhibits reflect that Pardee still has over \$116,000 on account from the \$84 Million Option Agreement deposits and has acquired 2,112.87 acres.

Listed below is a chronological summary of the land takedowns to date at Coyote Springs:

<u>Date of Closing</u>	<u>Takedown #</u>	<u>Purchase Price</u>
10/20/2006	1	combined with #2
5/7/2207	2	\$23,287,822.91
8/8/2008	3	see below for #3
12/22/2008	3	\$34,507,622.64
2/11/2009	4	\$16,651,376.92
8/18/2009	5	\$959,300.00
8/18/2009	5	\$243,169.21
8/18/2009	5	\$8,233,722.91

In conclusion, I reiterate Pardee's appreciation for your services, and I trust that you agree that full payment has been made in accordance with the schedules set forth in the Commission Letter. Naturally, Pardee reserves all rights and remedies with respect to any claim you may assert to the contrary.

Sincerely yours,



Jon E. Lash

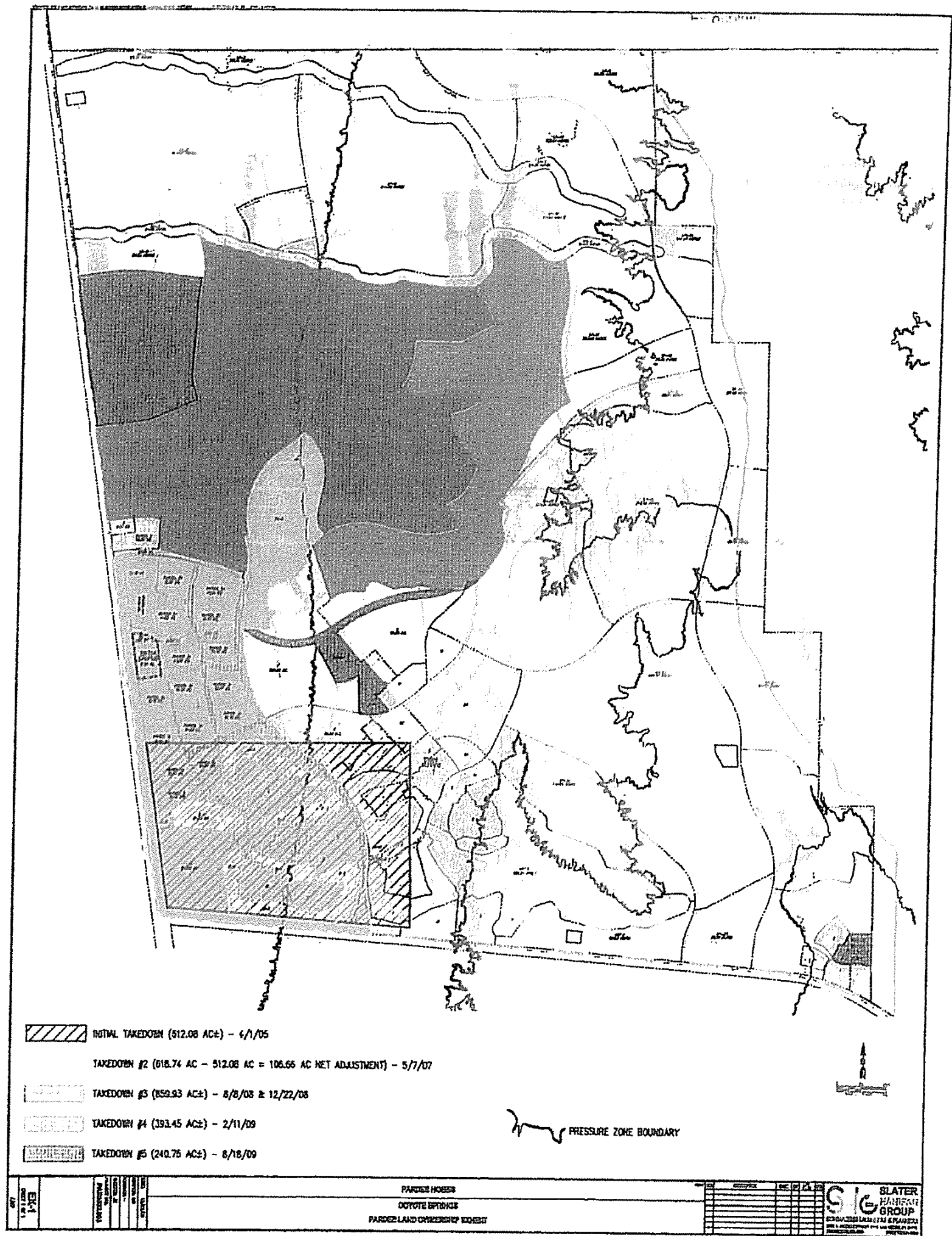
JEL/cr

Enclosures:

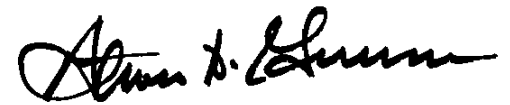
bcc: Chris Hallman
Chuck Curtis

2

PH 000125



Date	Parcels	Instrument Number	Adj. Acres	Note	Purchase Price
4/1/2005	Sec 20 & 21 of Patent	20050401-0002085	512.08	Initial Closing	\$ 10,000,000.00
10/20/2006	Quick Claim PHN to CSI	20061020-0002836	(512.08)	Quick Claim to CSI of Initial Closing	\$ (10,000,000.00)
10/20/2006	Parcel 1 (Village 1)	20061020-0002839	nila	Takedown #1 & 2 per recorded maps	\$
6/7/2007	Village 1	20070507-0003982	618.74	Takedown #1 & 2 amended boundary	\$ 23,287,822.91
2/11/2008	Village 2	20080211-0003400	383.45	Takedown #1	\$ 18,651,376.82
6/18/2008	Village 3	20080618-0003328	334.32	Village 3 & 4 Initial Closing	\$ 989,300.00
6/18/2008	Village 4	20080618-0002103	211.27	Takedown #5	\$ 2,376,692.41
6/18/2008	Village 5	20080618-0002103	181.44	Takedown #5	\$ 8,233,722.91
TOTAL			2112.87		\$ 83,883,014.59



CLERK OF THE COURT

DECL
PAT LUNDVALL
Nevada Bar No. 3761
AARON D. SHIPLEY
Nevada Bar No. 8258
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
ashipley@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV


**DECLARATION OF AARON D.
SHIPLEY IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

I, AARON D. SHIPLEY, declare under penalty of perjury:

1. I am over eighteen years of age, am of sound mind, and am competent to make this Declaration. This Declaration is made of my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true, and, if called as a witness, I would competently testify thereto.

2. I am a partner with McDonald Carano Wilson LLP ("MCW"), located at 2300 West Sahara Avenue, Suite 1000, Las Vegas, Nevada 89102, and am been duly licensed to practice law in the State of Nevada.

3. This Declaration is submitted in support of Defendant's Motion for Summary Judgment ("Motion").

 **McDONALD-CARANO-WILSON**
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
P.O. BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1 4. Exhibit A to the Motion¹ contains true and correct copies of relevant
2 portions of the certified transcript of the deposition of James Wolfram which was taken
3 on November 8, 2011.

4 5. Exhibit B to the Motion contains true and correct copies of relevant
5 portions of the certified transcript of the deposition of Walter Wilkes which was taken on
6 November 28, 2011.

7 6. Exhibit C to the Motion contains true and correct copies of relevant
8 portions of the certified transcript of the deposition of Jon Lash which was taken on
9 September 26, 2012.

10 7. Exhibit D to the Motion is a true and correct copy of the Option Agreement
11 for the Purchase of Real Property and Joint Escrow Instructions dated June 1, 2004
12 (“Option Agreement”). This exhibit is being withheld pending the Court’s Order
13 regarding Defendant’s contemporaneously filed Motion to File Exhibits to Defendant’s
14 Motion for Summary Judgment Under Seal pursuant to SRCR 3.

15 8. Exhibit E to the Motion is a true and correct copy of the Amendment to
16 Option Agreement dated July 28, 2004. This exhibit is being withheld pending the
17 Court’s Order regarding Defendant’s contemporaneously filed Motion to File Exhibits to
18 Defendant’s Motion for Summary Judgment Under Seal pursuant to SRCR 3.

19 9. Exhibit F to the Motion is a true and correct copy of the Amendment No. 2
20 to Option Agreement dated August 31, 2004. This exhibit is being withheld pending the
21 Court’s Order regarding Defendant’s contemporaneously filed Motion to File Exhibits to
22 Defendant’s Motion for Summary Judgment Under Seal pursuant to SRCR 3.

23 10. Exhibit G to the Motion is a true and correct copy of the letter from Jon
24 Lash, Sr. Vice President of Pardee Homes (“Lash”), to Walt Wilkes (“Wilkes”) of
25 General Realty Group and Jim Wolfram (“Wolfram”) of Award Realty Group dated
26

27
28 ¹ Pursuant to EDCR 2.27 all Exhibits to the Motion are attached to the contemporaneously filed
Appendix of Exhibits in Support of Defendant’s Motion for Summary Judgment (“Appendix”).

1 September 1, 2004, which was countersigned by Wolfram and Wilkes ("Commission
2 Agreement").

3 11. Exhibit H to the Motion contains true and correct copies of relevant
4 portions of the certified transcript of the deposition of Harvey Whittemore which was
5 taken on October 19, 2012.

6 12. Exhibit I to the Motion is a true and correct copy of a document entitled
7 "Buyer(s) Final Closing Statement" prepared by Stewart Title of Nevada. This document
8 bears a date stamp of April 13, 2005. This exhibit is being withheld pending the Court's
9 Order regarding Defendant's contemporaneously filed Motion to File Exhibits to
10 Defendant's Motion for Summary Judgment Under Seal pursuant to SRCR 3.

11 13. Exhibit J to the Motion is a true and correct copy of a document entitled
12 "Chicago Title Escrow Ledger Listing" dated April 6, 2009. This exhibit is being withheld
13 pending the Court's Order regarding Defendant's contemporaneously filed Motion to
14 File Exhibits to Defendant's Motion for Summary Judgment Under Seal pursuant to
15 SRCR 3.

16 14. Exhibit K to the Motion is a true and correct copy of the letter from Lash to
17 Wolfram and Wilkes dated August 23, 2007.

18 15. Exhibit L to the Motion is a true and correct copy of the letter from Lash to
19 Wolfram and Wilkes dated March 14, 2008.

20 16. Exhibit M to the Motion is a true and correct copy of the letter from Jim
21 Stringer, Jr. of Pardee Homes to Wolfram dated April 6, 2009. The enclosures to this
22 letter are being withheld pending the Court's Order regarding Defendant's
23 contemporaneously filed Motion to File Exhibits to Defendant's Motion for Summary
24 Judgment Under Seal pursuant to SRCR 3.

25 17. Exhibit N to the Motion is a true and correct copy of the letter from Lash to
26 Wolfram dated November 24, 2009.

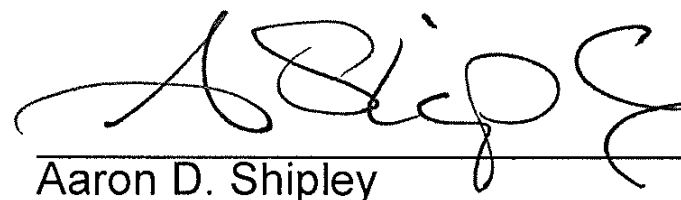
27 18. Defendant has produced the documents in its possession and control
28 related to the transactions involving Defendant's purchase of property from Coyote

1 Springs Investment LLC pursuant to the Option Agreement for the Purchase of Real
2 Property and Joint Escrow Instruction and its related amendments.

3 19. My office received notice that Plaintiffs served subpoenas on third parties
4 that involved in the transactions at issue in this litigation. On or about November 8,
5 2011 Plaintiffs served a subpoena on Stewart Title requesting documents related to the
6 Takedowns. On or about January 18, 2012 Plaintiffs produced Stewart Title's
7 documents in this litigation. On or about November 9, 2011 Plaintiff served a subpoena
8 on Chicago Title requesting documents related to the Takedowns. On or about
9 February 6, 2012 Plaintiffs produced Chicago Title's documents in this litigation. On or
10 about November 8, 2011 Plaintiffs also subpoenaed documents from CSI related to its
11 sale of any and all property to Pardee. On or about August 27, 2012 Plaintiffs produced
12 CSI's documents in this litigation.

13 20. I have executed this declaration believing it to be true and accurate in all
14 respects with the intention it be relied upon in this proceeding as if sworn under oath
15 and with the same force and effect and intending it to be made under penalty of perjury.

16 Dated this 24 day of October, 2012.

17
18 
19
20 Aaron D. Shipley
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 24th day of October, 2012, I served a true and correct copy of the foregoing **DECLARATION OF AARON D. SHIPLEY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** via hand delivery on the following:

James J. Jimmerson
Lynn M. Hansen
James M. Jimmerson
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

/s/ Sally Wexler
An Employee of McDonald Carano Wilson
LLP

264609

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 11:09 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

Appeal Regarding Judgment and Post-Judgment Orders
Eighth Judicial District Court
District Court Case No.: A-10-632338-C

JOINT APPENDIX – VOLUME 1 OF 88

McDONALD CARANO LLP
Pat Lundvall (NSBN 3761)
lundvall@mcdonaldcarano.com
Rory T. Kay (NSBN 12416)
rkay@mcdonaldcarano.com
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966

Attorneys for Appellant

Chronological Index to Joint Appendix

Date	Document Description	Volume	Labeled
12/29/2010	Complaint	1	JA000001- JA000006
01/14/2011	Amended Complaint	1	JA000007- JA000012
02/11/2011	Amended Summons	1	JA000013- JA000016
03/02/2011	Answer to Amended Complaint	1	JA000017- JA000023
10/25/2011	Transcript re Discovery Conference	1	JA000024- JA000027
11/08/2011	Scheduling Order	1	JA000028- JA000030
11/29/2011	Order Setting Civil Non-Jury Trial	1	JA000031- JA000032
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
12/16/2011	Notice of Entry of Stipulated Confidentiality Agreement and Protective Order	1	JA000040- JA000048
08/27/2012	Transcript re Hearing	1	JA000049- JA000050
08/29/2012	Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000051- JA000054
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06/29/2015	Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395- JA008922
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07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

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10/23/2013	Trial Exhibit 10 – filed under seal	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – filed under seal	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

Date	Document Description	Volume	Labeled
10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/23/2013	Trial Exhibit 21	28	JA004454
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
12/12/2013	Trial Exhibit 39	46	JA006936- JA006948

Date	Document Description	Volume	Labeled
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – filed under seal	27	JA004313- JA004319
10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
10/23/2013	Trial Exhibit BB	27	JA004103
10/23/2013	Trial Exhibit CC	27	JA004104
10/23/2013	Trial Exhibit DD	27	JA004105
10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
10/23/2013	Trial Exhibit FF	27	JA004114- JA004118
10/23/2013	Trial Exhibit GG	27	JA004119- JA004122
10/23/2013	Trial Exhibit HH	27	JA004123

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit II	27	JA004124
10/23/2013	Trial Exhibit JJ	27	JA004125
10/23/2013	Trial Exhibit KK	27	JA004126- JA004167
10/23/2013	Trial Exhibit LL	27	JA004168
10/23/2013	Trial Exhibit MM	27	JA004169
10/23/2013	Trial Exhibit NN	27	JA004170- JA004174
10/23/2013	Trial Exhibit OO	27	JA004175- JA004183
10/23/2013	Trial Exhibit PP	27	JA004184- JA004240
10/23/2013	Trial Exhibit QQ	27	JA004241- JA004243
10/23/2013	Trial Exhibit RR	27	JA004244- JA004248
10/23/2013	Trial Exhibit SS	27	JA004249- JA004255
10/23/2013	Trial Exhibit TT	27	JA004256- JA004262
10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
10/24/2013	Trial Exhibit VV	31	JA004791

Date	Document Description	Volume	Labeled
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935

Dated this 28th day of February, 2018.

McDONALD CARANO LLP

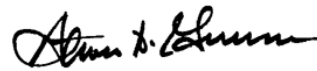
By: /s/ Rory T. Kay
Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 W. Sahara Ave., 12th Floor
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28th day of February, 2018, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson
An Employee of McDonald Carano LLP



CLERK OF THE COURT

1 **COMP**
2 JIMMERSON HANSEN, P.C.
3 JAMES J. JIMMERSON, ESQ.
4 Nevada Bar No. 000264
5 jjj@jimmersonhansen.com
6 415 So. Sixth St., Ste. 100
7 Las Vegas, NV 89101
8 (702) 388-7171
9 Attorney for Plaintiffs
10 James Wolfram and Walt Wilkes

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 JAMES WOLFRAM,
9 WALT WILKES,

10 Plaintiffs,
11 vs.

12 PARDEE HOMES OF NEVADA,
13 Defendant.

A- 10- 632338- C

CASE NO.:
DOCKET NO.: XXI I I

14 **COMPLAINT**

15 Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their
16 undersigned counsel, James J. Jimmerson, Esq. of the law firm of Jimmerson Hansen, for
17 their Complaint states as follows:

18 **GENERAL ALLEGATIONS**

19 1. At all times relevant hereto, Plaintiffs James Wolfram and Walt Wilkes are
20 individuals who have resided in Clark County, Nevada.

21 2. That Plaintiff Wolfram has been assigned all of Award Realty's rights, title
22 and interest in that certain Commission Letter dated September 1, 2004, and he is the real
23 party in interest in this case.

24 3. That Plaintiff Wilkes has been assigned all General Realty's rights, title and
25 interest in that certain Commission Letter dated September 1, 2004, and he is the real
26 party in interest in this case.

27 4. At all times relevant hereto, Defendant Pardee Homes of Nevada ("Pardee")
28 was a corporation registered in the state of Nevada.

1 5. Plaintiffs predecessors in interest, Award Realty and General Realty and
2 Plaintiffs and Defendant have a financial relationship. Plaintiffs were real estate brokers,
3 dealing in real estate owned by Coyote Springs Investment LLC and being purchased by
4 Defendant. The relationship between Coyote Springs Investment LLC and Defendant was
5 governed by a certain Option Agreement for the Purchase of Real Property and Joint
6 Escrow Instructions, dated in May of 2004 and later amended and restated on March 28,
7 2005 ("Option Agreement"). Plaintiffs and Defendant entered into an agreement entitled
8 "Commission Letter" dated September 1, 2004, which related to the Option
9 Agreement and governed the payment of commissions from Defendant to Plaintiffs for real
10 estate sold under the Option Agreement. For easy reference, Award Realty and General
11 Realty and Plaintiffs, are concurrently referred to as "Plaintiffs" herein.

12 6. Pursuant to the Commission Letter, Plaintiffs were to be paid a commission
13 for all real property sold under the Option Agreement.

14 7. Pursuant to the Commission Letter, Plaintiffs were to be fully informed of all
15 sales and purchases of real property governed by the Option Agreement. Specifically, the
16 Commission Letter stated:

17 Pardee shall provide each of you a copy of each written option exercise
18 notice given pursuant to paragraph 2 of the Option Agreement, together with
19 the information as to the number of acres involved and the scheduled closing
20 date. In addition, Pardee shall keep each of you reasonably informed as to
all matters relating to the amount and due dates of your commission
payments.

21 8. On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting
22 documents, which detail the purchases and sales of certain real property for which
23 Plaintiffs believe are part of the property outlined in the Option Agreement and, therefore,
24 property for which they are entitled to receive a commission. A parcel map was also
25 requested to identify which properties had been sold.

26 9. Defendant replied to Plaintiff's April 23, 2009, letter with a letter dated July
27 10, 2009. The July 10 letter failed to provide the documents requested by the Plaintiffs.
28

1 10. Plaintiffs once again requested the documents from the Defendant in a letter
2 dated August 26, 2009. In that letter, Plaintiffs alleged that failure to deliver the requested
3 documents constituted a material breach of the Commission Letter.

4 11. Defendant, after conversations with Plaintiffs, sent a two-page letter dated
5 November 24, 2009, with four attachments: 2 maps, a spreadsheet, and a map legend.
6 The letter attempted to explain the recent purchases or "takedowns" of real property by
7 Pardee.

8 12. Plaintiffs relied upon Defendant's representations made in the November 24,
9 2009 letter as being truthful and accurate.

10 13. Upon further inquiry, however, Plaintiffs have discovered that the
11 representations made by the Defendant in the November 24, 2009, letter were inaccurate
12 or untruthful. In response to their concerns, Plaintiffs sent another letter dated May 17,
13 2010 to Defendants, asking for additional information and further documentation of all
14 properties purchased by Defendant and sold by Coyote Springs Investment LLC. In that
15 letter, Plaintiffs alleged that the representations made in the November 24, 2009, letter
16 were believed to be inaccurate or untruthful after the Plaintiffs investigated the property
17 transactions and records in the Clark County Recorder's Office and Clark County
18 Assessor's Office. Plaintiffs further asked Defendant why it had instructed Francis Butler
19 of Chicago Title not to release closing escrow documents regarding purchase of properties
20 from Coyote Springs.

21 14. Defendant responded to the May 17, 2010, letter with a letter dated June 14,
22 2010. In that letter, Defendant denied breaching the covenants contained in the
23 Commission Letter, but did not reply or address any particular concern, including, but not
24 limited to: the discrepancy between the representations made by Defendant in the
25 November 24, 2009, letter and information and records found in the Clark County
26 Recorder's Office and the Clark County Assessor's Office, the request as to why closing
27 escrow documents were being withheld, and the request for all relevant closing escrow
28 documents.

1 15. To date there has been no further documentation produced by Defendant for
2 the Plaintiffs regarding their concerns about the sales and purchases of real property by
3 Defendant from Coyote Springs Investment, LLC.

4
5 **FIRST CLAIM FOR RELIEF**

6 **(Accounting)**

7 16. Plaintiffs incorporate each of the allegations contained within paragraphs 1
8 through 15 above.

9 17. Plaintiffs have requested documents promised to them by Defendant in the
10 Commission Letter and have not received them. Specifically, they have requested: the name
11 of the seller, the buyer, the parcel numbers, the amount of acres sold, the purchase price,
12 the commission payments schedule and amount, Title company contact information, and
13 Escrow number(s), copy of close of escrow documents, and comprehensive maps
14 specifically depicting this property sold and would, with parcel number specifically
15 identified.

16 18. Plaintiffs are entitled to an accounting and copies of the documents and
17 maps for all transfers of real property governed by the Option Agreement.

18 19. As a result of this action, Plaintiffs have been forced to bring this matter
19 before the Court. Plaintiff has been damaged in a sum in excess of \$10,000.00.

20 20. Plaintiffs are also entitled to an award of reasonable attorneys' fees and
21 costs.

22 **SECOND CLAIM FOR RELIEF**

23 **(Breach of Contract)**

24 21. Plaintiffs incorporate each of the allegations contained within paragraphs 1
25 through 20 above as though said paragraphs are fully stated herein.

26 22. Plaintiffs have requested documents promised to them by the Defendant in
27 the Commission Letter and have not received them.
28

23. Defendant has a duty to honor its contractual obligations. Defendant has failed and refused to perform its obligations pursuant to the terms and conditions of the Commission Letter.

24. As a result of Defendant's breach of contract, Plaintiffs have suffered damages in the amount according to proof, in excess of Ten Thousand Dollars (\$10,000).

25. As a result of Defendant's breach of contract, Plaintiffs have been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

THIRD CLAIM FOR RELIEF

(Breach of Good Faith and Fair Dealing)

26. Plaintiffs reallege and incorporate herein each and every allegation contained in paragraphs 1 through 25, inclusive, herein above.

27. Defendant Pardee owed, and continues to owe, Plaintiffs a duty of good faith and fair dealing to do everything under the Commission Letter that Defendant is required to do to further the purposes of the Commission Letter and to honor the terms and conditions thereof to the best of its ability.

28. In doing the acts alleged herein, Defendant Pardee failed to act in good faith and to the best of its ability, and also failed to deal fairly with Plaintiffs, thereby breaching its duties to so conduct itself and injuring Plaintiffs' rights to conduct its business and its ability to receive the benefits of the Commission Letter.

29. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have been damaged in a sum in excess of \$10,000.00 according to proof of trial, together with attorney's fees and interest to accrue at the legal rate.


30. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

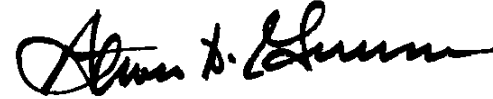
1 WHEREFORE, Plaintiffs prays as follows:

- 2 1. For the documents promised to them including, but not limited to an accurate
3 parcel map with Assessor's Parcel numbers, and an accounting of all
4 transfers or title or sales.
5 2. For compensatory damages in the sum and excess of \$10,000.00.
6 3. For cost of suit.
7 4. For reasonable attorney's fees.
8 5. For such further relief as the Court deems proper.

9 DATED this 29 day of December 2010.

10 JIMMERSON HANSEN, P.C.
11

12 By 
13 JAMES J. JIMMERSON, ESQ.
14 Nevada Bar No. 000264
15 jjj@jimmersonhansen.com
16 415 So. Sixth St., Ste. 100
17 Las Vegas, NV 89101
18 (702) 388-7171
19 Attorney for Plaintiffs
20 JAMES WOLFRAM and WALT WILKES
21
22
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27
28



CLERK OF THE COURT

1 **COMP**
2 JIMMERSON HANSEN, P.C.
3 JAMES J. JIMMERSON, ESQ.
4 Nevada Bar No. 000264
5 jjj@jimmersonhansen.com
6 415 So. Sixth St., Ste. 100
7 Las Vegas, NV 89101
8 (702) 388-7171
9 Attorney for Plaintiffs
10 James Wolfram and Walt Wilkes

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 JAMES WOLFRAM,
9 WALT WILKES,

10 Plaintiffs,
11 vs.

12 PARDEE HOMES OF NEVADA,
13 Defendant.

CASE NO.: A-10-632338-C
DOCKET NO.: XXIII

14 **AMENDED COMPLAINT**

15 Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their
16 undersigned counsel, James J. Jimmerson, Esq. of the law firm of Jimmerson Hansen, for
17 their Complaint states as follows:

18 **GENERAL ALLEGATIONS**

19 1. At all times relevant hereto, Plaintiffs James Wolfram and Walt Wilkes are
20 individuals who have resided in Clark County, Nevada.

21 2. That Plaintiff Wolfram has been assigned all of Award Realty's rights, title
22 and interest in that certain Commission Letter dated September 1, 2004, and he is the real
23 party in interest in this case.

24 3. That Plaintiff Wilkes has been assigned all General Realty's rights, title and
25 interest in that certain Commission Letter dated September 1, 2004, and he is the real
26 party in interest in this case.

27 4. At all times relevant hereto, Defendant Pardee Homes of Nevada ("Pardee")
28 was a corporation registered in the state of Nevada.

1 5. Plaintiffs predecessors in interest, Award Realty and General Realty and
2 Plaintiffs and Defendant have a financial relationship. Plaintiffs were real estate brokers,
3 dealing in real estate owned by Coyote Springs Investment LLC and being purchased by
4 Defendant. The relationship between Coyote Springs Investment LLC and Defendant was
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6 Escrow Instructions, dated in May of 2004 and later amended and restated on March 28,
7 2005 ("Option Agreement"). Plaintiffs and Defendant entered into an agreement entitled
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9 Agreement and governed the payment of commissions from Defendant to Plaintiffs for real
10 estate sold under the Option Agreement. For easy reference, Award Realty and General
11 Realty and Plaintiffs, are concurrently referred to as "Plaintiffs" herein.

12 6. Pursuant to the Commission Letter, Plaintiffs were to be paid a commission
13 for all real property sold under the Option Agreement.

14 7. Pursuant to the Commission Letter, Plaintiffs were to be fully informed of all
15 sales and purchases of real property governed by the Option Agreement. Specifically, the
16 Commission Letter stated:

17 Pardee shall provide each of you a copy of each written option exercise
18 notice given pursuant to paragraph 2 of the Option Agreement, together with
19 the information as to the number of acres involved and the scheduled closing
20 date. In addition, Pardee shall keep each of you reasonably informed as to
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21 8. On or about April 23, 2009, Plaintiffs sent a letter to Defendant requesting
22 documents, which detail the purchases and sales of certain real property for which
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25 requested to identify which properties had been sold.

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27 10, 2009. The July 10 letter failed to provide the documents requested by the Plaintiffs.
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4 11. Defendant, after conversations with Plaintiffs, sent a two-page letter dated
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6 The letter attempted to explain the recent purchases or "takedowns" of real property by
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8 12. Plaintiffs relied upon Defendant's representations made in the November 24,
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10 13. Upon further inquiry, however, Plaintiffs have discovered that the
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18 Assessor's Office. Plaintiffs further asked Defendant why it had instructed Francis Butler
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26 Recorder's Office and the Clark County Assessor's Office, the request as to why closing
27 escrow documents were being withheld, and the request for all relevant closing escrow
28 documents.

15. To date there has been no further documentation produced by Defendant for the Plaintiffs regarding their concerns about the sales and purchases of real property by Defendant from Coyote Springs Investment, LLC.

FIRST CLAIM FOR RELIEF

(Accounting)

16. Plaintiffs incorporate each of the allegations contained within paragraphs 1 through 15 above.

17. Plaintiffs have requested documents promised to them by Defendant in the Commission Letter and have not received them. Specifically, they have requested: the name of the seller, the buyer, the parcel numbers, the amount of acres sold, the purchase price, the commission payments schedule and amount, Title company contact information, and Escrow number(s), copy of close of escrow documents, and comprehensive maps specifically depicting this property sold and would, with parcel number specifically identified.

18. Plaintiffs are entitled to an accounting and copies of the documents and maps for all transfers of real property governed by the Option Agreement.

19. As a result of this action, Plaintiffs have been forced to bring this matter before the Court. Plaintiff has been damaged in a sum in excess of \$10,000.00.

20. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

21. Plaintiffs incorporate each of the allegations contained within paragraphs 1 through 20 above as though said paragraphs are fully stated herein.

22. Plaintiffs have requested documents promised to them by the Defendant in the Commission Letter and have not received them.

23. Defendant has a duty to honor its contractual obligations. Defendant has failed and refused to perform its obligations pursuant to the terms and conditions of the Commission Letter.

24. As a result of Defendant's breach of contract, Plaintiffs have suffered damages in the amount according to proof, in excess of Ten Thousand Dollars (\$10,000).

25. As a result of Defendant's breach of contract, Plaintiffs have been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

THIRD CLAIM FOR RELIEF

(Breach of Good Faith and Fair Dealing)

26. Plaintiffs reallege and incorporate herein each and every allegation contained in paragraphs 1 through 25, inclusive, herein above.

27. Defendant Pardee owed, and continues to owe, Plaintiffs a duty of good faith and fair dealing to do everything under the Commission Letter that Defendant is required to do to further the purposes of the Commission Letter and to honor the terms and conditions thereof to the best of its ability.

28. In doing the acts alleged herein, Defendant Pardee failed to act in good faith and to the best of its ability, and also failed to deal fairly with Plaintiffs, thereby breaching its duties to so conduct itself and injuring Plaintiffs' rights to conduct its business and its ability to receive the benefits of the Commission Letter.

29. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have been damaged in a sum in excess of \$10,000.00 according to proof of trial, together with attorney's fees and interest to accrue at the legal rate.


30. As a direct and proximate result of Defendant's breach of the covenant of good faith and fair dealing, Plaintiffs have been forced to bring this matter before the Court. Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

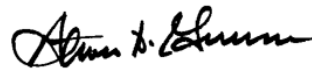
1 WHEREFORE, Plaintiffs prays as follows:

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3 parcel map with Assessor's Parcel numbers, and an accounting of all
4 transfers or title or sales.
- 5 2. For compensatory damages in the sum and excess of \$10,000.00.
- 6 3. For cost of suit.
- 7 4. For reasonable attorney's fees.
- 8 5. For such further relief as the Court deems proper.

9 DATED this 14 day of January, 2011.

10 JIMMERSON HANSEN, P.C.

11
12 By 
13 JAMES J. JIMMERSON, ESQ.
14 Nevada Bar No. 000264
15 jjj@jimmersonhansen.com
16 415 So. Sixth St., Ste. 100
17 Las Vegas, NV 89101
18 (702) 388-7171
19 Attorney for Plaintiffs
20 JAMES WOLFRAM and WALT WILKES
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22
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28



CLERK OF THE COURT

SUMM

JIMMERSON HANSEN, P.C.
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
jjj@jimersonhansen.com
415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
(702) 388-7171
Attorney for Plaintiffs
James Wolfram and Walt Wilkes

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES WOLFRAM,
WALT WILKES,

Plaintiffs,
vs.

PARDEE HOMES OF NEVADA,
Defendant.

CASE NO.: A-10-632338-C
DOCKET NO.: XXIII

AMENDED SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW:**

**PARDEE HOMES OF NEVADA
c/o NATIONAL REGISTERED AGENTS, INC. OF NEVADA
1000 East William Street - #204
Carson City, NV 89701**

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against
you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is
served on you, exclusive of the day of service, you must do the following:
 - (a) File with the Clerk of the Court, whose address is shown below, a
formal written response to the Complaint in accordance with the rules of
the Court, with the appropriate filing fee.
 - (b) Serve a copy of your response upon the attorney whose name and
address is shown below.

- 1
- 2 2. Unless you respond, your default will be entered upon application of the
- 3 Plaintiff(s) and failure to so respond will result in a judgment of default
- 4 against you for the relief demanded in the Complaint, which could result in
- 5 the taking of money or property or other relief requested in the Complaint.
- 6 3. If you intend to seek the advice of any attorney in this matter, you should
- 7 do so promptly so that your response may be filed on time.
- 8 4. The State of Nevada, its political subdivisions, agencies, officers,
- 9 employees, board members, commission members and legislators each
- 10 have 45 days after service of this Summons within which to file an Answer
- 11 or other responsive pleading to the Complaint.
- 12

13 Submitted by:

14 JIMMERSON HANSEN, P.C.

15

16 By [Signature]

17 JAMES J. JIMMERSON, ESQ.

18 Nevada Bar No. 000264

19 jjj@jimmersonhansen.com

20 415 So. Sixth St., Ste. 100

21 Las Vegas, NV 89101

22 (702) 388-7171

23 Attorney for Plaintiffs

24 JAMES WOLFRAM and WALT WILKES

25

26

27

28

STEVEN D. GRIERSON
CLERK OF COURT

By: _____

Deputy Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

KADIRA BECK



AFFIDAVIT OF SERVICE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

David M. Briggs, being duly sworn, says: that at all times herein affiant was and is over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received one - copy(ies) of the ^{Amended} Summons and ^{Amended} Complaint, on the 20th day of January, 2011, and served the same on the 9th day of February, 2011

 Delivering and leaving a copy with Defendant at that address of .

 Serving the Defendant by personally delivering and leaving a copy with , a person of suitable age and discretion residing at the Defendant's usual place of abode located at

Serving the Defendant Pardee Homes of Nevada by personally delivering and leaving a copy at 1000 E. Williams St., #204, Carson City, Nevada
(a) with as , an agent lawfully designated by statute to accept service of process;

(b) with Brianne Jibben, pursuant to NRS 14.010 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation file with the Secretary of State

 Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid:

 Ordinary mail

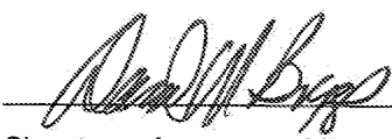
 Certified mail, return receipt requested

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____ Registered mail, return receipt requested addressed to
Defendant _____ at Defendant's last
known address of which is _____
_____.

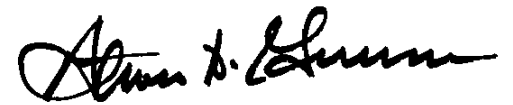
I declare under penalty of perjury under the law of the State of Nevada that the
foregoing is true and correct.

EXECUTED this 9th day of February, 2011.



Signature of person making service

Corporate Intelligence Int'l
707 S. 10th St.
Las Vegas, NV 89101
ST Lic# 595-595A



CLERK OF THE COURT

ANAC
PAT LUNDVALL
Nevada Bar No. 3761
AARON D. SHIPLEY
Nevada Bar No. 8258
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
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lundvall@mcdonaldcarano.com
ashipley@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**ANSWER TO AMENDED
COMPLAINT**

Defendant PARDEE HOMES OF NEVADA ("Defendant"), by and through its counsel of record, MCDONALD CARANO WILSON LLP, as and for their Response to JAMES WOLFRAM AND WALT WILKES' ("Plaintiffs") Amended Complaint ("Complaint"), hereby admits, denies and responds as follows:

GENERAL ALLEGATIONS

1. Answering paragraph 1 of the Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies each and every allegation set forth in said paragraph.

2. Answering paragraph 2 of the Complaint, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth therein and, on that basis, denies each and every allegation set forth in said paragraph.

3. Answering paragraph 3 of the Complaint, Defendant lacks sufficient knowledge

1 or information to form a belief as to the truth or falsity of the allegations set forth therein and, on
2 that basis, denies each and every allegation set forth in said paragraph.

3 4. Defendant admits the allegations contained in paragraph 4 of the Complaint.

4 5. Answering paragraph 5 of the Complaint, Defendant admits that Plaintiffs were
5 real estate brokers. Defendant also admits that some specific aspects of the relationship between
6 Coyote Springs Investment LLC and Defendant were governed by an Option Agreement for the
7 Purchase of Real Property and Joint Escrow Instructions ("Option Agreement") dated May of
8 2004, along with the subsequent amendments thereto. Further, Defendant admits that its letter to
9 Plaintiffs dated September 1, 2004 ("Commission Letter"), which Plaintiffs acknowledged and
10 executed, memorializes an agreement between the parties whereby Defendant would pay certain
11 commissions to Plaintiffs on a specific set of defined transactions. Defendant submits that the
12 terms of the Option Agreement and Commission Letter speak for themselves and denies each
13 and every allegation set forth in this paragraph that is inconsistent with the terms of either the
14 Option Agreement or the Commission Letter. Defendant denies the remaining allegations
15 contained in paragraph 5.

16 6. Answering paragraph 6 of the Complaint, Defendant submits that the terms of the
17 Option Agreement speak for themselves and denies each and every allegation set forth in this
18 paragraph that is inconsistent with the terms of the Option Agreement.

19 7. Answering paragraph 7 of the Complaint, Defendant submits that the terms of the
20 Commission Letter speak for themselves and denies each and every allegation set forth in this
21 paragraph that is inconsistent with the terms of the Commission Letter.

22 8. Answering paragraph 8 of the Complaint, Defendant admits that it received a
23 letter from Plaintiffs' counsel dated April 23, 2009, addressed to Jim Stringer, Esq. Defendant
24 denies the remaining allegations set forth in said paragraph.

25 9. Answering paragraph 9 of the Complaint, Defendant admits that Charles E.
26 Curtis, Legal Counsel for Pardee Homes, sent a letter dated July 10, 2009 to Plaintiffs' counsel.
27 Defendant submits that this letter speaks for itself and is the best evidence of its own content.
28 Defendant denies the remaining allegations set forth in said paragraph.

1 10. Answering paragraph 10 of the Complaint, Defendant admits that it received a
2 letter from Plaintiffs' counsel dated August 26, 2009, addressed to Mr. Charles E. Curtis.
3 Defendant denies the remaining allegations set forth in said paragraph.

4 11. Answering paragraph 11 of the Complaint, Defendant admits that Jon E. Lash,
5 Executive Vice President of Pardee Homes, sent a letter dated November 24, 2009 to Plaintiffs'
6 counsel, and that the letter contained attachments. Defendant submits that this letter speaks for
7 itself and is the best evidence of its own content. Defendant denies the remaining allegations set
8 forth in said paragraph.

9 12. Answering paragraph 12 of the Complaint, Defendant lacks sufficient knowledge
10 or information to form a belief as to the truth or falsity of the allegations set forth therein and, on
11 that basis, denies each and every allegation set forth in said paragraph.

12 13. Answering paragraph 13 of the Complaint, Defendant admits that it received a
13 letter from Plaintiffs' counsel dated August 26, 2009, addressed to Jon E. Lash. Defendant
14 denies the remaining allegations set forth in said paragraph.

15 14. Answering paragraph 14 of the Complaint, Defendant admits that Charles E.
16 Curtis, Legal Counsel for Pardee Homes, sent a letter dated June 14, 2010 to Plaintiffs' counsel.
17 Defendant submits that this letter speaks for itself and is the best evidence of its own content.
18 Defendant denies the remaining allegations set forth in said paragraph.

19 15. Answering paragraph 15 of the Complaint, Defendant lacks sufficient knowledge
20 or information to form a belief as to the truth or falsity of the allegations set forth therein and, on
21 that basis, denies each and every allegation set forth in said paragraph.

22 **FIRST CLAIM FOR RELIEF**

23 **(Accounting)**

24 16. Defendant hereby repeats and incorporates its responses to the foregoing
25 paragraphs as if fully set forth herein.

26 17. Defendant denies the allegations contained in paragraph 17 of the Complaint.

27 18. Defendant denies the allegations contained in paragraph 18 of the Complaint.

28 19. Defendant denies the allegations contained in paragraph 19 of the Complaint.

1 20. Defendant denies the allegations contained in paragraph 20 of the Complaint.

2 **SECOND CLAIM FOR RELIEF**

3 **(Breach of Contract)**

4 21. Defendant hereby repeats and incorporates its responses to the foregoing
5 paragraphs as if fully set forth herein.

6 22. Defendant denies the allegations contained in paragraph 22 of the Complaint.

7 23. Defendant denies the allegations contained in paragraph 23 of the Complaint.

8 24. Defendant denies the allegations contained in paragraph 24 of the Complaint.

9 25. Defendant denies the allegations contained in paragraph 25 of the Complaint.

10 **THIRD CLAIM FOR RELIEF**

11 **(Breach of Good Faith and Fair Dealing)**

12 26. Defendant hereby repeats and incorporates its responses to the foregoing
13 paragraphs as if fully set forth herein.

14 27. The allegations contained in paragraph 27 of the Complaint state a legal
15 conclusion to which no response is required. To the extent that a response is required, Defendant
16 lacks sufficient knowledge or information to form a belief as to the truth or falsity of the
17 allegations set forth therein and, on that basis, denies each and every allegation set forth in said
18 paragraph.

19 28. Defendant denies the allegations contained in paragraph 28 of the Complaint.

20 29. Defendant denies the allegations contained in paragraph 29 of the Complaint.

21 30. Defendant denies the allegations contained in paragraph 30 of the Complaint.

22 **AFFIRMATIVE DEFENSES**

23 **First Affirmative Defense**

24 The Complaint fails to state a claim against Defendant upon which relief can be granted.

25 **Second Affirmative Defense**

26 Any damage suffered by Plaintiffs as alleged in the Complaint was the result of the acts
27 or omissions of the Plaintiffs, or other third-parties over which Defendant had no control, and is
28 not the result of acts or omissions of Defendant.

Third Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, under the doctrines of waiver, laches and/or estoppel.

Fourth Affirmative Defense

Plaintiffs' claims are barred by the applicable statutes of limitations.

Fifth Affirmative Defense

Plaintiffs' claims are barred by reason of settlement and/or by the doctrines of accord and satisfaction.

Sixth Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, under the parol evidence rule and/or the statute of frauds.

Seventh Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, by reason of Plaintiffs' unclean hands and inequitable conduct.

Eighth Affirmative Defense

Plaintiffs failed to and should have taken action to minimize or eliminate any loss, injury, or damage, and therefore Plaintiffs are precluded from recovering damage, or Plaintiffs' damage should be reduced, by operation of the doctrines of avoidable consequences or mitigation of damages.

Ninth Affirmative Defense

Plaintiffs' recovery is barred, in whole or in part, under principles of set-off, recoupment, and/or unjust enrichment.

Tenth Affirmative Defense

Plaintiffs' claims are barred, either in whole or in part, because Plaintiffs' alleged damages are speculative and uncertain.

Eleventh Affirmative Defense

The Complaint may be barred by other affirmative defenses enumerated in NCRP 8(c). However, because this case is in its infancy and discovery has not yet commenced, Defendant

has not had an opportunity to discover all facts that may give rise to such affirmative defenses. Defendant therefore reserves its right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, having fully answered the Complaint, Defendant hereby requests that judgment be entered in its favor and against Plaintiffs as follows:

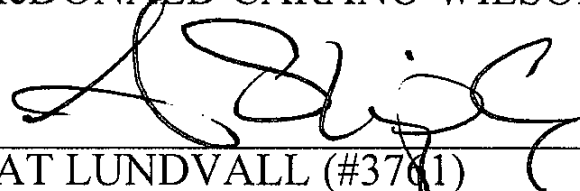
1. Dismissing the Complaint and all claims set forth therein, and ordering that Plaintiffs take nothing thereby;

2. For an award of reasonable attorneys' fees and costs of suit incurred in the defense of this action; and

3. For such other and further relief as this Court may deem just and equitable under the circumstances.

DATED this 2nd day of March, 2011.

McDONALD CARANO WILSON LLP



PAT LUNDVALL (#3781)

AARON D. SHIPLEY (#8258)

2300 West Sahara Avenue, Suite 1000

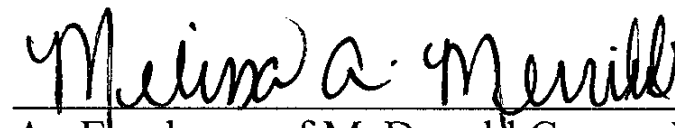
Las Vegas, Nevada 89102

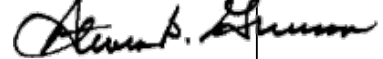
Attorneys for Defendant Pardee Homes of Nevada

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of March, 2011, I mailed a copy of the foregoing **ANSWER TO AMENDED COMPLAINT** to the following:

James J. Jimmerson, Esq.
Jimmerson Hansen, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs


An Employee of McDonald Carano Wilson LLP



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 JAMES WOLFRAM, ET AL.,

9 Plaintiffs,

10 vs.

11 PARDEE HOMES OF NEVADA,

12 Defendant.

)
) CASE#: A-10-632338-C

)
) DEPT. IV

13
14 BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

October 25, 2011

15 **RECORDER'S TRANSCRIPT OF HEARING**
16 DISCOVERY CONFERENCE

17 APPEARANCES:

18 For the Plaintiffs:

AMANDA BROOKHYSER, ESQ.

19
20
21 For the Defendant:

AARON D. SHIPLEY, ESQ.

PATRICIA K. LUNDVALL, ESQ. [via
telephone]

22
23
24
25 RECORDED BY: YVETTE G. SISON-BRITT, COURT RECORDER

1 Las Vegas, Nevada, October 25, 2011, 10:04 a.m.

2 * * *

3 DISCOVERY COMMISSIONER: Wolfram.

4 MS. BROOKHYSER: Good morning, Your Honor. Amanda
5 Brookhyser, of Jimmerson Hanson, on behalf of the Plaintiffs.

6 DISCOVERY COMMISSIONER: Good morning.

7 MR. SHIPLEY: Good morning, Your Honor. Aaron Shipley
8 and Patricia Lundvall, on behalf of Defendant Pardee Homes of Nevada.

9 DISCOVERY COMMISSIONER: Good morning. When you
10 have a telephonic ECC, make sure you have a stipulation in place, but
11 I'm not sure if it was really a problem because -- did everyone have some
12 representative in person?

13 MR. SHIPLEY: We did, Your Honor.

14 MS. BROOKHYSER: I wasn't at the ECC, Your Honor, but it
15 seemed to me like Mr. Shipley was there in person and Ms. Lundvall was
16 the one that appeared telephonically, but I --

17 DISCOVERY COMMISSIONER: And that's fine. I think --
18 understand that sometimes we don't get that from review of your
19 documents, but now that I'm aware of the situation, I'll be more mindful.

20 MR. SHIPLEY: Yeah. It was one of those things that, after
21 we got the notice to appear this morning, I went back and read the JCCR
22 and saw that that may have been a little confusing in the language.

23 MS. BROOKHYSER: And we prepared the JCCR, Your
24 Honor, so to the extent that it was confusing, that's our responsibility. I
25 apologize for that.

1 DISCOVERY COMMISSIONER: Just -- you might just put a
2 footnote or --

3 MS. BROOKHYSER: Of course.

4 DISCOVERY COMMISSIONER: -- an explanation in,
5 although we had it telephonically, we joined in one of the
6 corepresentatives, so just so my staff --

7 MS. BROOKHYSER: We will definitely do that.

8 DISCOVERY COMMISSIONER: -- understands what
9 happened.

10 MS. BROOKHYSER: Of course.

11 DISCOVERY COMMISSIONER: You want sixty days
12 between your initial and your rebuttal disclosures, is that correct?

13 MR. SHIPLEY: That's correct, Your Honor.

14 DISCOVERY COMMISSIONER: Why?

15 MR. SHIPLEY: Just to give -- to provide ample time, Your
16 Honor, is just I think the only reason.

17 DISCOVERY COMMISSIONER: I'll go ahead and give that to
18 you, and you're setting your discovery out further, which is fine. I thought
19 the dates were okay. There was a typographical error on one date, and
20 I'm going to correct it; the year was just wrong on the dispositive motion
21 deadline.

22 MR. SHIPLEY: Oh.

23 MS. BROOKHYSER: You're absolutely right, Your Honor.

24 DISCOVERY COMMISSIONER: This is a breach of contract
25 case. The Plaintiff suggested five to seven days for trial.

1 Defense counsel, I'm not sure you made a recommendation.

2 MR. SHIPLEY: We actually agreed on the five to seven days,
3 and I think that was just an oversight that it wasn't included. But that was
4 Plaintiffs' and Defendant's joint view, that it be five to seven days.

5 DISCOVERY COMMISSIONER: So breach of contract case,
6 five to seven days for trial. Your close of discovery will be August 28th of
7 2012; last day to amend pleadings, add parties, your initial expert
8 disclosure date will be March 14th of 2012; rebuttal experts will be due
9 May 16th of 2012; and your dispositive motion deadline will be September
10 28th of 2012. I will issue your scheduling order, send a memo to the trial
11 Court, and we'll get you a trial setting.

12 MR. SHIPLEY: Thank you, Your Honor.

13 DISCOVERY COMMISSIONER: Thank you very much.

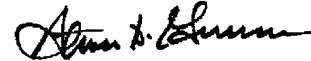
14 MS. BROOKHYSER: Thank you, Your Honor.

15 [Hearing concluded at 10:06 a.m.]

16 * * * * *

17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio-video recording of this proceeding in the above-entitled case.

19 
20 FRANCESCA HAAK
21 Court Recorder/Transcriber
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23
24
25



CLERK OF THE COURT

DSO

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, WALT WILKES,
Plaintiffs,
v.
PARDEE HOMES OF NEVADA,
Defendant.

CASE NO. A632338
DEPT NO. IV

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: Breach of contract
DATE OF FILING JOINT CASE CONFERENCE REPORT(S): 9/26/11
TIME REQUIRED FOR TRIAL: 5-7 days

Counsel for Plaintiffs:
Amanda J. Brookhyser, Esq., Jimmerson Hansen

Counsel for Defendant:
Aaron D. Shipley, Esq., McDonald Carano Wilson

Counsel representing all parties have been heard and
after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before
8/28/12.

2. all parties shall file motions to amend pleadings or
add parties on or before 3/14/12.

...

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CLERK OF THE COURT

DISCOVERY
COMMISSIONER

EIGHTH JUDICIAL
DISTRICT COURT

JA000028

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3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 3/14/12.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 5/16/12.

5. all parties shall file dispositive motions on or before 9/28/12.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

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1 Unless otherwise ordered, all discovery disputes (except
2 disputes presented at a pre-trial conference or at trial) must
3 first be heard by the Discovery Commissioner.
4

5 Dated this 7 day of November, 2011.
6

7 
8 DISCOVERY COMMISSIONER

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on the date filed, I placed a copy
11 of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s)
12 in the Clerk's office or mailed as follows:

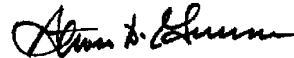
13 Amanda J. Brookhyser, Esq.
14 Aaron D. Shipley, Esq.

15 
16 COMMISSIONER DESIGNEE
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**DISCOVERY
COMMISSIONER**

EIGHTH JUDICIAL
DISTRICT COURT

JA000030


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

James Wolfram, et al.,
Jr.,

Plaintiff(s),

vs.

Pardee Homes of Nevada,

Defendant(s).

Case No. A632338
Dept. No. IV

ORDER SETTING CIVIL NON- JURY TRIAL
AND CALENDAR CALL

IT IS HEREBY ORDERED that:

This matter is set to be tried on a five week stack to begin on
November 13, 2012, at 10:00 a.m. with a calendar call on Wednesday,
November 7, 2012, at 10:00 a.m. All parties must bring to calendar call the following:

- (1) Typed exhibit lists;
- (2) List of depositions;
- (3) List of equipment needed for trial;

The Pre-trial Memorandum must be filed no later than 4:00 p.m. on Friday,
November 9, 2012, with a courtesy copy delivered to Department IV. All parties,
(attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS of**
E.D.C.R. 2.67 and 2.69.

Failure of the designated trial attorney or any party appearing in proper
person to appear for any court appearances or to comply with this Order shall

KATHY A. HARDCASTLE, DEPT. FOUR - LAS VEGAS, NEVADA

JA000031

7
1 result in any of the following: (1) dismissal of the action (2) default judgment;
2 (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate
3 remedy or sanction.

4 Counsel is required to advise the Court immediately when the case settles or is
5 otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall
6 also indicate whether a Scheduling Order has been filed and, if a trial date has been set,
7 the date of that trial. A copy should be given to Chambers.

8
9 DATED this 16 of November, 2011.

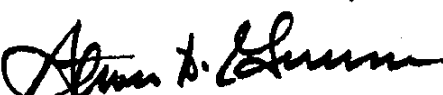
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KATHY A. HARDCASTLE, DISTRICT JUDGE

12 I hereby certify that on the date filed, this document was E-Served, mailed or a
13 copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to
14 the proper person as follows:

15 Amanda Brookhyser, Esq. – Jimmerson Hansen
16 Aaron Shipley, Esq. – McDonald Carano Wilson

17 
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CLERK OF THE COURT

1 **SAO**
2 PAT LUNDVALL
3 NSBN 3761
4 AARON D. SHIPLEY
5 NSBN 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 (702) 873-4100
10 (702) 873-9966 Facsimile
11 lundvall@mcdonaldcarano.com
12 ashipley@mcdonaldcarano.com
13 *Attorneys for Defendant*
14 *Pardee Homes of Nevada*

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 JAMES WOLFRAM,
12 WALT WILKES

13 Plaintiffs,

14 vs.

15 PARDEE HOMES OF NEVADA,

16 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

17
18 Plaintiffs James Wolfram and Walt Wilkes (collectively "Plaintiffs"), , and Defendant
19 Pardee Homes of Nevada ("Pardee" or "Defendant"), hereby enter into this Stipulated
20 Confidentiality Agreement and Protective Order pursuant to NRCP 26(c) and NRCP 29.
21 Plaintiffs and Defendant are collectively referred to as the "Parties" in this Stipulation and
22 individually as "Party." The Parties have agreed and stipulated to the entry of this Order for the
23 protection of certain business records, information, financial records, trade secrets, confidential
24 records, commercial information and related information produced or otherwise disclosed by
25 the parties in this action.

26 Whereas, the Parties may produce certain documents or other materials which contain
27 proprietary and/or confidential information, specifically to include but may not be limited to
28

1 documents produced by Coyote Springs Investments, LLC ("CSI") in response to a subpoena
2 issued by Plaintiffs' counsel on or about November 9, 2011;

3 Whereas, the Parties stipulate and agree that all documents produced by CSI pertaining
4 to Pardee and/or the Coyote Springs development in Clark and Lincoln counties contain
5 confidential and sensitive information and are designated as Confidential Information as more
6 fully defined below;

7 It is hereby stipulated and agreed, by and between the Parties hereto, through their
8 respective counsel of record, that:

9 1. For the purposes of this Order, "Confidential Information" shall mean all
10 information or material which is or has been produced or disclosed by CSI, disclosed to a
11 receiving party during the course of this litigation, whether embodied in physical objects,
12 documents, or the factual knowledge of persons, which has been designated in writing as
13 "Confidential" by the disclosing Party. Any Party that produces documents or information
14 obtained from a disclosing party, including CSI, during discovery in this action shall designate
15 such information as "Confidential."

16 2. A Party's inadvertent or unintentional failure to designate information as
17 Confidential shall not be deemed a waiver in whole or in part of that Party's claim of
18 confidentiality if the disclosing Party takes immediate action after discovering such omission to
19 notify all Parties in writing that such information constitutes Confidential Information, in which
20 case such information will be subject to this Order from and after the date on which such
21 written noticed is delivered to all Parties.

22 3. Confidential Information contained in physical objects or documents shall
23 include any documents, deposition transcripts, exhibits, discovery responses, etc., or copies
24 therefrom. Except as otherwise provided herein, the Parties shall not disclose Confidential
25 Information to a third party other than (1) to the persons specified in Paragraph 5 below; (2) to
26 the extent that such Confidential Information is or becomes generally available to the public
27 through no breach of this Order by the receiving Party by a person who is not under a duty of
28 confidentiality to the disclosing Party; or (3) to the extent that such disclosure is compelled by

1 legal process or procedure, including without limitation a subpoena, and the receiving Party
2 shall use commercially reasonable efforts to protect the Confidential Information from
3 inadvertent or accidental disclosure.

4 4. Confidential documents shall be so designated by stamping copies of the
5 document produced to a party with the legend "CONFIDENTIAL." Stamping the legend
6 "CONFIDENTIAL" on the cover of any multi-page document shall designate all pages of the
7 document as confidential, unless otherwise indicated by the producing Party.

8 5. The designation of information as Confidential pursuant to this Order shall not
9 be construed as a concession by a producing Party that such information is relevant or material
10 to any issue or is otherwise discoverable, or by a receiving Party that such information is, in
11 fact, a trade secret or confidential research, development or commercial information.

12 6. For the purposes of this Order, the following persons shall be authorized to
13 receive Confidential Information: (a) the Parties and their in-house counsel; (b) any directors,
14 officers or other management personnel of the Parties who have supervisory authority with
15 respect to the disposition of this case; (c) any attorney employed by the law firms selected by
16 each party as counsel of record in connection with this action, including paralegal, clerical and
17 secretarial staff employed by such law firms; (d) outside copy services employed by any of the
18 law firms or the Parties; (e) outside reporters retained to record and transcribe testimony in
19 connection with this action; (f) outside experts or consultants (testifying and non-testifying)
20 retained by a Party for the purposes of assisting in connection with this action, and the
21 employees of such experts and consultants who are assisting them; and (g) the Court and its
22 staff, and any other court, tribunal or dispute resolution officer duly appointed, chosen or
23 assigned in connection with this action. A Party who discloses Confidential Information to
24 outside experts or consultants (testifying and non-testifying) shall require that such expert or
25 consultant sign an acknowledgment and consent to this Stipulation in the form attached hereto
26 as Exhibit "A" prior to making such disclosure. A Party who has, prior to the execution of this
27 Order, disclosed Confidential Information to experts or consultants (testifying and non-
28 testifying), shall request that such person sign an acknowledgment and consent to this

1 Stipulation in the form attached hereto as Exhibit "A" following the acceptance of this Order by
2 the Court. The Parties agree to exchange executed copies of Exhibit "A" for any disclosed
3 expert witnesses at the close of the expert discovery.

4 7. The Parties agree that documents produced by non-parties in this action, such as
5 CSI, should be afforded the same protection contemplated by the parties in the Stipulated
6 Confidentiality Agreement and Protective Order. Prior to obtaining any information,
7 documents, or items produced by a non-party voluntarily or in response to a subpoena or court
8 order, the Party intending to receive the information from a non-party shall provide the non-
9 party with a copy of the Stipulated Confidentiality Agreement and Protective Order and this
10 amendment. By executing Exhibit "A" to the Stipulated Confidentiality Agreement and
11 Protective Order entitled "Acknowledgment and Agreement to Be Bound," any non-party
12 producing such information shall be entitled to designate documents as Confidential pursuant to
13 its terms and afforded the same protections as the Parties as contemplated in the Stipulated
14 Confidentiality Agreement and Protective Order.

15 8. In connection with any Party's filing in Court of any Confidential Information,
16 such information shall be filed with the Clerk of the Court in sealed envelopes prominently
17 marked with the caption of this case, the identity of the Party filing the envelope(s) and the
18 notation:

19 **CONTAINS CONFIDENTIAL INFORMATION**
20 **SUBJECT TO PROTECTIVE ORDER TO BE**
21 **OPENED ONLY AS DIRECTED BY THE COURT.**
22

23 9. The terms of this Order shall in no way affect a Party's right to withhold
24 information on grounds of immunity from discovery.

25 10. Upon final termination of this action, including all appeals, and upon request by
26 the producing Party, the receiving Party shall, at its option, either return to the producing Party
27 or destroy all physical objects and documents which embody Confidential Information and
28 which were received from the producing Party, and shall destroy, in whatever form stored or

1 reproduced, all other physical objects and documents produced by the producing Party to the
2 receiving Party during the litigation. However, counsel for a Party shall be entitled to retain a
3 copy of such Confidential Information, including, but not limited to, pleadings, correspondence,
4 memoranda, notes, and other work product materials which contain or refer to such
5 information, provided that all Confidential Information embodied in physical objects and
6 documents shall remain subject to this Order.

7 11. All matters arising under this Order may be heard and decided by the Clark
8 County District Court Judge or Discovery Commissioner designated to hear discovery matters
9 in this action.

10 12. If, at any time, counsel for the receiving Party believes that the producing Party
11 has unreasonably designated certain evidence as Confidential Information, the receiving Party
12 may object in writing to the designation within thirty (30) days of the disclosure and
13 designation of Confidential Information at issue. If the Parties are unable to confer and agree
14 on the designation, then the receiving Party may timely file a motion with the Court asserting
15 its challenge to the designation. The Party claiming Confidential Information shall have the
16 burden of establishing confidentiality.

17 13. This Order shall be without prejudice to the rights of the Parties to present a
18 motion to the Court under applicable Nevada Rules of Civil Procedure for a separate protective
19 order as to any particular document or information, including restrictions differing from those
20 as specified herein. This Order shall not be deemed to prejudice the Parties in any way in any
21

22 ///

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26 ///

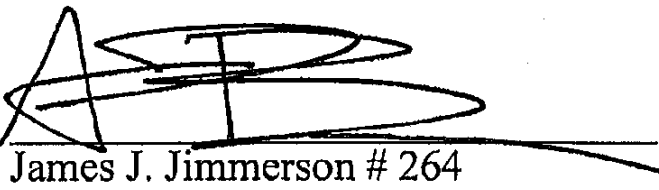
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future application for modification of this Order. Such motion, however, shall only be made after the Parties have engaged in a good faith effort to resolve the issue prior to any application to the Court. Nothing in this Stipulation shall restrict the use or disclosure by a Party of information that it alone has designated as confidential.

DATED this 9 day of Dec., 2011.

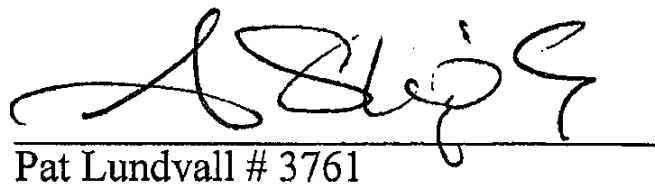
JIMMERSON HANSEN, P.C.


James J. Jimmerson # 264
Lynn M. Hansen # 244
Amanda J. Brookhyser # 11526
415 S. Sixth St., Ste. 100
Las Vegas, NV 89101
Telephone: (702) 380-7171

*Attorneys for Plaintiffs
James Wolfram and Walt Wilkes*

DATED this 9 day of Dec., 2011.


MCDONALD CARANO WILSON LLP


Pat Lundvall # 3761
Aaron D. Shipley # 8258
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100

Attorneys for Defendant Pardee Homes of

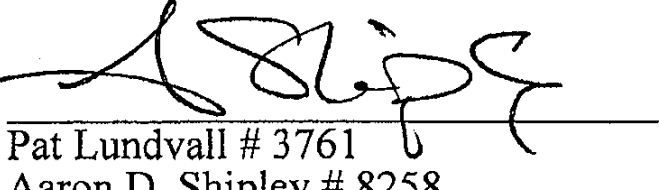
ORDER

IT IS SO ORDERED.


HONORABLE KATHY A. HARDCASTLE
DATED: December 13, 2011

Submitted by:

MCDONALD CARANO WILSON LLP


Pat Lundvall # 3761
Aaron D. Shipley # 8258
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100

*Attorneys for Defendant Pardee Homes of
Nevada*

FORM ATTACHMENT "A"

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Confidentiality Agreement and
Protective Order that was issued by the Eighth Judicial District Court of Clark County, Nevada
on _____ [date] in the action entitled JAMES WOLFRAM and WALT WILKES v.
PARDEE HOMES OF NEVADA; Case No. A-10-632338-C. I agree to comply with and to be
bound by all of the terms of this Stipulated Confidentiality Agreement and Protective Order and
I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Confidentiality Agreement and
Protective Order to any person or entity except in strict compliance with the provisions of this
Stipulated Confidentiality Agreement and Protective Order.

I further agree to submit to the jurisdiction of the Eighth Judicial District Court of Clark
County, Nevada for the purpose of enforcing the terms of this Stipulated Confidentiality
Agreement and Protective Order, even if such enforcement proceedings occur after termination
of this action.

Date: _____

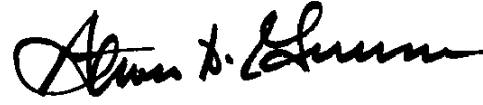
City and State where sworn and signed: _____

Printed name: _____

Signature: _____

NESO
PAT LUNDVALL
Nevada Bar No. 3761
AARON D. SHIPLEY
Nevada Bar No. 8258
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile
lundvall@mcdonaldcarano.com
ashipley@mcdonaldcarano.com
Attorneys for Defendant
Pardee Homes of Nevada

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

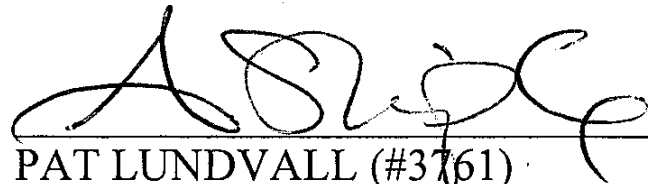
CASE NO.: A-10-632338-C
DEPT NO.: IV

**NOTICE OF ENTRY OF
STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

PLEASE TAKE NOTICE that an **STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE ORDER** was entered on the 15th day of December,
2011, a copy of which is attached hereto.

Dated this 16th day of December, 2011.

McDONALD CARANO WILSON LLP



PAT LUNDVALL (#3761)
AARON D. SHIPLEY (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
*Attorneys for Defendant Pardee Homes of
Nevada*

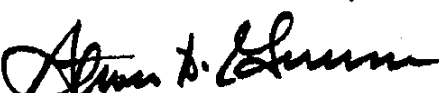
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that
on the ____ day of December, 2011, I served a true and correct copy of the foregoing **NOTICE
OF ENTRY OF STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER** via US Mail on the following:

James J. Jimmerson
Lynn M. Hansen
Amanda J. Brookhyser
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

An Employee of McDonald Carano Wilson LLP

240065.1


CLERK OF THE COURT

1 **SAO**
2 PAT LUNDVALL
3 NSBN 3761
4 AARON D. SHIPLEY
5 NSBN 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 (702) 873-4100
10 (702) 873-9966 Facsimile
11 lundvall@mcdonaldcarano.com
12 ashipley@mcdonaldcarano.com
13 *Attorneys for Defendant*
14 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,
12 WALT WILKES

13 Plaintiffs,

14 vs.

15 PARDEE HOMES OF NEVADA,

16 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

17
18 Plaintiffs James Wolfram and Walt Wilkes (collectively "Plaintiffs"), , and Defendant
19 Pardee Homes of Nevada ("Pardee" or "Defendant"), hereby enter into this Stipulated
20 Confidentiality Agreement and Protective Order pursuant to NRCP 26(c) and NRCP 29.
21 Plaintiffs and Defendant are collectively referred to as the "Parties" in this Stipulation and
22 individually as "Party." The Parties have agreed and stipulated to the entry of this Order for the
23 protection of certain business records, information, financial records, trade secrets, confidential
24 records, commercial information and related information produced or otherwise disclosed by
25 the parties in this action.

26 Whereas, the Parties may produce certain documents or other materials which contain
27 proprietary and/or confidential information, specifically to include but may not be limited to
28

1 documents produced by Coyote Springs Investments, LLC ("CSI") in response to a subpoena
2 issued by Plaintiffs' counsel on or about November 9, 2011;

3 Whereas, the Parties stipulate and agree that all documents produced by CSI pertaining
4 to Pardee and/or the Coyote Springs development in Clark and Lincoln counties contain
5 confidential and sensitive information and are designated as Confidential Information as more
6 fully defined below;

7 It is hereby stipulated and agreed, by and between the Parties hereto, through their
8 respective counsel of record, that:

9 1. For the purposes of this Order, "Confidential Information" shall mean all
10 information or material which is or has been produced or disclosed by CSI, disclosed to a
11 receiving party during the course of this litigation, whether embodied in physical objects,
12 documents, or the factual knowledge of persons, which has been designated in writing as
13 "Confidential" by the disclosing Party. Any Party that produces documents or information
14 obtained from a disclosing party, including CSI, during discovery in this action shall designate
15 such information as "Confidential."

16 2. A Party's inadvertent or unintentional failure to designate information as
17 Confidential shall not be deemed a waiver in whole or in part of that Party's claim of
18 confidentiality if the disclosing Party takes immediate action after discovering such omission to
19 notify all Parties in writing that such information constitutes Confidential Information, in which
20 case such information will be subject to this Order from and after the date on which such
21 written noticed is delivered to all Parties.

22 3. Confidential Information contained in physical objects or documents shall
23 include any documents, deposition transcripts, exhibits, discovery responses, etc., or copies
24 therefrom. Except as otherwise provided herein, the Parties shall not disclose Confidential
25 Information to a third party other than (1) to the persons specified in Paragraph 5 below; (2) to
26 the extent that such Confidential Information is or becomes generally available to the public
27 through no breach of this Order by the receiving Party by a person who is not under a duty of
28 confidentiality to the disclosing Party; or (3) to the extent that such disclosure is compelled by

1 legal process or procedure, including without limitation a subpoena, and the receiving Party
2 shall use commercially reasonable efforts to protect the Confidential Information from
3 inadvertent or accidental disclosure.

4 4. Confidential documents shall be so designated by stamping copies of the
5 document produced to a party with the legend "CONFIDENTIAL." Stamping the legend
6 "CONFIDENTIAL" on the cover of any multi-page document shall designate all pages of the
7 document as confidential, unless otherwise indicated by the producing Party.

8 5. The designation of information as Confidential pursuant to this Order shall not
9 be construed as a concession by a producing Party that such information is relevant or material
10 to any issue or is otherwise discoverable, or by a receiving Party that such information is, in
11 fact, a trade secret or confidential research, development or commercial information.

12 6. For the purposes of this Order, the following persons shall be authorized to
13 receive Confidential Information: (a) the Parties and their in-house counsel; (b) any directors,
14 officers or other management personnel of the Parties who have supervisory authority with
15 respect to the disposition of this case; (c) any attorney employed by the law firms selected by
16 each party as counsel of record in connection with this action, including paralegal, clerical and
17 secretarial staff employed by such law firms; (d) outside copy services employed by any of the
18 law firms or the Parties; (e) outside reporters retained to record and transcribe testimony in
19 connection with this action; (f) outside experts or consultants (testifying and non-testifying)
20 retained by a Party for the purposes of assisting in connection with this action, and the
21 employees of such experts and consultants who are assisting them; and (g) the Court and its
22 staff, and any other court, tribunal or dispute resolution officer duly appointed, chosen or
23 assigned in connection with this action. A Party who discloses Confidential Information to
24 outside experts or consultants (testifying and non-testifying) shall require that such expert or
25 consultant sign an acknowledgment and consent to this Stipulation in the form attached hereto
26 as Exhibit "A" prior to making such disclosure. A Party who has, prior to the execution of this
27 Order, disclosed Confidential Information to experts or consultants (testifying and non-
28 testifying), shall request that such person sign an acknowledgment and consent to this

1 Stipulation in the form attached hereto as Exhibit "A" following the acceptance of this Order by
2 the Court. The Parties agree to exchange executed copies of Exhibit "A" for any disclosed
3 expert witnesses at the close of the expert discovery.

4 7. The Parties agree that documents produced by non-parties in this action, such as
5 CSI, should be afforded the same protection contemplated by the parties in the Stipulated
6 Confidentiality Agreement and Protective Order. Prior to obtaining any information,
7 documents, or items produced by a non-party voluntarily or in response to a subpoena or court
8 order, the Party intending to receive the information from a non-party shall provide the non-
9 party with a copy of the Stipulated Confidentiality Agreement and Protective Order and this
10 amendment. By executing Exhibit "A" to the Stipulated Confidentiality Agreement and
11 Protective Order entitled "Acknowledgment and Agreement to Be Bound," any non-party
12 producing such information shall be entitled to designate documents as Confidential pursuant to
13 its terms and afforded the same protections as the Parties as contemplated in the Stipulated
14 Confidentiality Agreement and Protective Order.

15 8. In connection with any Party's filing in Court of any Confidential Information,
16 such information shall be filed with the Clerk of the Court in sealed envelopes prominently
17 marked with the caption of this case, the identity of the Party filing the envelope(s) and the
18 notation:

19 **CONTAINS CONFIDENTIAL INFORMATION**
20 **SUBJECT TO PROTECTIVE ORDER TO BE**
21 **OPENED ONLY AS DIRECTED BY THE COURT.**
22

23 9. The terms of this Order shall in no way affect a Party's right to withhold
24 information on grounds of immunity from discovery.

25 10. Upon final termination of this action, including all appeals, and upon request by
26 the producing Party, the receiving Party shall, at its option, either return to the producing Party
27 or destroy all physical objects and documents which embody Confidential Information and
28 which were received from the producing Party, and shall destroy, in whatever form stored or

1 reproduced, all other physical objects and documents produced by the producing Party to the
2 receiving Party during the litigation. However, counsel for a Party shall be entitled to retain a
3 copy of such Confidential Information, including, but not limited to, pleadings, correspondence,
4 memoranda, notes, and other work product materials which contain or refer to such
5 information, provided that all Confidential Information embodied in physical objects and
6 documents shall remain subject to this Order.

7 11. All matters arising under this Order may be heard and decided by the Clark
8 County District Court Judge or Discovery Commissioner designated to hear discovery matters
9 in this action.

10 12. If, at any time, counsel for the receiving Party believes that the producing Party
11 has unreasonably designated certain evidence as Confidential Information, the receiving Party
12 may object in writing to the designation within thirty (30) days of the disclosure and
13 designation of Confidential Information at issue. If the Parties are unable to confer and agree
14 on the designation, then the receiving Party may timely file a motion with the Court asserting
15 its challenge to the designation. The Party claiming Confidential Information shall have the
16 burden of establishing confidentiality.

17 13. This Order shall be without prejudice to the rights of the Parties to present a
18 motion to the Court under applicable Nevada Rules of Civil Procedure for a separate protective
19 order as to any particular document or information, including restrictions differing from those
20 as specified herein. This Order shall not be deemed to prejudice the Parties in any way in any
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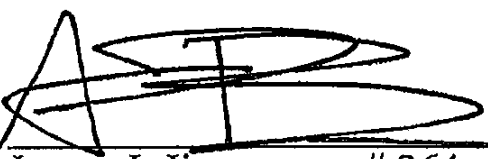
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future application for modification of this Order. Such motion, however, shall only be made after the Parties have engaged in a good faith effort to resolve the issue prior to any application to the Court. Nothing in this Stipulation shall restrict the use or disclosure by a Party of information that it alone has designated as confidential.

DATED this 9 day of Dec., 2011.

JIMMERSON HANSEN, P.C.

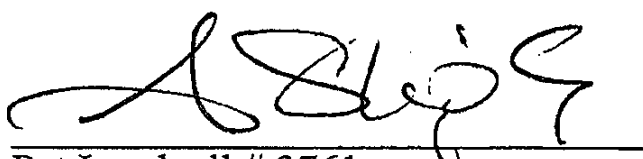


James J. Jimmerson # 264
Lynn M. Hansen # 244
Amanda J. Brookhyser # 11526
415 S. Sixth St., Ste. 100
Las Vegas, NV 89101
Telephone: (702) 380-7171

*Attorneys for Plaintiffs
James Wolfram and Walt Wilkes*

DATED this 9 day of Dec., 2011.

MCDONALD CARANO WILSON LLP

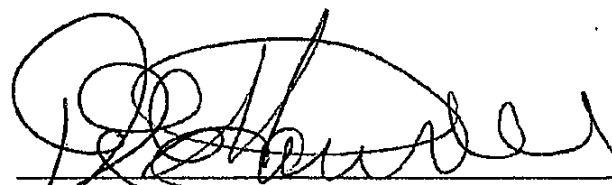


Pat Lundvall # 3761
Aaron D. Shipley # 8258
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100

Attorneys for Defendant Pardee Homes of

ORDER

IT IS SO ORDERED.

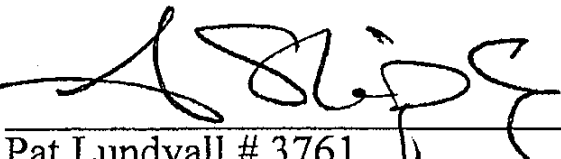


HONORABLE KATHY A. HARDCASTLE

DATED: December 13, 2011

Submitted by:

MCDONALD CARANO WILSON LLP



Pat Lundvall # 3761
Aaron D. Shipley # 8258
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone: (702) 873-4100

*Attorneys for Defendant Pardee Homes of
Nevada*

FORM ATTACHMENT "A"

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Confidentiality Agreement and
Protective Order that was issued by the Eighth Judicial District Court of Clark County, Nevada
on _____ [date] in the action entitled JAMES WOLFRAM and WALT WILKES v.
PARDEE HOMES OF NEVADA; Case No. A-10-632338-C. I agree to comply with and to be
bound by all of the terms of this Stipulated Confidentiality Agreement and Protective Order and
I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Confidentiality Agreement and
Protective Order to any person or entity except in strict compliance with the provisions of this
Stipulated Confidentiality Agreement and Protective Order.

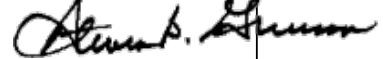
I further agree to submit to the jurisdiction of the Eighth Judicial District Court of Clark
County, Nevada for the purpose of enforcing the terms of this Stipulated Confidentiality
Agreement and Protective Order, even if such enforcement proceedings occur after termination
of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____



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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, ET AL.,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

CASE#: A-10-632338-C

DEPT. IV

BEFORE THE HON. CHRIS BEECROFT, DISCOVERY COMMISSIONER

August 27, 2012

RECORDER'S TRANSCRIPT OF HEARING
MOTION TO EXTEND DISCOVERY

APPEARANCES:

For the Plaintiffs:

JAMES M. JIMMERSON, ESQ.

For the Defendant:

AARON D. SHIPLEY, ESQ.

RECORDED BY: RICHARD KANGAS, COURT RECORDER

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Las Vegas, Nevada, August 27, 2012, 1:31 p.m.

* * *

DISCOVERY COMMISSIONER: All right. Let's take Wolfram first. It's the Court's understanding that this matter is off.

MR. SHIPLEY: Yeah. Good afternoon, Your Honor. Aaron Shipley, on behalf of the Defendant.

MR. JIMMERSON: James Jimmerson, on behalf of the Plaintiff.

MR. SHIPLEY: Yeah. We submitted a stipulation for Your Honor last week to sign, and we'll just wait for that, unless you have any questions regarding it.

DISCOVERY COMMISSIONER: I don't have any. Okay.

MR. SHIPLEY: All right. Thank you.

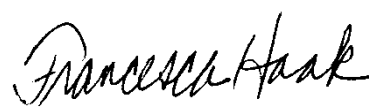
MR. JIMMERSON: Thank you.

DISCOVERY COMMISSIONER: Okay. It's off calendar. Thank you.

[Hearing concluded at 1:31 p.m.]

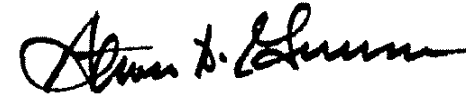
* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.


FRANCESCA HAAK
Court Recorder/Transcriber

ORIGINAL

Electronically Filed
08/29/2012 04:24:24 PM



CLERK OF THE COURT

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PO BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1 **DISC**
2 PAT LUNDVALL
3 Nevada Bar No. 3761
4 AARON D. SHIPLEY
5 Nevada Bar No. 8258
6 McDONALD CARANO WILSON LLP
7 2300 West Sahara Avenue, Suite 1000
8 Las Vegas, Nevada 89102
9 (702) 873-4100
10 (702) 873-9966 Facsimile
11 lundvall@mcdonaldcarano.com
12 ashipley@mcdonaldcarano.com
13 *Attorneys for Defendant*
14 *Pardee Homes of Nevada*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,
12 WALT WILKES

13 Plaintiffs,

14 vs.

15 PARDEE HOMES OF NEVADA,

16 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**STIPULATION AND ORDER
TO EXTEND DISCOVERY
DEADLINES**

(First Request)

(Discovery Commissioner)

17 IT IS HEREBY STIPULATED AND AGREED by and among JAMES WOLFRAM and
18 WALT WILKES ("Plaintiffs") and Defendant PARDEE HOMES OF NEVADA ("Pardee" or
19 "Defendant") that the discovery deadline be extended 60 days for the limited purpose of taking
20 the depositions of Linda Jones, Jon Lash and Harvey Whitmore.

21 In accordance with EDCR 2.35, good cause exists for this extension because Plaintiffs
22 are still waiting for a third party, Coyote Springs, Inc. ("CSI"), to produce documents in
23 response to Plaintiffs' subpoena. Plaintiffs contend that they cannot conduct and complete the
24 depositions of the aforementioned witnesses until CSI produces the requested documents and the
25 parties have had adequate time to review them. Continuing the current discovery deadline is in
26 the interest of the parties and judicial economy. Thus, the parties request a sixty (60) day
27
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extension from the August 28, 2012 discovery cutoff date to complete the limited discovery identified herein.

1. Completed Discovery: Plaintiffs and Defendant each provided initial disclosures. Subsequently, Defendants deposed each of the Plaintiffs. The parties have each exchange and responded to each other's written discovery requests. Plaintiffs have issued several third-party subpoenas requesting the production of documents.

2. Discovery that Remains to be Completed: Plaintiffs would like to take three remaining depositions: Linda Jones, Jon Lash and Harvey Whitmore. The parties also reserve the right to propound additional written discovery limited in scope as to any new issues of fact raised in the documents produced by CSI.

3. Reasons Why Remaining Discovery Has Not Been Completed: Plaintiffs contend that they cannot conduct and complete the depositions of the aforementioned witnesses until CSI produces the requested documents and the parties have had adequate time to review them.

4. A Proposed Schedule for Completing Remaining Discovery: The parties propose a 60 day extension of the discovery deadline to October 28, 2012. All other discovery deadlines dates are to remain the same. 29


5. The Current Trial Date: Trial is presently scheduled for a five-week non-jury stack beginning November 13, 2012. This matter previously received preferential status pursuant to NRS § 16.025. The parties request a continuance of the current trial date for a period of not less than 60 days.

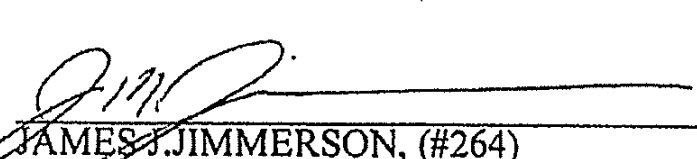
DATED this 23rd day of August, 2012

DATED this 23rd day of August, 2012

McDONALD CARANO WILSON LLP

JIMMERSON, HANSEN, P.C


 PAT LUNDVALL (#3761)
 AARON D. SHIPLEY (#8258)
 2300 West Sahara Avenue, Suite 1000
 Las Vegas, Nevada 89102
 Attorneys for Defendant Pardee Homes of Nevada


 JAMES J. JIMMERSON, (#264)
 LYNN HANSEN (#244)
 JAMES M JIMMERSON (#12599)
 415 S. Sixth Street, Ste 100
 Las Vegas, NV 89101
 Attorney for Plaintiffs

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DATED this ____ day of August, 2012

DATED this 23rd day of August, 2012

McDONALD CARANO WILSON LLP

JIMMERSON, HANSEN, P.C

PAT LUNDVALL (#3761)
AARON D. SHIPLEY (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

JAMES J. JIMMERSON, (#264)
LYNN HANSEN (#244)
JAMES M. JIMMERSON (#12599)
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

A-10-632338-C

ORDER

TRIAL DATE TO BE SET
ON OR AFTER 1/14/13

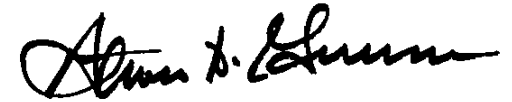
IT IS SO ORDERED this 27th day of August, 2012.

[Signature]
Discovery Commissioner

Submitted by:
McDONALD CARANO WILSON LLP
[Signature] #10162
PAT LUNDVALL (#3761)
AARON D. SHIPLEY (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

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CLERK OF THE COURT

1 **NTSO**
PAT LUNDVALL
2 Nevada Bar No. 3761
AARON D. SHIPLEY
3 Nevada Bar No. 8258
McDONALD CARANO WILSON LLP
4 2300 West Sahara Avenue, Suite 1000
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6 lundvall@mcdonaldcarano.com
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7 *Attorneys for Defendant*
Pardee Homes of Nevada

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 JAMES WOLFRAM,
WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**NOTICE OF ENTRY OF
STIPULATION AND ORDER
TO EXTEND DISCOVERY
DEADLINES**

(First Request)

(Discovery Commissioner)

16
17
18 PLEASE TAKE NOTICE that an **ORDER TO EXTEND DISCOVERY**
19 **DEADLINES** was entered in the above-referenced case on the 29th day of August, 2012,
20 a copy of which is attached hereto.

21
22 DATED this 30th day of August, 2012.

23 McDONALD CARANO WILSON LLP




24 PAT LUNDVALL (#3761)
25 AARON D. SHIPLEY (#8258)
26 2300 West Sahara Avenue, Suite 1000
27 Las Vegas, Nevada 89102
28 *Attorneys for Defendant Pardee Homes of Nevada*

 McDONALD-CARANO-WILSON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 30th day of August, 2012, I served a true and correct copy of the **NOTICE OF ENTRY OF STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES** via U.S. Mail, postage prepaid, to the following address:

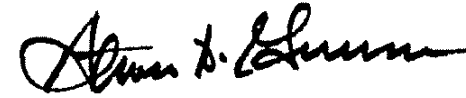
James J. Jimmerson, Esq.
Lynn Hansen, Esq.
James M. Jimmerson, Esq
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs


An Employee of McDonald Carano Wilson LLP

260565

ORIGINAL

Electronically Filed
08/29/2012 04:24:24 PM



CLERK OF THE COURT

McDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
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1 **DISC**
2 PAT LUNDVALL
3 Nevada Bar No. 3761
4 AARON D. SHIPLEY
5 Nevada Bar No. 8258
6 McDONALD CARANO WILSON LLP
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11 lundvall@mcdonaldcarano.com
12 ashipleym@mcdonaldcarano.com
13 *Attorneys for Defendant*
14 *Pardee Homes of Nevada*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 JAMES WOLFRAM,
12 WALT WILKES

13 Plaintiffs,

14 vs.

15 PARDEE HOMES OF NEVADA,

16 Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**STIPULATION AND ORDER
TO EXTEND DISCOVERY
DEADLINES**

(First Request)

(Discovery Commissioner)

17 IT IS HEREBY STIPULATED AND AGREED by and among JAMES WOLFRAM and
18 WALT WILKES ("Plaintiffs") and Defendant PARDEE HOMES OF NEVADA ("Pardee" or
19 "Defendant") that the discovery deadline be extended 60 days for the limited purpose of taking
20 the depositions of Linda Jones, Jon Lash and Harvey Whitmore.

21 In accordance with EDCR 2.35, good cause exists for this extension because Plaintiffs
22 are still waiting for a third party, Coyote Springs, Inc. ("CSI"), to produce documents in
23 response to Plaintiffs' subpoena. Plaintiffs contend that they cannot conduct and complete the
24 depositions of the aforementioned witnesses until CSI produces the requested documents and the
25 parties have had adequate time to review them. Continuing the current discovery deadline is in
26 the interest of the parties and judicial economy. Thus, the parties request a sixty (60) day
27
28

1 extension from the August 28, 2012 discovery cutoff date to complete the limited discovery
2 identified herein.

3 1. Completed Discovery: Plaintiffs and Defendant each provided initial disclosures.
4 Subsequently, Defendants deposed each of the Plaintiffs. The parties have each exchange and
5 responded to each other's written discovery requests. Plaintiffs have issued several third-party
6 subpoenas requesting the production of documents.

7 2. Discovery that Remains to be Completed: Plaintiffs would like to take three
8 remaining depositions: Linda Jones, Jon Lash and Harvey Whitmore. The parties also reserve
9 the right to propound additional written discovery limited in scope as to any new issues of fact
10 raised in the documents produced by CSI.

11 3. Reasons Why Remaining Discovery Has Not Been Completed: Plaintiffs contend
12 that they cannot conduct and complete the depositions of the aforementioned witnesses until CSI
13 produces the requested documents and the parties have had adequate time to review them.

14 4. A Proposed Schedule for Completing Remaining Discovery: The parties propose
15 a 60 day extension of the discovery deadline to October 28, 2012. All other discovery deadlines
16 dates are to remain the same. 29


17 5. The Current Trial Date: Trial is presently scheduled for a five-week non-jury
18 stack beginning November 13, 2012. This matter previously received preferential status pursuant
19 to NRS § 16.025. The parties request a continuance of the current trial date for a period of not
20 less than 60 days.

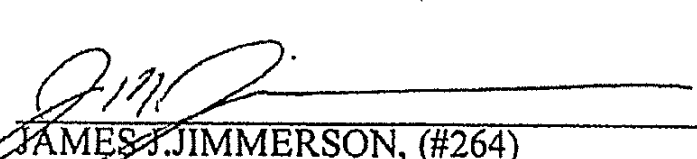
21 DATED this 23rd day of August, 2012

DATED this 23rd day of August, 2012

22 McDONALD CARANO WILSON LLP

JIMMERSON, HANSEN, P.C

23
24 
PAT LUNDVALL (#3761)
25 AARON D. SHIPLEY (#8258)
2300 West Sahara Avenue, Suite 1000
26 Las Vegas, Nevada 89102
27 Attorneys for Defendant Pardee Homes of
Nevada

23
24 
JAMES J. JIMMERSON, (#264)
25 LYNN HANSEN (#244)
JAMES M JIMMERSON (#12599)
26 415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
27 Attorney for Plaintiffs

extension from the August 28, 2012 discovery cutoff date to complete the limited discovery identified herein.

1. Completed Discovery: Plaintiffs and Defendant each provided initial disclosures. Subsequently, Defendants deposed each of the Plaintiffs. The parties have each exchange and responded to each other's written discovery requests. Plaintiffs have issued several third-party subpoenas requesting the production of documents.

2. Discovery that Remains to be Completed: Plaintiffs would like to take three remaining depositions: Linda Jones, Jon Lash and Harvey Whitemore. The parties also reserve the right to propound additional written discovery limited in scope as to any new issues of fact raised in the documents produced by CSI.

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DATED this ____ day of August, 2012

DATED this 23rd day of August, 2012

McDONALD CARANO WILSON LLP

JIMMERSON, HANSEN, P.C

PAT LUNDVALL (#3761)
AARON D. SHIPLEY (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

JAMES J. JIMMERSON, (#264)
LYNN HANSEN (#244)
JAMES M. JIMMERSON (#12599)
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101
Attorney for Plaintiffs

A-10-632338-C

ORDER

TRIAL DATE TO BE SET

IT IS SO ORDERED this 27th day of August, 2012.

ON OR AFTER 1/14/13

Discovery Commissioner

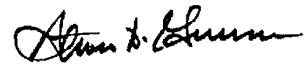
Submitted by:

McDONALD CARANO WILSON LLP

Patricia Lundvall #10162 *Gr*

PAT LUNDVALL (#3761)
AARON D. SHIPLEY (#8258)
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CLERK OF THE COURT

1 ACNJ

2
3
4 DISTRICT COURT
CLARK COUNTY, NEVADA

5 JAMES WOLFRAM, WALT WILKES

6
7 Plaintiff,

8 Vs.

CASE NO.: A632338
DEPT. NO.: IV

9 PARDEE HOMES OF NEVADA

10 Defendants.
11

12
13 AMENDED ORDER SETTING CIVIL NON-JURY TRIAL

14 IT IS HEREBY ORDERED THAT:

15 A. The above entitled case is set to be tried on a Five week stack to begin, **Monday,**
16 **February 4, 2013, at 8:30 a.m. The November 13, 2012 trial is hereby vacated.**

17 B. A Pre-Trial Conference/Calendar Call with the designated attorney and/or parties in
18 proper person will be held on **Thursday, January 24, 2013, at 8:30a.m. The November 7, 2012**
19 **Pre-Trial Conference is hereby vacated.** Parties must bring to Calendar Call the following:

- 20 (1) Typed exhibit lists;
21 (2) List of depositions;
22 (3) List of equipment needed for trial; and
23 (4) Courtesy copies of any legal briefs on trial issues.

24 C. Parties are to appear on **Thursday, November 1, 2012 at 9:00a.m. for a Status**
25 **Check on the matter.**

26 D. The Pre-trial Memorandum must be filed no later than noon on January 22, 2013 with
27 a courtesy copy delivered to Department IV. All parties, (Attorneys and parties in proper person)
28 **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67 and 2.69.

RECEIVED
KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV
SEP 21 2012
MCF
27
CLERK OF THE COURT

JA000061

1 E. All pre-trial motions, including but not limited to motions in limine, must be in
2 writing and **filed no later than December 21, 2012**, and must be heard not less than 14 days prior to
3 trial(see EDCR 2.47). **Orders shortening time will not be signed except in extreme emergencies.**

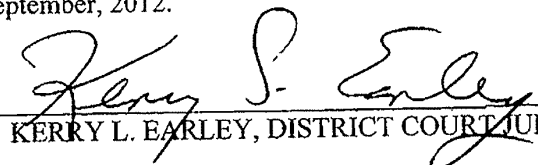
4 **An upcoming trial date is not an extreme emergency.**

5 F. All discovery deadlines, deadlines for filing dispositive motions and motions to
6 amend the pleadings or add parties are controlled by the previously issued Stipulation and Order to
7 Extend Discovery.

8 **Failure of the designated trial attorney or any party appearing in proper person to**
9 **appear for any court appearances or to comply with this Order shall result in any of the**
10 **following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation**
11 **of trial date; and/or any other appropriate remedy or sanction.**

12 Counsel is required to advise the Court immediately when the case settles or is otherwise
13 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate
14 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A
15 copy should be given to Chambers.

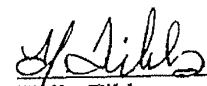
16 DATED this 20 day of September, 2012.

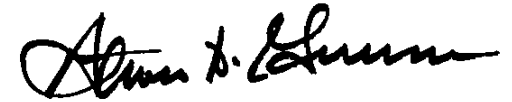
17 
18 KERRY L. EARLEY, DISTRICT COURT JUDGE

19 **CERTIFICATE OF SERVICE**

20
21 I hereby certify that on or about the date filed a copy of this Order was mailed or placed in
22 the attorney's folder on the first floor of the Regional Justice Center as follows:

23 Pat Lundvall Esq., - McDonald, Carano, Wilson
24 James Jimmerson, Esq., Jimmerson, Hansen

25 
26 Kelly Tibbs
27 Judicial Executive Assistant
28



CLERK OF THE COURT

MSJD
PAT LUNDVALL (NSBN 3761)
AARON D. SHIPLEY (NSBN 8258)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
(702) 873-4100
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Pardee Homes of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,
WALT WILKES

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,
Defendant.

CASE NO.: A-10-632338-C
DEPT NO.: IV

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Hearing Date:
Hearing Time:


Pursuant to Rule 56 of the Nevada Rules of Civil Procedure, defendant Pardee Homes of Nevada ("Pardee") moves the Court for an Order granting summary judgment in favor of Pardee and against plaintiffs James Wolfram ("Wolfram") and Walt Wilkes ("Wilkes") (collectively "Plaintiffs") on all causes of action in their Amended Complaint ("Complaint"). There are no genuine issues of material fact to resolve Plaintiffs' claims against Pardee for breach of contract, breach of good faith and fair dealing, and for an accounting. Accordingly, summary judgment in Pardee's favor is appropriate.

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///

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This motion is supported by the following Memorandum of Points and Authorities, the supporting Exhibits, the papers and pleadings on file in this matter, and any argument the Court may permit at the hearing of this matter.

RESPECTFULLY SUBMITTED this 24 day of October, 2012.

McDONALD CARANO WILSON LLP

/s/Pat Lundvall
Pat Lundvall (#3761)
Aaron D. Shipley (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

NOTICE OF MOTION


TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on for hearing before the above-entitled Court on the 11 day of January, 2012, at the hour of 8 : 3 0 A M.m. or as soon thereafter as counsel may be heard.

RESPECTFULLY SUBMITTED this _____ day of October, 2012.

McDONALD CARANO WILSON LLP

/s/ Pat Lundvall
Pat Lundvall (#3761)
Aaron D. Shipley (#8258)
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF UNDISPUTED FACTS

Plaintiffs filed this action against Pardee alleging that their predecessors in interest, Award Realty Group (“Award”) and General Realty Group, Inc. (“General”), were brokers in Pardee’s purchase of certain real estate from Coyote Springs Investment LLC (“CSI”) in the Counties of Clark and Lincoln, Nevada related to the Coyote Springs development project (the “Project”). In deposition, Plaintiffs describe this case as one principally for breach of contract, specifically the Commission Agreement with Pardee. See Certified Deposition Transcript of Wolfram at 9:22-10:4, relevant portions of which are attached to the contemporaneously filed Appendix of Exhibits in Support of Defendant’s Motion for Summary Judgment (“Appendix”) as **Exhibit A**; see also Certified Deposition Transcript of Wilkes at 20:20-21:1, relevant portions of which are attached to the Appendix as **Exhibit B**. The undisputed evidence reveals that Pardee performed all of its contractual obligations.

A. The Parties’ Relationship.

Around 2002 Plaintiffs had been tracking the status of the Coyote Springs Project and had become acquainted with Harvey Whittemore, the principal member of CSI at the time. See Wolfram Depo. (Exhibit A) at 45:7-46:5; see also Wilkes Depo. (Exhibit B) at 16:4-17:7. Plaintiffs had also become acquainted with Jon Lash, Vice President and COO of Pardee. See Wolfram Depo. (Exhibit A) at 44:11-46:5; see also Wilkes Depo. (Exhibit B) at 16:2-17:7. Plaintiffs, on a few previous occasions, had approached Mr. Lash with potential development deals, none of which panned out. See Wolfram Depo. (Exhibit A) at 44:17-46:5; see also Wilkes Depo. (Exhibit B) at 36:8-37:22. Nevertheless, after learning that Mr. Whittemore was interested in moving forward with the Coyote Springs Project, Plaintiffs once again contacted Mr. Lash and asked if he would be interested in meeting with Mr. Whittemore if they could facilitate such a meeting. See Wolfram Depo. (Exhibit A) at 48:14-16; see also Wilkes Depo. (Exhibit B) at 17:1-16. Mr. Lash agreed. Id.

1 A meeting was then scheduled at Pardee's Las Vegas office. See Wolfram
2 Depo. (Exhibit A) at 49:16-18; see also Wilkes Depo. (Exhibit B) at 17:4-16. Present at
3 this initial meeting were Plaintiffs, Mr. Whittemore, Mr. Lash, and Klif Andrews, another
4 executive of Pardee. See Wolfram Depo. (Exhibit A) at 49:19-22; see also Wilkes
5 Depo. (Exhibit B) at 17:13-16. During this meeting it was made known to Mr.
6 Whittemore that Plaintiffs represented Pardee as the potential buyer. See Wilkes
7 Depo. (Exhibit B) at 17:1-2. During the meeting Mr. Whittemore expressed his desire to
8 sell certain portions of real estate that would be designated at the Coyote Springs
9 Project for single-family detached production residential lots. See Certified Deposition
10 Transcript of Jon Lash at 111:6-112:5, relevant portions of which are attached to the
11 Appendix as **Exhibit C**. And Pardee made it clear that they only wanted to purchase
12 the single-family detached production residential lots on the Project, with CSI to
13 maintain control of the commercial land, the multi-family land, the custom lots
14 surrounding the golf course, and all other development deals on the Project. See
15 Certified Deposition Transcript of Harvey Whittemore at 11:20-12:4; 12:18-13:6; 14:20-
16 15:12; 95:15-18; 97:1-19, relevant portions of which are attached to the Appendix as
17 **Exhibit H**.

18 This initial meeting led to several months of negotiations between Pardee and
19 CSI. See Lash Depo. (Exhibit C) at 22:2-26:8. Plaintiffs were not needed for any of
20 those negotiations. Id. at 28:2-11; see also Whittemore Depo. (Exhibit H) at 91:19-
21 92:14; 103:9-22. The initial introduction meeting was the only meeting or participation
22 the Plaintiffs had in CSI's transaction with Pardee. See Wolfram Depo. (Exhibit A) at
23 50:15-17; see also Wilkes Depo. (Exhibit B) at 51:13-23.

24 **B. The CSI/Pardee Option Agreement and the Brokers' Commission**
25 **Agreement.**

26 After much negotiation, Pardee and CSI eventually entered into a written
27 agreement entitled Option Agreement for the Purchase of Real Property and Joint
28 Escrow Instructions ("Option Agreement"), which set forth the terms of the deal

1 whereby Pardee would purchase certain portions of real estate – the single family
2 detached production residential lots --from CSI in a series of “takedowns” over an
3 established period of time. A true and correct copy of the Option Agreement is
4 attached to the Appendix as **Exhibit D.**¹

5 Pardee and Plaintiffs also negotiated and entered into a Commission
6 Agreement. See Wolfram Depo. (Exhibit A) at 59:11-24; see also Wilkes Depo. (Exhibit
7 B) at 49:25-50:7. As Plaintiffs admitted in deposition, Pardee’s sole obligation to pay
8 any commissions to Plaintiffs was set forth within the four corners of the Commission
9 Agreement dated September 1, 2004, which the Plaintiffs countersigned (“Commission
10 Agreement” or “Commission Letter”). See Wolfram Depo. (Exhibit A) at 10:17-11:10;
11 see also Wilkes Depo. (Exhibit B) at 20:20-21:21. A true and correct copy of the
12 Commission Agreement is attached to the Appendix as **Exhibit G.** The Commission
13 Agreement governs the payment of commissions from Pardee to Plaintiffs related to
14 Pardee’s purchase of certain property from CSI for purposes of the Project. Id. It is this
15 Commission Agreement that Plaintiffs accuse Pardee of breaching. See Wolfram
16 Depo. (Exhibit A) at 9:22-10:23; see also Wilkes Depo. (Exhibit B) at 20:20-21:21.

17 The Commission Agreement expressly states that all of the capitalized terms
18 used in the Commission Agreement have the exact meanings set forth in the Option
19 Agreement. See Commission Agreement (Exhibit G) at p.1. The Commission
20 Agreement dictated that if Pardee approved the transaction to purchase property from
21 CSI during the “Contingency Period,” Pardee was required to pay a broker commission
22
23

24 ¹ Relevant hereto, the Option Agreement was amended twice. First, on July 28, 2004
25 Pardee and CSI executed the Amendment to Option Agreement for the Purchase of
26 Real Property and Joint Escrow Instructions, a true and correct copy of which is
27 attached to the Appendix as **Exhibit E.** Subsequently, on August 31, 2004, Pardee and
28 CSI executed the Amendment No. 2 to Option Agreement for the Purchase of Real
Property and Joint Escrow Instructions, a true and correct copy of which is attached to
the Appendix as **Exhibit F.** (The Option Agreement, along with the subsequent
amendments, will be collectively referred to as the “Option Agreement”).

(one-half to each) to General Realty Group and Award Realty Group equal to the following amounts:

- (i) Pardee shall pay four percent (4%) of the **Purchase Property Price** payments made by Pardee pursuant to paragraph 1 of the Option Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);
- (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the remaining **Purchase Property Price** payments made by Pardee pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen Million Dollars (\$16,000,000); and
- (iii) Then, with respect to any portion of the **Option Property** purchased by Pardee pursuant to paragraph 2 of the Option Agreement, Pardee shall pay one and one-half percent (1-1/2%) of the amount derived by multiplying the number of acres purchased by Pardee by Forty Thousand Dollars (\$40,000).

See Exhibit G, p.1 (emphasis added).

As Pardee and CSI agreed from the inception of the deal, the "Purchase Property" was the property already contemplated to be used for single-family detached production residential lots. See Lash Depo. (Exhibit C) at 111:6-112:5; see also Whittemore Depo. (Exhibit H) at 89:15-90:15. The term "Purchase Property Price" was defined in Amendment No. 2 to the Option Agreement as Eighty-Four Million Dollars (\$84,000,000), which was payable in segments over a period of time as Pardee purchased portions of the Purchase Property. See Exhibit F, § 4. The term "Option Property" is defined in the Option Agreement as follows: "the remaining portion of the Entire Site which is or becomes designated for single-family detached production residential use." See Exhibit D, § B(ii).

C. Pardee's Performance Under the Commission Agreement.

As Plaintiffs admit, Pardee paid Plaintiffs commissions on the \$84,000,000 Purchase Property Price. See Wolfram Depo. (Exhibit A) at 69:1-70:2; see also Wilkes Depo. (Exhibit B) at 55:1-24. Under the express terms of the Commission Agreement, these commissions were based solely on the total Purchase Property Price for the land, not the number of acres acquired. See Commission Agreement (Exhibit G) at p.1.

1 No commission was payable under clause (iii) of the Commission Agreement
2 unless the property purchased fell within the applicable definition of "Option Property."
3 Pardee has never exercised any options to purchase any Option Property. See Lash
4 Depo. (Exhibit C) at 95:18-22; 96:9-14; see also Whittemore Depo. (Exhibit H) at 50:15-
5 51:5; 100:25-101:17. Plaintiffs do not contend otherwise.

6 Plaintiffs acknowledge that their contractual relationship with Pardee is dictated
7 entirely by the Commission Agreement. See Wolfram Depo. (Exhibit A) at 65:6-9; see
8 also Wilkes Depo. at 20:20-21:21; 49:25-50:7; 68:10-17; 125:7-126:3. Over the course
9 of the multiple Takedowns, Plaintiffs were paid a total of \$2,632,000 in commissions
10 pursuant to the terms of the Commission Agreement. See Wolfram Depo. (Exhibit A) at
11 69:1-70:2. All of the commissions were paid through escrow. Id. at 70:16-71:7; 106:7-
12 11; 133:19-25; see also Wilkes Depo. (Exhibit B) at 94:13-95:23; see also Ledgers from
13 Stewart Title and Chicago Title, copies of which are attached to the Appendix **Exhibit I**
14 and **Exhibit J**, respectively.

15 Plaintiffs also acknowledge that their commissions were based on the Purchase
16 Property Price, not on acreage. See Wolfram Depo. (Exhibit A) at 105:13-16; see also
17 Wilkes Depo. (Exhibit B) at 89:2-23. The Purchase Property Price was \$84,000,000.
18 See Exhibit F. Further, Plaintiffs acknowledge that they do not have any evidence or
19 any facts to indicate that Pardee has paid more than \$84,000,000 to CSI for the
20 Purchase Property. See Wolfram Depo. (Exhibit A) at 112:14-23; see also Wilkes
21 Depo. (Exhibit B) at 77:8-12; 114:7-12. Pardee did not pay more than \$84,000,000 as
22 the Property Purchase Price. See Lash Depo. at 96:9-14. CSI has never received
23 more than \$84,000,000 as payment for the Purchase Property. See Whittemore Depo.
24 (Exhibit H) at 100:15-17.

25 Nor do Plaintiffs have any evidence or facts to prove that Pardee purchased any
26 Option Property from CSI. See Wolfram Depo. (Exhibit A) at 93:8-94:3. Pardee has
27 never exercised any such option. See Whittemore Depo. (Exhibit H) at 50:15-51:5;
28 100:25-101:17.

1 Plaintiffs have also alleged that Pardee breached the Commission Agreement by
2 failing to keep Plaintiffs informed of sales and purchases of real property required by
3 the Option Agreement. See Amended Complaint, ¶¶ 7,17, and 23. As more fully
4 explained below, Pardee has fulfilled all of its obligations under this specific
5 requirement of the Commission Agreement, which states:

6 Pardee shall provide to each of you a copy of each written option exercise
7 notice given pursuant to paragraph 2 of the Option Agreement, together
8 with information as to the number of acres involved and the scheduled
9 closing date. In addition, Pardee shall keep each of you reasonably
10 informed as to all matters relating to the amount and due dates of your
11 commission payments.

12 See Commission Agreement (Exhibit G) at p.2. Pardee has not purchased any Option
13 Property, therefore, there is no obligation for Pardee to provide Plaintiffs with written
14 notice of such transactions required by sentence one. See Commission Agreement
15 (Exhibit G) at p.1. As mentioned above, Plaintiffs received all of their commission
16 payments through escrow from either Stewart Title or Chicago Title. See Exhibits I and
17 J. With these commission payments Plaintiffs also received closing statements from
18 the title companies handling the deals. Id. Further, Pardee regularly provided Plaintiffs
19 with documentation, including maps, related to the various Takedowns and Plaintiffs'
20 commissions. See Lash Depo. (Exhibit C) at 97:20-98:4. In sum, Pardee fulfilled all of
21 its obligations under the Commission Agreement to keep Plaintiffs reasonably informed
22 as required by sentence two.

23 Discovery is scheduled to close on October 29, 2012.

24 II. LEGAL ARGUMENT

25 A. Standard For Summary Judgment.

26 Pursuant to Nev. R. Civ. P. 56(c), a moving party is entitled to summary
27 judgment when there are no genuine issues of material fact in dispute and the moving
28 party is entitled to judgment as a matter of law. The "availability of summary
proceedings promotes judicial economy and reduces litigation expense associated with
actions clearly lacking in merit." Elizabeth E. v. ADT Security Systems West, 108 Nev.

1 889, 892, 839 P.2d 1308, 1310 (1992). “Rule 56 should not be regarded as a
2 ‘disfavored procedural shortcut’ but instead ‘as an integral part of the . . . rules as a
3 whole, which are designed to secure the just, speedy and inexpensive determination of
4 every action.’” Wood v. Safeway, Inc., 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005)
5 (citing and adopting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). The Nevada
6 Supreme Court has “put to rest any questions regarding the continued viability of the
7 ‘slightest doubt’ standard” previously applied to summary judgment motions. *Id.*

8 The non-moving party “is not entitled to build a case on gossamer threads of
9 whimsy, speculation and conjecture.” Collins v. Union Fed. Savings & Loan, 99 Nev.
10 284, 302, 662 P.2d 610, 621 (1983) (quoting Hahn v. Sargent, 523 F.2d 461, 467 (1st
11 Cir. 1975), cert. denied, 425 U.S. 904, 96 S. Ct. 1495 (1976)). The nonmoving party
12 “bears the burden to ‘do more than simply show that there is some metaphysical doubt’
13 as to the operative facts in order to avoid summary judgment being entered in the
14 moving party’s favor.” Wood, 121 Nev. at 732, 121 P.3d at 1031 (citing Matsushita
15 Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1986)). In addition, “[t]he
16 question of the interpretation of a contract when the facts are not in dispute is a
17 question of law.” See Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

18 **B. Plaintiffs’ Cause of Action for Breach of Contract Fails as a Matter**
19 **of Law.**

20 To prevail on a breach of contract claim, a plaintiff must establish: (1) a valid and
21 existing contract was entered into between plaintiff and defendant; (2) plaintiff
22 performed or was excused from performance; (3) defendant committed a material
23 breach of the contract; and (4) plaintiff sustained damages as a result of the breach.
24 See e.g., Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000)
25 (overruled on other grounds). Thus, to prevail on a summary judgment motion involving
26 a nonmoving party’s claim for breach of contract, the moving party need only show that
27 no dispute exists as to the nonexistence of at least one the four elements. Wood, 121
28 Nev. at 731, 121 P.3d at 1031. Here, summary judgment is appropriate because the

undisputed facts show that: Pardee did not commit a material breach of the Commission Letter and Plaintiffs are incapable of proving damages.

1. The Commission Letter is Clear and Unambiguous and Pardee Has Fully Performed Under Its Terms.

As admitted by Plaintiffs, the relationship between Pardee and Plaintiffs is governed by the four corners of the Commission Agreement, which is clear and unambiguous. A duty to perform must arise under the contract before a breach of contract can be found. Whether or not the duty to perform exists depends on the Court's interpretation of the contract. "The question of the interpretation of a contract when the facts are not in dispute is a question of law." Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003). Absent some countervailing reason, contracts will be construed from their written language and enforced as written. Kaldi v. Farmers Ins. Exchange, 117 Nev. 273, 278, 21 P.3d 16, 19 (2001) (internal citations omitted). When a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written, regardless of the parties' intent. Margrave v. Dermody Properties, Inc., 110 Nev. 824, 827, 878 P.2d 291, 293 (1994) (citation omitted).

Plaintiffs acknowledge that their contractual relationship with Pardee is dictated entirely by the Commission Agreement. The language of the Commission Agreement is clear, unambiguous, and is only susceptible to one interpretation. It is undisputed that Pardee agreed to pay commissions to Plaintiffs pursuant to the express terms of the Commission Agreement. The plain language of the Commission Agreement required the payment of commissions according to a set percentage of the overall Purchase Property Price. Undisputedly, those commissions were paid. The Commission Agreement also required Pardee to pay commissions on the purchase of Option Property *if* Pardee exercised its option to purchase said Option Property. Pardee has never exercised any such option.