

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND**

This case, simply put, involves claims for breach of contract arising from the Commission Agreement dated September 1, 2004 ("Commission Agreement" or "Commission Letter"), which Pardee and the Plaintiffs negotiated and executed. A copy of the Commission Letter is attached hereto as **Exhibit A**. The undisputed evidence reveals that Pardee performed all of its contractual obligations.

Plaintiffs acknowledge that their contractual relationship with Pardee is dictated entirely by the Commission Agreement. The Commission Agreement governs the payment of commissions from Pardee to Plaintiffs related to Pardee's purchase of certain property from CSI related to the Project. It is this Commission Agreement that Plaintiffs accuse Pardee of breaching.

Plaintiffs have claimed that they are entitled to compensation for their personal time commitment for investigating their claims. Their NRCP 16.1 disclosure states, in part: "Finally, Plaintiffs must be compensated for the time and effort expended attempting to discover from public records what information was owed to them under the Commission Letter Agreement." See Plaintiffs' Seventh Supplement to NRCP 16.1 Disclosure of Witnesses and Documents, at p. 8:23-25, a copy of which is attached hereto as **Exhibit B**.

Plaintiffs' contention that they are entitled to compensation for their personal time commitment investigating their claims as an element of their alleged damages is unsubstantiated and contrary to Nevada law. Therefore, Pardee requests the Court issue an order *in limine* that Plaintiffs are precluded from offering any evidence at trial, in the form of documents, testimony, expert opinions and any other evidence, related to their claim for an award of compensation for their time. During discovery Plaintiffs failed to produce any documents or offer any testimony in deposition that quantified with any exactness the amount of time spent investigating. Further, at no time during discovery did Plaintiffs attempt to produce any documents or testifying quantifying the

1 value of their time. Therefore, Plaintiffs claim is completely unsubstantiated and cannot  
2 be considered an actual element of their alleged damages. Therefore, an order *in*  
3 *limine* on this issue will promote efficiency in preparation for and during the trial.

## 4 II. LEGAL ARGUMENT

### 5 A. Legal Standard.

6 Pursuant to NRS 47.060, a motion in limine is the proper vehicle to prevent the  
7 introduction of inadmissible evidence at trial. See NRS 47.080(1). (“[p]reliminary  
8 questions concerning the qualification of a person to be a witness, the existence of a  
9 privilege or the admissibility of evidence shall be determined by the judge.”). The ruling  
10 on a motion *in limine* lies soundly within the district court’s discretion. See State ex. rel.  
11 Dept. of Highways v. Nevada Aggregates and Asphalt Co., 92 Nev. 370, 551 P.2d  
12 1095, 1098 (1976).

13 Motions in limine take two forms: (1) to procure a definitive ruling on the  
14 admissibility of evidence at the outset of trial; or (2) to prevent counsel for the opposing  
15 party from mentioning potentially inadmissible evidence in his opening statement, or  
16 eliciting such evidence from a witness until a definitive ruling on the admissibility or non-  
17 admissibility of the evidence can be made. Born v. Eisenman, 114 Nev. 854, 962 P.2d  
18 1227 (1998); Nev. Rev. St. 47.080; see 21 Charles Alan Wright and Kenneth W.  
19 Graham, Jr., Federal Practice and Procedure §5037.6 (2007). This motion takes both  
20 forms.

21 An order in limine further promotes efficiency at trial and helps minimize  
22 disruptions, increasing uninterrupted flow of evidence during trial. Kelly v. New West  
23 Federal Savings, 56 Cal. Rptr. 2d 803, 808 (1996).

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1           **B. Plaintiffs Are Precluded From Presenting Evidence At Trial About**  
2           **Their Alleged Damages in the Form of the Alleged Time Commitment**  
3           **for Investigating Their Claims.**

4           Plaintiffs contend they are entitled to damages in the form of their personal time  
5           commitment for investigating their claims. Plaintiffs' claims are for contract, not tort,  
6           damages. Accordingly, Plaintiffs' alleged damages are limited to those arising from the  
7           contract itself, and must have been reasonably contemplated by the parties at the time  
8           they entered the contract. Hilton Hotels Corp. v. Butch Lewis Prods., 109 Nev. 1043,  
9           1046 (1993); Las Vegas Oriental, Inc. v. Sabella's of Nevada, Inc., 97 Nev. 311, 313,  
10          630 P.2d 255, 256 (1981). Because Plaintiffs' personal time commitments in  
11          investigating their claims were not reasonably contemplated by either party to the  
12          contract, this claim for damages is also inappropriate. See Las Vegas Oriental, Inc., 97  
13          Nev. at 313, 630 P.2d at 256.

14          NRCP 16.1(a)(1)(C) requires a disclosure of "A computation of any category of  
15          damages claimed by the disclosing party, making available for inspection and copying  
16          as under Rule 34 the documents or other evidentiary matter, not privileged or protected  
17          from disclosure, on which such computation is based, including materials bearing on  
18          the nature and extent of injuries suffered." Put simply, Plaintiffs did not accomplish this  
19          requirement in their NRCP 16.1 mandatory disclosures. Throughout this case Plaintiffs  
20          have not produced any documents or provided any testimony in deposition that  
21          contained an actual computation of the alleged amount of time spent investigating their  
22          claims. Further, at no time during discovery did Plaintiffs attempt to produce any  
23          documents or testifying quantifying the value of their time spent investigating their  
24          claims.

25          Because of Plaintiffs failure to adequately articulate their position and compute  
26          their claim for damages, Pardee was afforded no opportunity to conduct any adequate  
27          discovery on these issues. During his deposition, Wolfram was asked, "At this point in  
28          time you can't tell me any amounts then that you may have been damaged, is that  
                right?" His response was, "Not yet." See Certified Deposition Transcript of Wolfram, at

1 109:20-23, relevant portions of which are attached hereto as **Exhibit C**. He was also  
2 asked, "Can you tell me how much that you believe you've been damaged, sir, and that  
3 you're seeking to recover from Pardee?" His response was, "I can't. I don't know  
4 enough about what I'm talking about. That's the reason this whole thing has come  
5 about. I can't tell you that. I don't have enough information." See Wolfram Depo.  
6 (Exhibit A) at 102:7-13.

7 In sum, Plaintiffs' contention that they are entitled to compensation for their  
8 personal time commitment investigating their claims as an element of their alleged  
9 damages is completely unsubstantiated. Therefore, Pardee requests the Court issue  
10 an order *in limine* that precludes Plaintiffs from offering any evidence at trial, in the form  
11 of documents, testimony, expert opinions and any other evidence, related to their claim  
12 for an award of compensation for their time.

#### 13 **IV. CONCLUSION**

14 Based on the foregoing, Pardee requests the Court issue an order *in limine* to  
15 preclude impermissible evidence, in the form of documents, testimony, expert opinions  
16 and all other evidence, at trial on the issue of Plaintiffs' alleged damages related to  
17 compensation for their alleged time commitment investigating their claims. This early *in*  
18 *limine* ruling will allow the parties to more efficiently prepare for trial.

19  
20 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2013.

21 **McDONALD CARANO WILSON LLP**

22  
23 /s/ Aaron D. Shipley  
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*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 1<sup>st</sup> day of March, 2013, I served a true and correct copy of the foregoing **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR DAMAGES IN THE FORM OF COMPENSATION FOR TIME** via U.S. Mail 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/ Melissa A. Merrill  
An Employee of McDonald Carano Wilson LLP

273327

# **EXHIBIT A**



10830 Wilshire Boulevard, Suite 1900  
Los Angeles, California 90024-4101

**JON R. LAARH**  
Sr. Vice President  
(310) 478-3628 ext. 261  
(310) 448-1295

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).

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.

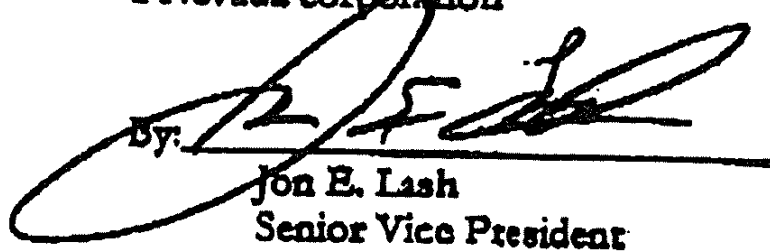
This Agreement represents our entire understanding concerning the subject matter hereof, and all oral statements, representations, and negotiations are hereby merged into this Agreement and are superseded hereby. This Agreement may not be modified except by a written instrument signed by all of us. Nothing 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.

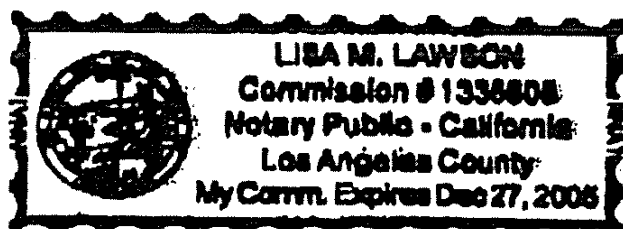
Mr. Walt Wilkes  
Mr. Jim Wolfram  
September 1, 2004  
Page 3

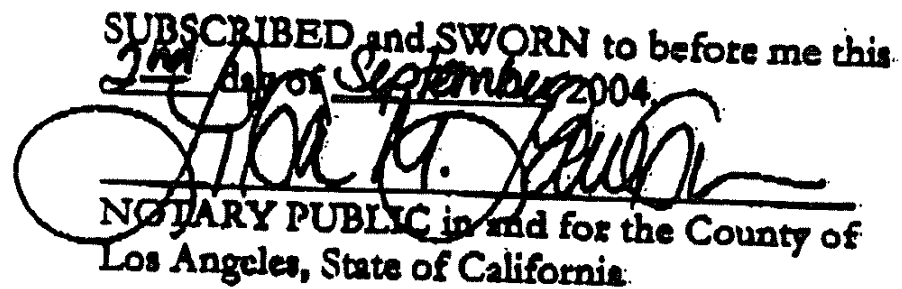
Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,  
a Nevada corporation

By:   
Jon E. Lash  
Senior Vice President



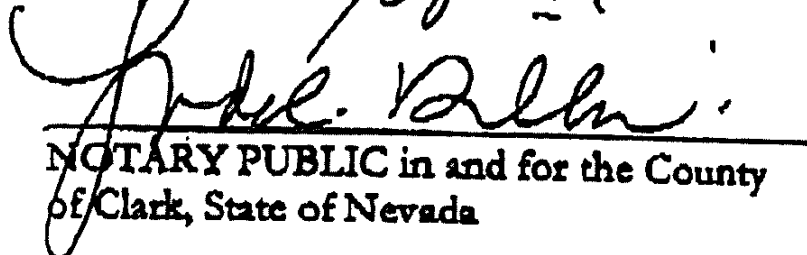
SUBSCRIBED and SWORN to before me this  
1st day of September 2004.  
  
NOTARY PUBLIC in and for the County of  
Los Angeles, State of California.

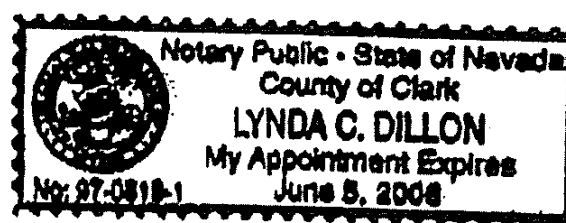
Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By:   
Walt Wilkes

SUBSCRIBED and SWORN to before me  
this 1st day of September 2004.

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



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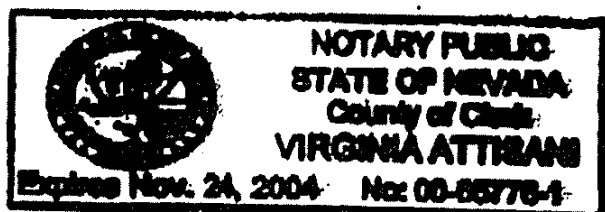
Mr. Walt Wilkes  
Mr. Jim Wolfram  
September 1, 2004  
Page 4

AWARD REALTY GROUP

By: *Jim Wolfram*  
Jim Wolfram

SUBSCRIBED and SWORN to before me  
this 10 day of SEPT, 2004.

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



# **EXHIBIT B**

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 **SUPP**  
JAMES J. JIMMERSON, ESQ.  
2 Nevada Bar No. 000264  
LYNN M. HANSEN, ESQ.  
3 Nevada Bar No. 0244  
JAMES M. JIMMERSON, ESQ.  
4 Nevada Bar No. 12599  
JIMMERSON HANSEN, P.C.  
5 415 So. Sixth St., Ste. 100  
Las Vegas, NV 89101  
6 Tel No.: (702) 388-7171; Fax No.: (702) 380-6406  
jji@jimmersonhansen.com  
7 lmh@jimmersonhansen.com  
lmj@jimmersonhansen.com  
8

Attorney for Plaintiffs  
James Wolfram and Walt Wilkes

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 JAMES WOLFRAM AND WALT WILKES

13 Plaintiffs,

14 vs.

15 PARDEE HOMES OF NEVADA,

16 Defendant.

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

17 **PLAINTIFFS' SEVENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF**  
18 **WITNESSES AND DOCUMENTS**

19 COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their  
20 attorneys, Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of  
21 Jimmerson Hansen, P.C., and hereby submits the following Seventh Supplement to list of  
22 witnesses and production of documents, as follows (*new items in bold*):  
23

24 ///

25 ///

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JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

I.

WITNESSES

Plaintiffs provide the following witnesses' identities, last known address and telephone numbers:

1. James Wolfram  
c/o Jimmerson Hansen, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171

This person most knowledgeable is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

2. Walt Wilkes  
c/o Jimmerson Hansen, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171

This person most knowledgeable is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

3. Frances Butler Dunlap  
Chicago Title Company  
Las Vegas, Nevada

This person was the head of the Real Estate Commercial Department of Chicago Title Company, is most knowledgeable, and is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

4. PARDEE HOMES OF NEVADA  
Custodian of Records  
McDonald Carano Wilson LLP  
100 West Liberty Street, 10th Floor  
Reno, Nevada 89501  
(775) 788-2000

Pardee Homes of Nevada is a named Defendant in this matter. Its present or former employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6) and/or custodians of records are expected to testify regarding the facts and background of this case.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 368-7171 - Facsimile (702) 387-1167

1 5. PARDEE HOMES OF NEVADA  
2 Person Most Knowledgeable  
3 McDonald Carano Wilson LLP  
4 100 West Liberty Street, 10th Floor  
5 Reno, Nevada 89501  
6 (775) 788-2000

7 Pardee Homes of Nevada is a named Defendant in this matter. Its present or former  
8 employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6)  
9 and/or Person Most Knowledgeable are expected to testify regarding the facts and background  
10 of this case.

11 6. Jon Lash  
12 c/o McDonald Carano Wilson LLP  
13 100 West Liberty Street, 10th Floor  
14 Reno, Nevada 89501  
15 (775) 788-2000

16 Mr. Lash is an employee of PARDEE HOMES OF NEVADA and is expected to testify  
17 regarding the facts and background of this case.

18 7. Clifford Anderson  
19 c/o McDonald Carano Wilson LLP  
20 100 West Liberty Street, 10th Floor  
21 Reno, Nevada 89501  
22 (775) 788-2000

23 Mr. Anderson is an employee of PARDEE HOMES OF NEVADA and is expected to  
24 testify regarding the facts and background of this case.

25 8. Harvey Whitemore  
26 c/o Coyote Springs  
27 Address Unknown

28 Mr. Whitemore is the owner of the property involved in this lawsuit and is expected to  
testify regarding the facts and background of this case.

9. Chicago Title Company  
Las Vegas, Nevada  
Custodian of Records

The Custodian of Records is expected to testify regarding the facts and background of  
this case.

10. Chicago Title Company  
Las Vegas, Nevada  
Person Most Knowledgeable

**JIMMERSON HANSEN, P.C.**  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 The Person Most Knowledgeable is expected to testify regarding the facts and  
2 background of this case.

3 11. Peter J. Dingerson  
4 D&W Real Estate  
5 5455 S. Durango Dr., Ste 160  
6 Las Vegas, NV 89113

7 Mr. Dingerson is the owner of D&W Real Estate and is expected to testify regarding the  
8 facts and background of this case.

9 12. Jay Dana  
10 General Realty Group  
11 6330 S. Eastern Ave Ste 2  
12 Las Vegas, NV 89119

13 Mr. Dana is the owner of General Realty Group Inc. and is expected to testify regarding  
14 the facts and background of this case.

15 13. Jerry Masini  
16 Award Realty Corp.  
17 3015 S. Jones Blvd.  
18 Las Vegas, NV 89146

19 Mr. Masini is the owner of Award Realty and is expected to testify regarding the  
20 facts and background of this case.

21 14. Mark Carmen  
22 Exit Realty Number One  
23 6600 W. Charleston, Suite #119  
24 Las Vegas, Nevada 89146

25 Mr. Carmen is the owner of Las Vegas Realty Center and is expected to testify  
26 regarding the facts and background of this case.

27 Plaintiffs reserve the right to call any and all witnesses who may be disclosed or  
28 deposed throughout the course of discovery.

Plaintiffs reserve the right to call any and all of Defendant's witnesses; and

Plaintiffs reserve the right to call any and all rebuttal witnesses.

Plaintiffs' experts, if any, as yet unidentified.

Plaintiffs reserve the right to supplement this list of witnesses as discovery  
progresses and until the time of trial in this case.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

II.

DOCUMENTS

Pursuant to NRCP 16.1(a)(1)(B), Plaintiffs provide the following documents relating to Plaintiffs and Defendants:

1. Any and all written agreements between the Parties;
2. Any and all documents evidencing damages to the Plaintiffs;
3. Any and all correspondence between the Parties;
4. Any and all appropriate Custodian of Record documents;
5. Any and all pleadings in this matter;
6. **Documents labeled Bates Numbers PLTF0001-PLTL10496.**

These documents are being reproduced as Plaintiffs' Initial NRCP 16.1 Disclosures of Witnesses and Documents had duplicate documents. The duplicate copies have been removed and the documents are listed as follows:

- A. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions dated May 2004 (Bates No. PLTF0001-0080);
- B. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
- C. Two Assignments of Real Estate Commission and Personal Certification Agreement (Bates No. PLTF0153-0157A)
- D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes regarding the attached Commission letter dated September 1, 2004, (Bates No. PLTF0158-0162);
- E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
- G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
- H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
- I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
- J. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);

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Telephone (702) 388-7171 - Facsimile (702) 387-1157

- 1 K. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates  
2 No. PLTF0197-0202);
- 3 L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No.  
4 PLTF0203-0205);
- 5 M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash,  
6 (Bates No. PLTF0206-0209);
- 7 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq.,  
8 (Bates No. PLTF0210-0211);
- 9 Bates Nos. PLTF0212-0244 are the duplicative documents produced in  
10 Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 11 7. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces  
12 Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 13 8. Documents produced by Chicago Title in response to Plaintiffs' Subpoena  
14 Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 15 9. Documents produced by Coyote Springs Investments in response to Plaintiff's  
16 Duces Tecum on CD, (Bates No. CSI\_Wolfram 000014 -  
17 CSI\_Wolfram0003004), attached hereto;
- 18 10. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 -  
19 PLTF10417), attached hereto;
- 20 11. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached  
21 hereto;
- 22 12. Non-Party Coyote Springs Investments, LLC's Supplement and Amended  
23 Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates  
24 PLTF10420-PLTF10424, attached hereto.
- 25 13. Chicago Title Company's previously bates stamped documents no. PLTF 1424  
26 through PLTF 10414 (on bottom right of documents bates stamped) and rebated  
27 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates  
28 stamped), including the Custodian of Records Subpoena to Chicago Title  
Company including the executed Certificate of Custodian of Records bates  
stamped as Cht 08997.
14. Stewart Title Company's previously bates stamped documents no. PLTF 0245  
through PLTF 1423 and rebated as bates nos: Stwt 0001 through 1202.  
Documents Stwt 0699 and Stwt 0731 are copy coversheets and were  
inadvertently bates stamped.
15. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,  
page 51, bates PLTF 10427 through PLTF 10438.
16. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,  
page 35, bates PLTF 10439 through PLTF 10440.
17. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,  
page 18, bates PLTF 10441 through PLTF 10443.
18. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,  
page 57, bates PLTF 10444 through PLTF10456.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1187

19. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113, page 55, bates PLTF 10457 through PLTF 10462.
20. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98, page 57, bates PLTF 10463 through PLTF 10468.
21. Copy of redacted billing sheets representing attorney's fees charged by Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012, bates PLTF 10469 through PLTF 10481.
22. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
23. Assignment of Rights, Title and Interest from Jay Dana on behalf of General Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
24. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
25. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of Walt Wilkes, bates PLTF 10487.
26. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
27. Assignment signed by Mark Carmen dated December 3, 2012 along with Exhibit A signed by Jay Dana dated January 11, 2011, attached hereto as bates PLTF 10491 through PLTF 10493; and
28. Assignment signed by Peter J. Dingerson dated December 20, 2012 along with Exhibit A signed by Jerry Masini dated December 20, 2010, attached hereto as bates PLTF 10494 through PLTF 10496.

Plaintiffs reserve the right to any and all documents the Defendants disclosed by any parties or used at any depositions.

Plaintiffs reserve the right to any and all other relevant documents to this matter.

Plaintiffs reserve the right to identify and produce different and/or additional documents as the investigation and discovery in this case proceeds.

### III.

#### COMPUTATION OF DAMAGES

Plaintiffs calculate their damages to be in excess of \$1,900,000.00 associated with the Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations to the Plaintiffs.

There are two primary components to this calculation. The first component is the loss of future commissions from future sales or takedowns of property located in Clark County, subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least 3,000 acres of property, defined as Option Property under the Option Agreement effective

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 • Facsimile (702) 387-1167

1 June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South,  
2 Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June  
3 1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production  
4 Residential Property—a purchase and designation that would entitle Plaintiffs to a 1.5%  
5 commission on a per-acre price of \$40,000.00. If 3,000 acres were purchased by Pardee  
6 under this scenario, Plaintiffs would be entitled to \$1,800,000 in commissions. However,  
7 Pardee's course of conduct in failing to appropriately discharge its duties under the  
8 Commission Letter Agreement has robbed Plaintiffs of this opportunity to be paid these  
9 commissions. Pardee's actions have served to reclassify the land originally labeled as  
10 Purchase Property and Option Property, and under the new reclassification, all Option  
11 Property has been removed from Clark County, thereby divesting Plaintiffs of any hope to  
12 collect any part of the \$1.8 million in commissions they could be paid had no reclassification  
13 occurred.

14 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees  
15 currently exceed \$102,700.00. This amount represents all work from the date of drafting of  
16 the Complaint in November 2010 through October 19, 2012. These attorney's fees constitute  
17 damages pursuant to the September 1, 2004 Commission Letter Agreement. As stated in the  
18 Agreement, "In the event, either party brings an action to enforce its rights under this  
19 Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs."  
20 Plaintiffs in bringing this suit expect to be the prevailing party and, as such, are entitled to their  
21 reasonable attorney's fees as damages for Defendant's breach of contract and breach of the  
22 covenant of good faith and fair dealing.

23 Finally, Plaintiffs must be compensated for the time and effort expended attempting to  
24 discover from public records what information was owed to them under the Commission Letter  
25 Agreement. Discovery is still ongoing therefore the Plaintiffs reserve

26 ///

27 ///

28




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1 the right to amend and supplement this response as the investigation and discovery in this  
2 case proceeds.

3 Dated this 27<sup>th</sup> February, 2013.

JIMMERSON HANSEN, P.C.

  
JAMES J. JIMMERSON, ESQ.  
Nevada Bar No. 000264  
LYNN M. HANSEN, ESQ.  
Nevada Bar No. 0244  
JAMES M. JIMMERSON, ESQ.  
Nevada Bar No. 12599  
415 So. Sixth St., Ste. 100  
Las Vegas, NV 89101  
Attorney for Plaintiffs  
*James Wolfram and Walt Wilkes*



CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' SEVENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 27<sup>th</sup> day of February, 2013, as indicated below:

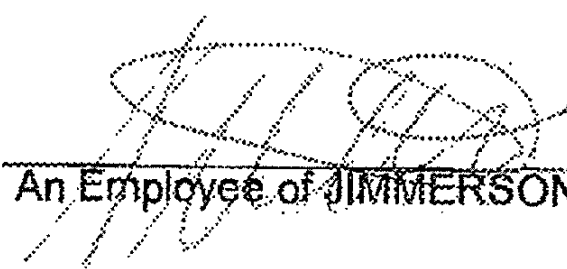
☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

By electronic service through the E-filing system

☒ By facsimile, pursuant to EDCR 7.26

By receipt of copy as indicated below

PAT LUNDVALL, ESQ.,  
AARON D. SHIPLEY, ESQ.  
McDONALD CARANO WILSON, LLP  
2300 W. Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102  
Attorneys for Defendant  
Pardee Homes of Nevada  
Fax No.: 702-873-9966

  
An Employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

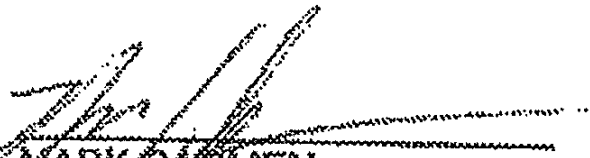
ASSIGNMENT

Reference is made to the January 11, 2011 Assignment by Jay Dana, owner/broker of General Realty Group, Inc. and made on behalf of General Realty Group, Inc., a copy of which is attached hereto as Exhibit A. I, Mark Carmen, owner/broker of Las Vegas Realty Center, and on behalf of Las Vegas Realty Center, hereby assign to Walt Wilkes all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that Las Vegas Realty Center has any rights, title or interest in the same.

Dated: December 3, 2012

LAS VEGAS REALTY CENTER

By:

  
MARK CARMEN  
OWNER/BROKER

PLTF10491

JA002200

**EXHIBIT "A"**

**EXHIBIT "A"**

Sent 27/02/2013 - - to p14/17

FROM :

01/11/2011 14:03 17027364353

FAX NO. :

GENERALREALTYGROUP

Oct. 26 2012 02:58PM P5  
PAGE 01

January 11, 2011

I, Jay Dana, Owner/Broker of General Realty Group INC, on behalf of General Realty Group, INC. hereby assign to Walter D. Wilkes and/or, Las Vegas Realty Center, Mark Carmen, Owner, Broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between General Realty and Purdue Homes

January 11, 2011

By: Jay Dana, Owner/Broker  
General Realty Group, INC.

PLTF10485

PLTF10493

JA002202

**ASSIGNMENT**

Reference is made to the December 20, 2010 Assignment by Jerry Masini, owner/broker of Award Realty and made on behalf of Award Realty, a copy of which is attached hereto as Exhibit A. I, Peter J. Dingerson, owner/broker of D&W Real Estate LLC, on behalf of D&W Real Estate LLC, hereby assign to James F. Wolfram all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Perdee Homes, to the extent that D&W Real Estate LLC has any rights, title or interest in the same.

Dated: December 3, 2012

D&W REAL ESTATE, LLC

By:   
PETER J. DINGERSON  
OWNER/BROKER

SHS/Oen, assignment agr.

PLTF10494

JA002203

**EXHIBIT "A"**

**EXHIBIT "A"**

FROM :

FAX NO. :

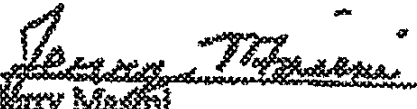
Oct. 26 2012 02:57PM P2

December 20, 2010

I, Jerry Masini, Owner/Broker of Award Realty, on behalf of Award Realty, hereby assign to James F. Wolfman and/or D & W Real Estate LLC, Peter Dingerson, broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between Award Realty and Perdue Homes.

December 20, 2010

By: Jerry Masini, Owner/Broker  
Award Realty

  
\_\_\_\_\_  
Jerry Masini

PLTF10486

PLTF10496

# EXHIBIT C





CERTIFIED  
COPY  
DISTRICT COURT

Las Vegas  
Reno  
Carson City

CLARK COUNTY, NEVADA

JAMES WOLFRAM,  
WALT WILKES,

Plaintiffs,

vs.

PARDEE HOMES OF NEVADA,

Defendant.

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

DEPOSITION OF WALTER WILKES

LAS VEGAS, NEVADA

MONDAY, NOVEMBER 28, 2011

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

LST JOB NO. 147615

t 702.314.7200  
f 702.631.7351

[www.litigationservices.com](http://www.litigationservices.com)

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



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 A. I don't think --

2 Q. Did you take a look at those at the time  
3 you received a copy of them?

4 A. Briefly.

5 Q. And any questions that you had then, you  
6 posed those to Mr. Jimmerson or to Mr. Stringer?

7 A. Absolutely not. I didn't even talk to  
8 them.

9 Q. Did you pose any questions to Mr. Stringer  
10 after receiving this information?

11 A. I don't believe I did. I can't remember,  
12 but I think if anybody would have posed a question,  
13 it would have been Jim or probably Mr. Jimmerson.  
14 In fact, I would bet it would have been  
15 Mr. Jimmerson. I don't remember. You know --

16 MS. HANSEN: You have answered.

17 THE WITNESS: Okay.

18 (Exhibit 8 marked.)

19 BY MS. LUNDVALL:

20 Q. Mr. Wilkes, I'm now going to hand you  
21 what's been marked as Exhibit 8 to your deposition.

22 A. Okay.

23 Q. Once again, this is a letter that was  
24 directed to Mr. Wolfram, this time from Jon Lash.

25 A. Okay.

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Walter Wilkes, commencing on Monday, November 28, 2011, at 9:00 a.m.

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

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

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 30th day of November 2011.

  
CARRE LEWIS, CCR NO. 497

**AFFT**

JAMES J. JIMMERSON, ESQ.

Nevada Bar No.: 00264

LYNN M. HANSEN, ESQ.

Nevada Bar No.: 00244

JAMES M. JIMMERSON, ESQ.

Nevada Bar No.: 12599

JIMMERSON HANSEN, P.C.

415 South 6<sup>th</sup> Street, Suite 100

Las Vegas, Nevada 89101

Tel No.: (702) 388-7171; Fax No.: (702) 388-6406

[lmh@jimmersonhansen.com](mailto:lmh@jimmersonhansen.com)

[imi@jimmersonhansen.com](mailto:imi@jimmersonhansen.com)

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JAMES WOLFRAM and WALT WILKES )

Plaintiffs, )

vs. )

PARDEE HOMES OF NEVADA, )

Defendant )

CASE NO.: A-10-632338-C

DEPT NO.: IV

**AFFIDAVIT OF JAMES M. JIMMERSON, ESQ.**

**IN SUPPORT OF PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR  
COUNTER MOTION FOR PARTIAL SUMMARY JUDGMENT**

JAMES M. JIMMERSON, ESQ., being first duly sworn, deposes and states:

I am over the age of 18 and am not a party to this action. I am familiar with the facts set forth herein, with the exception of those facts stated on information and belief and as to those facts, I believe them to be true.

1. Your Affiant is an attorney at law, duly licensed to practice before all of the Courts in the State of Nevada.

2. Your Affiant is an associate with the law firm of Jimmerson Hansen, P.C., attorneys retained to represent Plaintiffs JAMES WOLFRAM and WALT WILKES in the above-captioned matter.

3. Your Affiant has personal knowledge of the facts and circumstances surrounding the issues discussed in the instant Plaintiffs' Reply in Support of Their Counter Motion for Partial Summary Judgment and makes this Affidavit based upon said knowledge.

4. Attached as Exhibit "38" is a true and correct copy of a letter from defense counsel dated November 9, 2012.

5. Attached as Exhibit "39" is a true and correct copy of a letter from Plaintiffs' counsel dated November 16, 2012.

6. Attached as Exhibit "40" is a true and correct copy of an Assignment from D&W Real Estate signed by Peter J. Dingerson.

7. Attached as Exhibit "41" is a true and correct copy of an Assignment from Las Vegas Realty Center signed by Mark Carmen.

8. Attached as Exhibit "42" is a true and correct copy of Plaintiff's Sixth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents.

9. This affidavit is made in good faith and not for the purposes of delaying the lawful resolution of this dispute.

///

///

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

Further your Affiant sayeth naught.

DATED this 17<sup>m</sup> day of January, 2013.

  
JAMES M. JIMMERSON, ESQ.

SUBSCRIBED and SWORN to before  
me this 17 day of January, 2013.



  
NOTARY PUBLIC in and for said  
COUNTY and STATE

**EXHIBIT “38”**

**EXHIBIT “38”**





MCDONALD·CARANO·WILSON<sup>®</sup>

Pat Lundvall  
[plundvall@mcdonaldcarano.com](mailto:plundvall@mcdonaldcarano.com)

Reply to Las Vegas

November 9, 2012

VIA EMAIL AND U.S. MAIL

James M. Jimmerson  
JIMMERSON, HANSEN, P.C.  
415 S. Sixth Street, Ste 100  
Las Vegas, NV 89101  
[jmj@jimmersonhansen.com](mailto:jmj@jimmersonhansen.com)

**Re: James Wolfram, Walt Wilkes v. Pardee Homes of Nevada  
A-10-632338-C**

Dear Mr. Jimmerson:

This letter is to follow up on the conference call yesterday involving you, Ms. Hansen, Pat Lundvall and myself regarding some issues related to the Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment ("Opposition") you filed on November 7, 2012. Under separate cover we will address the balance of our concerns. One issue we discussed in particular was related to your argument regarding the alleged assignments from General Realty and Award Realty to Mr. Wilkes and Mr. Wolfram, respectively. We requested an opportunity to review the originals of exhibits you cite to in support of your argument that proper and timely assignments were, in fact, effectuated. As we discussed, Pardee objects to the authenticity those documents until such time that we can inspect the originals.

In the Affidavit of James M. Jimmerson, Esq. filed in support of the Opposition, you state that Exhibits 30-37 contained in the Appendix of Exhibits are "true and correct" copies of the documents they purport to be. Based on this statement we assume you or your clients have the originals of these documents within your possession and can make them available for our inspection. As such, we would like to inspect the originals of those documents at your office. We prefer to do this at your earliest convenience, but no later than **November 16, 2012**. If we do not hear from you by then, we will file a written objection asking the Court to compel you to retract your representation that these documents are "true and correct" copies, and to deem those documents as inadmissible if you are unable to properly establish their authenticity. As we discussed

100 WEST LIBERTY ST., 10<sup>TH</sup> FLOOR  
RENO, NEVADA 89501

P.O. BOX 2670, RENO, NEVADA 89505  
775-788-2000 • FAX 775-788-2020

ATTORNEYS AT LAW



[www.mcdonaldcarano.com](http://www.mcdonaldcarano.com)

2300 WEST SAHARA AVENUE  
SUITE 1000  
LAS VEGAS, NEVADA 89102  
702-873-4100  
FAX 702-873-9966

JA002117



MCDONALD-CARANO-WILSON

James M. Jimmerson

Page 3

November 9, 2012

in our telephone call, your clients testified under oath that they had no such assignments and you did not produce these documents in response to our specific requests for production. Only once we filed our motion for summary judgment did these documents suddenly "appear."

Please contact me if you would like to discuss this issue to more detail.

Sincerely,



Pat Lundvall

JA002118

**EXHIBIT “39”**

**EXHIBIT “39”**



**JIMMERSON HANSEN**

ATTORNEYS AT LAW

CELEBRATING 25 YEARS 1987-2012

James J. Jimmerson,  
Lynn M. Hansen

Shawn M. Giesinger  
James M. Brummen

\*ALSO ADMITTED IN CALIFORNIA  
\*\*AMERICAN ACADEMY OF  
NATIONAL LAWYERS  
\*\*\*CERTIFIED FAMILY LAW  
SPECIALIST

November 16, 2012

*Via U.S. Mail and Electronic Mail*

Pat Lundvall, Esq.  
McDONALD CARANO WILSON LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102

**RE: James Wolfram, Walt Wilkes v. Pardee Homes of Nevada  
A-10-632338-C**

Dear Ms. Lundvall,

I am in receipt of your letter dated November 9, 2012 regarding the above-referenced action. In response to your concerns about certain exhibits attached to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment, Mr. Shipley and I have agreed to meet at 2:00 p.m. today to allow him to inspect the originals of Exhibits 32, 33, 34, 36 and 37. Exhibits 30, 31 and 35 were produced by Stewart Title and I have relied on the Certificate of Custodian of Records stating that the produced documents are "true and exact" copies of the originals as the basis of my statement that Exhibits 30, 31 and 35 are true and correct copies of the originals.

The authenticity of Exhibits 30-37 should not be in question. Defendant's reference to Mr. Wolfram and Mr. Wilkes' deposition testimony about the assignment of rights under the September 1, 2004 Commission Agreement in its Motion for Summary Judgment is misplaced. It is apparent from reading the transcripts of the depositions of Mr. Wolfram and Mr. Wilkes that they did not understand the quality and nature of your questions. Mr. Wilkes, when asked if he received any assignment from Jack Matthews to General responded "Jack was my very close friend and he assigned me to make us play golf once a week." p. 42:1-2. In Mr. Wolfram's deposition he stated "what do you mean by claims? Give me an example of what you're talking about." p. 9:9-10. These statements illustrate that Plaintiffs did not understand the meaning of your questions. Your attempt to rephrase the questions by saying "typically an assignment is a contractual document where it's in writing where a company will assign to you the right to bring claims or bring litigation to assert causes of action on their behalf," was insufficient to clarify the meaning of the

Pat Lundvall, Esq.  
November 16, 2012  
Page 2

questions and to garner accurate responses. Wolfram Dep. at p. 9:11-15. As demonstrated by the assignments from Award Realty and General Realty, the companies did not assign to Plaintiffs the right to bring the action on their behalf, but instead assigned to Plaintiffs "all rights, title and interest" in the September 1, 2004 Commission Agreement. This language is found in the December 20, 2010, and January 11, 2011 Assignments signed by Mr. Dana and Mr. Masini and is quoted in Plaintiffs' Amended Complaint at paragraphs 2 and 3.

You state in your letter, "You did not produce these documents in response to our specific requests for production. Only once we filed our Motion for Summary Judgment did these documents suddenly 'appear.'" This is untrue. Defendant had been notified of the assignments as early as August 19, 2011, when a copy of the Assignment signed by Mr. Dana was produced to you at bates PLTF 157A. Also, in response to Request for Production No. 5, Plaintiffs referred you to "two Assignments of Real Estate Commission and Personal Certification Agreement bates nos. PLTF 0153 - PLTF 0157A." We also stated, "discovery is ongoing and Plaintiffs expressly reserve the right to supplement these responses as necessary." A copy of that response is enclosed.

Furthermore, Plaintiffs provided you copies of Exhibits 30, 31 and 35 when producing documents from Stewart Title. As stated by Mr. Shipley in his Declaration in support of Defendant's Motion for Summary Judgment, your office was in receipt of these documents on January 18, 2012. As such, Defendant was on notice that General Realty and Award Realty's rights, title and interest in the September 1, 2004 Commission Agreement had been assigned to Plaintiffs when Defendant received copies of Plaintiffs and Stewart Titles' documents no later than ten months ago. The only documents which were produced after you filed the Motion for Summary Judgment were the Affidavits and Verifications from Mr. Masini, Mr. Dingerson, Mr. Wilkes and the December 20, 2010 Assignment signed by Mr. Masini. The Affidavits and Verification were necessitated by Defendant's Motion for Summary Judgment and therefore could not have been produced before receiving the Motion. Because these assignments are only relevant as to whom the true parties in interest are—and do not go to the factual merits of the causes of action—their production shortly before the close of discovery does not prejudice your client.

Finally, Defendant did not take any additional discovery regarding its concerns about these Assignments from Award Realty and General Realty to Plaintiffs beyond asking Plaintiffs questions they clearly did not understand. Depositions of Mr. Masini and Mr. Dana were never taken, and Defendant did not serve either Award Realty or General Realty with a subpoena for records. As such, and in light of the documents produced to date, there should be no dispute as to the validity of the Assignments and the fact that Plaintiffs are the real parties in interest to this action.

Pat Lundvall, Esq.  
November 16, 2012  
Page 3

Thank you for your attention to these matters. If you have any further questions or concerns please do not hesitate to contact my office.

Sincerely,

JIMMERSON HANSEN, P.C.

  
James M. Jimmerson, Esq.

JMJ/mh  
Enclosure

JA002122

1 **REQUEST NO. 5:**

2 All documents reflecting an assignment of claims or commissions from Award Realty  
3 related to either the Commission Letter or the Option Agreement.

4 **RESPONSE NO. 5:**

5 Please see two Assignments of Real Estate Commission and Personal Certification  
6 Agreement (Bates Nos. PLTF0153-PLTF0157A). Discovery is on-going and Plaintiffs  
7 expressly reserve the right to supplement these Responses as necessary.

8 **REQUEST NO. 6:**

9 All versions and/or drafts of the Commission Letter, including but not limited to, those  
10 referenced during your deposition. See Transcript of Deposition of James Wolfram, dated  
11 November 8, 2011, pgs. 61:13-62:13.

12 **RESPONSE NO. 6:**

13 Please see July 1, 2004 draft correspondence from Jon Lash of Pardee Homes to  
14 Plaintiffs regarding Option Agreement (Bates Nos. PLTF10415-PLTF10417), August 5, 2004  
15 draft correspondence from Sandler and Rosen, LLP regarding Option Agreement (Bates Nos.  
16 PLTF10418-PLTF10420), August 16, 2004 draft correspondence from Jon Lash to Plaintiffs  
17 regarding Commission Agreement (Bates Nos. PLTF10421-PLTF10423), and September 1,  
18 2004 draft correspondence from Walt Wilkes to Jim Wolfram regarding Option Agreement  
19 (Bates Nos. PLTF10424-PLTF10428). Discovery is on-going and Plaintiffs expressly reserve  
20 the right to supplement these Responses as necessary.

21 **REQUEST NO. 7:**

22 All documents reflecting communications and/or correspondence between you and  
23 Walt Wilkes regarding Coyote Springs, the Option Agreement, and/or the Commission Letter.

24 **RESPONSE NO. 7:**

25 None at this time. Discovery is on-going and Plaintiffs expressly reserve the right to  
26 supplement these Responses as necessary.

27 ///

28

**EXHIBIT “40”**

**EXHIBIT “40”**



### ASSIGNMENT

Reference is made to the December 20, 2010 Assignment by Jerry Masini, owner/broker of Award Realty and made on behalf of Award Realty, a copy of which is attached hereto as Exhibit A. I, Peter J. Dingerson, owner/broker of D&W Real Estate LLC, on behalf of D&W Real Estate LLC, hereby assign to James F. Wolfram all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that D&W Real Estate LLC has any rights, title or interest in the same.

Dated: December 3, 2012

D&W REAL ESTATE, LLC

By:   
PETER J. DINGERSON  
OWNER/BROKER

**EXHIBIT “A”**

**EXHIBIT “A”**

FROM :

FAX NO. :

Oct. 26 2012 02:57PM P2

December 20, 2010

I, Jerry Masini, Owner/ Broker of Award Realty, on behalf of Award Realty, hereby assign to James F. Wolfram and/or D & W Real Estate LLC, Peter Dingerson, broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between Award Realty and Pardee Homes.

December 20, 2010

By: Jerry Masini, Owner/Broker  
Award Realty

  
\_\_\_\_\_  
Jerry Masini

PLTF10486

JA002127

**EXHIBIT “41”**

**EXHIBIT “41”**


### ASSIGNMENT

Reference is made to the January 11, 2011 Assignment by Jay Dana, owner/broker of General Realty Group, Inc. and made on behalf of General Realty Group, Inc., a copy of which is attached hereto as Exhibit A. I, Mark Carmen, owner/broker of Las Vegas Realty Center, and on behalf of Las Vegas Realty Center, hereby assign to Walt Wilkes all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that Las Vegas Realty Center has any rights, title or interest in the same.

Dated: December 3, 2012

LAS VEGAS REALTY CENTER

By:

  
MARK CARMEN  
OWNER/BROKER

**EXHIBIT “A”**

**EXHIBIT “A”**

FROM :

01/11/2011 14:03

17027364353

FAX NO. :

GENERALREALTYGROUP

Oct. 26 2012 02:58PM P5


PAGE 01

January 11, 2011

I, Jay Dana, Owner/Broker of General Realty Group INC, on behalf of General Realty Group, INC. hereby assign to Walter D. Wilkes and/or, Las Vegas Realty Center, Mark Carmen, Owner, Broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between General Realty and Pardo Homes

January 11, 2011

By: Jay Dana, Owner/Broker  
General Realty Group, INC.



PLTF10485

JA002131

**EXHIBIT “42”**

**EXHIBIT “42”**



fc

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 **SUPP**  
2 JAMES J. JIMMERSON, ESQ.  
3 Nevada Bar No. 000264  
4 LYNN M. HANSEN, ESQ.  
5 Nevada Bar No. 0244  
6 JAMES M. JIMMERSON, ESQ.  
7 Nevada Bar No. 12599  
8 JIMMERSON HANSEN, P.C.  
9 415 So. Sixth St., Ste. 100  
10 Las Vegas, NV 89101  
11 Tel No.: (702) 388-7171; Fax No.: (702) 380-6406  
12 [jjj@jimmersonhansen.com](mailto:jjj@jimmersonhansen.com)  
13 [lmh@jimmersonhansen.com](mailto:lmh@jimmersonhansen.com)  
14 [jmj@jimmersonhansen.com](mailto:jmj@jimmersonhansen.com)

15 Attorney for Plaintiffs  
16 James Wolfram and Walt Wilkes

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 JAMES WOLFRAM AND WALT WILKES  
13 Plaintiffs,  
14 vs.  
15 PARDEE HOMES OF NEVADA,  
16 Defendant.

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

17 **PLAINTIFFS' SIXTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF**  
18 **WITNESSES AND DOCUMENTS**

19 COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their  
20 attorneys, Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of  
21 Jimmerson Hansen, P.C., and hereby submits the following Fifth Supplement to list of  
22 witnesses and production of documents, as follows (*new items in bold*):  
23

24 ///  
25 ///  
26 ///

I.  
**WITNESSES**

Plaintiffs provide the following witnesses' identities, last known address and telephone numbers:

1. James Wolfram  
c/o Jimmerson Hansen, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171

This person most knowledgeable is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

2. Walt Wilkes  
c/o Jimmerson Hansen, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171

This person most knowledgeable is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

3. Frances Butler Dunlap  
Chicago Title Company  
Las Vegas, Nevada

This person was the head of the Real Estate Commercial Department of Chicago Title Company, is most knowledgeable, and is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

4. PARDEE HOMES OF NEVADA  
Custodian of Records  
McDonald Carano Wilson LLP  
100 West Liberty Street, 10th Floor  
Reno, Nevada 89501  
(775) 788-2000

Pardee Homes of Nevada is a named Defendant in this matter. Its present or former employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6) and/or custodians of records are expected to testify regarding the facts and background of this case.

1           5.     PARDEE HOMES OF NEVADA  
2                Person Most Knowledgeable  
3                McDonald Carano Wilson LLP  
4                100 West Liberty Street, 10th Floor  
5                Reno, Nevada 89501  
6                (775) 788-2000

7           Pardee Homes of Nevada is a named Defendant in this matter. Its present or former  
8           employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6)  
9           and/or Person Most Knowledgeable are expected to testify regarding the facts and background  
10          of this case.

11          6.     Jon Lash  
12                c/o McDonald Carano Wilson LLP  
13                100 West Liberty Street, 10th Floor  
14                Reno, Nevada 89501  
15                (775) 788-2000

16          Mr. Lash is an employee of PARDEE HOMES OF NEVADA and is expected to testify  
17          regarding the facts and background of this case.

18          7.     Clifford Anderson  
19                c/o McDonald Carano Wilson LLP  
20                100 West Liberty Street, 10th Floor  
21                Reno, Nevada 89501  
22                (775) 788-2000

23          Mr. Anderson is an employee of PARDEE HOMES OF NEVADA and is expected to  
24          testify regarding the facts and background of this case.

25          8.     Harvey Whitmore  
26                c/o Coyote Springs  
27                Address Unknown

28          Mr. Whitmore is the owner of the property involved in this lawsuit and is expected to  
testify regarding the facts and background of this case.

9.     Chicago Title Company  
Las Vegas, Nevada  
Custodian of Records

The Custodian of Records is expected to testify regarding the facts and background of  
this case.

10.    Chicago Title Company  
Las Vegas, Nevada  
Person Most Knowledgeable

1 The Person Most Knowledgeable is expected to testify regarding the facts and  
2 background of this case.

3 11. Peter J. Dingerson  
4 D&W Real Estate  
5 5455 S. Durango Dr., Ste 160  
6 Las Vegas, NV 89113

7 Mr. Dingerson is the owner of D&W Real Estate and is expected to testify regarding the  
8 facts and background of this case.

9 12. Jay Dana  
10 General Realty Group  
11 6330 S. Eastern Ave Ste 2  
12 Las Vegas, NV 89119

13 Mr. Dana is the owner of General Realty Group Inc. and is expected to testify regarding  
14 the facts and background of this case.

15 13. Jerry Masini  
16 Award Realty Corp.  
17 3015 S. Jones Blvd.  
18 Las Vegas, NV 89146

19 Mr. Masini is the owner of Award Realty and is expected to testify regarding the  
20 facts and background of this case.

21 Plaintiffs reserve the right to call any and all witnesses who may be disclosed or  
22 deposed throughout the course of discovery.

23 Plaintiffs reserve the right to call any and all of Defendant's witnesses; and

24 Plaintiffs reserve the right to call any and all rebuttal witnesses.

25 Plaintiffs' experts, if any, as yet unidentified.

26 Plaintiffs reserve the right to supplement this list of witnesses as discovery  
27 progresses and until the time of trial in this case.

## 28 II.

### DOCUMENTS

Pursuant to NRCP 16.1(a)(1)(B), Plaintiffs provide the following documents relating to  
Plaintiffs and Defendants:

1. Any and all written agreements between the Parties;
2. Any and all documents evidencing damages to the Plaintiffs;
3. Any and all correspondence between the Parties;
4. Any and all appropriate Custodian of Record documents;
5. Any and all pleadings in this matter;
6. Documents labeled Bates Numbers PLTL0001-PLTL00244;

These documents are being reproduced as Plaintiffs' Initial NRCP 16.1 Disclosures of Witnesses and Documents had duplicate documents. The duplicate copies have been removed and the documents are listed as follows:

- A. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions dated May 2004 (Bates No. PLTF0001-0080);
- B. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
- C. Two Assignments of Real Estate Commission and Personal Certification Agreement (Bates No. PLTF0153-0157A)
- D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes regarding the attached Commission letter dated September 1, 2004, (Bates No. PLTF0158-0162);
- E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
- G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
- H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
- I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
- J. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);
- K. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates No. PLTF0197-0202);
- L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No. PLTF0203-0205);
- M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash, (Bates No. PLTF0206-0209);

- 1 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq.,  
2 (Bates No. PLTF0210-0211);
- 3 Bates Nos. PLTF0212-0244 are the duplicative documents produced in  
4 Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 5 7. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces  
6 Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 7 8. Documents produced by Chicago Title in response to Plaintiffs' Subpoena  
8 Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 9 9. Documents produced by Coyote Springs Investments in response to Plaintiff's  
10 Duces Tecum on CD, (Bates No. CSI\_Wolfram 000014 -  
11 CSI\_Wolfram0003004), attached hereto;
- 12 10. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 -  
13 PLTF10417), attached hereto;
- 14 11. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached  
15 hereto;
- 16 12. Non-Party Coyote Springs Investments, LLC's Supplement and Amended  
17 Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates  
18 PLTF10420-PLTF10424, attached hereto.
- 19 13. Chicago Title Company's previously bates stamped documents no. PLTF 1424  
20 through PLTF 10414 (on bottom right of documents bate stamped) and rebated  
21 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bate  
22 stamped), including the Custodian of Records Subpoena to Chicago Title  
23 Company including the executed Certificate of Custodian of Records bates  
24 stamped as Cht 08997.
- 25 14. Stewart Title Company's previously bate stamped documents no. PLTF 0245  
26 through PLTF 1423 and rebated as bates nos: Stwt 0001 through 1202.  
27 Documents Stwt 0699 and Stwt 0731 are copy coversheets and were  
28 inadvertently bates stamped.
15. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,  
page 51, bates PLTF 10427 through PLTF 10438.
16. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,  
page 35, bates PLTF 10439 through PLTF 10440.
17. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,  
page 18, bates PLTF 10441 through PLTF 10443.
18. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,  
page 57, bates PLTF 10444 through PLTF10456.
19. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113,  
page 55, bates PLTF 10457 through PLTF 10462.
20. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,  
page 57, bates PLTF 10463 through PLTF 10468.
21. Copy of redacted billing sheets representing attorney's fees charged by

1 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,  
2 bates PLTF 10469 through PLTF 10481.

3 22. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.

4 23. Assignment of Rights, Title and Interest from Jay Dana on behalf of General  
5 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.

6 24. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award  
7 Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.

8 25. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of  
9 Walt Wilkes, bates PLTF 10487.

10 26. **Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.**

11 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any  
12 parties or used at any depositions.

13 Plaintiffs reserve the right to any and all other relevant documents to this matter.

14 Plaintiffs reserve the right to identify and produce different and/or additional documents  
15 as the investigation and discovery in this case proceeds.

16 III.

17 COMPUTATION OF DAMAGES

18 Plaintiffs calculate their damages to be in excess of \$1,900,000.00 associated with the  
19 Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations  
20 to the Plaintiffs.

21 There are two primary components to this calculation. The first component is the loss  
22 of future commissions from future sales or takedowns of property located in Clark County,  
23 subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least  
24 3,000 acres of property, defined as Option Property under the Option Agreement effective  
25 June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South,  
26 Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June  
27 1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production  
28 Residential Property—a purchase and designation that would entitle Plaintiffs to a 1.5%  
commission on a per-acre price of \$40,000.00. If 3,000 acres were purchased by Pardee  
under this scenario, Plaintiffs would be entitled to \$1,800,000 in commissions. However,  
Pardee's course of conduct in failing to appropriately discharge its duties under the

1 Commission Letter Agreement has robbed Plaintiffs of this opportunity to be paid these  
2 commissions. Pardee's actions have served to reclassify the land originally labeled as  
3 Purchase Property and Option Property, and under the new reclassification, all Option  
4 Property has been removed from Clark County, thereby divesting Plaintiffs of any hope to  
5 collect any part of the \$1.8 million in commissions they could be paid had no reclassification  
6 occurred.

7 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees  
8 currently exceed \$102,700.00. This amount represents all work from the date of drafting of  
9 the Complaint in November 2010 through October 19, 2012. These attorney's fees constitute  
10 damages pursuant to the September 1, 2004 Commission Letter Agreement. As stated in the  
11 Agreement, "In the event, either party brings an action to enforce its rights under this  
12 Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs."  
13 Plaintiffs in bringing this suit expect to be the prevailing party and, as such, are entitled to their  
14 reasonable attorney's fees as damages for Defendant's breach of contract and breach of the  
15 covenant of good faith and fair dealing.

16 Finally, Plaintiffs must be compensated for the time and effort expended attempting to  
17 discover from public records what information was owed to them under the Commission Letter  
18 Agreement. Discovery is still ongoing therefore the Plaintiffs reserve

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JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1157

1 the right to amend and supplement this response as the investigation and discovery in this  
2 case proceeds.

3 Dated this 29<sup>th</sup> October, 2012

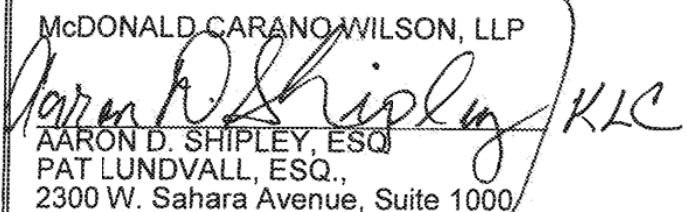
4 JIMMERSON HANSEN, P.C.

5  
6   
JAMES J. JIMMERSON, ESQ.  
Nevada Bar No. 000264  
LYNN M. HANSEN, ESQ.  
Nevada Bar No. 0244  
JAMES M. JIMMERSON, ESQ.  
Nevada Bar No. 12599  
415 So. Sixth St., Ste. 100  
Las Vegas, NV 89101  
Attorney for Plaintiffs  
James Wolfram and Walt Wilkes

11 RECEIPT OF COPY

12 The undersigned hereby acknowledges receipt of copy of PLAINTIFFS' SIXTH  
13 SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS  
14 on this 29<sup>th</sup> day of October, 2012, at 3:21 a.m./p.m.

16 McDONALD CARANO WILSON, LLP

17  KLC  
18 AARON D. SHIPLEY, ESQ.  
19 PAT LUNDVALL, ESQ.,  
20 2300 W. Sahara Avenue, Suite 1000  
21 Las Vegas, Nevada 89102  
Attorneys for Defendant  
Pardee Homes of Nevada

1 AFFT

2 JAMES J. JIMMERSON, ESQ.

3 Nevada Bar No.: 00264

4 LYNN M. HANSEN, ESQ.

5 Nevada Bar No.: 00244

6 JAMES M. JIMMERSON, ESQ.

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12 [lmh@jimmersonhansen.com](mailto:lmh@jimmersonhansen.com)

13 [jmj@jimmersonhansen.com](mailto:jmj@jimmersonhansen.com)

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 JAMES WOLFRAM and WALT WILKES )

CASE NO.: A-10-632338-C

17 Plaintiffs, )

DEPT NO.: IV

18 vs. )

19 PARDEE HOMES OF NEVADA, )

20 Defendant )

21 AFFIDAVIT OF J. J. J.

22 J. J. J., being first duly sworn, deposes and states:

23 I am over the age of 18 and am not a party to this action. I am familiar with  
24 the facts set forth herein, with the exception of those facts stated on information and  
25 belief and as to those facts, I believe them to be true.

26 1. Your Affiant is an agent and representative of Award Realty Corp.,  
27 ("Award") capable of acting on behalf of Award.

2. Your Affiant has personal knowledge of the facts and circumstances surrounding the issues discussed in the letter from Award to Linda Jones at Stewart Title dated May 5, 2005, with the subject line: James Wolfram, and makes this Affidavit based upon said knowledge.

3. Your Affiant makes this Affidavit to clarify the purpose, intent and effect of that May 5, 2005 letter from Award to Stewart Title.

4. In May, 2005, Award irrevocably assigned, conveyed and granted to James Wolfram at D&W Realty all rights, title and interest Award had in the September 1, 2004 Commission Letter Agreement, by and between Award, General Realty Group, Inc. and Pardee Homes of Nevada.

5. The May 5, 2005 letter from Award Realty Corp. to Stewart Title, reflected Award's assignment and conveyance to James Wolfram at D&W Realty all rights, title and interest it had in the September 1, 2004 Commission Letter Agreement, by and between Award, General Realty Group, Inc. and Pardee Homes of Nevada.

6. Since May 5, 2005, Award Realty has not taken any interest in the Coyote Springs land transaction, escrow no.: 04-09-0209LJ. This is a result of Award's full and complete assignment of all rights, title and interest it once had the September 1, 2004 Commission Letter Agreement prior to the assignment.

///

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JIMMERSON HANSEN, P.C.  
415 South Main Street, Suite 100 Las Vegas, Nevada 89101  
Telephone (702) 747-7171 Fax (702) 747-1167

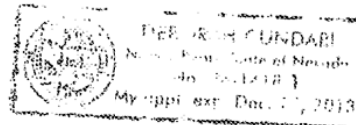
7. This Affidavit is made in good faith and for the purposes of clarifying any questions or uncertainties, if any there be, about certain documents related to the litigation between Mr. Wolfram and Mr. Wilkes and Pardee Homes of Nevada.

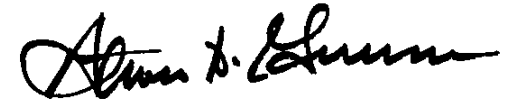
Further your Affiant sayeth naught.

DATED this \_\_\_\_\_ day of October, 2012.

SUBSCRIBED and SWORN to before  
me this 16 day of October, 2012.

[Signature]  
NOTARY PUBLIC in and for said  
COUNTY and STATE





CLERK OF THE COURT

**MIL**  
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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[lundvall@mcdonaldcarano.com](mailto:lundvall@mcdonaldcarano.com)  
[ashipley@mcdonaldcarano.com](mailto: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

**DEFENDANT'S MOTION IN LIMINE TO  
EXCLUDE PLAINTIFFS' CLAIM FOR  
ATTORNEYS' FEES AS AN ELEMENT  
OF DAMAGES**

**(MIL #1)**

Hearing Date:  
Hearing Time:

Trial Date: April 15, 2013

Defendant Pardee Homes of Nevada ("Pardee") hereby moves the Court for an order *in limine* on the non-admissibility of the issue of attorneys' fees as an element of damages, sought to be introduced by Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") in the trial on this matter. Testimony and evidence at the trial regarding Plaintiffs' alleged attorneys' fees and costs would be improper in the context of this breach of contract case as they cannot be considered an element of Plaintiffs' damages. Such issues should be handled in post-trial briefing only.

1 This Motion is brought pursuant to NRS 47.060, the following Memorandum of  
2 Points and Authorities, the exhibits attached hereto, the pleadings and papers on file  
3 herein, and any oral argument this Court wishes to consider.

4 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2013.

5 McDONALD CARANO WILSON LLP

6  
7 /s/ Aaron D. Shipley  
8 Pat Lundvall (#3761)  
9 Aaron D. Shipley (#8258)  
10 2300 West Sahara Avenue, Suite 1000  
11 Las Vegas, Nevada 89102  
12 *Attorneys for Defendant Pardee Homes of*  
13 *Nevada*

14 **NOTICE OF MOTION**

15 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

16 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
17 will bring the foregoing **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE**  
18 **PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES** on  
19 for hearing before the above-entitled Court on the 16 day of April,  
20 2013, at the hour of 8 : 30 a.m. or as soon thereafter as counsel may be heard.

21 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2013.

22 McDONALD CARANO WILSON LLP

23 /s/ Aaron D. Shipley  
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*

**DECLARATION OF AARON D. SHIPLEY IN SUPPORT OF DEFENDANT'S MOTION  
IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES AS AN  
ELEMENT OF DAMAGES**

AARON D. SHIPLEY, after being sworn, declares as follows:

1. I am licensed to practice law in the State of Nevada, and am a partner with the law firm of McDonald Carano Wilson LLP, attorneys of record for Defendant Pardee Homes ("Pardee").

2. This Declaration is made of my own personal knowledge except where stated upon information and belief, and as to those matters, I believe them to be true.

3. This Declaration is submitted in compliance with EDCR 2.47 and in support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (the "Motion").

4. On February 28, 2013, I spoke to James M. Jimmerson, counsel for Plaintiffs, via telephone, as required by EDCR 2.47. We discussed the issues relevant to this Motion. We disagreed on the issue of whether Plaintiffs could properly seek an award of their attorneys' fees as an element of their damages at trial, as opposed to seeking an award of their fees in post-trial motion practice if they are found to be the prevailing party at trial. Ultimately we were unable to resolve this issue during our telephone conference.

5. Under the circumstances, despite a good faith effort to confer, the motion has become necessary.

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

DATED this 1<sup>st</sup> day of March, 2013.

/s/ Aaron D. Shipley  
AARON D SHIPLEY

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND**

This case, simply put, involves claims for breach of contract arising from the Commission Agreement dated September 1, 2004 ("Commission Agreement" or "Commission Letter"), which Pardee and the Plaintiffs negotiated and executed. A copy of the Commission Letter is attached hereto as **Exhibit A**. The undisputed evidence reveals that Pardee performed all of its contractual obligations.

Plaintiffs acknowledge that their contractual relationship with Pardee is dictated entirely by the Commission Agreement. The Commission Agreement governs the payment of commissions from Pardee to Plaintiffs related to Pardee's purchase of certain property from CSI related to the Project. It is this Commission Agreement that Plaintiffs accuse Pardee of breaching. The Commission Agreement contains an attorneys' fees provision, which states: "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." See Exhibit A, at p. 2.

Plaintiffs have claimed that their attorneys' fees should be considered an element of their damages. Their NRCP 16.1 disclosure states, in part: "The second component of this calculation [of damages] is attorney's fees. Plaintiffs' attorney's fees currently exceed \$102,700.00. This amount represents all work from the date of drafting of the Complaint in November 2010 through October 19, 2012. These attorney's fees constitute damages pursuant to the September 1, 2004 Commission Letter Agreement...Plaintiffs in bringing this suit expect to be the prevailing party and, as such, are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract and breach of the covenant of good faith and fair dealing." See Plaintiffs' Seventh Supplement to NRCP 16.1 Disclosure of Witnesses and Documents, at p. 8:14-22, a copy of which is attached hereto as **Exhibit B**.

Plaintiffs' contention that they are entitled to reimbursement of their attorney's fees as an element of their alleged damages is misguided and contrary to Nevada law.



1 Therefore, Pardee requests the Court issue an order *in limine* that Plaintiffs are  
2 precluded from offering any evidence at trial, in the form of documents, testimony,  
3 expert opinions and any other evidence, related to their claim for an award of their  
4 attorneys' fees. Attorneys' fees in the context of a breach of contract case such as this  
5 cannot be awarded as an element of damages. In this context, Attorneys' fees can only  
6 be only properly awarded to the prevailing party. There can be no determination of  
7 prevailing party until the conclusion of the trial. An order *in limine* on this issue will  
8 promote efficiency in preparation for and during the trial.

## 9 II. LEGAL ARGUMENT

### 10 A. Legal Standard.

11 Pursuant to NRS 47.060, a motion in limine is the proper vehicle to prevent the  
12 introduction of inadmissible evidence at trial. See NRS 47.080(1). ("[p]reliminary  
13 questions concerning the qualification of a person to be a witness, the existence of a  
14 privilege or the admissibility of evidence shall be determined by the judge."). The ruling  
15 on a motion *in limine* lies soundly within the district court's discretion. See State ex. rel.  
16 Dept. of Highways v. Nevada Aggregates and Asphalt Co., 92 Nev. 370, 551 P.2d  
17 1095, 1098 (1976).

18 Motions in limine take two forms: (1) to procure a definitive ruling on the  
19 admissibility of evidence at the outset of trial; or (2) to prevent counsel for the opposing  
20 party from mentioning potentially inadmissible evidence in his opening statement, or  
21 eliciting such evidence from a witness until a definitive ruling on the admissibility or non-  
22 admissibility of the evidence can be made. Born v. Eisenman, 114 Nev. 854, 962 P.2d  
23 1227 (1998); Nev. Rev. St. 47.080; see 21 Charles Alan Wright and Kenneth W.  
24 Graham, Jr., Federal Practice and Procedure §5037.6 (2007). This motion takes both  
25 forms.

26 An order in limine further promotes efficiency at trial and helps minimize  
27 disruptions, increasing uninterrupted flow of evidence during trial. Kelly v. New West  
28 Federal Savings, 56 Cal. Rptr. 2d 803, 808 (1996).

1           **B. Plaintiffs Are Precluded From Presenting Evidence At Trial About**  
2           **Their Alleged Attorneys' Fees as an Element of Damages.**

3           Plaintiffs argue that they have suffered damages in the form of attorneys' fees.  
4           However, Plaintiffs have not specially pled attorneys' fees as an element of their  
5           damages. See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc., 117 Nev.  
6           948, 35 P.3d 964, (2001). In Sandy Valley, the Nevada Supreme Court discusses the  
7           difference between attorney fees as a cost of litigation and attorney fees as an element  
8           of damages. See id., 117 Nev. at 955, 35 P.3d at 968-969. The court acknowledges  
9           that attorney fees cannot be recovered as a cost of litigation unless authorized by  
10          agreement, statute, or rule. See id., 117 Nev. at 956, 35 P.3d at 969 (internal citation  
11          omitted). The Nevada Supreme Court also recognizes that when parties seek attorney  
12          fees as a cost of litigation, documentary evidence of the fees is presented generally by  
13          post-trial motion. See id. In contrast, however, when attorney fees are claimed as  
14          foreseeable damages arising from tortious conduct or a breach of contract, they are  
15          considered special damages and must be pled in the complaint pursuant to NRCP  
16          9(g). See id. "The mention of attorney fees in a complaint's general prayer for relief is  
17          insufficient to meet this requirement." Id.

18          Plaintiffs have only generally alleged attorneys fees, and therefore, cannot now  
19          claim their attorneys' fees as an element of damages. In their Amended Complaint, a  
20          recovery of attorneys' fees was only mentioned in the Plaintiffs' general prayer for relief.  
21          Plaintiffs did not articulate its current position until a very late NRCP 16.1 disclosure.  
22          Thus, Plaintiffs have now wrongfully asserted their attorneys' fees as a basis for their  
23          argument that they have suffered recoverable damages.

24          Most recently, in 2011 the Nevada Supreme Court again recognized the  
25          development of Sandy Valley and its progeny by summarizing:

26                In Sandy Valley Associates v. Sky Ranch Estates, we distinguished  
27                between attorney fees as a cost of litigation and as special damages. 117  
28                Nev. 948, 955-60, 35 P.3d 964, 968-71 (2001), receded from on other  
                  grounds as stated in Horgan v. Felton, 123 Nev. 577, 579, 170 P.3d 982,  
                  983 (2007). Attorney fees that are a cost of litigation arise from an

1 agreement, statute, or rule authorizing the fees, whereas attorney fees  
2 that are considered special damages are fees that are foreseeable arising  
3 from the breach of contract or tortious conduct. *Id.* at 956, 35 P.3d at 969.  
4 In *Shuette v. Beazer Homes Holdings Corp.*, we supplemented *Sandy*  
5 *Valley* by explaining that fees as special damages “constitute a rather  
6 **narrow exception** to the rule prohibiting attorney fees awards absent  
7 express authorization.” 121 Nev. 837, 862, 124 P.3d 530, 547  
8 (2005)(emphasis added).

9 *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. Adv.  
10 Op. 26, ---, 255 P.3d 268, 279 n. 11 (Jun. 2, 2011). Thus, Plaintiffs have wrongfully  
11 asserted their attorneys’ fees as a basis for their argument that they have suffered  
12 recoverable damages.

13 By completely failing to specifically plead for such an award at the outset of this  
14 litigation, Plaintiffs cannot now claim their attorneys’ fees as an element of damages.  
15 Plaintiffs should be precluded from introducing any evidence at trial to support this  
16 claim. In this case, pursuant to the attorneys’ fees provision in the Commission  
17 Agreement attorneys’ fees can only be awarded to the prevailing party. There can be  
18 no determination of prevailing party until the conclusion of the trial. Therefore, this  
19 issue should be handled in post-trial briefing only. In this regard, if Pardee is the  
20 prevailing party at trial, it will seek an award of its attorneys’ fees and costs after the  
21 trial under the same attorneys’ fees provision in the Commission Agreement.

22 ///

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1     **IV.   CONCLUSION**

2             Based on the foregoing, Pardee requests the Court issue an order *in limine* to  
3 preclude impermissible evidence, in the form of documents, testimony, expert opinions  
4 and all other evidence, at trial on the issue of attorneys' fees as an element of Plaintiffs'  
5 alleged damages. This early *in limine* ruling will allow the parties to more efficiently  
6 prepare for trial.  
7

8             RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2013.

9                             McDONALD CARANO WILSON LLP

10                            /s/ Aaron D. Shipley  
11                            Pat Lundvall (#3761)  
12                            Aaron D. Shipley (#8258)  
13                            2300 West Sahara Avenue, Suite 1000  
14                            Las Vegas, Nevada 89102  
15                            Attorneys for Defendant Pardee Homes of  
16                            Nevada  
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP  
3 and that on the 1<sup>st</sup> day of March, 2013, I served a true and correct copy of the foregoing  
4 **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR**  
5 **ATTORNEYS' FEES AS AN ELEMENT OF DAMAGES** via U.S. Mail on the following:

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

11 /s/ Melissa A. Merrill  
12 An Employee of McDonald Carano Wilson LLP

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17 273258  
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 **MCDONALD-CARANO-WILSON**  
100 WEST LIBERTY STREET, 10<sup>TH</sup> FLOOR • RENO, NEVADA 89501  
P.O. BOX 2670 • RENO, NEVADA 89505-2670  
PHONE 775-788-2000 • FAX 775-788-2020

# **EXHIBIT A**



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

JON R. LASH  
Sr. Vice President  
(310) 475-3628 ext. 281  
(310) 445-1285

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).

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.

\\calaimf61\Users\dats\Lawson\My documents\Land Acq - JEL\Letters\2004 Letters\Wilkes\_04.09.02.doc



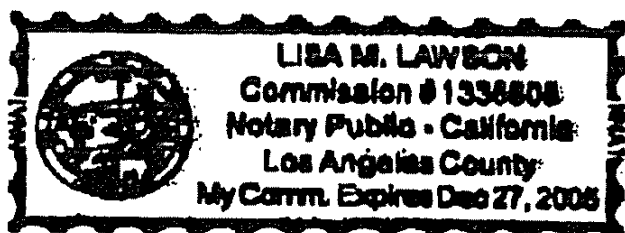
Mr. Walt Wilkes  
Mr. Jim Wolfram  
September 1, 2004  
Page 3

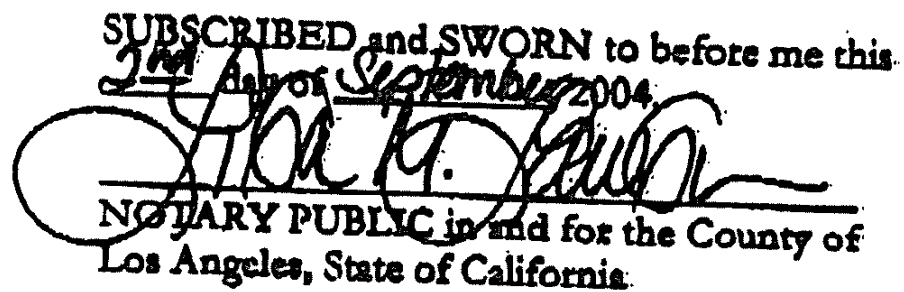
Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,  
a Nevada corporation

By:   
Jon E. Lash  
Senior Vice President



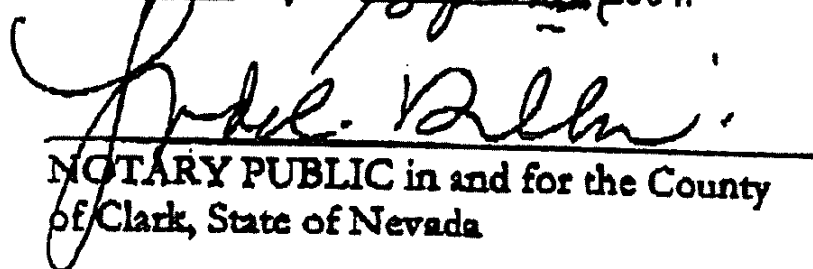
SUBSCRIBED and SWORN to before me this  
1st day of September 2004.  
  
NOTARY PUBLIC in and for the County of  
Los Angeles, State of California.

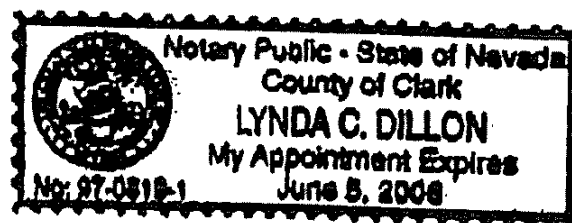
Agreed to and accepted:

GENERAL REALTY GROUP, INC.

By:   
Walt Wilkes

SUBSCRIBED and SWORN to before me  
this 1st day of September 2004.

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



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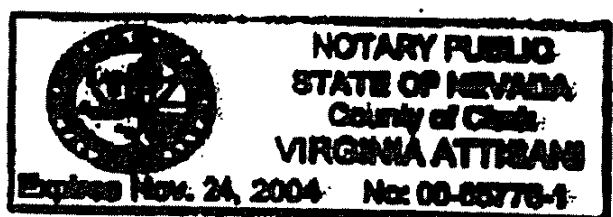
Mr. Walt Wilkes  
Mr. Jim Wolfram  
September 1, 2004  
Page 4

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



# **EXHIBIT B**

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 **SUPP**  
2 JAMES J. JIMMERSON, ESQ.  
3 Nevada Bar No. 000264  
4 LYNN M. HANSEN, ESQ.  
5 Nevada Bar No. 0244  
6 JAMES M. JIMMERSON, ESQ.  
7 Nevada Bar No. 12599  
8 JIMMERSON HANSEN, P.C.  
9 415 So. Sixth St., Ste. 100  
10 Las Vegas, NV 89101  
11 Tel No.: (702) 388-7171; Fax No.: (702) 380-6406  
12 jjj@jimmersonhansen.com  
13 lmh@jimmersonhansen.com  
14 lmj@jimmersonhansen.com

15 Attorney for Plaintiffs  
16 James Wolfram and Walt Wilkes

17 **DISTRICT COURT**  
18 **CLARK COUNTY, NEVADA**

19 JAMES WOLFRAM AND WALT WILKES

20 Plaintiffs,

21 vs.

22 PARDEE HOMES OF NEVADA,

23 Defendant.

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

24 **PLAINTIFFS' SEVENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF**  
25 **WITNESSES AND DOCUMENTS**

26 COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their  
27 attorneys, Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of  
28 Jimmerson Hansen, P.C., and hereby submits the following Seventh Supplement to list of  
witnesses and production of documents, as follows (*new items in bold*):

///

///

///

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

I.

WITNESSES

Plaintiffs provide the following witnesses' identities, last known address and telephone numbers:

1. James Wolfram  
c/o Jimmerson Hansen, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171

This person most knowledgeable is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

2. Walt Wilkes  
c/o Jimmerson Hansen, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171

This person most knowledgeable is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

3. Frances Butler Dunlap  
Chicago Title Company  
Las Vegas, Nevada

This person was the head of the Real Estate Commercial Department of Chicago Title Company, is most knowledgeable, and is expected to render testimony regarding the facts and circumstances surrounding the subject matter of this litigation.

4. PARDEE HOMES OF NEVADA  
Custodian of Records  
McDonald Carano Wilson LLP  
100 West Liberty Street, 10th Floor  
Reno, Nevada 89501  
(775) 788-2000

Pardee Homes of Nevada is a named Defendant in this matter. Its present or former employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6) and/or custodians of records are expected to testify regarding the facts and background of this case.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

1 5. PARDEE HOMES OF NEVADA  
2 Person Most Knowledgeable  
3 McDonald Carano Wilson LLP  
4 100 West Liberty Street, 10th Floor  
5 Reno, Nevada 89501  
6 (775) 788-2000

7 Pardee Homes of Nevada is a named Defendant in this matter. Its present or former  
8 employees, representatives, agents, person to be designated pursuant to NRCP 30(b)(6)  
9 and/or Person Most Knowledgeable are expected to testify regarding the facts and background  
10 of this case.

11 6. Jon Lash  
12 c/o McDonald Carano Wilson LLP  
13 100 West Liberty Street, 10th Floor  
14 Reno, Nevada 89501  
15 (775) 788-2000

16 Mr. Lash is an employee of PARDEE HOMES OF NEVADA and is expected to testify  
17 regarding the facts and background of this case.

18 7. Clifford Anderson  
19 c/o McDonald Carano Wilson LLP  
20 100 West Liberty Street, 10th Floor  
21 Reno, Nevada 89501  
22 (775) 788-2000

23 Mr. Anderson is an employee of PARDEE HOMES OF NEVADA and is expected to  
24 testify regarding the facts and background of this case.

25 8. Harvey Whitmore  
26 c/o Coyote Springs  
27 Address Unknown

28 Mr. Whitmore is the owner of the property involved in this lawsuit and is expected to  
testify regarding the facts and background of this case.

9. Chicago Title Company  
Las Vegas, Nevada  
Custodian of Records

The Custodian of Records is expected to testify regarding the facts and background of  
this case.

10. Chicago Title Company  
Las Vegas, Nevada  
Person Most Knowledgeable

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 398-7171 - Facsimile (702) 397-1167

1 The Person Most Knowledgeable is expected to testify regarding the facts and  
2 background of this case.

3 11. Peter J. Dingerson  
4 D&W Real Estate  
5 5455 S. Durango Dr., Ste 160  
6 Las Vegas, NV 89113

7 Mr. Dingerson is the owner of D&W Real Estate and is expected to testify regarding the  
8 facts and background of this case.

9 12. Jay Dana  
10 General Realty Group  
11 6330 S. Eastern Ave Ste 2  
12 Las Vegas, NV 89119

13 Mr. Dana is the owner of General Realty Group Inc. and is expected to testify regarding  
14 the facts and background of this case.

15 13. Jerry Masini  
16 Award Realty Corp.  
17 3015 S. Jones Blvd.  
18 Las Vegas, NV 89146

19 Mr. Masini is the owner of Award Realty and is expected to testify regarding the  
20 facts and background of this case.

21 14. Mark Carmen  
22 Exit Realty Number One  
23 6600 W. Charleston, Suite #119  
24 Las Vegas, Nevada 89146

25 Mr. Carmen is the owner of Las Vegas Realty Center and is expected to testify  
26 regarding the facts and background of this case.

27 Plaintiffs reserve the right to call any and all witnesses who may be disclosed or  
28 deposed throughout the course of discovery.

Plaintiffs reserve the right to call any and all of Defendant's witnesses; and

Plaintiffs reserve the right to call any and all rebuttal witnesses.

Plaintiffs' experts, if any, as yet unidentified.

Plaintiffs reserve the right to supplement this list of witnesses as discovery  
progresses and until the time of trial in this case.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1167

II.

DOCUMENTS

Pursuant to NRCP 16.1(a)(1)(B), Plaintiffs provide the following documents relating to Plaintiffs and Defendants:

1. Any and all written agreements between the Parties;
2. Any and all documents evidencing damages to the Plaintiffs;
3. Any and all correspondence between the Parties;
4. Any and all appropriate Custodian of Record documents;
5. Any and all pleadings in this matter;
6. **Documents labeled Bates Numbers PLTF0001-PLTL10496.**

These documents are being reproduced as Plaintiffs' Initial NRCP 16.1 Disclosures of Witnesses and Documents had duplicate documents. The duplicate copies have been removed and the documents are listed as follows:

- A. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions dated May 2004 (Bates No. PLTF0001-0080);
- B. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
- C. Two Assignments of Real Estate Commission and Personal Certification Agreement (Bates No. PLTF0153-0157A)
- D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes regarding the attached Commission letter dated September 1, 2004, (Bates No. PLTF0158-0162);
- E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
- G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
- H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
- I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
- J. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);



JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1157

- 1 K. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates  
2 No. PLTF0197-0202);
- 3 L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No.  
4 PLTF0203-0205);
- 5 M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash,  
6 (Bates No. PLTF0206-0209);
- 7 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq.,  
8 (Bates No. PLTF0210-0211);
- 9 Bates Nos. PLTF0212-0244 are the duplicative documents produced in  
10 Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 11 7. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces  
12 Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 13 8 Documents produced by Chicago Title in response to Plaintiffs' Subpoena  
14 Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 15 9. Documents produced by Coyote Springs Investments in response to Plaintiff's  
16 Duces Tecum on CD, (Bates No. CSI\_Wolfram 000014 -  
17 CSI\_Wolfram0003004), attached hereto;
- 18 10. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 -  
19 PLTF10417), attached hereto;
- 20 11. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached  
21 hereto;
- 22 12. Non-Party Coyote Springs Investments, LLC.'s Supplement and Amended  
23 Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates  
24 PLTF10420-PLTF10424, attached hereto.
- 25 13. Chicago Title Company's previously bates stamped documents no. PLTF 1424  
26 through PLTF 10414 (on bottom right of documents bates stamped) and rebated  
27 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates  
28 stamped), including the Custodian of Records Subpoena to Chicago Title  
Company including the executed Certificate of Custodian of Records bates  
stamped as Cht 08997.
14. Stewart Title Company's previously bates stamped documents no. PLTF 0245  
through PLTF 1423 and rebated as bates nos: Stwt 0001 through 1202.  
Documents Stwt 0699 and Stwt 0731 are copy coversheets and were  
inadvertently bates stamped.
15. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,  
page 51, bates PLTF 10427 through PLTF 10438.
16. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,  
page 35, bates PLTF 10439 through PLTF 10440.
17. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,  
page 18, bates PLTF 10441 through PLTF 10443.
18. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,  
page 57, bates PLTF 10444 through PLTF10456.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1187

- 1 19. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113,  
2 page 55, bates PLTF 10457 through PLTF 10462.
- 3 20. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,  
4 page 57, bates PLTF 10463 through PLTF 10468.
- 5 21. Copy of redacted billing sheets representing attorney's fees charged by  
6 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,  
7 bates PLTF 10469 through PLTF 10481.
- 8 22. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 9 23. Assignment of Rights, Title and Interest from Jay Dana on behalf of General  
10 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
- 11 24. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award  
12 Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
- 13 25. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of  
14 Walt Wilkes, bates PLTF 10487.
- 15 26. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
- 16 27. Assignment signed by Mark Carmen dated December 3, 2012 along with  
17 Exhibit A signed by Jay Dana dated January 11, 2011, attached hereto as  
18 bates PLTF 10491 through PLTF 10493; and
- 19 28. Assignment signed by Peter J. Dingerson dated December 20, 2012 along  
20 with Exhibit A signed by Jerry Masini dated December 20, 2010, attached  
21 hereto as bates PLTF 10494 through PLTF 10496.

22 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any  
23 parties or used at any depositions.

24 Plaintiffs reserve the right to any and all other relevant documents to this matter.

25 Plaintiffs reserve the right to identify and produce different and/or additional documents  
26 as the investigation and discovery in this case proceeds.

### 27 III.

### 28 COMPUTATION OF DAMAGES

Plaintiffs calculate their damages to be in excess of \$1,900,000.00 associated with the Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations to the Plaintiffs.

There are two primary components to this calculation. The first component is the loss of future commissions from future sales or takedowns of property located in Clark County, subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least 3,000 acres of property, defined as Option Property under the Option Agreement effective

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1187

1 June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South,  
2 Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June  
3 1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production  
4 Residential Property—a purchase and designation that would entitle Plaintiffs to a 1.5%  
5 commission on a per-acre price of \$40,000.00. If 3,000 acres were purchased by Pardee  
6 under this scenario, Plaintiffs would be entitled to \$1,800,000 in commissions. However,  
7 Pardee's course of conduct in failing to appropriately discharge its duties under the  
8 Commission Letter Agreement has robbed Plaintiffs of this opportunity to be paid these  
9 commissions. Pardee's actions have served to reclassify the land originally labeled as  
10 Purchase Property and Option Property, and under the new reclassification, all Option  
11 Property has been removed from Clark County, thereby divesting Plaintiffs of any hope to  
12 collect any part of the \$1.8 million in commissions they could be paid had no reclassification  
13 occurred.

14 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees  
15 currently exceed \$102,700.00. This amount represents all work from the date of drafting of  
16 the Complaint in November 2010 through October 19, 2012. These attorney's fees constitute  
17 damages pursuant to the September 1, 2004 Commission Letter Agreement. As stated in the  
18 Agreement, "In the event, either party brings an action to enforce its rights under this  
19 Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs."  
20 Plaintiffs in bringing this suit expect to be the prevailing party and, as such, are entitled to their  
21 reasonable attorney's fees as damages for Defendant's breach of contract and breach of the  
22 covenant of good faith and fair dealing.

23 Finally, Plaintiffs must be compensated for the time and effort expended attempting to  
24 discover from public records what information was owed to them under the Commission Letter  
25 Agreement. Discovery is still ongoing therefore the Plaintiffs reserve

26 ///


27 ///

28

1 the right to amend and supplement this response as the investigation and discovery in this  
2 case proceeds.

3 Dated this 27<sup>th</sup> February, 2013.

JIMMERSON HANSEN, P.C.

  
JAMES J. JIMMERSON, ESQ.  
Nevada Bar No. 000264  
LYNN M. HANSEN, ESQ.  
Nevada Bar No. 0244  
JAMES M. JIMMERSON, ESQ.  
Nevada Bar No. 12599  
415 So. Sixth St., Ste. 100  
Las Vegas, NV 89101  
Attorney for Plaintiffs  
*James Wolfram and Walt Wilkes*

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 - Facsimile (702) 387-1157

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' SEVENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 27<sup>th</sup> day of February, 2013, as indicated below:

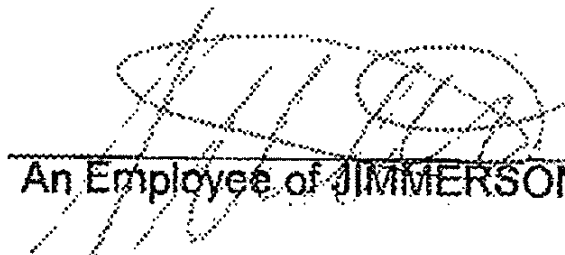
☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

By electronic service through the E-filing system

☒ By facsimile, pursuant to EDCR 7.26

By receipt of copy as indicated below

PAT LUNDVALL, ESQ.,  
AARON D. SHIPLEY, ESQ.  
McDONALD CARANO WILSON, LLP  
2300 W. Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102  
Attorneys for Defendant  
Pardee Homes of Nevada  
Fax No.: 702-873-9966

  
An Employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 386-7171 - Facsimile (702) 387-1167

ASSIGNMENT

Reference is made to the January 11, 2011 Assignment by Jay Dana, owner/broker of General Realty Group, Inc. and made on behalf of General Realty Group, Inc., a copy of which is attached hereto as Exhibit A. I, Mark Carmen, owner/broker of Las Vegas Realty Center, and on behalf of Las Vegas Realty Center, hereby assign to Walt Wilkes all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that Las Vegas Realty Center has any rights, title or interest in the same.

Dated: December 3, 2012

LAS VEGAS REALTY CENTER

By:

  
MARK CARMEN  
OWNER/BROKER

PLTF10491

JA002170

**EXHIBIT "A"**

**EXHIBIT "A"**

PLTF10492

JA002171

Sent 27/02/2013 - - to p14/17

FROM :

01/11/2011 14:53 17027364253

FAX NO. :

GENERALREALTYGROUP

Oct. 26 2012 02:58PM P5  
PAGE 01

January 11, 2011

I, Jay Dana, Owner/Broker of General Realty Group INC, on behalf of General Realty Group, INC. hereby assign to Walter D. Wilkes and/or, Las Vegas Realty Center, Mark Carmen, Owner, Broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between General Realty and Pardon Homes

January 11, 2011

By: Jay Dana, Owner/Broker  
General Realty Group, INC.

PLTF10485

PLTF10493

JA002172



**ASSIGNMENT**

Reference is made to the December 20, 2010 Assignment by Jerry Masini, owner/broker of Award Realty and made on behalf of Award Realty, a copy of which is attached hereto as Exhibit A. I, Peter J. Dingerson, owner/broker of D&W Real Estate LLC, on behalf of D&W Real Estate LLC, hereby assign to James F. Wolfram all the rights, title and interest in that certain Commission Letter Agreement of September 1, 2004, by and between General Realty, Award Realty and Pardee Homes, to the extent that D&W Real Estate LLC has any rights, title or interest in the same.

Dated: December 3, 2012

D&W REAL ESTATE, LLC

By:   
PETER J. DINGERSON  
OWNER/BROKER

SHS\Gen\assignment agr.

PLTF10494

JA002173

**EXHIBIT "A"**

**EXHIBIT "A"**

Sent 27/02/2013 - - to p17/17

FROM :

FROM NO. :

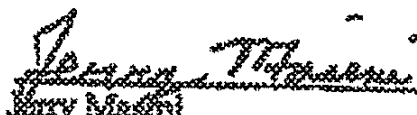
Oct. 26 2012 02:57PM P2

December 20, 2010

I, Jerry Masini, Owner/Broker of Award Realty, on behalf of Award Realty, hereby assign to James F. Wolfram and/or D & W Real Estate LLC, Peter Dingerson, broker, all rights, title, and interest in that certain Commission Agreement (Commission Letter) dated September 1, 2004 between Award Realty and Pardee Homes.

December 20, 2010

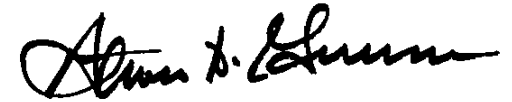
By: Jerry Masini, Owner/Broker  
Award Realty

  
Jerry Masini

PLTF10486

PLTF10496

JA002175



CLERK OF THE COURT

**MIL**  
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  
(702) 873-9966 Facsimile  
[lundvall@mcdonaldcarano.com](mailto:lundvall@mcdonaldcarano.com)  
[ashipley@mcdonaldcarano.com](mailto: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

**DEFENDANT'S MOTION IN LIMINE TO  
EXCLUDE PLAINTIFFS' CLAIM FOR  
DAMAGES IN THE FORM OF  
COMPENSATION FOR TIME**

**(MIL #2)**

Hearing Date:  
Hearing Time:

Trial Date: April 15, 2013

Defendant Pardee Homes of Nevada ("Pardee") hereby moves the Court for an order *in limine* on the non-admissibility of the issue of damages in the form of compensation for the alleged time commitment for investigating their claims, sought to be introduced by Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") in the trial on this matter. Testimony and evidence at the trial regarding Plaintiffs' alleged damages pertaining to their time commitment investigating their claims are improper, unfounded, and not quantifiable, and therefore, cannot be considered an element of Plaintiffs' damages.

1 This Motion is brought pursuant to NRS 47.060, the following Memorandum of  
2 Points and Authorities, the exhibits attached hereto, the pleadings and papers on file  
3 herein, and any oral argument this Court wishes to consider.

4 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2013.

5 McDONALD CARANO WILSON LLP

6  
7 /s/ Aaron D. Shipley  
8 Pat Lundvall (#3761)  
9 Aaron D. Shipley (#8258)  
10 2300 West Sahara Avenue, Suite 1000  
11 Las Vegas, Nevada 89102  
12 *Attorneys for Defendant Pardee Homes of Nevada*

13 **NOTICE OF MOTION**

14 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

15 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
16 will bring the foregoing **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE**  
17 **PLAINTIFFS' CLAIM FOR DAMAGES IN THE FORM OF COMPENSATION FOR**  
18 **TIME** on for hearing before the above-entitled Court on the 16 day of  
19 April, 2013, at the hour of 8 : 30 a.m. or as soon thereafter as counsel  
20 may be heard.

21 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2013.

22 McDONALD CARANO WILSON LLP

23 /s/ Aaron D. Shipley  
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*

**DECLARATION OF AARON D. SHIPLEY IN SUPPORT OF DEFENDANT'S MOTION  
IN LIMINE TO EXCLUDE PLAINTIFFS' CLAIM FOR DAMAGES IN THE FORM OF  
COMPENSATION FOR TIME**

AARON D. SHIPLEY, after being sworn, declares as follows:

1. I am licensed to practice law in the State of Nevada, and am a partner with the law firm of McDonald Carano Wilson LLP, attorneys of record for Defendant Pardee Homes ("Pardee").

2. This Declaration is made of my own personal knowledge except where stated upon information and belief, and as to those matters, I believe them to be true.

3. This Declaration is submitted in compliance with EDCR 2.47 and in support of Defendant's Motion in Limine to Exclude Plaintiff's Claim for Damages in the Form of Compensation for Time (the "Motion").

4. On February 28, 2013, I spoke to James M. Jimmerson, counsel for Plaintiffs, via telephone, as required by EDCR 2.47. We discussed the issues relevant to this Motion. We disagreed on the issue of whether Plaintiffs could properly seek damages in the form of compensation for their time allegedly investigating their claims against Pardee. Ultimately we were unable to resolve this issue during our telephone conference.

5. Under the circumstances, despite a good faith effort to confer, the motion has become necessary.

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

DATED this 1<sup>st</sup> day of March, 2013.

/s/ Aaron D. Shipley  
AARON D SHIPLEY

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No.: 72371**

Electronically Filed  
~~Feb 28 2018~~ 11:28 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

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**JOINT APPENDIX – VOLUME 13 OF 88**

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Attorneys for Appellant

**Chronological Index to Joint Appendix**

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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
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08/30/2012	Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000055- JA000060
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<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/24/2012	Defendant's Motion for Summary Judgment	1	JA000063- JA000082
10/24/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment	1	JA000083- JA000206
10/24/2012	Declaration of Aaron D. Shipley in Support of Defendant's Motion for Summary Judgment	1	JA000207- JA000211
10/25/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment – <b>filed under seal</b>	2	JA000212- JA000321
11/07/2012	Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment	2	JA000322- JA000351
11/09/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment – <b>sections filed under seal</b>	3-6	JA000352- JA001332
11/13/2012	Appendix of Exhibits to Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Counter Motion for Summary Judgment	7-12	JA001333- JA002053
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01/07/2013	Reply Brief in Support of Defendant's Motion for Summary Judgment	13	JA002081- JA002101

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03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time (MIL #2)	13	JA002176- JA002210
03/05/2013	Transcript of Proceedings - March 5, 2013	14	JA002211- JA002350
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04/08/2013	Defendant's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002471- JA002500
04/17/2013	Second Amended Order Setting Civil Non-Jury Trial	16	JA002501- JA002502
04/23/2013	Plaintiffs Reply in Further Support of Motion for Leave to File Second Amended Complaint	16	JA002503- JA002526
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05/10/2013	Plaintiffs Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts order on Hearing on April 26, 2013	16	JA002627- JA002651
05/10/2013	Defendant's Supplemental Brief in Support of Its Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002652- JA002658
05/30/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002659- JA002661
06/05/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002662- JA002664
06/05/2013	Notice of Entry of Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002665- JA002669
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09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Claim for Attorney's Fees As An Element of Damages	17	JA002865- JA002869
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim For Damages in the Form of Compensation for Time	17	JA002870- JA002874
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09/27/2013	Plaintiffs Supplement to Their Opposition to Defendants Motion for Partial Summary Judgment	19-21	JA002988- JA003203
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10/23/2013	Transcript re Trial	22	JA003213- JA003403
10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – <b>filed under seal</b>	23	JA003545- JA003625
10/23/2013	Trial Exhibit C	23	JA003626- JA003628
10/23/2013	Trial Exhibit D	23	JA003629- JA003631
10/23/2013	Trial Exhibit E – <b>filed under seal</b>	23	JA003632- JA003634
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10/23/2013	Trial Exhibit I	23	JA003641- JA003643

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10/23/2013	Trial Exhibit J – <b>filed under seal</b>	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
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10/23/2013	Trial Exhibit N	24	JA003681- JA003683
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10/23/2013	Trial Exhibit GG	27	JA004119- JA004122
10/23/2013	Trial Exhibit HH	27	JA004123
10/23/2013	Trial Exhibit II	27	JA004124
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10/23/2013	Trial Exhibit SS	27	JA004249- JA004255
10/23/2013	Trial Exhibit TT	27	JA004256- JA004262
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10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 6 – <b>filed under seal</b>	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – <b>filed under seal</b>	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – <b>filed under seal</b>	27	JA004311- JA004312



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10/23/2013	Trial Exhibit 9 – <b>filed under seal</b>	27	JA004313- JA004319
10/23/2013	Trial Exhibit 10 – <b>filed under seal</b>	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – <b>filed under seal</b>	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – <b>filed under seal</b>	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – <b>filed under seal</b>	28	JA004361- JA004453
10/23/2013	Trial Exhibit 21	28	JA004454
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10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
12/09/2013	Transcript re Trial – <b>filed under seal</b>	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530

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12/12/2013	Transcript re Trial – <b>filed under seal</b>	44-45	JA006533- JA006878
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07/24/2014	Order Granting Motion to Expunge Lis Pendens	48	JA007571- JA007573
05/30/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002659- JA002661
06/05/2013	Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002662- JA002664
01/12/2017	Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013649- JA013651
07/10/2015	Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009753- JA009754
01/12/2017	Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013643- JA013644
04/02/2013	Order re Order Denying Defendants Motion for Summary Judgment	16	JA002462- JA002464
03/14/2013	Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002351- JA002353
10/12/2017	Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014144- JA014146
11/29/2011	Order Setting Civil Non-Jury Trial	1	JA000031- JA000032
11/02/2017	Pardee Amended Notice of Appeal	88	JA014152- JA014154

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
07/15/2015	Pardee Homes of Nevada's Consolidated Opposition To: (1) Plaintiff's Motion to Strike Judgment Entered on June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59; and (2) Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	63	JA009919- JA009943
09/12/2015	Pardee Homes of Nevada's Consolidated Reply in Support of (1) Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015; and (2) Motion for Attorney's Fees and Costs	68	JA010812- JA010865
12/30/2015	Pardee Homes of Nevada's Consolidated Response to: (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiffs' Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees; and (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010946- JA010953
06/01/2016	Pardee Homes of Nevada's Motion to Amend Judgment	72	JA011455- JA011589
07/02/2015	Pardee Homes of Nevada's Motion to Amend Judgment	59	JA009207- JA009283
06/27/2016	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	82	JA013025- JA013170
07/15/2015	Pardee Homes of Nevada's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	62	JA009759- JA009771



Date	Document Description	Volume	Labeled
08/10/2015	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Reconsideration of the Order on Pardee's Emergency Motion to Stay Execution of Judgment	67	JA010582-JA010669
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion for Attorney's Fees and Costs	82	JA013171-JA013182
06/30/2016	Pardee Homes of Nevada's Reply in Support of Motion to Amend Judgment; and Opposition to Plaintiffs' Countermotion for Attorney's Fees	82	JA013183-JA013196
07/01/2016	Pardee Homes of Nevada's Reply in Support of Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	82	JA013197-JA013204
03/23/2016	Pardee Homes of Nevada's Response to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011214-JA011270
08/25/2014	Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting	49	JA007699-JA007707
02/08/2017	Pardee Notice of Appeal	86	JA013657-JA013659
07/08/2015	Pardee's Emergency Motion to Stay Execution of Judgment: and Ex Parte Order Shortening Time	62	JA009663-JA009710
06/06/2016	Pardee's Motion for Attorney's Fees and Costs	72	JA011590-JA011614
05/28/2015	Pardee's Motion for Attorney's Fees and Costs	49	JA007718-JA007734
06/24/2014	Pardee's Motion to Expunge Lis Pendens – <b>section filed under seal</b>	48	JA007411-JA007456

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
06/24/2015	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015	52	JA008192- JA008215
05/31/2016	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	71	JA011442- JA011454
04/07/2017	Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	86	JA013660- JA013668
05/10/2017	Pardee's Reply in Support of Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014069- JA014071
10/17/2016	Pardee's Supplemental Brief Regarding Pre- and Post-Judgment Interest Pursuant to the Court's Order	86	JA013591- JA013602
07/08/2015	Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment	62	JA009711- JA009733
08/25/2014	Plaintiff's Accounting Brief Pursuant to the court's Order Entered on June 25, 2014	49	JA007647- JA007698
09/12/2016	Plaintiffs' Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013566- JA013590
05/23/2016	Plaintiffs' Memorandum of Costs and Disbursements	71	JA011397- JA011441
06/08/2016	Plaintiffs' Motion for Attorney's Fees and Costs	77	JA012115- JA012182
06/29/2015	Plaintiffs' Motion for Attorney's Fees and Costs	52-53	JA008216- JA008327
07/24/2015	Plaintiffs' Motion for Reconsideration, Ex Parte (With Notice) of Application for Order Shortening Time Regarding Stay of Execution and Order Shortening Time Regarding Stay of Execution	67	JA010482- JA010522

Date	Document Description	Volume	Labeled
07/18/2013	Plaintiffs' Motion in Limine To Permit James J. Jimmerson, Esq. To Testify Concerning Plaintiffs' Attorney's Fees and Costs (MIL #25)	17	JA002732- JA002771
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 – <b>sections filed under seal</b>	54-56	JA008395- JA008922
03/14/2016	Plaintiffs' Motion to Settle Two (2) Competing Judgments and Orders	70	JA011168- JA011210
06/21/2016	Plaintiffs' Opposition to Defendant, Pardee Homes of Nevada's, Motion to Amend Judgment and Plaintiffs' Countermotion for Attorneys' Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	81	JA012813- JA013024
08/06/2013	Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment	17	JA002830- JA002857

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
03/20/2013	Plaintiffs Opposition to Defendant's Motion in Limine to Exclude Plaintiffs Claim for Attorney's Fees as an Element of Damages MIL 1	15	JA002359- JA002408
03/20/2013	Plaintiffs Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the form of compensation for time MIL 2	15	JA002409- JA002433
07/17/2015	Plaintiffs' Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees	65-67	JA010203- JA010481
06/30/2015	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	57-58	JA008923- JA009109
06/21/2016	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	80	JA012625- JA012812
05/12/2017	Plaintiffs' Opposition to Pardee's Motion Stay Execution of Judgment and Post-Judgment Orders	88	JA014072- JA014105
07/08/2015	Plaintiffs' Opposition to Pardee's Motion to Retax Costs	60-61	JA009284- JA009644
06/20/2016	Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	77-79	JA012183- JA012624
11/04/2016	Plaintiffs' Reply Brief in Support of Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013603- JA013612
04/23/2013	Plaintiffs Reply in Further Support of Motion for Leave to File Second Amended Complaint	16	JA002503- JA002526

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
01/17/2013	Plaintiffs' Reply in Further Support of Their Counter Motion for Partial Summary Judgment	13	JA002102- JA002144
08/02/2016	Plaintiffs' Reply in Support of Countermotion for Attorney's Fees and Costs	84-85	JA013358- JA013444
08/02/2016	Plaintiffs' Reply in Support of Motion for Attorney's Fees and Costs	83-84	JA013205- JA013357
01/11/2016	Plaintiffs' Reply to Defendants Consolidated Response to (1) Plaintiffs' Notice of Non-Reply and Non-Opposition to Plaintiff's Opposition to Pardee's Motion to Amend Judgment and Countermotion for Attorney's Fees And (2) Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	69	JA010954- JA010961
07/15/2013	Plaintiffs Reply to Defendants Counterclaim	17	JA002724- JA002731
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	68	JA010680- JA010722
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment Entered on June 15, 2015	68	JA010768- JA010811
09/11/2015	Plaintiffs' Reply to Defendant's Opposition to Plaintiff's Motion to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59	68	JA010723- JA010767
04/20/2016	Plaintiffs' Reply to Defendant's Response and Supplement to Plaintiffs' Motion to Settle Two (2) Sets of Competing Judgments and Orders	71	JA011271- JA011384

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
04/27/2017	Plaintiffs' Response to Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014066- JA014068
05/10/2013	Plaintiffs Supplement to Motion for Leave to File a Second Amended Complaint Pursuant to the Courts order on Hearing on April 26, 2013	16	JA002627- JA002651
12/08/2015	Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	68	JA010866- JA010895
09/27/2013	Plaintiffs Supplement to Their Opposition to Defendants Motion for Partial Summary Judgment	19-21	JA002988- JA003203
07/22/2013	Plaintiffs Supplemental Opposition to Defendants Motion in Limine to Plaintiffs Claim for Damages in the Form of Compensation for Time MIL 2	17	JA002787- JA002808
10/25/2013	Plaintiffs Trial Brief Pursuant to EDCR 7.27	31	JA004818- JA004847
06/19/2015	Plaintiffs, James Wolfram and Walt Wilkes' Memorandum of Costs and Disbursements	52	JA008159- JA008191
03/16/2016	Release of Judgment	71	JA011211- JA011213
01/07/2013	Reply Brief in Support of Defendant's Motion for Summary Judgment	13	JA002081- JA002101
09/16/2013	Reply in Support of Defendant's Motion for Partial Summary Judgment	17	JA002858- JA002864
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Claim for Attorney's Fees as An Element of Damages	17	JA002865- JA002869

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
09/16/2013	Reply in Support of Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Damages in the Form of Compensation for Time	17	JA002870- JA002874
07/15/2014	Reply in Support of Pardee's Motion to Expunge Lis Pendens	48	JA007560- JA007570
08/17/2015	Reply Points and Authorities in Support of Motion for Reconsideration	67	JA010670- JA010678
11/08/2011	Scheduling Order	1	JA000028- JA000030
06/06/2013	Second Amended Complaint	16	JA002670- JA002677
04/17/2013	Second Amended Order Setting Civil Non-Jury Trial	16	JA002501- JA002502
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
08/29/2012	Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000051- JA000054
06/30/2015	Supplement to Plaintiffs' Pending Motion for Attorney's Fees and Costs, Motion to Strike Judgment, Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment, and Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	59	JA009110- JA009206
09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
07/12/2007	Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014106- JA014110

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
03/05/2013	Transcript of Proceedings - March 5, 2013	14	JA002211- JA002350
10/25/2011	Transcript re Discovery Conference	1	JA000024- JA000027
08/27/2012	Transcript re Hearing	1	JA000049- JA000050
04/26/2013	Transcript re Hearing	16	JA002527- JA002626
07/09/2013	Transcript re Hearing	17	JA002688- JA002723
09/23/2013	Transcript re Hearing	18	JA002875- JA002987
07/17/2014	Transcript re Hearing	49	JA007579- JA007629
07/31/2014	Transcript re Hearing	49	JA007630- JA007646
07/10/2015	Transcript re Hearing	62	JA009734- JA009752
01/15/2016	Transcript re Hearing	70	JA010962- JA011167
08/15/2016	Transcript re Hearing - August 15, 2016	86	JA013445- JA013565
12/06/2012	Transcript re Status Check	13	JA002066- JA002080
07/23/2013	Transcript re Status Check	17	JA002809- JA002814
10/23/2013	Transcript re Trial	22	JA003213- JA003403



<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/24/2013	Transcript re Trial	29-30	JA004463- JA004790
10/28/2013	Transcript re Trial – <b>filed under seal</b>	32-33	JA004848- JA005227
10/29/2013	Transcript re Trial – <b>filed under seal</b>	35	JA005264- JA005493
10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
12/09/2013	Transcript re Trial – <b>filed under seal</b>	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530
12/12/2013	Transcript re Trial – <b>filed under seal</b>	44-45	JA006533- JA006878
12/13/2013	Transcript re Trial - Part 1	46	JA006953- JA007107
12/13/2013	Transcript re Trial - Part 2	47-48	JA007108- JA007384
10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – <b>filed under seal</b>	23	JA003545- JA003625
10/23/2013	Trial Exhibit C	23	JA003626- JA003628
10/23/2013	Trial Exhibit D	23	JA003629- JA003631
10/23/2013	Trial Exhibit E – <b>filed under seal</b>	23	JA003632- JA003634

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
10/23/2013	Trial Exhibit F	23	JA003635- JA003637
10/23/2013	Trial Exhibit G	23	JA003638
10/23/2013	Trial Exhibit H	23	JA003639- JA003640
10/23/2013	Trial Exhibit I	23	JA003641- JA003643
10/23/2013	Trial Exhibit J – <b>filed under seal</b>	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
10/23/2013	Trial Exhibit L	24	JA003675- JA003678
10/23/2013	Trial Exhibit M	24	JA003679- JA003680
10/23/2013	Trial Exhibit N	24	JA003681- JA003683
10/23/2013	Trial Exhibit O – <b>filed under seal</b>	25-26	JA003684- JA004083
10/23/2013	Trial Exhibit P	27	JA004084
10/23/2013	Trial Exhibit Q	27	JA004085
10/23/2013	Trial Exhibit R	27	JA004086- JA004089
10/23/2013	Trial Exhibit S	27	JA004090

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10/23/2013	Trial Exhibit T	27	JA004091- JA004092
10/23/2013	Trial Exhibit U	27	JA004093
10/23/2013	Trial Exhibit V	27	JA004094
10/23/2013	Trial Exhibit W	27	JA004095- JA004096
10/23/2013	Trial Exhibit X	27	JA004097
10/23/2013	Trial Exhibit Y	27	JA004098
10/23/2013	Trial Exhibit Z	27	JA004099- JA004100
10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 10 – <b>filed under seal</b>	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – <b>filed under seal</b>	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – <b>filed under seal</b>	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – <b>filed under seal</b>	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

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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

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Labeled</b>
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – <b>filed under seal</b>	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – <b>filed under seal</b>	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – <b>filed under seal</b>	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – <b>filed under seal</b>	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

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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

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12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935

Dated this 28<sup>th</sup> day of February, 2018.

McDONALD CARANO LLP

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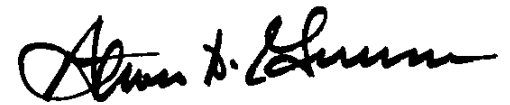
## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28<sup>th</sup> 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

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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 OPPOSITION TO  
PLAINTIFF'S COUNTER MOTION FOR  
PARTIAL SUMMARY JUDGMENT RE:  
REAL PARTIES IN INTEREST**

Hearing Date: Dec. 21, 2012  
Hearing Time: 9:00 a.m.

Pardee Homes of Nevada ("Pardee" or "Defendant") submits its Opposition ("Opposition") to the Plaintiffs' Counter Motion for Partial Summary Judgment ("Counter Motion").<sup>1</sup> Material issues of fact prevent the Court from granting the Counter Motion. Certain evidence proffered by Plaintiffs should be stricken since it contradicts their sworn deposition testimony. If stricken, summary judgment in Pardee's favor on the issue of Plaintiffs' standing to sue should be granted.

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<sup>1</sup> Plaintiffs' Counter Motion was filed in response to Defendant's Motion for Summary Judgment, and made a part of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

1 This Opposition is supported by the following Memorandum of Points and  
2 Authorities, supporting exhibits, the papers and pleadings on file in this matter, and any  
3 argument the Court may permit at the hearing of this matter.

4 RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of November, 2012.

5 McDONALD CARANO WILSON LLP

6  
7 /s/Pat Lundvall  
8 Pat Lundvall (#3761)  
9 Aaron D. Shipley (#8258)  
10 2300 West Sahara Avenue, Suite 1000  
11 Las Vegas, Nevada 89102  
12 *Attorneys for Defendant Pardee Homes of Nevada*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Plaintiffs' Counter Motion asserts that there are no "genuine issues of material  
16 facts as to whom the real parties in interest are," and that Plaintiffs are the only ones  
17 with legal standing to prosecute the claims in this action. See Counter Motion at p.  
18 27:13-15. Plaintiffs argue that their proffered evidence "conclusively establishes" that  
19 they have received full assignments from their respective brokers to all rights, title, and  
20 interest under the Commission Agreement. See Counter Motion, at p. 25:17-18.  
21 Despite these assertions, the evidence proffered by Plaintiffs is actually far from  
22 conclusive. In reality, Plaintiffs' Counter Motion raises more questions than it offers  
23 answers.

24 When the Commission Agreement was negotiated and executed, Wilkes was an  
25 agent of General Realty Group, Inc. ("General") and Wolfram was an agent of Award  
26 Realty Group. ("Award"). See Wolfram Depo. (Exhibit A to Motion) at 63:5-14; see also  
27 Wilkes Depo. (Exhibit B to Motion) at 72:11-23. Neither was a broker authorized to bind  
28 their respective brokerage company. Id.; at Exhibit A 25:21-26:6; Exhibit B 129:23-  
130:9.

1 A simple examination of the Commission Agreement shows that the actual parties to  
2 the agreement were Pardee, General and Award. See Exhibit 11 to Counter Motion. It  
3 is hornbook law that only parties - - or their legal assignees - - to an agreement can  
4 sue to enforce an agreement. Easton Bus. Opp v. Town Executive Suites, 126  
5 Nev.Adv.Op. 13, 230 P.3d 827, 830-831 (2010). General and Award have not sued  
6 Pardee. Thus the issue for the Court's determination on this Counter Motion is  
7 whether Wolfram and Wilkes are the only assignees entitled to bring claim against  
8 Pardee asserting breach of the Commission Agreement. A review of the new evidence  
9 proffered by Plaintiffs - - proffered only after Pardee moved for summary judgment on  
10 the issue of Plaintiffs' standing to sue - - reveals they are not.

11 In their Complaint, Plaintiffs alleged that Wolfram was assigned all of Award's  
12 rights, title and interest in the Commission Agreement. See Amended Complaint at ¶  
13 2. Similarly, Plaintiffs alleged that Wilkes has been assigned all of General's rights,  
14 title and interest in the Commission Agreement. Id. at ¶ 3. However, in sworn  
15 deposition testimony both admitted that they had not received any such assignment.  
16 See, for example, Wolfram Depo. (Exhibit A to Motion) at 9:1-21. Wolfram's testimony  
17 was clear and unequivocal.

18 Q: All right. In this litigation, have you received any assignments  
19 to bring claims on behalf of Award Realty?

20 A: I don't think so. I believe, I don't think so.

21 Q: What about on behalf of D&W Real Estate, have you received  
22 any assignments to bring claims on their behalf?

23 A: What do you mean by claims? Give me an example of what  
24 you are talking about.

25 Q: Typically, an assignment is a contractual document where it is  
26 in writing where a company will assign to you the right to bring claims or  
27 bring litigation or assert causes of action on their behalf.

28 A: No.

Q: So you don't have anything like that?

A: No.

1 Q: From either D&W or from Award, is that correct?

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

3 Id.

4 Subsequent to the depositions of both Wolfram and Wilkes, and only in  
5 response to Pardee's Motion, Plaintiffs have now attempted to contradict their sworn  
6 deposition testimony by producing documents they contend establish the existence of  
7 the alleged assignments they previously swore they did not have. As to Wolfram,  
8 Plaintiffs allege that several documents establish a valid assignment from Award to  
9 Wolfram. See Counter Motion, p. 25:18-19. Plaintiffs cite to two letters Award  
10 allegedly sent to Linda Jones at Stewart Title, both dated May 5, 2005. See Exhibit 30  
11 to Counter Motion. Plaintiffs did not originally produce these letters during discovery.  
12 Plaintiffs also cite to a letter from Peter Dingerson of D&W Real Estate, LLC to Ms.  
13 Jones at Stewart Title dated May 3, 2005. See Exhibit 31 to Counter Motion. Plaintiffs  
14 did not originally provide that letter during discovery. Plaintiffs also cite to a document  
15 from Jerry Masini dated December 20, 2010. See Exhibit 32 to Counter Motion. This  
16 document was not originally produced by Plaintiffs, either. On October 26, 2012 Mr.  
17 Masini and Mr. Dingerson both claim to have signed affidavits. See Exhibits 33 and 34  
18 to Counter Motion, respectively. These affidavits were produced by Plaintiffs on that  
19 same day—the discovery cutoff date—only **after** receiving Pardee's Motion for  
20 Summary Judgment. These documents contradict Plaintiffs' sworn deposition  
21 testimony. **What's worse is that Plaintiffs misrepresent the contents of their**  
22 **proffered documentary evidence concerning Wolfram's alleged assignment.**  
23 **These documents do NOT establish that Wolfram is the only assignee from**  
24 **Award to the Commission Agreement.**

25 As to Wilkes, Plaintiffs cite to a January 3, 2006 document from General to  
26 Wilkes. See Exhibit 35 to Counter Motion. This document was not originally produced  
27 by Plaintiffs during discovery. They also cite to a document from General making a  
28

1 different assignment than Exhibit 35, of all of General's rights, title and interest in the  
2 Commission Agreement but this time to someone else other than Wilkes. See Exhibit  
3 36 to Counter Motion (emphasis added). This document was not originally produced  
4 by Plaintiffs during discovery. **And once again, Plaintiffs misrepresent the contents**  
5 **of these documents and their legal impact. These documents do NOT establish**  
6 **that Wilkes is the only assignee from General to the Commission Agreement.**

7 In the subsequent sections herein Pardee demonstrates that Plaintiffs proffered  
8 documents - - which attempt to contradict sworn deposition testimony – do not state  
9 what Plaintiffs claim, nor do they have the legal consequence that Plaintiffs claim.

## 10 **II. LEGAL ARGUMENT**

### 11 **A. Summary Judgment Standard.**

12 Plaintiffs have now moved for partial summary judgment claiming that they are  
13 the real parties in interest entitled to bring this action, even though it was the brokerage  
14 companies, through which they were employed, who were the parties to the  
15 Commission Agreement with Pardee. Pursuant to NRCP 56(c), summary judgment is  
16 appropriate only when "the pleadings, depositions, answers to interrogatories, and  
17 admissions on file, together with the affidavits, if any, show that there is no genuine  
18 issue as to any material fact and that the moving party is entitled to judgment as a  
19 matter of law." In evaluating a request for summary judgment, the court must view the  
20 record and evidence in a light most favorable to the non-moving party. Borgerson v.  
21 Scanlon, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001). In the context of Plaintiffs'  
22 Counter-Motion, Pardee is entitled to all favorable inferences from both the record and  
23 the proffered evidence. When the non-moving party, like Pardee, successfully sets  
24 forth genuine issues of material fact for trial, the moving party is not entitled to summary  
25 judgment. Boland v. Nevada Rock & Sand Co., 111 Nev. 608, 610, 894 P.2d 988, 990  
26 (1995).

**B. Plaintiffs Have Offered This Court Sham Issues of Fact, Claiming They Are “Genuine.”**

“When Rule 56 speaks of a “genuine” issue of material fact, it does so with the adversary system in mind. The word “genuine” has moral overtones” – it does not mean a fabricated issue. Aldabe v Adams, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965). Although the summary judgment procedure is not available to test and resolve the credibility of witnesses to a fact issue, it may appropriately be invoked to defeat a contradiction from the mouth of a party against whom summary judgment is sought, when that contradiction is claimed to be the source of a “genuine” issue of fact for trial. Id. (party may not be permitted to offer contradictory evidence of sworn deposition testimony in opposition to a motion for summary judgment); Bank of Las Vegas v Hoopes, 84 Nev. 585, 586 445 P.2d 937, 938 (1968) (to like effect); Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14 57 P.3d 82, 87 (2002) (to like effect)).

Simply put, parties cannot create issues of fact by proffering evidence that contradicts their prior deposition testimony. Id. See also Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 266 (9<sup>th</sup> Cir. 1991) citing Foster v. Arcata Associates, 772 F.2d 1453, 1462 (9<sup>th</sup> Cir. 1985). “[I]f a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit [or other evidence] contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.” Kennedy, 952 F.2d at 266, quoting Foster 772 F.2d at 1462.

In their Complaint, both Plaintiffs allege that they have received assignments from the real estate brokers with whom they were respectively affiliated at the time the Commission Letter was executed, thereby acknowledging the need for such an assignment. Wolfram alleged that Award assigned all its “rights, title and interest” in the Commission Letter to him. See Amended Complaint, at ¶ 2. Similarly, Wilkes alleged that General assigned all its “rights, title and interest” in the Commission Letter to him. Id., at ¶ 3. It is upon these alleged assignments that Plaintiffs initiated this litigation

1 against Pardee. Yet, in deposition, both Plaintiffs admitted that they had not received  
2 any such assignment. See, for example, Wolfram Depo. (Exhibit A to Motion) at 9:1-21.  
3 Pardee moved for summary judgment based upon Plaintiffs' sworn deposition  
4 testimony. Now, Plaintiffs opposed that Motion with "exhibits" that contradict their  
5 sworn deposition testimony. This they cannot do. The Court should strike the proffered  
6 evidence that contradicts Plaintiffs' sworn testimony. Allowing that contradictory  
7 evidence to be used to oppose a properly supported motion for summary judgment  
8 simply invites a party to either sand-bag its opponent, at best, or, at worst, be permitted  
9 to falsify their sworn testimony simply to avoid the imposition of summary judgment.<sup>2</sup>

10 **C. If the Court Accepts Plaintiffs' Proffered Evidence, There Are**  
11 **Genuine Issues Of Material Fact Which Preclude Granting Plaintiffs'**  
12 **Counter Motion.**

13 Plaintiffs' assert that "the facts conclusively establish that Plaintiffs' are the real  
14 parties in interest with standing to prosecute the claims in the Amended Complaint."  
15 See Counter Motion, at 25:17-18. However, a close examination of the evidence used  
16 to establish these "facts" shows that things are not exactly conclusive, and in fact,  
17 newly-proffered evidence offers more questions than answers.

18 Pursuant to NRCP 17(a), only a real party in interest may institute an action.  
19 The purpose of this rule is to insure that the party bringing suit is actually the proper  
20 party entitled to recover so that the defendant is protected "against a subsequent  
21 action by the party actually entitled to recover, and to insure generally that the judgment  
22 will have its proper effect as res judicata." Easton Business Opportunities, Inc. v. Town  
23 Executive Suites-Eastern Marketplace, LLC, 126 Nev. Adv. Op. 13, 230 P.3d 827, 831  
(2010) (quoting FRCP 17(a) advisory committee's notes (1966)).

24 Pardee contracted with General and Award. See Exhibit 11 to Counter Motion.  
25 Plaintiffs both acknowledge that it was General and Award who were the parties to  
26 Pardee's Commission Agreement, and that they were merely signing on behalf of

---

27  
28 <sup>2</sup> If the Court strikes Plaintiffs' proffered documents which contradict their sworn testimony,  
then summary judgment on this issue in Pardee's favor should issue. See Motion pp. 17-18.

General and Award. See Wolfram Depo. (Exhibit A to Motion) at 63:5-14; see also Wilkes Depo. (Exhibit B to Motion) at 72:8-18. An assignee can be a real party in interest, but only if the assignor has effected a valid assignment to the assignee. Easton, 230 P.3d at 833. By raising this issue Pardee seeks to avoid being subjected to multiple suits on the same Commission Agreement since neither General nor Award nor its other assignees are parties to this case. As demonstrated herein, there is evidence that General and Award effectuated assignments to the Commission Agreement to others, to include D&W Real Estate, Las Vegas Realty Center and Mark Carmen. See Exhibits 30-37. **A close examination of Plaintiffs' proffered evidence reveals that Wolfram or Wilkes have not established that either D&W Real Estate, Las Vegas Realty Center, or Mark Carmen have disclaimed their assigned interest in the Commission Agreement.** Without that proof, Plaintiffs have failed to establish that they are the only real parties in interest entitled to assert all claims arising from Award's and General's interest in the Commission Letter. D&W Real Estate, Las Vegas Realty Center and Mark Carmen are not parties to this case, so any final judgment may not have res judicata or claim preclusion against them. Without those entities assigning in full their interests to Wolfram and Wilkes, Pardee may be subjected to multiple suits.

**D. Examination of Plaintiffs' Proffered Evidence Does Not Reveal They Are the Real Parties in Interest.**

At pages 25 through 27 of the Counter Motion, Plaintiffs discuss the evidence they claim demonstrates that they are the only parties with the right to enforce the Commission Agreement against Pardee. Most notable about that discussion is the fact that Plaintiffs never quote the actual language of the proffered exhibits, they merely characterize the contents of those exhibits. In fact, a close review reveals Plaintiffs mischaracterize that evidence.



1. Wolfram.

Exhibits 30 through 34 to the Counter Motion are claimed to demonstrate that Wolfram was assigned all of Award's right, title and interest in the Commission Agreement. They do not. Exhibit 30 contains two letters, both dated May 5, 2005, from two purported bookkeepers at Award to Stewart Title. Those bookkeepers merely tell Stewart Title to whom any checks should be issued. ("Please be advised that James Wolfram is no longer associated with Award Realty. All checks due him are to be made out to D&W Realty"; "All checks due him from Coyote Springs Land Transaction, Escrow No. 04-09-0209LJ are to be made payable to James Wolfram at D&W Realty"). A specific escrow is mentioned, in these letters, i.e., Escrow No. 04-09-0209LJ(for which Plaintiffs acknowledge being paid), but not any additional escrows for which Plaintiffs now falsely claim additional commissions therefrom. In these letters Award clearly does not assign all rights, title or interest in the Commission Agreement. Further, there is no indication that the bookkeeper is authorized to do so on behalf of Award.

Exhibit 31, interestingly, is a letter that predates Exhibit 30. It is a letter dated May 3, 2005, from Peter J. Dingerson, Owner/Broker of D&W Real Estate, LLC, and similar to Exhibit 30, it simply tells Stewart Title to whom the checks should be written concerning a specific escrow ("I am writing to give my permission for Stewart Title to release all future checks made to D&W Real Estate LLC directly to James Wolfram in reference to the above mentioned transaction."). Once again, a specific escrow is mentioned (for which Plaintiffs acknowledge being paid), not any additional escrows for which Plaintiffs now falsely claim additional commissions therefrom.

Exhibit 32 does assign all right, title and interest in the Commission Agreement from Award, but to "James F. Wolfram **and/or** D&W Real Estate, LLC, Peter Dingerson, broker." As a result of that assignment, **both** Wolfram **and** D&W Real Estate, LLC, Peter Dingerson, broker, **share the assignment**. They are, in effect, joint tenants of all rights, title and interest in the Commission Agreement. The question then

1 becomes whether D&W Real Estate, LLC, Peter Dingerson, broker, assigned its right,  
2 title and interest in the Commission Agreement to Wolfram solely. Plaintiffs have  
3 offered no such written assignment. Without such, Wolfram is not the sole party in  
4 interest and Pardee may be subjected to multiple suits.

5 Plaintiffs instead proffer an after-the-fact affidavit found at Exhibit 34. The  
6 affidavit is notable in a number of respects. First, it was offered after the close of  
7 discovery from a witness disclosed on the last day of discovery, so Pardee had no  
8 opportunity to cross-examine. Second, nowhere within the affidavit does D&W Real  
9 Estate make any assignment of its interest (assigned to it from Award) to Wolfram.  
10 Instead at paragraphs 5 and 6, the affiant offers a legal interpretation of Award's  
11 assignment which is found at Exhibit 32. The affidavit is from a representative of D&W  
12 Real Estate - - not Award - - but he offers his unsubstantiated legal opinion of the  
13 effect of Award's assignment that he did not draft or sign. Moreover, the affidavit found  
14 at exhibit 33 contradicts the affidavit at exhibit 34 and confirms that Award assigned its  
15 interest in the Commission Agreement to Wolfram and D&W Realty. As before,  
16 Wolfram offers no assignment from D&W Realty of its interest to himself.<sup>3</sup>

17 **2. Wilkes.**

18 In their Counter Motion, Plaintiffs also failed to establish that General assigned  
19 all of its rights, title and interest to Wilkes. Close examination of exhibit 35 reveals that  
20 "General desires to assign **all or a portion of** the Coyote Springs Commission to  
21 Wilkes [.]". Exhibit 35, Recital E. The agreement merely references a specific escrow  
22 (escrow no. 04-09-0209 MLJJ), not any additional escrows for which Plaintiffs now  
23 falsely claim additional commissions therefrom. Further, a close examination of Exhibit  
24 36 to the Counter Motion shows that Jay Dana, the Owner/Broker of General Realty,  
25 assigned General's rights, title, and interest in the Commission Agreement to **both**  
26 "Walter D. Wilkes and/or, Las Vegas Realty Center, Mark Carmen, Owner, Broker..."

27 \_\_\_\_\_  
28 <sup>3</sup> Notably, the legal interpretation is wrong. Notwithstanding, any legal interpretations of  
contractual provisions are a determination for the Court.

on January 11, 2011. See Exhibit 36 to Counter Motion. According to this purported assignment Wilkes is not the only one that received all of General's rights, title and interest in the Commission Agreement. It is quite clear that Las Vegas Realty Center and Mark Carmen also received the same assignment. Plaintiffs have not produced any signed documents that indicate that either Mark Carmen or Las Vegas Realty Center have released their potential rights and interest in the Commission Agreement to Wilkes. Therefore, a genuine issue of material fact exists as to Wilkes' proper standing in this case, thereby precluding Plaintiffs from an award of partial summary judgment on this issue.

### III. CONCLUSION

Based upon the foregoing, at minimum it is apparent that a genuine issue of material fact is in dispute concerning Plaintiffs' standing if Plaintiffs' proffered evidence is accepted. Thus, partial summary judgment is not appropriate and Pardee respectfully requests the Court deny Plaintiffs' Counter Motion. Moreover, the Court should strike Plaintiffs' proffered evidence since it contradicts Plaintiffs' prior sworn testimony, and grant summary judgment to Pardee on the issue of Plaintiffs' standing to sue.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of November, 2012.

McDONALD CARANO WILSON LLP

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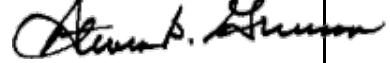
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 29th day of November, 2012, I served a true and correct copy of the foregoing **DEFENDANT’S OPPOSITION TO PLAINTIFFS’ COUNTER MOTION FOR PARTIAL SUMMARY JUDGMENT** by e-service through the Wiznet e-filing system utilized by the Eighth Judicial District Court, Clark County, Nevada:

James J. Jimmerson  
Lynn M. Hansen  
James M. Jimmerson  
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/s/ Sally Wexler  
An Employee of McDonald Carano Wilson  
LLP

266242



DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES WOLFRAM, et al. )  
 )  
Plaintiffs, )  
 )  
vs. ) CASE NO. A-10-632338-C  
 ) DEPT. NO. IV  
PARDEE HOMES OF NEVADA, et al., )  
 )  
Defendants. ) **ORIGINAL**

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HON. KERRY EARLEY, DISTRICT JUDGE

On Thursday, December 6, 2012  
At 8:30 a.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.  
  
For the Defendants: PATRICIA K. LUNDVALL, ESQ.  
AARON D. SHIPLEY, ESQ.

Reported by: Jennifer D. Church, RPR, CCR No. 568

Jennifer D. Church, CCR No. 568  
District Court, Dept. IV

1 THURSDAY, DECEMBER 6, 2012, 8:30 A.M.

2 LAS VEGAS, NEVADA

3 -oOo-

4 THE COURT: Case A632338, James Wolfram versus  
5 Pardee Homes of Nevada.

6 I called you out of order because I think,  
7 looking at this, that maybe we can move this or get  
8 this -- I'm trying to understand the logistics, but what  
9 I kind of understand is, Mr. Jimmerson, you want to be  
10 around or you want to be the one arguing the motions.

11 MR. JIMMERSON: Yes, Your Honor.

12 THE COURT: And you were working to get it  
13 continued from the 21st; correct?

14 MR. JIMMERSON: We had set it originally  
15 January 11th. Then the parties agreed to December 21st.  
16 My staff was unaware I was not in town.

17 THE COURT: And in all honesty, my  
18 December 21st stack we're trying to move too because  
19 we're moving. We just found out. They are actually  
20 moving the 21st. So I won't have a computer or  
21 anything.

22 So in all honesty, we're going to have to move  
23 the 21st anyway because I can't have calendar at the  
24 courthouse. All the people moving to new courtrooms are  
25 moving the 21st.

1 MS. LUNDVALL: And from that perspective,  
2 Mr. Jimmerson and I -- my name is Pat Lundvall, here on  
3 behalf of Pardee Homes. While I've had a couple cases  
4 within your department, this is the first time I've made  
5 an appearance, and so thank you.

6 THE COURT: Nice to meet you.

7 MS. LUNDVALL: My partner, Aaron Shipley, is  
8 here with me as well today.

9 MR. SHIPLEY: Good morning.

10 MS. LUNDVALL: Mr. Jimmerson and I spoke about  
11 this, and I think that we potentially may have a  
12 resolution. I don't want to speak for him, but I think  
13 that if I could propose it, then maybe everybody  
14 could -- their problems could be solved.

15 Where we ran into an issue was this, is that we  
16 had a trial date in February, February 5th.

17 THE COURT: February 4th.

18 MS. LUNDVALL: February 4th. And what we were  
19 trying to do was to avoid having a motion for summary  
20 judgment hearing so close to trial, whereby the parties  
21 were going to have to incur, you know, a significant  
22 amount of expense preparing for trial that may not be  
23 necessary.

24 THE COURT: I understand that completely.

25 MS. LUNDVALL: So this is what, you know,

1 Mr. Jimmerson and I discussed. We can put this hearing  
2 over until January, which it sounds like it works for  
3 the Court's convenience.

4 THE COURT: It does.

5 MS. LUNDVALL: Works for his convenience, works  
6 for my convenience. Because the other dates that he had  
7 proposed in December don't work for me because of other  
8 obligations that I have for other clients.

9 But what that would require, though, us to do  
10 is to slip that February trial date. And as long as  
11 we're slipping that maybe 30 to 45 days --

12 THE COURT: I did. I put down here -- we're on  
13 the same page.

14 MS. LUNDVALL: Good.

15 THE COURT: So I analyzed it and I said, for  
16 everybody, it would seem we could continue it to the  
17 March or April trial stack. That would make sense.  
18 That's why I wanted counsel here.

19 Do you have a preference or do either of those  
20 work or -- that's what I thought would work for  
21 everybody. I understand the summary judgment.

22 MS. LUNDVALL: Thank you, Your Honor.

23 THE COURT: I litigated for 30 years. I  
24 understood exactly where you were coming from. So I had  
25 your resolution too. So I agree with you.



1           So my question is would a March or April -- and  
2 then also I won't have courtroom sharing. We'll have  
3 full days of trial. So we'll be much better to be able  
4 to get things moving.

5           MR. SHIPLEY: Do you know which courtroom you  
6 are moving to?

7           THE COURT: I am moving to the Phoenix  
8 Building. So I'm going to be across the street. It's  
9 up on the 11th floor, and I have my own courtroom. So  
10 it will be much more flexible.

11           Like right now I'm in trial in -- I don't even  
12 remember what courtroom we were in yesterday.

13           THE CLERK: 11C.

14           THE COURT: 11C. And --

15           MR. JIMMERSON: Could we have the dates of  
16 either March or April? I could look at my calendar on  
17 my phone.

18           THE CLERK: The March trial would be  
19 March 11th. The April trial stack starts on April 15th.

20           MS. LUNDVALL: April 15th actually works for  
21 me, Your Honor. The March time frame does not work.

22           THE COURT: Mr. Jimmerson?

23           MR. JIMMERSON: Just one moment.

24           THE COURT: No problem. Electronics only go so  
25 fast.

1 MR. JIMMERSON: Well, it's the user who only  
2 goes so fast.

3 The 15th of April would be just fine, Judge.

4 THE COURT: Can you give them the calendar call  
5 and everything they need to know then?

6 MR. JIMMERSON: And this is on a preference, so  
7 you'll understand we're number one. If we settle the  
8 case, great. But if not, we would be number one on that  
9 week.

10 THE CLERK: Pretrial conference is going to be  
11 April 4th, 2013, at 8:30 a.m. Trial stack would be  
12 April 15th at 8:30 a.m.

13 MR. JIMMERSON: Is there a date within that for  
14 pretrial memoranda?

15 THE CLERK: All motions in limine will be due  
16 by March 1, 2013. Pretrial memorandum will be due by  
17 April 2, 2013.

18 THE COURT: So now we need a date for your  
19 summary judgment.

20 MS. LUNDVALL: That's correct.

21 MR. JIMMERSON: Do you want to go back to the  
22 January 11th date originally set?

23 THE COURT: January 11th, Mr. Jimmerson, that's  
24 a Friday. I'm moving my Fridays to Tuesdays because I  
25 have my own courtroom, so I don't have back to back,

1 which is kind of difficult. So that date isn't  
2 available.

3 MS. LUNDVALL: Your Honor, from this  
4 perspective, what I'm hoping is that maybe you can  
5 identify something in January that maybe might work best  
6 for you.

7 THE COURT: That would be really nice.

8 MS. LUNDVALL: Because when I looked at your  
9 calendar, you are chock-a-block for a lot of days.

10 THE COURT: Could I get an affidavit from you?  
11 Because I would really like to explain it here. You are  
12 right. And I'm really swimming upstream as fast as I  
13 can to do this. So I actually didn't bring my law clerk  
14 because she's still working on all the motions I have  
15 for next week.

16 Because it's really difficult, because you look  
17 at a calendar, but when I look at it, it tells me  
18 nothing. I don't know if the motions are two pages long  
19 or like some today are 28 pages long or 30.

20 But I will make you a preference. I'm trying  
21 very hard not to move everything, as you can see. But  
22 if you pick a date, I will put down here that I will  
23 make that a preference. And if other things have to be  
24 moved, counsel are being very generous with me because  
25 it's difficult.

1 MR. JIMMERSON: How does your January 8th look?

2 THE COURT: I think that's a bad one. Can I be  
3 honest? I was told by the law clerk January 8th is bad  
4 and anything towards the end of January is better. I  
5 know we're getting tight. She even asked that I move  
6 your motion for summary judgment to February, the early  
7 part of February.

8 MR. JIMMERSON: How does the 15th or 22nd  
9 sound?

10 MS. LUNDVALL: The week of January 14th through  
11 the 18th, I'm in deposition every day that week.

12 THE COURT: The 24th is the best. The 15th  
13 looks bad. Mr. Jimmerson, how about January 24th?

14 MS. LUNDVALL: 24th works for us.

15 THE COURT: Is that okay with you,  
16 Mr. Jimmerson?

17 MR. JIMMERSON: Yes. That was our pretrial  
18 conference in this case.

19 THE COURT: Okay. You already calendared it.  
20 You are right. So we'll make it January 24th. It will  
21 be at 8:30 and in the Phoenix Building.

22 MS. LUNDVALL: Thank you, Your Honor.

23 THE COURT: The other question I had is we had  
24 this motion to file exhibits under seal.

25 MS. LUNDVALL: Yes, Your Honor.

1           THE COURT: I saw some of them have already  
2 been filed under seal. Am I right? When I was  
3 looking --

4           MR. JIMMERSON: We were trying to comply with  
5 that, put them in envelopes, you know.

6           THE COURT: Right. I did see that. Is that  
7 kind of moot now or do we still need --

8           MR. JIMMERSON: There's not a formal order in  
9 place. We don't have any objection as long as it  
10 doesn't interfere with the normal preparation of a case  
11 or an expert, you know, handling that.

12           And in that regard, I did want to ask, with the  
13 delay of the trial by two months, are we now delaying or  
14 slipping other dates, like disclosure of expert  
15 witnesses and other items approximately in the same time  
16 period?

17           MS. LUNDVALL: There would be no agreement, at  
18 least from Pardee, that the extension of discovery would  
19 be -- or the discovery close, which is already closed,  
20 would be extended or anything of that nature. The time  
21 frames for disclosure of expert witnesses is long, long  
22 ago past. We would not agree.

23           MR. JIMMERSON: That's true. I'm just asking  
24 is the cutoff of discovery in place or not? There  
25 wouldn't be a particular reason why it would still

1 remain in place.

2 THE COURT: What I've been doing is I'm keeping  
3 all the deadlines in place. If you have an issue, it  
4 goes back to the Discovery Commissioner. Since I -- we  
5 have Beecroft, I think, now. Once the trial is moved,  
6 then they are hearing arguments sometimes if there's a  
7 reason.

8 If not, I'm not moving anything on discovery.  
9 I'm keeping everything and telling counsel to go back to  
10 the Discovery Commissioner if there is an issue that  
11 arises because the trial has been moved out. So I don't  
12 touch those deadlines.

13 MS. LUNDVALL: Thank you, Your Honor.

14 To answer your question, though, concerning the  
15 motions, there are -- both sides have filed motions to  
16 file their exhibits under seal, or certain of their  
17 exhibits under seal that have confidentiality clauses  
18 and protections associated with those.

19 Both sides have also filed nonoppositions to  
20 the other's motions.

21 MR. JIMMERSON: Correct.

22 MS. LUNDVALL: So we have agreement as to both  
23 motions to file our respective identified exhibits under  
24 seal, and I think that those have been presented to the  
25 Court as such.

1           THE COURT: That fits. I just looked at your  
2 file real fast last night when I got out of trial. I  
3 didn't read all those motions. I just saw that. So I  
4 thought I would ask you, since for me it lists your  
5 different motions, and I'm trying to get everything  
6 caught up.

7           That would be perfect then. So I don't have to  
8 worry about that motion that was set for the 29th.

9           MS. LUNDVALL: Yes. Correct, Your Honor. And  
10 if you would prefer for us to prepare orders then to  
11 agree upon the language of the orders to present to you,  
12 we will be happy to do so.

13          THE COURT: That would be great. Because my  
14 next thing was could you prepare an order so we can  
15 vacate -- we all seem to be on the same page here. I  
16 guess that's good. I put down so we could vacate the  
17 hearing for January 29th for the plaintiff's motion to  
18 file exhibits under seal.

19          And if you could agree on an order, that would  
20 be easier than me doing a minute order since I haven't  
21 even gotten to those motions yet. That would be great.

22          MS. LUNDVALL: Happy to do so, Your Honor.

23          THE COURT: That takes care of that issue too.  
24 That's all I have on my list.

25          MR. JIMMERSON: That's all we have too, Judge.

1 THE COURT: Thank you very much. I appreciate  
2 your cooperation very much.

3 MS. LUNDVALL: Thank you, Your Honor.

4 MR. JIMMERSON: Thank you, Judge.

5 -oOo-

6 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF  
7 PROCEEDINGS.

8  
9 */s/ Jennifer D. Church*

10 JENNIFER D. CHURCH, CCR. No. 568, RPR



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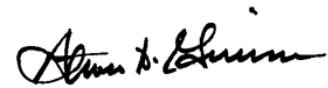
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CLERK OF THE COURT

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13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 JAMES WOLFRAM,  
16 WALT WILKES

17 Plaintiffs,

18 vs.

19 PARDEE HOMES OF NEVADA,  
20 Defendant.

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

**REPLY BRIEF IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

21 Plaintiffs' Opposition ("Opposition") to defendant Pardee Homes of Nevada's  
22 ("Pardee") Motion for Summary Judgment ("Motion") is notable in two critical respects in  
23 this breach of contract case scheduled for a bench trial. First, Plaintiffs offer no  
24 argument that any provision of the Commission Agreement – the contract at issue in  
25 this case -- is ambiguous or unclear. In fact, they concede that the contractual terms at  
26 issue are clear and unambiguous. See Opposition at 7:13-9:9. Plaintiffs also concede  
27 that when contractual terms are clear and unambiguous, and the statement of facts  
28 before the Court is undisputed, **it is an issue of law for the Court to interpret the  
plain meaning of the contractual provisions at issue and apply that plain meaning  
to the undisputed facts.** See Opposition at 13:21-28.

As to the second notable point, Plaintiffs do not point to any of Pardee's factual  
assertions contending that there is a genuine issue of material fact warranting

1 determination at trial. Instead, Plaintiffs offered their own statement of facts, in  
2 contravention of their duties opposing a motion for summary judgment. Hickman v.  
3 Meadow Wood Reno, 96 Nev. 782, 617 P.2d 871, (1980) (if an issue of fact is claimed,  
4 a party opposing a motion for summary judgment must point the court to the existence  
5 of a triable issue of fact, and is required to set forth specific facts showing that there is a  
6 genuine issue for trial).

7 Because the Plaintiffs did not point to any disputed fact from Pardee's statement  
8 of facts, a reader is forced to compare the Motion against the Opposition to determine  
9 whether the parties have any **genuine** disputes about the facts material to disposition  
10 of the Motion. Pardee has performed that comparison. That comparison reveals only  
11 two claimed factual contentions: (1) Plaintiffs contend that Pardee has purchased  
12 "Option Property", from CSI; and (2) Plaintiffs also contend that Pardee and CSI  
13 changed the definition of "Option Property" subsequent to the Commission Agreement  
14 at issue in this case. See Opposition at 4:7-12 ("despite the constant claim that Pardee  
15 has not taken down any Option Property, Pardee made a significant purchase of Option  
16 Property as defined in the original Option Agreement, but hid that transaction from  
17 Plaintiffs by redefining what "Option Property is"). As demonstrated within, neither of  
18 these factual contentions, however, is "**genuine**."

19 The Court's first job in resolving Pardee's motion for summary judgment is  
20 therefore to determine if Plaintiffs have advanced a "**genuine**" issue of disputed fact.  
21 Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) "A factual  
22 dispute is **genuine** when the evidence is such that a rational trier of fact could return a  
23 verdict for the non-moving party." Id. Thus, the Court must review the **evidence**  
24 offered by the parties to determine whether a claimed factual dispute is "**genuine**." Id.

25 As demonstrated from a review of the evidence, Plaintiffs have not advanced  
26 any "**genuine**" issues of fact, but instead have resorted to material misrepresentations  
27 of the evidence offered for determination of Pardee's Motion. In other words, Plaintiffs  
28 falsely describe the evidence proffered to the Court in their Opposition, but a review of

1 the actual evidence reveals quite a different picture. For example: (1) in their  
2 Opposition Plaintiffs advance material misrepresentations of the sworn deposition  
3 testimony from Harvey Whittemore relevant to disposition of the Motion,<sup>1</sup> and (2)  
4 Plaintiffs materially misrepresent the plain language, and therefore the plain meaning,  
5 of the parties' contractual provisions offered as exhibits.

6 This reply brief carefully and concisely points out Plaintiffs' tactics.<sup>2</sup> Pardee  
7 wades through the volume of paper that Plaintiffs have thrown at the Court to point out  
8 Plaintiffs' material misrepresentation of the evidence. Pardee offers pinpoint citations to  
9 the parties' exhibits that will allow the Court to confirm Plaintiffs' impermissible tactics  
10 and confirm that there is no "**genuine**" issue of disputed fact. Pardee further  
11 demonstrates that using the **genuine** undisputed facts, resolution of this case turns  
12 upon **issues of contract interpretation** -- which are **issues of law** for the Court to  
13 decide since the parties agree the Commission Agreement is clear and unambiguous.  
14 Resolution of those issues of law reveals that Pardee is entitled to summary judgment  
15 in its favor on all claims asserted by Plaintiffs.

16 **I. Plaintiffs Offered No Genuine Issues of Material Fact.**

17 In its motion for summary judgment, in compliance with EDCR 2.20, Pardee  
18 offered the Court a concise statement of undisputed facts. With two exceptions,  
19 Plaintiffs did not quarrel with Pardee's statement of facts. Plaintiffs have therefore  
20 conceded that the balance of the facts are undisputed. See Schuck v. Signature Flight  
21 Support of Nevada, Inc., 126 Nev. Adv. Op. 42, \_\_\_, 245 P.3d 542, 545-546 (2010).

22  
23  
24  
25 <sup>1</sup> Pardee has sent a Rule 11 letter and proposed motion for sanctions to Plaintiffs based upon  
26 these material representations. The Nevada Supreme Court has made clear that parties and  
27 their attorney owe a duty of candor to the Court and sanctions may be awarded for  
28 misrepresenting the record in a case. See Thomas v. City of North Las Vegas, 122 Nev. 82, 96,  
127 P.3d 1057, 1066-67 (2006).

<sup>2</sup> Pardee addressed Plaintiffs' Counter-Motion for Summary Judgment and the issue  
examining whether Plaintiffs are the real parties in interest in its separate brief titled "Pardee's  
Opposition to Plaintiffs' Counter-Motion for Summary Judgment" filed November 29, 2012.

1 Pardee discusses the two exceptions below. They include (1) Plaintiffs'  
2 unfounded contention that Pardee purchased "Option Property," as defined by its  
3 original Option Agreement with CSI;<sup>3</sup> and (2) Plaintiffs unfounded contention that  
4 Pardee and CSI changed the definition of "Option Property," when they amended their  
5 Option Agreement in March 2005, and then hid that change from Plaintiffs.

6 To place these two unfounded contentions in context, Pardee again sets out  
7 Pardee's obligations under the Commission Agreement that Plaintiffs accuse Pardee of  
8 breaching:

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

17 \*\*\*

18 Pardee shall provide to each of you a copy of each written option exercise  
19 notice given pursuant to paragraph 2 of the Option Agreement, together  
20 with information as to the number of acres involved and the scheduled  
21 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.

22 See Exhibit G to Motion, p. 1 and 2 (emphasis added). It is these obligations and  
23 definitions that Pardee focuses upon herein. It is these contractual provisions that both  
24 parties concede are clear and unambiguous.

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25  
26  
27 <sup>3</sup> Notwithstanding all discovery in this case, for the first time Plaintiffs now contend that  
28 Pardee purchased Option Property from CSI. Up to the filing of their Opposition, Plaintiffs have  
never made that contention.

1           **A. Pardee Has Not Purchased Any Option Property From CSI.**

2           In its Motion, using sworn deposition testimony, Pardee demonstrated that  
3 Pardee has never exercised any option to purchase Option Property from CSI. See  
4 Motion at 7:1-5. Specifically, Pardee's representative, Jon Lash, testified as follows:

5           A. That's a reasonable request. Where we're at now is we're in a  
6 separate suit on this property.<sup>4</sup> We're not going forward. **We haven't**  
7 **exercised any of the option property. There's a strong likelihood we**  
8 **won't exercise any option.**

9 \*\*\*

10          A. Right. I just sensed there was some confusion in some of these  
11 letters that we were exercising additional option property and hadn't and  
12 weren't paying, and **I assure you, all we've done was purchase the**  
13 **original \$84 million, and that's where we're at.**

14 \*\*\*

15          Q. And have there been any takedowns, then, of any option property  
16 or any exercises of any options by Pardee or the single-family production?

17          A. No.

18          See Lash Depo (Exhibit 3 to Opposition) at 121:18:21; 122:9-14; 114:3-8 (Emphasis  
19 added). Further, CSI's representative, Harvey Whittemore, testified as follows:

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

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

\*\*\*

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<sup>4</sup> Pardee and CSI are in a separate suit involving the development of Coyote Springs. See  
Case No. A636401-B.



1 Q. And to your knowledge has Pardee ever exercised this grant  
2 of option so as to take down additional single family production  
home?

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

8 Q. And that was particularly to your knowledge as of through March of  
9 2011?

10 A. 2000 – August of 2010 and pretty darn confident, high level of  
confidence through March 2011.

11 See Whittemore Depo (Exhibit H) at 50:15-51:5; 100:25-101:17 (Emphasis added).  
12 This sworn deposition testimony, from both Pardee and CSI, conclusively establishes  
13 that Pardee has not purchased any Option Property pursuant to paragraph 2 of the  
14 Option Agreement. Without such a purchase, Plaintiffs are not entitled to any further  
15 commissions under the Commission Agreement. See Exhibit G.

16 In their Opposition, however, Plaintiffs falsely state: "Pardee purchased Option  
17 Property as defined in the Option Agreement, without providing the required notices to  
18 Plaintiffs reflecting the same or paying Plaintiffs the appropriate commission under the  
19 Commission Agreement for the Option Property purchase." Opposition, at 11:19-22.  
20 Plaintiffs cite the Court to Harvey Whittemore's sworn deposition testimony at page 77,  
21 line 1 to page 80, line 11, and Pardee's Motion for Summary Judgment at page 11 as  
22 evidentiary support for that false claim. A simple review of both items of evidence  
23 clearly reveals that neither citation supports the assertion made in Plaintiffs' Opposition.  
24 Mr. Whittemore's cited sworn testimony is set forth in full below:

25 Q. Now when you put 16-D on top of 15-A –

26 A. Yes, sir.

27 Q. -- you are now comparing parcel one as described in the original  
28 Option Agreement to the purchases as reflected in the amendment, as

1 reflected by the Option Agreement and the further amendments thereto; is  
2 that right?

3 A. It compares certain parcel maps to a description of purchase  
4 property, yes.

5 Q. That certain parcel map is parcel one described on file 98, page  
6 57, correct?

7 A. Yes, sir.

8 Q. Okay. And parcel one is the outer most portion of parcel one as  
9 reflected in 16-D is the angled line just left for the majority of this of the  
10 section line in the middle of the transparency; is that right?

11 A. The line in the center of the – to the general center of the – in the  
12 transparency that –

13 Q. Is the section line?

14 A. -- is the section line.

15 Q. And the outermost portion of the parcel, of parcel one is just to the  
16 right of that section line for everything below about two inches of the  
17 transparency; is that correct?

18 A. I would like to describe it this way if we could. If you simply refer to  
19 the section lines, you could say that the transparency covers the, starting  
20 from the top, the lower southwest portion of that section, then the lower  
21 south of the section immediately to its east, and you can therefore refer to  
22 each and every one of these, if you had section numbers we could refer to  
23 each of the parcels; but to your question it represents the following with  
24 the exception of your transparency at the bottom of your transparency, the  
25 bottom two parcels appear immediately before, immediately north of 168,  
26 appear to be sections which may or may not have section lines drawn on  
27 them. Because if you look here, I will help you, this area is not to – you  
28 can see that this is a mile, this is longer than a mile. There has to be a  
section line drawn here. So to describe that as a parcel may or may not  
be entirely accurate. But I know what you are saying, that is a section,  
this is a section, but this –

Q. I'm not –

A. -- is more than a section.

Q. I'm not representing what is or is not a section, I just want to know  
is, does parcel one end at this line, which the majority of which is to the  
right of the vertical section line?

A. That isn't a section line, this is the section line over here. This line  
is not a section line. That's what I am trying to help you.

Q. Then what line is it?

- 1 A. That is a – we would have to get the parcel map – are you talking  
2 about this line?
- 3 Q. Referring back to 16-A?
- 4 A. Yes.
- 5 Q. This line right here I believe divides section, correct, this line right  
6 here?
- 7 A. Okay, I will accept your representation, but what I'm trying to  
8 suggest is that these parcel cut through with angles within section and are  
9 not coterminous with the actual section lines on the property.
- 10 Q. And I completely agree with you, my question is though, is just I  
11 wanted to make sure this outer left-hand portion –
- 12 A. Yes, sir.
- 13 Q. This line right here?
- 14 A. Yes.
- 15 Q. And for the record I'm trying to describe it which is parallel with  
16 Highway 93; is that right?
- 17 A. That is Highway 93.
- 18 Q. Okay, and would you agree that Highway 93 is parallel to the  
19 outermost line on the, on 16-D?
- 20 A. Yes, sir.
- 21 Q. Okay, and would you agree that that outermost line represents the  
22 border, represents the outermost portion of parcel one to the east?
- 23 A. As you describe it I agree with that?
- 24 Q. Okay. And when comparing by using 16-D against 15-A, okay  
25 which when put transparency on top of the paper you would acknowledge  
26 that portions of takedown number four, the green are outside parcel one;  
27 is that right?
- 28 A. I will say that the green is outside of parcel one.
- Q. Okay, and to the extent that takedown number four is accurately  
represented as the green within this exhibit that takedown, certain  
portions of takedown number four were outside parcel one, is that right?
- A. As depicted on these maps subject to check, that correct.
- See Whittemore Depo. (Exhibit H to Motion) at 77:1-80:11. Nothing in that testimony  
says Pardee purchased Option Property from CSI. In fact, Mr. Whittemore testified to

1 the exact opposite. Further, nothing at page 11 of Pardee's Motion, or anywhere within  
2 Pardee's Motion suggests that Pardee has purchased any Option Property from CSI.

3 Another place where Plaintiffs misrepresent the sworn deposition testimony of  
4 Mr. Whittemore (CSI's representative) is found at Opposition 6:16-17. There, again  
5 citing Mr. Whittemore's testimony, in their Opposition Plaintiffs falsely claim:  
6 "Essentially, the Option Property is the rest of the property at Coyote Springs  
7 designated for single-family homes." Mr. Whittemore's actual sworn testimony is as  
8 follows and is the exact opposite of what Plaintiffs represent it to be::

9  
10 Q: This option property was the balance of the entire site, to quote,  
11 which is or beomes designated for single family homes detached  
12 production use; is that correct?

13 A: As a lawyer I would tell you that the document speaks for itself.  
14 The option property contemplated by this agreement by me, the person  
15 who negotiated this, was to create and make sure that everybody  
16 understood that Pardee was only, unless they exercised their option – let  
17 me make it very clear. **Unless they exercised their option with respect**  
18 **to the entire parcel, that we would control the development of**  
19 **everything other than single family detached production of**  
20 **residential property; and therefore, when you say the option**  
21 **property includes everything, it doesn't.** It includes the option property  
22 which we as the developer designated as single family detached. If  
23 Pardee, for example, wasn't developing the property fast enough and  
24 simply was taking their time and hurting us, we would have been in a  
25 position to come back and say hey listen, we don't believe that you are  
26 performing under the contract and try to bring other people in.

27 So there is a big distinction between the entire site, which 30,000  
28 acres versus – and this is why it is so important, is that we distinguish  
between what we contemplated and couldn't do in Clark County versus  
doing anything in Lincoln County. **Because again the option property**  
**only included the pieces that I designated as the developer in**  
**conjunction with the negotiations as single family production**  
**homes.**

23 Exhibit 4, 23:9-24:11.<sup>5</sup> This testimony is critical. Unless Plaintiffs can prove, at the  
24 very, very minimum, that Mr. Whittemore or CSI, as the master developer, designated  
25 other property – other than the original Purchase Property – at Coyote Springs for  
26 single-family detached production residential use, they cannot prove Pardee exercised

27  
28 <sup>5</sup> These false assertions cannot, and do not, create a genuine issue of fact defeating summary  
judgment. Wayment v. Holmes, 112 Nev. 232, 236-37, 912 P.2d 816, 818-19 (1996).

1 any option to purchase such property. Plaintiffs have not offered such evidence. Proof  
2 of this designation is critical. Without such proof, Plaintiffs' contention that Pardee  
3 purchased Option Property is entirely unfounded.

4 Plaintiffs' assertion that Pardee purchased Option Property is egregiously false.  
5 Further, Plaintiffs' assertion that either Mr. Whittemore's deposition or Pardee's Motion  
6 supports that argument is egregiously false. These false assertions cannot, and do not,  
7 create a genuine issue of fact defeating summary judgment.

8 **B. Pardee and CSI Did Not Change the Definition of "Option Property" In**  
9 **Subsequent Amendments of the Option Agreement.**

10 In their Opposition, Plaintiffs repeatedly claim that it was not until discovery in  
11 this case that they learned that CSI and Pardee had amended and restated the Option  
12 Agreement in a document dated March 28, 2005. Opposition 3:18-26; 9:25-10:13.  
13 That claim is false. Plaintiffs knew of that amendment well before this case began. In  
14 fact, in their Complaint and Amended Complaint, Plaintiffs alleged: "The relationship  
15 between CSI and Pardee was governed by a certain Option Agreement for the  
16 Purchase of Real Property and Joint Escrow Instructions dated in May of 2004, **and**  
17 **later amended and restated on March 28, 2005** ("Option Agreement')." Complaint, ¶  
18 5; Amended Complaint ¶ 5. Plaintiffs, by their own factual admission, were well aware  
19 of the Amended and Restated Option Agreement dated March 28, 2005 long before this  
20 case began.

21 Plaintiffs also accuse Pardee of changing or altering the definition of "Option  
22 Property" in subsequent agreements with CSI. See Opposition at 4:7-12. Plaintiffs'  
23 accusation is demonstrably false based upon authenticated documentary evidence.<sup>7</sup>  
24 To illustrate: The parties hereto (Plaintiffs and Pardee) expressly agreed that all of the  
25 capitalized terms used in the Commission Agreement would have the exact meanings

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26 <sup>7</sup> The first four pages of Plaintiffs' Opposition contain many, many factual representations but  
27 NO citations to any evidence. See Opposition at pp. 1-4. Many of those factual representations  
28 are demonstrably false. Since these representations are unsupported by evidence, the Court may  
not rely upon them in deciding Pardee's Motion for Summary Judgment. Wayment, 112 Nev. at  
236-37, 912 P.2d at 818-19.

1 as set forth in the Option Agreement between Pardee and CSI. See Commission  
2 Agreement (Exhibit G) at p.1. The term "Option Property" is defined in the Option  
3 Agreement as follows: "Buyer's option to purchase the remaining portion of the Entire  
4 Site which is or becomes designated for single-family detached production residential  
5 use." See Exhibit D, §B (ii). And contrary to Plaintiffs' material misrepresentation to  
6 this Court to the contrary, **the definition of "Option Property" was never agreed to**  
7 **be changed by CSI and Pardee.** Compare Option Agreement (Exhibit D) §B(ii)  
8 (definition of Option Property is "Buyer's option to purchase the remaining portion of the  
9 Entire Site which is or becomes designated for single family production residential  
10 use")

11 • with Amendment #1 (Exhibit 7),§1 ("Unless otherwise defined herein, all  
12 capitalized terms used in this Amendment shall have the same meaning as provided in  
13 the Agreement." No new definition of Option Property found within);

14 • and Amendment #2 (Exhibit 8) §1 ("Unless otherwise defined herein, all  
15 capitalized terms used in this Amendment shall have the same meaning as provided in  
16 the Agreement." No new definition of Option Property found within);

17 • and Amendment #3 (Exhibit 12) §c ("Buyer's option to purchase the remaining  
18 portion of the Entire Site which is or becomes designated for single-family detached  
19 production residential use") **(This language is identical to that used in the Option**  
20 **Agreement, contrary to Plaintiffs' false representation.);**

21 • and Amendment #4 (Exhibit 16) §1 ("Unless otherwise defined herein, all  
22 capitalized terms used in this Fourth Amendment shall have the same meaning as  
23 provided in the Agreement." No new definition of Option Property found within);

24 • and Amendment #5 (Exhibit 17) §1 ("Unless otherwise defined herein, all  
25 capitalized terms used in this Fifth Amendment shall have the same meaning as  
26 provided in the Agreement." No new definition of Option Property found within);  
27  
28

1           • and Amendment #6 (Exhibit 18) §1 (“Unless otherwise defined herein, all  
2 capitalized terms used in this Sixth Amendment shall have the same meaning as  
3 provided in the Agreement.” No new definition of Option Property found within);

4           • and Amendment #7 (Exhibit 19) §1 (“Unless otherwise defined herein,  
5 capitalized terms used in this Seventh Amendment shall have the same meaning as  
6 provided in the Agreement.” No new definition of Option Property found within);

7           • and Amendment #8 (Exhibit 20), §1 (“Unless otherwise defined herein, all  
8 capitalized terms used in this Eighth Amendment shall have the same meaning as  
9 provided in the Agreement.” No new definition of Option Property found within.)

10           It is tedious to go through the mountain of paper proffered by Plaintiffs in their  
11 Opposition to learn that Pardee and CSI did not change the definition of Option  
12 Property. But by following Pardee’s road map herein, the Court will learn that no new  
13 definition exists. In sum, this tedious exercise reveals that there are only two places in  
14 which a definition of Option Property can be found among Pardee and CSI’s original  
15 Option Agreement and the 8 amendments thereto, and **the definition of Option**  
16 **Property is identical. Id.** Nobody changed the definition. Nobody hid the March 28,  
17 2005 document from Plaintiffs. And, as testified to by Mr. Whittemore, at no time did  
18 he, as the master developer, designate additional land for “single-family detached  
19 production residential use.” See Exhibit 4, 23:9-24:11.

20           Try as they might, Plaintiffs cannot change the undisputed fact, demonstrated by  
21 sworn testimony of those individuals with personal knowledge and the authenticated  
22 agreements, between Pardee and CSI, and public records, that Pardee has never  
23 purchased “Option Property” pursuant to paragraph 2 of the Option Agreement from  
24 CSI as that real property is defined therein. Instead, Pardee has shown Plaintiffs have  
25 misrepresented the record before this Court.

26           Pardee has shown Plaintiffs misrepresented the contents of the authenticated  
27 agreements. And Pardee has shown Plaintiffs misrepresented the public record. And  
28 Pardee has shown that Plaintiffs misrepresented sworn deposition testimony. It is

1 difficult to prove a negative proposition. But Pardee has done so. Pardee has not  
2 purchased any Option Property and Plaintiffs have offered no legitimate, admissible  
3 evidence that it has. Without such a purchase, Plaintiffs are not entitled to additional  
4 commissions. Without such a purchase, Plaintiffs cannot demonstrate a breach of  
5 contract by Pardee.

6 **II. Pardee Is Entitled to Judgment As a Matter of Law.**

7 **A. Plaintiffs Offered A Red Herring Concerning the Boundaries of**  
8 **Purchase Property and Option Property.**

9 Concerning the term "Purchase Property", it is important to note that the  
10 Commission Agreement provided a commission to Plaintiffs based upon the "Purchase  
11 Property Price", not the acreage constituting "Purchase Property".

- 12 (i) Pardee shall pay four percent (4%) of the **Purchase Property**  
13 **Price** payments made by Pardee pursuant to paragraph 1 of the  
14 Option Agreement up to a maximum of Fifty Million Dollars  
15 (\$50,000,000);
- 16 (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the  
17 remaining **Purchase Property Price** payments made by Pardee  
18 pursuant to paragraph 1 of the Option Agreement in the aggregate  
19 amount of Sixteen Million Dollars (\$16,000,000); and

20 See Exhibit G, p.1. Therefore, even if the boundaries or the specific acreage changed  
21 that made up the "Purchase Property", bought by Pardee from CSI, Plaintiffs were not  
22 entitled to further commissions as long as the "Purchase Property Price" stayed the  
23 same. See Exhibit G to Motion, p.1. Thus, all of Plaintiffs' overlays and transparencies  
24 of maps are meaningless. What is determinative of the amount of Plaintiffs'  
25 commissions pursuant to paragraphs I and ii was the "Purchase Property Price" not the  
26 acreage acquired. Even Plaintiffs admitted such in their depositions. See Exhibit A at  
27 105:13-16; Exhibit B at 89:2-23. And it is important to note that Plaintiffs admit they  
28 have received all commissions owed based upon the Purchase Property Price.

The term "Purchase Property Price" was defined in Amendment No. 2 to the  
Option Agreement as \$84,000,000.00. See Exhibit F §4. That price – the Purchase  
Property Price – never changed across the various amendments, between CSI and



1 Pardee. Compare Exhibit F to the Motion with Exhibits 7, 8, 12, 16, 17, 18, 19 and 20  
2 to the Opposition. Pardee did not pay more than \$84,000,000.00 as the Purchase  
3 Property Price to CSI. See Lash Depo. (Exhibit C to the Motion) at 122:9-14. CSI  
4 never received more than \$84,000,000.00 from Pardee as payment for the Purchase  
5 Property Price. See Whittemore Depo. (Exhibit H to the Motion) at 100:15-17. Further,  
6 Plaintiffs acknowledge that they do not have any evidence or facts to indicate that  
7 Pardee paid more than \$84,000,000.00 to CSI as the Purchase Property Price for the  
8 Purchase Property. See Wolfram Depo. (Exhibit A) at 112:14-23; Wilkes Depo (Exhibit  
9 B at 77:8-12; 114:7-12. Plaintiffs admit they have been paid in full their commissions  
10 based upon the \$84,000,000.00 Purchase Property Price. See Wolfram Depo. (Exhibit  
11 A) at 69:1-70:2; see also Wilkes Depo. (Exhibit B to the Motion) at 55:1-24.

12 From the very beginning, CSI and Pardee acknowledged that the specific  
13 boundaries of the Purchase Property may change, for a variety of reasons. For  
14 example:

- 15 A. . . . Seller is negotiating with the United States Bureau of Land  
16 Management ("BLM") to arrange for a reconfiguration of the real  
17 property shown on the aforesaid Exhibit "A-1" and certain other real  
18 property (the "Leased Land") which is subject to a long-term lease  
19 (the "BLM Reconfiguration"), the result of which would be a  
20 reconfiguration of the real property owned by Seller as shown on  
21 the map attached hereto as Exhibit "A-2" and made a part hereof . .  
22 . **Notwithstanding the foregoing, the parties acknowledge that**  
23 **the BLM Reconfiguration will be accomplished in stages, and**  
24 **the local and legal descriptions of the Entire Site shall be**  
25 **modified from time to time as necessary to conform to their**  
26 **existing conditions.**
- 27 B. ...For purposes of this Agreement, the Option Property shall be the  
28 real property shown on Exhibit "C-1" attached hereto and made a  
part hereof **if the BLM Reconfiguration does not occur or the**  
**real property shown on Exhibit "C-2" attached hereto and**  
**made a part hereof if the BLM Reconfiguration is completed;**  
provided however, that **the actual boundaries of the Option**  
**Property are subject to change depending upon the status of**  
**the BLM Reconfiguration,** the processing of the Seller  
Entitlements for the Entire Site as described in paragraph 10(b)  
below and market conditions...

1 See Exhibit 5 to Opposition, at pp. 1-2 (emphasis added). It is clear that there were a  
2 number of factors that were out of the parties' control that were expected to change the  
3 boundaries and configuration of the Entire Site, the Purchase Property and/or the  
4 Option Property.

5 The boundaries of the Purchase Property did change. Compare Exhibits 9 and  
6 10 with Exhibit 12. But important for determination of Pardee's compliance with the  
7 Commission Agreement, the Purchase Property Price always remained the same --  
8 \$84,000,000.00. The Plaintiffs' commissions were solely based on the Purchase  
9 Property Price, not the acreage acquired by Pardee. The change in boundaries had  
10 absolutely no impact on the amount of Plaintiffs' commissions.

11 Thus, when Plaintiffs contend that the boundaries of the Purchase Property  
12 changed, they offer a red herring to the Court. In other words, "it is much ado about  
13 nothing."

14 **B. Plaintiffs Materially Misrepresent Pardee's Duties to Inform Plaintiffs**  
15 **Under the Commission Agreement.**

16 Pardee's duties to inform Plaintiffs were plainly set out in the Commission  
17 Agreement:

18 Pardee shall provide to each of you a copy of each written option exercise  
19 notice given pursuant to paragraph 2 of the Option Agreement, together  
20 with information as to the number of acres involved and the scheduled  
21 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.

22 See Exhibit G at p. 2. Since Pardee never purchased Option Property, there was  
23 nothing to report under sentence 1. As to sentence 2, Plaintiffs were always paid  
24 through escrow each time Pardee made a takedown from CSI, thereby learning of their  
25 commission due dates and payment. See Exhibit A at 70:16-71:7; 106:7-11; 133:19-  
26 25; see also Exhibit B at 94:13-95:23; see also Exhibits I and J.

27 Notwithstanding the plain language of the Commission Agreement, Plaintiffs  
28 contend that Pardee was obligated to inform Plaintiffs of all transactions with CSI, even

1 if Plaintiffs had no interest in those other transactions like golf course leases, multi-  
2 family land transactions, commercial property transactions, etc. Opposition 9:18-20;  
3 9:25-26; 10:1-13. Plaintiffs go on to contend that since they were not advised of all  
4 transactions between Pardee and CSI, Pardee breached its duty to inform under the  
5 Commission Agreement. Plaintiffs' contention is not found within the language or the  
6 terms of the Commission Agreement.

7 Plaintiffs advance a curious argument in support of their contention that Pardee  
8 failed to comply with the duty to inform set forth in the Commission Agreement.  
9 Plaintiffs argue: "The essential piece of information missing from the letter [from  
10 Pardee] is the confirmation that the other transactions between the parties (CSI and  
11 Pardee) were not subject to the Option Agreement: namely some disclosure of the  
12 other transactions sufficient to confirm to Plaintiffs that they were not entitled to a  
13 commission for those transactions." Opposition 17:8-11. By that argument Plaintiffs  
14 concede they were not entitled to learn about these other transactions between CSI  
15 and Pardee, and therefore they were not entitled to any commissions therefrom, but  
16 they only wanted to be told they were not entitled to commissions on the transaction.  
17 Such an argument is obviously circular: Pardee breached the duty to inform by not  
18 informing Plaintiffs about a transaction in which they had no interest. Surely, such a  
19 circular, disingenuous argument cannot constitute a breach of contract.

20 Absent some countervailing reason, contracts must be construed from their  
21 written language and enforced as written. Kaldi v. Farmers Ins. Exchange, 117 Nev.  
22 273, 278, 21 P.3d 16, 19 (2001). A contract's terms must be given their plain meaning  
23 and the contract must be enforced as written. Magrave v. Dermody Properties, Inc.,  
24 110 Nev. 824, 827, 878 P.2d 291, 293 (1994).

25 The plain meaning from the Commission Agreement required Pardee to inform  
26 Plaintiffs if they acquired Option Property (Pardee did not), and to advise Plaintiffs of  
27 the commissions to which they were entitled (which Pardee admittedly did). The  
28 significantly broader interpretation that Plaintiffs advance defies the plain meaning of

1 the contract terms. To enforce that broader interpretation would be to re-write the  
2 parties' agreement, something the Court is not permitted to do. Farmers Ins. Group v.  
3 Stonik, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994).

4 Applying the plain meaning of the contract terms as written to the undisputed  
5 facts of Pardee's compliance with its duty to inform reveals, as a matter of law, Pardee  
6 has not breached its duty to inform Plaintiffs.

7 **C. Each of Plaintiffs' Claims Are Dependent Upon Proof of a Breach of**  
8 **the Commission Agreement – Without Such Proof, Each Claim Fails.**

9 Plaintiffs do not quarrel with the fact that each of the claims Plaintiffs have  
10 asserted against Pardee are dependent on a showing that Pardee breached the  
11 Commission Agreement. Opposition at pp. 19-21; 22-24. Plaintiffs have failed to  
12 establish, through that Pardee has breached the Commission Agreement. Therefore,  
13 Plaintiffs' claims for breach of contract, accounting and breach of the covenant of good  
14 faith and fair dealing all fail as a matter of law.

15 **D. Plaintiffs Still Have Not Demonstrated Damages.**

16 Plaintiffs advance a contradictory argument concerning their alleged damages.  
17 The Court needs to understand this contradiction in context. First, Plaintiffs contend  
18 that Pardee purchased Option Property from CSI. Plaintiffs contend that they know the  
19 amount of Option Property acreage Pardee purchased by comparing overlays or  
20 transparencies against exhibits to the Option Agreement. The price per acre was set  
21 out in the Commission Agreement, and the percentage upon which the commissions  
22 owed were to be calculated were set out in the Commission Agreement. If so, the  
23 amount of acreage is known, then Plaintiffs should be able to calculate the amount of  
24 commissions owed under paragraph iii from the Commission Agreement since the  
25 amount owed is a percentage of the purchase price able to be calculated. But they do  
26 not. Plaintiffs instead admit they have not incurred any present damages, but only  
27 potential future damages. Specifically, Plaintiffs contend that a component of their  
28 "damages is the future loss of commissions." Opposition 18:19-20. Plaintiffs make no

1 contention that they are presently owed any commission. Id. Such an admission is  
2 dispositive. By admitting that no present commissions are owed, Plaintiffs effectively  
3 concede Pardee has not purchased any Option Property from CSI.

4 Moreover, if, as Plaintiffs contend, Pardee had purchased additional land  
5 designated as Option Property, a deed transferring that land from CSI to Pardee would  
6 exist. Such a deed would describe the land transferred. From that description the  
7 number of acres Pardee received from CSI could be calculated. Once the number of  
8 acres is discerned, the amount of commissions allegedly due under paragraph iii of the  
9 Commission Agreement could easily be calculated. Once again, that Plaintiffs cannot  
10 make such a simple calculation underscores the fact that Pardee has not purchased  
11 any Option Property from CSI. In sum, Plaintiffs are incapable of establishing damages  
12 because they lack any evidence that Pardee purchased any Option Property. Without  
13 proof of damages, Plaintiffs cannot prove a breach of contract. Mort Wallin v.  
14 Commercial Cabinet Co., 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

15 Plaintiffs also argue that they have suffered damages in the form of attorneys'  
16 fees. However, plaintiffs have not specially pled attorneys' fees as an element of their  
17 damages as required by Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.,  
18 117 Nev. 948, 35 P.3d 964, (2001). In Sandy Valley, the Nevada Supreme Court  
19 discusses the difference between attorney fees as a cost of litigation and attorney fees  
20 as an element of damages. See id., 117 Nev. at 955, 35 P.3d at 968-969. The court  
21 acknowledges that attorney fees cannot be recovered as a cost of litigation unless  
22 authorized by agreement, statute, or rule. See id., 117 Nev. at 956, 35 P.3d at 969  
23 (internal citation omitted). The Nevada Supreme Court also recognizes that when  
24 parties seek attorney fees as a cost of litigation, documentary evidence of the fees is  
25 presented generally by post-trial motion. See id. In contrast, however, when attorney  
26 fees are claimed as foreseeable damages arising from tortious conduct or a breach of  
27 contract, they are considered special damages and must be pled in the complaint  
28 pursuant to NRCP 9(g). See id. The court concludes that "[w]hen attorney fees are

1 alleged as damages, they must be specifically pleaded and proven by competent  
2 evidence at trial, just as any other element of damages.” Id., 117 Nev. at 960, 35 P.3d  
3 at 971. Plaintiffs have only generally alleged attorneys fees, and therefore, cannot now  
4 claim their attorneys’ fees as an element of damages. Thus, Plaintiffs have wrongfully  
5 asserted their attorneys’ fees as a basis for their argument that they have suffered  
6 recoverable damages.

7 Finally, Plaintiffs contend they are entitled to damages in the form of their  
8 personal time commitment for investigating their claims. See Opposition at pp. 18-19.<sup>8</sup>  
9 Plaintiffs’ claims are for contract, not tort, damages. Id. at 21 n. 7. Accordingly,  
10 Plaintiffs’ alleged damages are limited to those arising from the contract itself, and must  
11 have been reasonably contemplated by the parties at the time they entered the  
12 contract. Hilton Hotels Corp. v. Butch Lewis Prods., 109 Nev. 1043, 1046 (1993); Las  
13 Vegas Oriental, Inc. v. Sabella’s of Nevada, Inc., 97 Nev. 311, 313, 630 P.2d 255, 256  
14 (1981). Because Plaintiffs’ personal time commitments in investigating their claims  
15 were not reasonably contemplated by either party to the contract, this claim for  
16 damages is also inappropriate. See Las Vegas Oriental, Inc., 97 Nev. at 313, 630 P.2d  
17 at 256.

---

26 <sup>8</sup> Plaintiffs’ only support for their assertion that their own personal investigation of their  
27 claims is compensable is a case from the Supreme Court of California, See id. at 19.  
28 The pinpoint citation Plaintiffs provide pertains only to awards of attorney’s fees, wholly  
unrelated to the issue of Plaintiffs’ personal investigatory efforts. See Gray v. Don  
Miller & Associates, Inc., 35 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984).



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1     **III.     Conclusion.**

2             As demonstrated within, the genuine facts underlying this dispute are  
3     undisputed. The parties concede their contractual terms are clear and unambiguous. It  
4     is a resolution of issues of law for this Court to apply the undisputed facts to the plain  
5     meaning of the clear and unambiguous contract. Doing so reveals Pardee is entitled to  
6     summary judgment in its favor against Plaintiffs on each claim asserted in the  
7     Complaint. Pardee respectfully requests that the Court enter summary judgment in  
8     favor of Pardee against Plaintiffs on all claims asserted in the Complaint.

9             DATED this 7<sup>th</sup> day of January, 2013.

10                             McDONALD CARANO WILSON LLP

11                                     /s/ Pat Lundvall

12                             Pat Lundvall (#3761)

13                             Aaron D. Shipley (#8258)

14                             2300 West Sahara Avenue, Suite 1000

15                             Las Vegas, Nevada 89102

16                             Attorneys for Defendant Pardee Homes of  
17                             Nevada

**CERTIFICATE OF SERVICE**

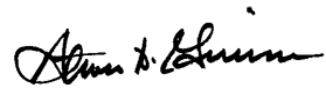
I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 7th day of January, 2013, I served electronically, to all parties of record, a true and correct copy of the foregoing **REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.**

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Lynn M. Hansen  
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/s/ Sally Wexler  
An Employee of McDonald Carano Wilson LLP

266008.1





CLERK OF THE COURT

1 REP

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14 Attorneys for Plaintiffs

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 JAMES WOLFRAM and

18 WALT WILKES,

19 Plaintiffs,

20 vs.

21 PARDEE HOMES OF NEVADA,

22 Defendant.

CASE NO.: A-10-632338-C

DEPT. NO.: IV

DATE OF HEARING: January 24, 2013

TIME OF HEARING: 8:30 a.m.

23 PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR  
24 COUNTER MOTION FOR PARTIAL SUMMARY JUDGMENT

25 Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their counsel  
26 of record JAMES J. JIMMERSON, ESQ., LYNN M. HANSEN, ESQ., and JAMES M.  
27 JIMMERSON, ESQ., of the law firm of JIMMERSON HANSEN, P.C., hereby submit  
28 their Reply in Further Support of Their Counter Motion for Partial Summary Judgment.

This Reply is based on the pleadings and papers on file, the Memorandum of Points

///

///

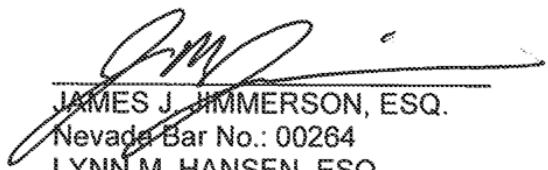
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and Authorities attached hereto and arguments of counsel at the hearing of this Motion.

DATED this 17<sup>th</sup> day of January, 2013.

JIMMERSON HANSEN, P.C.



JAMES J. JIMMERSON, ESQ.  
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Attorneys for Plaintiffs

1 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN FURTHER SUPPORT OF**  
2 **COUNTER-MOTION FOR PARTIAL SUMMARY JUDGMENT**

3 **I.**

4 **INTRODUCTION**

5 Plaintiffs brought this Counter-Motion for Partial Summary as all the evidence  
6 supports Plaintiffs' position that they are the only ones capable of bringing this suit against  
7 Pardee. Defendant has pointed to no documentary evidence suggesting otherwise. When  
8 faced with this documentary evidence, Defendant's counsel demanded to personally  
9 examine the originals of the copies which had been produced during discovery. See  
10 Exhibit 38, a true and correct copy of the letter from defense counsel dated November 9,  
11 2012. In response to this request, Plaintiffs' counsel scheduled a meeting with defense  
12 counsel for the observation and inspection of the originals of the assignments. See Exhibit  
13 39, a true and correct copy of a letter from Plaintiffs' counsel dated November 16, 2012.  
14 As stated in Plaintiffs' counsel's letter in response, "the authenticity of [the] Exhibits should  
15 not be in question." Further, after inspecting the originals of certain exhibits, Defendant's  
16 counsel agreed that the copies furnished in discovery were genuine. Moreover, no  
17 response to this letter has been sent and as such, the Court should conclude that Plaintiffs'  
18 counsel's statements are meritorious.

19 In its Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment  
20 and in Opposition to the Counter Motion, Defendant repeatedly claims that Plaintiffs have  
21 misrepresented evidence and testimony to the Court. Such is not the case and any effort  
22 to suggest that Plaintiffs have misrepresented anything to the Court would itself be  
23 misleading to the ultimate trier of fact in this action. Defendant asserts that the evidence  
24 presented in support of the Counter Motion for Summary Judgment was not produced  
25 during discovery or before the Motion for Summary Judgment had been filed. This is not  
26 true. In fact, most of the evidence presented in the Counter Motion for Partial Summary  
27 Judgment was produced months before such a motion was filed. See Exhibit 39; and  
28 Declaration of Aaron Shipley at ¶ 17. However, this has not deterred Defendant from

1 suggesting to the Court that the evidence "magically" appeared after the Motion for  
2 Summary Judgment was filed. Nevertheless, the Court should recognize what the  
3 evidence undoubtedly confirms, that Plaintiffs, James Wolfram and Walt Wilkes, are the  
4 sole real parties in interest capable of bringing their claims against Pardee.

5 Defendant's only substantive argument in opposition to the Counter-Motion for  
6 Partial Summary Judgment is that the assignments signed by Jerry Masini on behalf of  
7 Award Realty and Jay Dana on behalf of General Realty, were only partial assignments to  
8 Plaintiffs. and Award and General also assigned their rights, title and interest to D&W Real  
9 Estate and Las Vegas Realty Center, respectively. However, attached hereto are two  
10 assignments from Las Vegas Realty Center and D&W Real Estate, once again confirming  
11 that Plaintiffs Mr. Wolfram and Mr. Wilkes are the only two individuals with the rights, title  
12 and interest in the September 1, 2004 Commission Letter Agreement signed by Jon Lash  
13 of Pardee and James Wolfram and Walt Wilkes. These assignments establish that the real  
14 parties in interest in this dispute are present.<sup>1</sup>

15 Defendant in its desperate attempt to avoid having this Court decide the action on  
16 its merits has clung to its arguments regarding the real parties in interest. However, the  
17 Court should take notice of these two assignments once again confirming what everyone  
18 already knew: that James Wolfram and Walt Wilkes are, and throughout this litigation have  
19 been, the real parties in interest and control all the rights granted to Award Realty and  
20 General Realty in the September 1, 2004 Commission Letter Agreement and thus granting  
21 the Counter Motion for Partial Summary Judgment.

22  
23  
24 <sup>1</sup> Defendant may claim that the two new assignments should not be considered since they  
25 were executed after discovery closed. Defendant would be mistaken, however. Discovery  
26 in this matter is set for a fixed time period and is conducted to examine the merits of  
27 Plaintiffs' claims. *Harlem River Consumers Co-op., Inc. v. Associated Grocers of Harlem,*  
28 *Inc.*, 54 F.R.D. 551, 553 (S.D.N.Y. 1972). Conversely, determination of the real party in  
interest is unrelated to the merits of the action and can be decided up and until the time of  
trial. See *Easton Bus. Opp. v. Town Executive Suites*, 126 Nev. Adv Op. 13, 230 P.3d  
827, 831-32 (2010).

II.

LEGAL ARGUMENT

**A. The Documents Confirm that Plaintiffs are the Real Parties in Interest**

Plaintiffs have supplied Defendant several documents supporting Plaintiffs' right to file suit against Pardee. These documents include letters from Award Realty and D&W Real Estate informing the title companies that all payments should be made to James Wolfram (see Exhibits 30 and 31); formal assignments from Award Realty and General Realty assigning to Plaintiffs all rights, title and interest in the September 1, 2004 Commission Letter Agreement (see Exhibits 32 and 36); and affidavits from Jerry Masini and Peter Dingerson stating under oath that the rights, title and interest assigned to Plaintiffs were conferred to them in their personal capacity (see Exhibits 33 and 34). Defendant was even provided an executed copy of a Commission Agreement between Walt Wilkes and General Realty to demonstrate that Mr. Wilkes had been assigned all rights, title and interest in the Commission Letter Agreement (see Exhibit 35). These documents all support Plaintiffs' position as being the only parties in interest in this action and no documents to the contrary have been supplied by Defendant.

Defendant's only substantive argument in opposition to the Counter-Motion is that the documents do not establish that Plaintiffs are the only real parties in interest. Opp. at pp. 9-11.<sup>2</sup> Specifically, Defendant cites the language in the December 20, 2010 and January 11, 2011 assignments stating, "I, Jerry Masini... hereby assign to James F. Wolfram and/or D&W Real Estate LLC, Peter Dingerson, broker, all rights title and interest..." to support the argument that both James Wolfram and D&W Real Estate, LLC share the assignment. Opp. at 9.<sup>3</sup> However, if at any time D&W Real Estate or Las Vegas Realty Center actually had rights, title or interest in the Commission Letter Agreement, they no longer do so. See Exhibit 40, a true and correct copy of the assignment to James

<sup>2</sup> In this Reply, the Counter-Motion for Partial Summary Judgment will be cited as "Mot. at p. \_\_\_\_." Defendant's Opposition to the Counter-Motion will be cited as "Opp. at p. \_\_\_\_."

<sup>3</sup> Identical language is found in the assignment from General Realty to Walt Wilkes and/or Las Vegas Realty.

1 Wolfram of all rights, title and interest D&W Real Estate has (if any) in the Commission  
2 Letter Agreement, signed by Peter Dingerson and dated December 3, 2012, attached  
3 hereto; and Exhibit 41, a true and correct copy of the assignment to Walt Wilkes of all  
4 rights, title and interest Las Vegas Realty Center has (if any) in the Commission Letter  
5 Agreement, signed by Mark Carmen and dated December 3, 2012, attached hereto. By  
6 executing these new assignments, D&W Real Estate and Las Vegas Realty Center have  
7 forever granted to Plaintiffs all rights, title and interest in the September 1, 2004  
8 Commission Letter Agreement, therefore making Plaintiffs the only real parties in interest in  
9 this action. *Id.* Such assignments are effective, even if they were made after Plaintiffs  
10 instituted this action. *See Easton*, 230 P.3d at 831-32. As such, the Court should find that  
11 there is no genuine issue of material fact as to whether the Plaintiffs are the real parties in  
12 interest.

13 **B. Plaintiffs' Deposition Testimony Does Not Disturb the Assignments**

14 Defendant's central argument in its Opposition to the Counter-Motion is not that  
15 Plaintiffs are not the real parties in interest (in fact Defendant concedes that, at a minimum,  
16 they are "joint tenants" of all rights, title and interest in the Commission Letter Agreement;  
17 see Opp. at p.9), but that Plaintiffs testified in their depositions that they had not been  
18 given assignments and therefore, the Court cannot consider any evidence to the contrary.  
19 Opp. at pp. 3-4. However, Defendant's selective quotation of the record is woefully  
20 insufficient to justify wholesale exclusion of evidence—especially when an examination of  
21 the depositions in question reveals Defendant's severe mischaracterization of Plaintiffs'  
22 testimony. From Mr. Wilkes' deposition:

23 Q. When you went from Jack Matthew to general, did you get any type of  
24 assignment from Jack Matthews realty?

25 A. An assignment?

26 Q. Yes.

27 A. Jack was my very close friend and he assigned me to make us play golf once a  
28 week.

1 \*\*\*\*\*

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

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

4 Q. Did anyone assign any claims to you?

5 A. I had a – my commission order from – that I have him sign other over to me on  
6 the Coyote Springs transaction because it was all mine. That was our deal, that I pay – I  
7 pay my few hundred dollars a month and anything I brought it, I got to keep 100 percent of.

8 Q. So in other words, you have some type of assignment, then, at least as to your  
9 commissions, correct?

10 A. Yeah. He assigned them over to – he assigned them over to General Realty – I  
11 mean, Las Vegas Realty and Las Vegas Realty signed them over to Rubicon. I have  
12 documentation of that, I believe.

13 See Exhibit 2 at pp. 41:21-44:20. From Mr. Wolfram's deposition:

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

16 A. I don't think so. I believe, I don't think so.

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

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

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

23 A. No.

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

25 A. No.

26 Q. From either D&W or Award, is that correct?

27 A. That's right. As far as I remember.

28 See Exhibit 1 at p. 9:1-21.

1 Several observations from these two lines of questioning and from Defendant's  
2 Opposition should be made. First, Plaintiffs clearly did not understand the nature of the  
3 questions being asked of them. Mr. Wilkes first thought that Defendant's counsel was  
4 asking about an assignment to play golf. Then, after some explanation, Mr. Wilkes testified  
5 that he did have an assignment from General Realty, contradicting Defendant's  
6 characterization of his testimony (and it is worth noting that Defendant in its Opposition  
7 chose not to quote from Mr. Wilkes's deposition, but only from Mr. Wolfram's).<sup>4</sup> And Mr.  
8 Wolfram did not understand the questions about an assignment as evidenced by his  
9 question, "what do you mean by claims?" If Plaintiffs did not understand the question, their  
10 answers do not carry with them the "moral" implications of failing to answer accurately. *Cf.*  
11 *Opp.* at p. 6 (citing *Aldabe v. Adams*, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965)).

12 Second, Plaintiffs answers were accurate as to Defendant's questions. As has  
13 been established, Mr. Wilkes testified that he did have an assignment from General Realty,  
14 despite not having a full understanding of the question he was being asked. Mr. Wolfram  
15 accurately answered the questions posed to him as well. When asked if he had been  
16 given an assignment of claims, he testified in the negative. And he is right. He never  
17 received an assignment to bring claims on behalf of Award Realty. The assignment he  
18 received gave him all rights, title and interest Award Realty had in the Commission Letter

19  
20 <sup>4</sup> It is ironic that Defendant so blatantly mischaracterizes Plaintiffs' deposition testimony in  
21 light of the several occasions in which Defendant accuses Plaintiffs of materially  
22 misrepresenting the facts and evidence in Defendant's Reply in Response to Plaintiff's  
23 Opposition to the Motion for Summary Judgment and in its Opposition to the Plaintiffs'  
24 Counter-Motion. So much so that Defendant makes reference to a Rule 11 letter sent to  
25 Plaintiffs' counsel. However, as has been demonstrated in its papers and will be confirmed  
26 at the hearing on these motions, Plaintiffs have not misrepresented anything to the Court.  
27 Defense counsel's desperate efforts to convince the Court to the contrary (even on an  
28 issue like the present real party in interest dispute, which has nothing to do with the merits  
of the action) is evidence of the strength of the merits of Plaintiffs' claims. Despite  
threatening a Rule 11 Motion, no such motion has been filed and nor should it be. As  
stated in the conclusion of Plaintiffs' counsel's letter in response to the Rule 11 letter,  
"Plaintiffs and Defendant may disagree about the duties and obligations of the Defendant  
under the September 1, 2004 Commission Letter Agreement, but that should not affect  
counsel's civility and professionalism." As such, the Court should take Defendant's  
willingness to so cavalierly impugn Plaintiffs' counsel's integrity with a healthy grain of salt.



1 Agreement. And therefore, Mr. Wolfram is bringing this action on his own behalf. Nothing  
2 in either Plaintiff's deposition testimony demonstrates that Plaintiffs did not have the  
3 assignments referenced above.

4 In spite of this testimony, Defendant seeks to have the Court ignore all of the  
5 evidence confirming that Plaintiffs were assigned all rights, title and interest in the  
6 Commission Letter Agreement because one Plaintiff testified that he did not receive an  
7 assignment of claims—testimony which was accurate! Specifically, Defendant asserts that  
8 allowing the Court to consider the evidence presented would encourage others to "sand-  
9 bag" their opponents or even encourage the use of false testimony to avoid summary  
10 judgment. Opp. at p. 7. However, the record does not support the suggestion that  
11 Defendant has been sand-bagged, or worse, that Defendant's summary judgment motion  
12 may be defeated because of false testimony.

13 First, Defendant has been on notice about the truth of the assignments since the  
14 beginning. Despite Defendant's bold allegation that Plaintiffs failed to provide Exhibits 30-  
15 37 "during discovery" (Opp. at pp. 4-5), nothing could be further from the truth. Each and  
16 every exhibit cited in Plaintiffs' Opposition and Counter-Motion was produced during the  
17 discovery period. See Exhibit 42, a true and correct copy of Plaintiff's most recent  
18 supplement to their Rule 16.1 Disclosures, dated October 29, 2012, attached hereto.  
19 Further, Exhibits 30, 31, 35, and 36, were produced to Defendant no later than January 18,  
20 2012, ten months before discovery closed. See Declaration of Aaron Shipley in Support of  
21 Defendant's Motion for Summary Judgment at ¶19; and the Joint Case Conference Report  
22 filed on September 26, 2011. It was Defendant's choice not to investigate the assignments  
23 and thus Plaintiff should not be so quickly accused of sand-bagging.

24 Second, Plaintiffs have told the truth throughout this action and will continue to do  
25 so. Just because Defendant does not like the evidence demonstrating that Plaintiffs are  
26 the real parties in interest does not justify its improper attempts to exclude such evidence  
27 and deny Plaintiffs their day in court. If there has been any misunderstanding as to the  
28 validity of Plaintiffs' status as the real parties in interest, the blame is properly placed on

1 Defendant. As has been demonstrated, Defendant has had the bulk of the evidence  
2 confirming the assignments for over ten months, but chose to conduct no discovery into  
3 those assignments. Exhibit 39 at p. 2. Defendant cannot lay its failure to act at Plaintiffs'  
4 feet. As such, the Court should consider all of the evidence presented, which firmly  
5 establish that Plaintiffs are the real parties in interest.

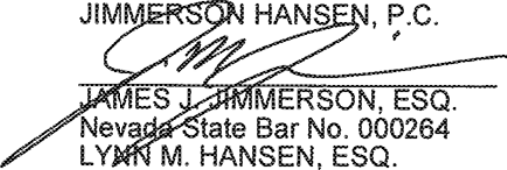
6 III.

7 CONCLUSION

8 Based on the foregoing, it is clear that there exist no genuine issue of material fact  
9 as to the Plaintiffs' status as real parties in interest, warranting granting the Counter-Motion  
10 for Partial Summary Judgment against Defendant Pardee. As such, Plaintiffs respectfully  
11 request the Court to grant Plaintiffs' Counter-Motion for Partial Summary Judgment.

12 DATED this 17th day of January, 2013.

13 JIMMERSON HANSEN, P.C.

14   
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17 LYNN M. HANSEN, ESQ.  
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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT was made on the 17 day of January, 2013, as indicated below:

X By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

X By facsimile, pursuant to EDCR 7.26 (as amended)

\_\_\_\_\_ By receipt of copy as indicated below

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