

1 66. Taking all of the Production Residential Property purchased under the Multifamily
2 Agreement, Plaintiffs should have received commissions in the amount of \$134,964.00
3 (224.94 acres times \$40,000.00 per acre, times 1.5%). Pardee made no such payment.

4 67. As a direct and proximate result of Pardee's failure to faithfully discharge its duties
5 under the Commission Letter Agreement, Plaintiffs have suffered significant damages.

6 68. Plaintiffs have incurred substantial attorney's fees in the course of enforcing their
7 rights under the Commission Letter Agreement. The fees were foreseeable and
8 necessarily caused by Pardee's failure to produce the information as required by the
9 Commission Letter Agreement as Plaintiffs had no other way to retrieve the information
10 than by hiring an attorney, filing suit, using the tools of discovery, and appealing to the
11 powers of the Court. The attorney's fees attributable to Defendant's bad faith conduct
12 equal or exceed \$135,486.87. Specifically, the attorney's fees caused by Defendant's
13 breach of contract and breach of the covenant of good faith and fair dealing exceed
14 \$7,602.50. Plaintiffs' attorney fee damages for the accounting claim equal or exceed
15 \$135,486.87. The fees are reasonable for the work performed and are far less than the
16 fees actually incurred by Plaintiffs in prosecuting this action.

17 69. Plaintiffs expended no fewer than eighty (80) hours of time, effort, and energy
18 attempting to discover the nature of the transactions between CSI and Pardee, which
19 Pardee has a duty to disclose under the Commission Letter Agreement.

20 70. This time and effort was foreseeable at the time of execution of the Commission
21 Letter Agreement. It was natural and foreseeable that Plaintiffs, in the event they were
22 denied the information and records promised to them by Defendant, would seek out
23 alternative sources of that information. Because the information concerned the availability
24 of commissions to be paid to Plaintiffs, they would naturally inquire as to the land
25 transactions to determine if any money is owed them. Additionally, Pardee's Option to buy
26 land from CSI lasted for forty (40) years. Given that both Plaintiffs were over sixty (60)
27 years of age at the time the Commission Letter Agreement was executed, it is foreseeable
28

1 that Plaintiffs would be concerned as to their families' abilities to track the land purchases
2 to which they would be entitled a commission when Plaintiffs have passed on.

3 71. An hourly rate of \$80 per hour is reasonable in light of the work performed and the
4 qualifications and experience of Plaintiffs.

5 72. Despite the damages suffered by Plaintiffs, there is no adequate remedy at law to
6 compensate Plaintiffs without compelling an accounting.

7 **F. Plaintiffs' Performance Under the Commission Letter Agreement**

8 73. Plaintiffs fully performed any and all obligations they had to Pardee for which they
9 would be entitled the benefits of their bargain with Pardee.

10 74. Since Mr. Wolfram and Mr. Wilkes had already performed services for Pardee, the
11 Commission Letter Agreement placed no affirmative obligations on them.

12 75. The Commission Letter Agreement did not bar Plaintiffs from inquiring as to the
13 development of Coyote Springs.

14 76. Under the circumstances, Defendant cannot justifiably expect Plaintiffs not to
15 inquire about the development of Coyote Springs.

16 77. Plaintiffs had requested information concerning the development of Coyote Springs
17 from Pardee between 2008 and 2010 prior to filing suit.

18 78. These requests were neither extreme nor outrageous.

19 79. It was not foreseeable by the parties at the time of entering into the Commission
20 Letter Agreement that Plaintiffs would have to compensate Defendant for the time and
21 effort responding to their requests for information.

22 **CONCLUSIONS OF LAW**

23 80. To sustain a claim for breach of contract, Plaintiffs must establish (1) the existence
24 of a valid contract between Plaintiffs and Defendant; (2) a breach by Defendant, and (3)
25 damages as a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 405 (1865); *Calloway*
26 *v. City of Reno*, 116 Nev. 250, 256, 993 P.3d 1259, 1263 (2000) (*overruled on other*
27 *grounds by Olson v. Richard*, 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)).
28

1 81. "Contract interpretation strives to discern and give effect to the parties' intended
2 meaning...before an interpreting court can conclusively declare a contract ambiguous or
3 unambiguous, it must consult the context in which the parties exchanged promises."
4 *Galardi v. Naples Polaris*, --- Nev. ---, ---, 301 P.3d 364, 367 (July 18, 2013).

5 82. If a contract is unambiguous, the parties' intent must be derived from the plain
6 language of the contract. See *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776,
7 121 P.3d 599, 603 (2005).

8 83. The Court may take notice of the course of dealing between the parties and the
9 trade usage of a contract's terms to interpret a contract. *Galardi*, 301 P.3d at 367; *United*
10 *Services Auto Ass'n v. Schlang*, 111 Nev. 486, 493, 894 P.2d 967, 971 (1995); *Nevada*
11 *Nat. Bank v. Huff*, 94 Nev. 506, 514, 582 P.2d 364, 370 (1978).

12 84. Contractual provisions should be harmonized whenever possible, and construed to
13 reach a reasonable solution. *Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112 Nev.
14 1255, 1260, 925 P.2d 505, 509 (1996).

15 85. "The parol evidence rule forbids the reception of evidence which would vary or
16 contradict the contract, since all prior negotiations and agreements are deemed to have
17 been merged therein." *Kaldi v. Farmers Ins. Exchange*, 117 Nev. 273, 281, 21 P.3d 16, 21
18 (2001).

19 86. Mutual consent is needed to amend or modify a contract. Unilateral changes are
20 unenforceable. See *MacKenzie Ins. Agencies, Inc. v. National Ins. Ass'n*, 110 Nev. 503,
21 505, 874 P.2d 758, 760 (1994); *Union Pacific R.R. Co. v. Chicago M. St. P. & P. R. Co.*,
22 549, F.2d 114, 118 (9th Cir. 1976); *Clark County Sports Enterprises, Inc. v. City of Las*
23 *Vegas*, 96 Nev. 167, 172, 606 P.2d 171, 175 (1980).

24 87. Damages arising from breach of contract must (1) arise from the breach of contract
25 and (2) "be such as may reasonably be supposed to have been in the contemplation of
26 both parties." See *Clark County School Dist. v. Rolling Plains Const., Inc.*, 117 Nev. 101,
27 106, 16 P.3d 1079, 1082 (2001) (disapproved of on other grounds, 117 Nev. 948). Stated
28 another way, "the damages claimed for the breach of contract must be foreseeable." *Id.*

1 88. The Commission Letter Agreement constitutes a valid and enforceable contract
2 between Plaintiffs and Defendant.

3 89. Considering that (1) the Commission Letter Agreement guaranteed that Plaintiffs
4 would receive commission payments and information in connection with every takedown of
5 Production Residential Property by Pardee as of the date the Commission Letter
6 Agreement was executed (since the Option Agreement only allowed Pardee to purchase
7 Production Residential Property through procedures whereby Plaintiffs would be entitled to
8 a commission, and (2) the Commission Letter Agreement explicitly prohibited Pardee from
9 taking any action to circumvent or otherwise avoid its obligations to Plaintiffs, it would be
10 inappropriate to interpret the Commission Letter Agreement to deny Plaintiffs commissions
11 in the event Pardee acts outside of the strictures of the Option Agreement and acquires
12 Option Property in a manner other than pursuant to paragraph 2 of the Option Agreement.
13 Interpreting the phrase "pursuant to paragraph 2" as a limitation on Plaintiffs' entitlement to
14 commissions and information in all instances except when Pardee acquires Option
15 Property pursuant to paragraph 2 of the Option Agreement would do violence to the intent
16 of the parties and would render the non-circumvention clause meaningless. Since at the
17 time the Commission Letter Agreement was executed, Pardee had only one way to
18 purchase Option Property under the Option Agreement (through the exercise of options
19 pursuant to paragraph 2), the phrase "pursuant to paragraph 2" in the Commission Letter
20 Agreement cannot be interpreted as creating an artificial limitation on when Plaintiffs would
21 receive a commission now that Pardee has purchased Option Property in a manner other
22 than pursuant to paragraph 2 of the Option Agreement. The phrase "pursuant to
23 paragraph 2" cannot take on a new importance or meaning simply because Pardee and
24 CSI later created new avenues for Pardee to purchase Production Residential Property.

25 90. Defendant materially breached its obligations under the Commission Letter
26 Agreement by purchasing Option Property and:

- 27 a. Failing to appropriately calculate and pay to Plaintiffs the commission owed under
28 the Option Property formula;

- b. Failing to provide a copy of the notice whereby Defendant purchased the Option Property;
- c. Failing to provide Plaintiffs information concerning the number of acres of Option Property Purchased;
- d. Failing to keep Plaintiffs reasonably informed as to all matters related to the amount and due dates of their commission payments;
- e. Purchasing Production Residential Property and failing to appropriately pay and inform Plaintiffs of the purchases; and
- f. Circumventing and otherwise attempting to avoid its obligations under the Commission Letter Agreement.

91. Plaintiffs appropriately satisfied any and all obligations they had under their agreement with Pardee.

92. Plaintiffs suffered damages in the form of the commissions Plaintiffs were entitled to be paid, but were not, for Pardee's purchase of Production Residential Property. These damages total \$134,964.00.

93. Plaintiffs suffered damages in the form of their time and effort attempting to retrieve the information owed to them. Such harm is compensable. See *Gray v. Don Miller & Associates, Inc.*, 35 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa Barbara Title Co.*, 28 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct. 1994). These damages total \$6,400.00.

94. Plaintiffs suffered damages in the form of the attorney's fees and costs incurred as they were necessary and foreseeable to recover the information Plaintiffs are entitled to under the Commission Letter Agreement. Plaintiffs had no alternative but to file suit, access the tools of discovery, and appeal to the Court's equitable powers to get access to the information owed to them. These reasonable attorney's fees and costs are special damages. See *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001). These damages total \$7,602.50.

1 95. To sustain a claim for breach of the implied covenant of good faith and fair dealing
2 sounding in contract, Plaintiffs must establish: (1) Plaintiffs and Defendant were parties to
3 the contract; (2) the Defendant owed a duty of good faith to Plaintiffs; (3) the Defendant
4 breached that duty by performing in a manner that was unfaithful to the purpose of the
5 contract; and (4) Plaintiff's justified expectations were thus denied. *See Perry v. Jordan*,
6 111 Nev. 943, 947, 900 P.2d 335, 338 (1995).

7 96. "An implied covenant of good faith and fair dealing is recognized in every contract
8 under Nevada law." *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*,
9 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

10 97. Under the implied covenant, each party must act in a manner that is faithful to the
11 purpose of the contract and the justified expectations of the other party. *Morris v. Bank of*
12 *America Nevada*, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 (1994).

13 98. The implied covenant of good faith and fair dealing "essentially forbids arbitrary,
14 unfair acts by one party that disadvantages the other." *Frantz v. Johnson*, 116 Nev. 455,
15 465 n. 4., 999 P.2d 351, 358 (2000).

16 99. Because Pardee had only one way to purchase Option Property under the Option
17 Agreement (pursuant to the procedures of paragraph 2) at the time of the execution of the
18 Commission Letter Agreement, and Pardee had promised to take no action to circumvent
19 or avoid its obligations to Plaintiffs, Plaintiffs had justifiable expectations that Pardee would
20 not enter into later agreements with CSI granting Pardee new rights to purchase Option
21 Property while failing to appropriately inform Plaintiffs and pay them their commissions.

22 100. Defendant denied Plaintiffs their justified expectations under the Commission
23 Letter Agreement by purchasing Option Property and:

- 24 a) Failing to appropriately calculate and pay to Plaintiffs the commission owed under
25 the Option Property formula;
26 b) Failing to provide a copy of the notice whereby Defendant purchased the Option
27 Property;
28

- c) Failing to provide Plaintiffs information concerning the number of acres of Option Property Purchased;
- d) Failing to keep Plaintiffs reasonably informed as to all matters related to the amount and due dates of their commission payments;
- e) Purchasing Production Residential Property and failing to appropriately pay and inform Plaintiffs of the purchases; and
- f) Circumventing and otherwise attempting to avoid its obligations under the Commission Letter Agreement.

101. Plaintiffs suffered damages in the form of the commissions Plaintiffs were entitled to be paid, but were not, for Pardee's purchase of Production Residential Property. These damages total \$134,964.00.

102. Plaintiffs suffered damages in the form of their time and effort attempting to retrieve the information owed to them. Such harm is compensable. *See Gray v. Don Miller & Associates, Inc.*, 35 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa Barbara Title Co.*, 28 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct. 1994). These damages total \$6,400.00.

103. Plaintiffs suffered damages in the form of the attorney's fees and costs incurred as they were necessary and foreseeable to recover the information Plaintiffs are entitled to under the Commission Letter Agreement. Plaintiffs had no alternative but to file suit, access the tools of discovery, and appeal to the Court's equitable powers to get access to the information owed to them. These reasonable attorney's fees and costs are special damages. *See Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001). These damages total \$7,602.50.

104. Plaintiffs did not breach any obligation they had to Pardee under the Commission Letter Agreement by inquiring into the development of Coyote Springs.

105. Plaintiffs acted in good faith at all times toward Defendant and did not deny Pardee its justified expectations under the Commission Letter Agreement.

1 106. Defendant suffered no recoverable damages from Plaintiffs' inquiries.
2 Defendant's time and effort damages were not foreseeable at the time of entering the
3 contract.

4 107. An accounting is an independent cause of action that is distinct from the
5 equitable remedy of accounting. See, e.g. *Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705
6 (1910); *Young v. Johnny Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle*
7 *USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nev.
8 Aug. 13, 2010); *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal.
9 App. 2009); *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-
10 RJJ, 2012 WL 194434 (D. Nev. Jan. 23, 2012).

11 108. An action for an accounting is a "proceeding in equity for the purpose of
12 obtaining a judicial settlement of the accounts of the parties in which proceedings the court
13 will adjudicate the amount due, administer full relief, and render complete justice." *Oracle*
14 *USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933, at *6 (D.
15 Nev. Aug. 13, 2010).

16 109. To prevail on a claim for accounting, a Plaintiff must establish the existence
17 of a special relationship whereby a duty to account may arise. See *Teselle v. McLoughlin*,
18 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). The right to an accounting
19 can arise from Defendant's possession of money or property which, because of the
20 Defendant's relationship with the Plaintiff, the Defendant is obliged to surrender. *Id.*

21 110. The elements of a cause of action for an accounting are: (1) a special
22 relationship between the parties giving rise to a duty to account; (2) mutual accounts
23 between the parties must be held by one of the parties; and (3) a duty by defendant to
24 render an accounting. *Mobius Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-
25 01678-GMN-RJJ, 2012 WL 194434, at *8 (D. Nev. Jan. 23, 2012); *Mitchell v. O'Neale*, 4
26 Nev. 504, 522 (1869).

27 111. The duty to account arises (1) where the parties enjoy a fiduciary
28 relationship; (2) where the parties enjoy a "special relationship," that is, where a party

1 reasonably imparts special confidence in the defendant and the defendant would
2 reasonably know of this confidence; or (3) where a party has superior knowledge or where
3 the material facts are peculiarly within the knowledge of the party sought to be charged and
4 not within the fair and reasonable reach of the other party. *Dow Chemical v. Mahlum*, 114
5 Nev. 1468, 1486, 970 P.2d 98, 110 (1998); *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d
6 335, 337 (1995).

7 112. Plaintiffs have established the requisite elements to prosecute a claim for
8 accounting—that there exists a special relationship between Plaintiffs and Pardee; that the
9 accounts are controlled by Pardee; and that Pardee owes Plaintiffs a duty to account. The
10 relationship between Pardee and Plaintiffs is such that Pardee is in a position of trust and
11 superior knowledge relative to Plaintiffs and the material facts are peculiarly within the
12 knowledge of Pardee and not within the fair and reasonable reach of Plaintiffs.

13 113. The Commission Letter Agreement confirms that the accounts are controlled
14 by one party in that the Commission Letter Agreement obligates Pardee to: (1) determine if
15 a commission payment is warranted for a particular purchase; (2) decide what notice is
16 required under the Agreement; (3) calculate the appropriate commission to be paid; and (4)
17 make the payment to Plaintiffs.

18 114. To date, Defendant has failed to appropriately account to Plaintiffs and there
19 is no adequate remedy at law to compensate Plaintiffs without compelling an accounting.
20 Plaintiffs are entitled to be provided the following information when Pardee purchases land
21 from CSI: the name of the seller, the buyer, the parcel numbers, the amount of acres sold,
22 the purchase price, the commission payments schedule and amount, Title company
23 contact information, and Escrow number(s), copy of close of escrow documents, maps
24 specifically depicting the property sold, with parcel numbers specifically identified, and
25 information stating the designation of the property when it is sold (and if the designation
26 changes, information stating the change in designation).

1 115. Plaintiffs are entitled to their reasonable attorney's fees as special damages.
2 See *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d
3 964 (2001). These damages total \$135,486.87

4 **DECISION**

5 116. WHEREFORE, the Court finds that Defendant Pardee Homes of Nevada is
6 liable to Plaintiffs for breach of contract, breach of the covenant of good faith and fair
7 dealing, and for its failure to account to Plaintiffs as to the information concerning the
8 development of Coyote Springs as it pertained to Plaintiffs present and future
9 commissions. Damages are to be awarded to Plaintiffs from Defendant in an amount
10 totaling \$276,850.87.

11 117. Further, the Court finds that Plaintiffs are not liable to Defendant for breach
12 of the implied covenant of good faith and fair dealing. As such, no damages will be
13 awarded to Defendant.

14 118. The Court will schedule further proceedings consistent with this Decision,
15 including compelling Defendant to account to Plaintiffs.

16 DATED this ____ day of _____, 201__.

17
18 _____
19 DISTRICT COURT JUDGE

20 Respectfully submitted by:

21 JIMMERSON HANSEN, P.C.

22
23 _____
24 JAMES J. JIMMERSON, ESQ.
Nevada Bar No.: 00264
25 LYNN M. HANSEN, ESQ.
Nevada Bar No.: 00244
26 JAMES M. JIMMERSON, ESQ.
Nevada Bar No.: 12599
27 JIMMERSON HANSEN, P.C.
28 415 South 6th Street, Suite 100

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415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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Las Vegas, Nevada 89101
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*Attorneys for Plaintiffs James
Wolfram and Walt Wilkes*

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Exhibit L

A-10-632338-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Breach of Contract

COURT MINUTES

February 10, 2015

A-10-632338-C James Wolfram, Plaintiff(s)
vs.
Pardee Homes of Nevada, Defendant(s)

February 10, 2015 3:00 AM Minute Order

HEARD BY: Earley, Kerry

COURTROOM:

COURT CLERK: Kristin Duncan

JOURNAL ENTRIES

- After reviewing Plaintiffs' Accounting Brief pursuant to the Court's Order, Pardee Homes of Nevada's Supplemental Brief regarding future accounting, and Pardee's Notice of Submission, the Court rules as follows:

1. Defendant to provide to Plaintiffs an Affidavit or an unsworn declaration in lieu thereof pursuant to NRS 53.045 executed under penalty of perjury by a corporate representative from Weyerhaeuser Company NR (WNR) acknowledging and confirming the representations contained in Ms. Lundvall's letter dated August 5, 2014, regarding the transactions which resulted in Pardee's rights and obligations under the Commission Agreement being assigned/transferred to WNR.
2. All future amendments, if any, to the Amended and Restated Option Agreement dated March 28, 2005, be provided to Plaintiffs and their successors and/or assigns (hereinafter referred to as Plaintiffs). These documents will be designated CONFIDENTIAL pursuant to the protective order in this case.
3. This COURT ORDERS, in compliance with its Decision in this matter, that Pardee or its successor in interest and/or assigns (hereinafter referred to as Pardee) provide the following to Plaintiffs in the future to keep Plaintiffs reasonably informed pursuant to the Commission Agreement:
 - (1) Within fourteen (14) days of the relevant event described below, Pardee shall provide Plaintiffs with courtesy copies of the following:
 - (a) All publicly-recorded documents related to any transaction involving Pardee's purchase of Option Property from CSI;
 - (b) 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;
 - (c) A parcel map which reflects the exact location of the related Option Property, if one is available; and
 - (d) Documents that reflect the purchase price of the Option Property, along

PRINT DATE: 02/11/2015

Page 1 of 2

Minutes Date: February 10, 2015

A-10-632338-C

with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement.

(e) Pardee shall notify Plaintiffs which escrow company will handle any Option Property purchases

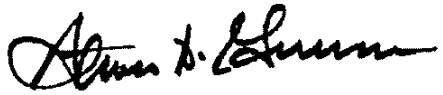
(2) In the event there is a purchase of Option Property, Pardee shall pay into escrow any commissions owed to Plaintiffs concurrently with Pardee's deposit of the Option Property Price.

(3) In the event that the Option Agreement is terminated, Pardee shall provide notice thereof to Plaintiffs within fourteen (14) days of the effective date of the termination.

(4) Plaintiffs shall notify Pardee of the name and address of the person or entity that should receive notice of the foregoing information and documents. Ms. Lundvall to prepare the order and Mr. Jimmerson to sign off as to form and content.

CLERK'S NOTE: A copy of this minute order was e-mailed to: Patricia Lundvall, Esq. [lundvall@mcdonaldcarano.com] and James J. Jimmerson, Esq. [jjj@jimmersonhansen.com] (KD 2/11/15)

Exhibit M



CLERK OF THE COURT

1 **NEOJ**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *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

**NOTICE OF ENTRY OF
ORDER ON FINDINGS OF
FACT AND CONCLUSIONS OF
LAW AND SUPPLEMENTAL
BRIEFING RE FUTURE
ACCOUNTING**

PLEASE TAKE NOTICE that an **ORDER ON FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND SUPPLEMENTAL BRIEFING RE FUTURE
ACCOUNTING** was entered in the above-referenced case on the 20th day of April,
2015, a copy of which is attached hereto.

DATED this 13th day of May, 2014.

McDONALD CARANO WILSON LLP

/s/ Pat Lundvall
PAT LUNDVALL (#3761)
RORY T. KAY (#12416)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
*Attorneys for Defendant Pardee Homes of
Nevada*

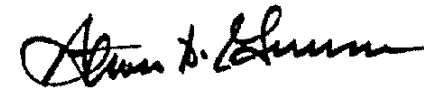
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 13th day of May, 2015, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER ON FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SUPPLEMENTAL BRIEFING RE FUTURE ACCOUNTING** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

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

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

334032.1



CLERK OF THE COURT

1 **ORDER**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
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9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

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

**ORDER ON FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
SUPPLEMENTAL BRIEFING RE
FUTURE ACCOUNTING**

21 **AND RELATED CLAIMS**

22 On October 23, 2013, the above-referenced matter came on for bench trial
23 before the Honorable Judge Kerry Earley. The Court, having reviewed the record,
24 testimony of witnesses, the documentary evidence, stipulations of counsel, the papers
25 submitted by the respective parties, and considered the arguments of counsel at trial in
26 this matter, entered Findings of Fact and Conclusions of Law (the "Decision") on June
27 25, 2014. That Decision is hereby incorporated into this Order.

28 In the Decision, the Court ordered both parties to provide the Court with
supplemental briefs detailing information the Defendant should provide to the Plaintiffs
consistent with the Court's Decision. The parties complied with the Court's order, as
the Plaintiffs submitted Plaintiffs' Accounting Brief and the Defendant submitted Pardee

1 Homes of Nevada's Supplemental Brief Regarding Future Accounting as well as a
2 Notice of Submission. On February 10, 2015, the Court issued a minute order
3 reflecting its decision on the supplemental briefing.

4 Now, having considered the parties' briefings, any arguments by counsel
5 presented in support of the same, and good cause appearing therefore, the Court
6 decides the submitted issues as follows:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Pardee
8 Homes of Nevada or its successors in interest and/or assigns (hereinafter collectively
9 referred to as "Pardee") shall provide to Plaintiffs an affidavit or unsworn declaration in
10 lieu thereof pursuant to NRS 53.045 executed under penalty of perjury by a corporate
11 representative from Weyerhaeuser NR Company ("WNR") acknowledging and
12 confirming the representations contained in Pat Lundvall's letter dated August 5, 2014,
13 regarding the transactions which resulted in Pardee's rights and obligations under the
14 Commission Agreement being assigned/transferred to WNR.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
16 Pardee shall provide to Plaintiffs and their successors and/or assigns all future
17 amendments, if any, to the Amended and Restated Option Agreement dated March 28,
18 2005. The documents will be designated CONFIDENTIAL pursuant to the protective
19 order in the above-referenced matter.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, in
21 compliance with the Court's Decision, Pardee provide the following to Plaintiffs in the
22 future to keep them reasonably informed pursuant to the Commission Agreement:

- 23 1. Within fourteen (14) days of the relevant event described below, Pardee shall
24 provide Plaintiffs with courtesy copies of the following:
- 25
26
27
28

- a. All publicly-recorded documents related to any transaction involving Pardee's purchase of Option Property¹ from CSI;
- b. 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;
- c. A parcel map which reflects the exact location of the related Option Property, if one is available;
- d. Documents that reflect the purchase price of the Option Property, along with a breakdown of the calculation of commission owed pursuant to paragraph (iii) of the Commission Agreement; and
- e. Pardee shall notify Plaintiffs which escrow company will handle any Option Property purchases.

2. If there is a purchase of Option Property, Pardee shall pay into escrow any commissions owed to Plaintiffs concurrently with Pardee's deposit of the Option Property Price.
3. If the Option Agreement is terminated, Pardee shall provide notice thereof to Plaintiffs within fourteen (14) days of the effective date of the termination.
4. Plaintiffs shall notify counsel for Pardee and WNR of the name and address of the person or entity that should receive notice of the foregoing information and documents.

DATED this 20th day of April, 2015.


DISTRICT COURT JUDGE


¹ Any capitalized term in this Order referring to the Amended and Restated Option Agreement dated March 28, 2005 will have the same meaning as in the Amended and Restated Option Agreement or any amendments thereto.

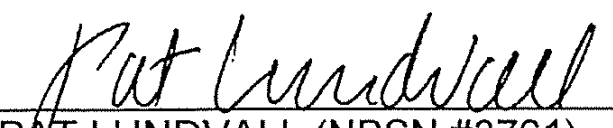

1 Submitted by:
2 McDONALD CARANO WILSON LLP
3
4 
5 PAT LUNDVALL (NBSN #3761)
6 RORY T. KAY (NSB #12416)
7 2300 West Sahara Avenue, Suite 1200
8 Las Vegas, Nevada 89102
9 Attorneys for Pardee Homes of Nevada
10
11 Reviewed and approved by:
12
13 JIMMERSON HANSEN P.C.
14
15  3/3/15
16 JAMES J. JIMMERSON (NSB #00264)
17 LYNN M. HANSEN (NSB #00244)
18 BURAK S. AHMED (NSB #12547)
19 2300 West Sahara Avenue, Suite 1200
20 Las Vegas, Nevada 89102
21 Attorneys for Pardee Homes of Nevada
22
23
24
25
26
27
28

Exhibit N



McDONALD·CARANO·WILSON^{LLP}

Rory T. Kay

Reply to Las Vegas

May 29, 2015

Via Hand Delivery

The Honorable Kerry Earley
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: ***Pardee Homes of Nevada adv. James Wolfram, et al.:***
Proposed Judgment

Dear Judge Earley:

Attached hereto is Pardee Homes of Nevada's ("Pardee") proposed judgment for the Court's consideration. The judgment incorporates the Court's Findings of Fact and Conclusions of Law dated June 25, 2014, the Minute Order dated February 10, 2015, and the Order on Findings of Fact and Conclusions of Law and Supplemental Briefing Re Future Accounting dated April 20, 2015 (the "Final Order").

Given that the Court's Findings, Minute Order, and Final Order resolved all of the outstanding issues in the case, Pardee believes it appropriate for the Court to now enter judgment in this matter.

Sincerely,



Rory T. Kay

cc: James J. Jimmerson, Esq. (via e-mail)

100 WEST LIBERTY ST., 10TH FLOOR
RENO, NEVADA 89501

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

ATTORNEYS AT LAW



www.mcdonaldcarano.com

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

JUDG
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 RORY T. KAY (NSBN 12416)
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 (702) 873-4100
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lundvall@mcdonaldcarano.com
rkay@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

JUDGMENT

AND RELATED CLAIMS

On October 23, 2013, the above-referenced matter came on for bench trial before the Honorable Judge Kerry Earley. The Court, having reviewed the record, testimony of witnesses, the documentary evidence, stipulations of counsel, the papers submitted by the respective parties, and considered the arguments of counsel at trial in this matter, entered Findings of Fact and Conclusions of Law on June 25, 2014.

In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide supplemental briefing within 60 days detailing what future information Defendant Pardee Homes of Nevada ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the accounting cause of action.

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order") The Notice of Entry of the Accounting Order was filed on May 13,
4 2015.

5 In accordance with the Findings of Fact and Conclusions of Law entered on June
6 25, 2014 and the Accounting Order entered on May 13, 2015, the Court finds the
7 following:

8 Plaintiffs claimed \$1,952,000 in total damages related to their causes of action.
9 Specifically, Plaintiffs claimed \$1,800,000 in damages related to lost future
10 commissions from Pardee's purported breach of the Commission Agreement, \$146,500
11 in attorney's fees incurred as special damages in prosecuting the action, and \$6,000 in
12 consequential damages for time and effort expended searching for information
13 regarding what Pardee purportedly owed them under the Commission Agreement.

14 Having considered the entire record, including testimony of witnesses, the
15 documentary evidence, stipulations of counsel, the papers submitted by the respective
16 parties, and the arguments of counsel at trial in this matter, the Court enters judgment
17 as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
19 **ENTERED** against Plaintiffs and for Pardee as to Plaintiffs' claim for \$1,800,000 in
20 damages related to lost future commissions under the Commission Agreement. Pardee
21 has not breached the Commission Agreement in such a way as to deny Plaintiffs any
22 future commissions, and Pardee has paid all commissions due and owing under the
23 Commission Agreement.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
25 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
26 breach of contract and breach of the implied covenant of good faith and fair dealing.
27 Plaintiffs are entitled to damages from Pardee in an amount totaling \$141,500.00, of
28 which \$6,000 are consequential damages from Pardee's breach of the Commission

1 Agreement and the remaining \$135,500.00 are special damages in the form of
2 attorney's fees and costs.

3 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
4 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' cause
5 of action for accounting. Pardee shall provide Plaintiffs with future accountings related
6 to the Commission Agreement consistent with the Accounting Order entered by the
7 Court on May 13, 2015.

8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
9 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Pardee's cause
10 of action for breach of the implied covenant of good faith and fair dealing.

11 This Judgment may be amended upon entry of any further awards of interest,
12 costs and/or attorney's fees.

13 DATED this ____ day of May, 2015.

14
15 _____
16 DISTRICT COURT JUDGE

17 Submitted by:

18 McDONALD CARANO WILSON LLP

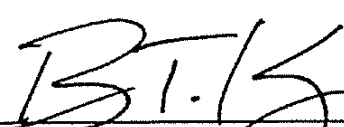
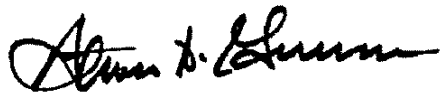
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20 
21 PAT LUNDVALL (NSB #3761)
22 RORY T. KAY (NSB #12416)
23 2300 West Sahara Avenue, Suite 1200
24 Las Vegas, Nevada 89102
25 *Attorneys for Pardee Homes of Nevada*
26
27
28

Exhibit O



CLERK OF THE COURT

1 **NJUD**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
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8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**NOTICE OF ENTRY OF
JUDGMENT**

16 PLEASE TAKE NOTICE that a **JUDGMENT** was entered in the above-
17 referenced case on the 3rd day of June, 2015, a copy of which is attached hereto.

18 DATED this 15th day of June, 2015.

19
20 McDONALD CARANO WILSON LLP

21 /s/ Pat Lundvall
22 PAT LUNDVALL (#3761)
23 RORY T. KAY (#12416)
24 2300 West Sahara Avenue, Suite 1200
25 Las Vegas, Nevada 89102
26 *Attorneys for Defendant Pardee Homes of*
27 *Nevada*
28

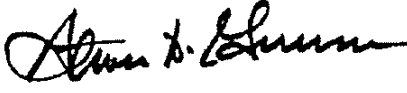
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 15th day of June, 2015, I served a true and correct copy of the **NOTICE OF ENTRY JUDGMENT** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

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

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

336337.1



CLERK OF THE COURT

JUDG

PAT LUNDVALL (NSBN 3761)
RORY T. KAY (NSBN 12416)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
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lundvall@mcdonaldcarano.com
rkay@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

JUDGMENT

AND RELATED CLAIMS

On October 23, 2013, the above-referenced matter came on for bench trial before the Honorable Judge Kerry Earley. The Court, having reviewed the record, testimony of witnesses, the documentary evidence, stipulations of counsel, the papers submitted by the respective parties, and considered the arguments of counsel at trial in this matter, entered Findings of Fact and Conclusions of Law on June 25, 2014.

In the Findings of Fact and Conclusions of Law, the Court ordered the parties to provide supplemental briefing within 60 days detailing what future information Defendant Pardee Homes of Nevada ("Pardee") and its successors and/or assigns should provide Plaintiffs James Wolfram and Walt Wilkes ("Plaintiffs") and their successors and/or assigns consistent with the Court's decision on the accounting cause of action.

1 After reviewing the parties' supplemental briefing, the Court then entered an
2 order on April 20, 2015 reflecting its decision on the supplemental briefing (the
3 "Accounting Order") The Notice of Entry of the Accounting Order was filed on May 13,
4 2015.

5 In accordance with the Findings of Fact and Conclusions of Law entered on June
6 25, 2014 and the Accounting Order entered on May 13, 2015, the Court finds the
7 following:

8 Plaintiffs claimed \$1,952,000 in total damages related to their causes of action.
9 Specifically, Plaintiffs claimed \$1,800,000 in damages related to lost future
10 commissions from Pardee's purported breach of the Commission Agreement, \$146,500
11 in attorney's fees incurred as special damages in prosecuting the action, and \$6,000 in
12 consequential damages for time and effort expended searching for information
13 regarding what Pardee purportedly owed them under the Commission Agreement.

14 Having considered the entire record, including testimony of witnesses, the
15 documentary evidence, stipulations of counsel, the papers submitted by the respective
16 parties, and the arguments of counsel at trial in this matter, the Court enters judgment
17 as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
19 **ENTERED** against Plaintiffs and for Pardee as to Plaintiffs' claim for \$1,800,000 in
20 damages related to lost future commissions under the Commission Agreement. Pardee
21 has not breached the Commission Agreement in such a way as to deny Plaintiffs any
22 future commissions, and Pardee has paid all commissions due and owing under the
23 Commission Agreement.

24 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT IS**
25 **ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' causes of action for
26 breach of contract and breach of the implied covenant of good faith and fair dealing.
27 Plaintiffs are entitled to damages from Pardee in an amount totaling \$141,500.00, of
28 which \$6,000 are consequential damages from Pardee's breach of the Commission

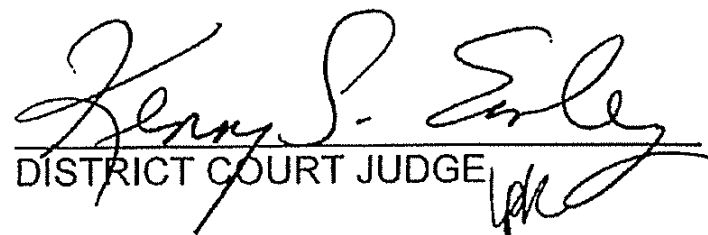
1 Agreement and the remaining \$135,500.00 are special damages in the form of
2 attorney's fees and costs.

3 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
4 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Plaintiffs' cause
5 of action for accounting. Pardee shall provide Plaintiffs with future accountings related
6 to the Commission Agreement consistent with the Accounting Order entered by the
7 Court on May 13, 2015.

8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED THAT**
9 **JUDGMENT IS ENTERED** in favor of Plaintiffs and against Pardee on Pardee's cause
10 of action for breach of the implied covenant of good faith and fair dealing.

11 This Judgment may be amended upon entry of any further awards of interest,
12 costs and/or attorney's fees.

13 DATED this 3rd day of June, 2015.

14
15 
16 DISTRICT COURT JUDGE

17 Submitted by:

18 McDONALD CARANO WILSON LLP

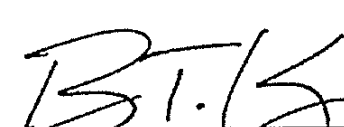
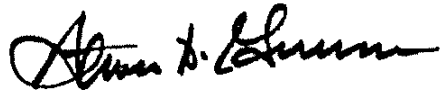
19
20 
21 PAT LUNDVALL (NSB #3761)
22 RORY T. KAY (NSB #12416)
23 2300 West Sahara Avenue, Suite 1200
24 Las Vegas, Nevada 89102
25 Attorneys for Pardee Homes of Nevada
26
27
28

Exhibit P



CLERK OF THE COURT

1 **NEOJ**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

**NOTICE OF ENTRY OF
ORDER ON PARDEE'S
EMERGENCY MOTION TO
STAY EXECUTION OF
JUDGMENT; AND EX PARTE
ORDER SHORTENING TIME**

16
17 PLEASE TAKE NOTICE that an **ORDER ON PARDEE'S EMERGENCY**
18 **MOTION TO STAY EXECUTION OF JUDGMENT; AND EX PARTE ORDER**
19 **SHORTENING TIME** was entered in the above-referenced case on the 10h day of
20 July, 2015, a copy of which is attached hereto.

21 DATED this 10th day of July, 2015.

22 McDONALD CARANO WILSON LLP

23
24 /s/ Pat Lundvall
25 PAT LUNDVALL (#3761)
26 RORY T. KAY (#12416)
27 2300 West Sahara Avenue, Suite 1200
28 Las Vegas, Nevada 89102
Attorneys for Defendant Pardee Homes of Nevada

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on this 10th day of July, 2015, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER ON PARDEE'S EMERGENCY MOTION TO STAY EXECUTION OF JUDGMENT AND EX PARTE ORDER SHORTENING TIME** via Wiznet electronic service as utilized by the Eighth Judicial District in Clark County, Nevada.

James J. Jimmerson, Esq.
Holly Fic, Esq.
Kim Stewart
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101

And

John Muije
John W. Mujie & Associates
1840 E. Sahara Ave., #106
Las Vegas, NV 89104

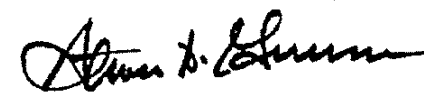
Attorney for Plaintiffs

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

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ORIGINAL

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CLERK OF THE COURT

1 **ORDR**
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
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9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 Attorneys for Defendant
12 Pardee Homes of Nevada

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

**ORDER ON PARDEE'S EMERGENCY
MOTION TO STAY EXECUTION OF
JUDGMENT; AND EX PARTE ORDER
SHORTENING TIME**

21 **AND RELATED CLAIMS**

22 The Honorable Judge Bonaventure, sitting in place of the Honorable Judge Kerry
23 Earley, heard Pardee's Emergency Motion to Stay Execution of Judgment; and Ex
24 Parte Order Shortening Time on July 11, 2015 at 9:00 a.m. James J. Jimmerson and
25 _____, of the law firm JIMMERSON HANSEN P.C., appeared on behalf of Plaintiffs.
26 Pat Lundvall and Rory Kay, of the law firm McDONALD CARANO WILSON LLP, appeared
27 on behalf of Defendant Pardee Homes of Nevada ("Pardee"). The Court reviewed the
28 papers and pleadings on file, and heard the arguments of counsel presented at the
hearing.

For good cause appearing, the Court hereby finds as follows:

1 The parties should be temporarily stayed from executing upon the Judgment
2 dated June 15, 2015 until 10 days after written notice of entry of orders resolving all
3 parties' motions to alter or amend the Judgment and the motions resolving the
4 competing claims to attorneys' fees and recoverable costs.

5 Based on the foregoing findings, having considered the parties' briefing and
6 arguments of counsel presented at the hearing on this matter, and good cause
7 appearing therefor,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Pardee's
9 Emergency Motion to Stay Execution is GRANTED.

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall
11 withdraw any writs seeking to execute upon the June 15, 2015 Judgment.

12 IT IS FURTHER ORDERED, ADJUGED AND DECREED that the parties are
13 stayed from executing upon the Judgment dated June 15, 2015 until 10 days after
14 written notice of entry of orders resolving all parties' motions to alter or amend the
15 judgment and the motions resolving the competing claims to attorneys' fees and
16 recoverable costs.

17
18 DATED this 19TH day of July, 2015.

19
20 
21 SENIOR DISTRICT COURT JUDGE

22 Submitted by:

23 McDONALD CARANO WILSON LLP

24
25 /s/ Pat Lundvall

26 PAT LUNDVALL (NBSN #3761)

27 RORY T. KAY (NSB #12416)

28 2300 West Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

Attorneys for Pardee Homes of Nevada

1 conduct in failing to appropriately discharge its duties under the Commission Letter Agreement
2 has robbed Plaintiffs of this opportunity to be paid these commissions. Pardee's actions have
3 served to reclassify the land originally labeled

4 1, 2004 Commission Letter Agreement. As stated in the Agreement, "In the event, either party
5 brings an action to enforce its rights under this Agreement, the prevailing party shall be
6 awarded reasonable attorneys' fees and costs." Plaintiffs in bringing this suit expect to be the
7 prevailing party and, as such, are entitled to their reasonable attorney's fees as damages for
8 Defendant's breach of contract, breach of the covenant of good faith and fair dealing, and for
9 compelling the accounting due to Plaintiffs.

10 As stated by the Court in its most recent minute order, Plaintiffs' claims for attorney fee
11 damages are governed by *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117
12 Nev. 948 (2001). Pursuant to *Sandy Valley*, Plaintiffs calculate their attorney fee damages as
13 follows: all fees and costs incurred for filing the complaint, prosecuting the claim for accounting,
14 and seeking documents owed to Plaintiffs under the September 1, 2004 Commission Letter
15 Agreement (for the breach of contract and breach of the covenant of good faith and fair dealing
16 claims) plus one-third of the fees and costs incurred for the prosecution of all of the claims (as
17 one of the three claims is for an accounting for which all of Plaintiffs' fees are damages).
18 Exempt from the damages are fees in connection with the prosecution of the breach of contract
19 and breach of the implied covenant of good faith and fair dealing claims, specifically not in
20 furtherance of the recovery of documents. To date, Plaintiffs' attorney fee damages are greater
21 than or equal to: **\$135,486.87**. Specifically, Plaintiffs' attorney fee damages for the accounting
22 claim equal or exceed **\$135,486.87**; for the claim for the breach of contract equal or exceed
23 \$7,602.50; and for the claim for the breach of the implied covenant of good faith and fair
24 dealing claims equal or exceed \$7,602.50.

25 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
26 discover from public records what information was owed to them under the Commission Letter
27 Agreement. Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this
28 information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed
\$6,400.00 for their time.

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

1 Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and
2 supplement this response as the investigation and discovery in this case proceeds.

3 Dated this 11th day of day of December, 2013.

4 JIMMERSON HANSEN, P.C.

5 /s/ James M. Jimmerson
6 JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
7 LYNN M. HANSEN, ESQ.
Nevada Bar No. 0244
8 JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
9 415 So. Sixth St., Ste. 100
Las Vegas, NV 89101
10 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) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' THIRTEENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 11th day of December , 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

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

/s/ Stephanie Spilotro
An Employee of JIMMERSON HANSEN, P.C.

Exhibit B

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, et al.,
Plaintiffs,
vs.
PARDEE HOMES OF NEVADA,
Defendant.

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

REPORTER'S TRANSCRIPT OF BENCH TRIAL

VOLUME II

BEFORE THE HON. KERRY L. EARLEY, DISTRICT COURT JUDGE

On Friday, December 13, 2013

At 1:00 p.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.

For the Defendant: 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 change. But it is an unreasonable position and a breach
2 of contract to think that you can adversely affect my
3 clients' rights to a commission by making a later deal
4 between the parties that would change defined terms and
5 entitlement to money and sequence of construction which
6 would lead to different calculations of commission
7 because of the fact that Option Property is paid on a
8 different formula than Purchase Property was paid.

9 Purchase Property was a percentage of the
10 \$84 million, four percent up to \$50 million and one and
11 a half percent above \$50 million to \$84 million, whereas
12 Purchase Property was property that was being acquired
13 and developed, that it would be one and a half percent
14 times \$40,000 per acre times the number of acres. So
15 the math is very different depending upon your finding
16 as what was purchased by these parties.

17 So while we say within Exhibit A that there has
18 been, and through the testimony of our clients,
19 Mr. Wolfram and Mr. Wilkes, there has been a payment of
20 the appropriate percentage of the \$84 million to the
21 plaintiffs if all \$84 million of property is found by
22 the Court to be Purchase Property, it is not the right
23 calculation if the Court finds that some or a portion of
24 the 2,100 acres was, indeed, Option Property for which
25 they would be paid a different formula and a different

1 sum.

2 What I'm suggesting to the Court, though, is
3 the legal principle that I think the Court would find
4 acceptable is that by signing the Amended and Restated
5 Option Agreement, Exhibit 5, and canceling, superseding,
6 replacing -- the verbs used by these witnesses before
7 you starting with Mr. Lash and thereafter -- the
8 original Option Agreement, Exhibit 2, by Exhibit 5, they
9 cannot adversely affect the rights of our clients to a
10 commission.

11 That is where -- that is the folly of Pardee
12 Homes of Nevada, Inc.'s position throughout the nine
13 days of trial that we've been working together in this
14 matter. Because they believe, as they've testified, We
15 knew that boundaries would change, that the direction of
16 which building might change -- they didn't say they knew
17 it would change, but they were going to be flexible
18 enough to change, and that was the testimony.

19 Mr. Whittemore was humorous enough to note,
20 Listen, I'm here to entice them to buy more property, as
21 much as I can get them to buy. Mr. Andrews confirmed
22 that this morning saying that Mr. Whittemore would sell
23 them anything that they would be interested in that
24 Mr. Whittemore's company had an interest in, from water
25 rights to all types of other aspects, golf course, the

1 never bought Option Property. We never exercised an
2 option. We never gave a notice, therefore, we never
3 bought Option Property. Therefore, we don't calculate
4 the commission based upon the different formula.

5 THE COURT: Right. And you are not saying they
6 bought Option Property. What you are saying is they
7 bought -- well, you are calling it Option Property
8 because it was built under the multi-family. You are
9 using the designation part now to make it Option
10 Property?

11 MR. J.J. JIMMERSON: Exactly right.

12 THE COURT: That's what you are doing?

13 MR. J.J. JIMMERSON: Right. Because it wasn't
14 Purchase Property and because --

15 THE COURT: It was not Purchase Property. They
16 know it wasn't --

17 MR. J.J. JIMMERSON: And it wasn't included in
18 the \$84 million.

19 THE COURT: I'm only asking because I want to
20 make sure I'm very clear, because it's very important to
21 me that I'm clear what everybody's saying. And we all
22 know we've gone through a long process here. So I don't
23 mean to infer anything by my questions. I just want to
24 make sure I understand. You understand that,
25 Mr. Jimmerson --

1 I mean, how many times have you seen in your
2 lawsuits a lawsuit that says the breach of contract is
3 the failure to provide information? I mean, it's an
4 exception. I don't say it never happens. I'm saying
5 that most of the time it's you breached the contract for
6 which you've caused damage in excess of \$10,000.

7 So in this Complaint we have the background is
8 we talked about they executed a Commission Letter of
9 September 1, 2004, Exhibit 1. If we turn the page, it
10 talks about their having been assigned their real estate
11 companies' interest for which summary judgment is
12 granted.

13 Paragraph 6, pursuant to the Commission Letter,
14 they are entitled to be paid a commission for all real
15 property sold under the Option Agreement. Pursuant to
16 the Commission Letter, plaintiffs were to be fully
17 informed of all sales. And I say "fully." The words
18 are reasonably informed, and I quote it. And it says,
19 Pardee shall keep each of you reasonably informed as to
20 all matters relating to amount and due dates of your
21 commission payments, Exhibit 1.

22 Then on April 23, 2009, plaintiffs sent to
23 defendant documents which detail the purchase and sales
24 of certain real property for which plaintiffs believe
25 are part of property outlined in the Option Agreement

1 and, therefore, property for which they are entitled to
2 receive a commission. A parcel map was also requested
3 to identify which properties have been sold, Exhibit 24.

4 Judge, this is a little bit of irony here.
5 April 23 is when the letter is dated and sent,
6 presumably received on the 24th or 25th. That day, the
7 next day, April 24, 2009, is the seventh amendment date
8 to the Amended and Restated Option Agreement that
9 specifically referenced Residential 5 and the
10 single-family production residential as being part of
11 the multi-family agreement.

12 That is why, when it comes to measuring the
13 credibility, Mr. Lash was very careful to say in his
14 letter, This is the property we've acquired using our
15 \$84.million dollars, intentionally avoiding, in my view,
16 the statement or representation, This is all of the
17 single-family residential property we've acquired,
18 because that would have been false.

19 His map did not include RES 5 as part of the
20 documents. Part of the property that was shown in
21 Exhibits -- Addendum 7 and 8 within Exhibits B-6, B-1,
22 and Exhibit E of Exhibit 13.

23 Then the defendant replied to plaintiffs'
24 letter of April 23, 2009 with a letter dated July 10,
25 2009. The April 23 letter, Exhibit 24, memorializes the

1 single-family residential property. They already
2 designated 2,112 acres, and they've already designated
3 50 additional acres that we didn't know about until the
4 middle of this trial.

5 That's why I say, in terms of when you hear
6 this argument or question by Mr. Lash, I read the
7 letters as asking for money -- there is a couple letters
8 that say, We were the procuring cause, maybe we're
9 entitled to a commission. It's true.

10 But most of the letters, of the 16 or 18
11 letters you have before you, it is, I want information,
12 I want information, I want -- he wasn't certain whether
13 he was owed any money, but he was entitled to the
14 information. They broke their agreement by not doing
15 so, for which they are entitled to that.

16 And then the third claim is most compelling
17 too. It's the implied covenant of good faith and fair
18 dealing that runs with this contract and is set forth in
19 paragraphs 27 through 30. They continue to have a duty
20 of good faith fair dealing. They were asked for
21 documents. They didn't provide the documents. And as a
22 result, they are in breach.

23 When you listen to the words of opposing
24 counsel -- I'll conclude with this -- that, Oh, you
25 could have done to the deed and seen -- what could you

1 THE COURT: I'm working very hard. Please
2 don't get discouraged with me if it doesn't come as fast
3 as you would like. I'm just telling you that up-front
4 because I -- calendar just got really tight on me
5 because of that trial.

6 MS. LUNDVALL: Thank you, Your Honor.

7 THE COURT: It was a preferential trial
8 setting. So here we go.

9 MR. J.M. JIMMERSON: We will submit to you our
10 updated proposed findings of fact and conclusions of law
11 and decisions within the first half of next week.

12 MS. LUNDVALL: May we get copies of what they
13 submit?

14 MR. J.J. JIMMERSON: Of course. We'll serve
15 her, of course.

16 MR. J.M. JIMMERSON: Absolutely.

17 THE COURT: So I just wanted to let you know
18 and be up-front with you.

19 MS. LUNDVALL: Thank you, Your Honor.

20 THE COURT: Like I said, I will do my very
21 best. I tried to get somebody else to take my bench
22 trial next week. Not so much.

23 I truly believe a judge has to have a fair
24 amount of time to do a fair decision, and I know you all
25 would agree with that.

1 MR. J.J. JIMMERSON: Thank your staff.

2 MS. LUNDVALL: Thank you, Your Honor.

3 -oOo-

4 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
5 PROCEEDINGS.

6

7

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

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

Exhibit C



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

September 1, 2004

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

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

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

Gentlemen:

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

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

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

PH 000135

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

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

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

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

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

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

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

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PH 000136

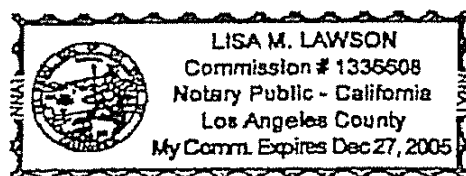
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 3

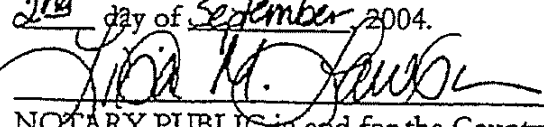
Our signatures below will represent our binding agreement to the above.

Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation

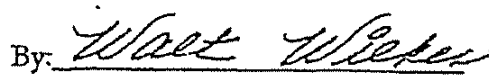
By: 
Jon E. Lash
Senior Vice President

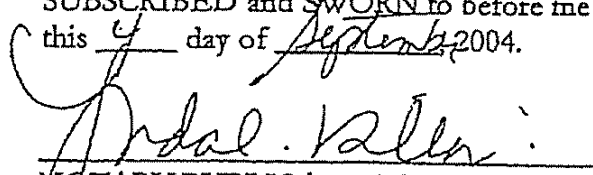


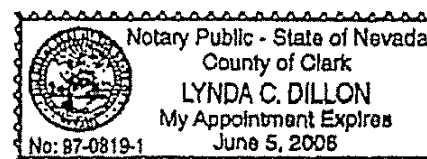
SUBSCRIBED and SWORN to before me this
2nd day of September 2004.

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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PH 000137

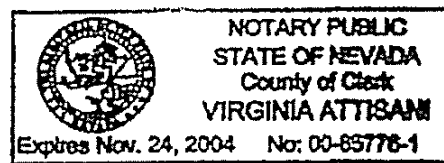
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: Jim Wolfram
Jim Wolfram

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

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



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PH 000138

Exhibit D


CLERK OF THE COURT

1 NEOJ
2 JAMES J. JIMMERSON, ESQ.
3 Nevada State Bar No.: 00264
4 jjj@jimmersonhansen.com
5 LYNN M. HANSEN, ESQ.
6 Nevada State Bar No.: 00244
7 lmh@jimmersonhansen.com
8 415 South 6th Street, Suite 100
9 Las Vegas, Nevada 89101
10 Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

11 JAMES WOLFRAM and
12 WALT WILKES,
13
14 Plaintiffs,

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

vs.

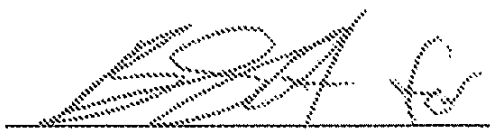
15 PARDEE HOMES OF NEVADA,
16
17 Defendant.

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law and
Order was entered in the above-captioned matter on June 25, 2014. A true and correct file
-stamped copy of said Order is attached hereto.

Dated this 27 day of June, 2014.

JIMMERSON HANSEN, P.C.


JAMES J. JIMMERSON, ESQ.
Nevada State Bar No.: 00264-12547
LYNN M. HANSEN, ESQ.
Nevada State Bar No.: 00244
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

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

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

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was made on the 27 day of June, 2014, as indicated below:

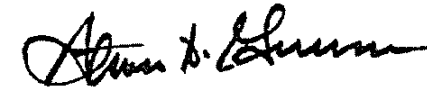
X By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

By facsimile, pursuant to EDCR 7.26 (as amended)

X By receipt of copy as indicated below

Pat Lundvall, Esq.
Aaron D. Shipley, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant


An employee of JIMMERSON HANSEN, P.C.


CLERK OF THE COURT

1 ORDER

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 JAMES WOLFRAM and
5 WALT WILKES,

6 Plaintiffs,

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

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

Trial Date: October 23, 2013

10 AND RELATED CLAIMS

11 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

12 On October 23, 2013, this matter came on for bench trial before the Honorable Kerry L.
13 Earley. The Court, having reviewed the record, the testimony of witnesses, the documentary
14 evidence, stipulations of counsel, the papers submitted by the respective parties, and considered the
15 arguments of counsel at trial in this matter, with good cause appearing therefor, the Court now enters
16 the following Findings of Fact and Conclusions of Law. Plaintiffs James Wolfram ("Wolfram") and
17 Walt Wilkes ("Wilkes") (collectively "Plaintiffs") filed this action against defendant Pardee Homes
18 of Nevada ("Pardee") alleging claims for breach of contract, breach of the covenant of good faith
19 and fair dealing, and accounting related to a Commission Agreement entered into on September 1,
20 2004, between Plaintiffs and Pardee (See Second Amended Complaint). As a conditional
21 counterclaim, Pardee alleges against Plaintiffs breach of the covenant of good faith and fair dealing
22 arising from the Commission Agreement.
23

24 **I. FINDINGS OF FACT**

25 **A. THE PARTIES**

26 1. Plaintiffs James Wolfram and Walt Wilkes have been licensed real estate
27
28

1 brokers working in Southern Nevada and the surrounding area for over 35 years.

2 2. Plaintiff Wolfram previously worked for Award Realty Group. Plaintiff
3 Wilkes previously worked for General Realty Group. In a previous order, the Court ruled that
4 Wolfram and Wilkes were assigned all claims from Award Realty Group and General Realty Group,
5 and, therefore, had standing to assert the claims at issue.

6 3. Defendant Pardee Homes of Nevada ("Pardee") is a Nevada corporation
7 operating as a residential homebuilder constructing homes and other structures in Southern Nevada
8 and elsewhere.

9 4. In the 1990's, Harvey Whittemore, through his then-owned company, Coyote
10 Springs Investment LLC ("CSI") began developing a project to be known as ("Coyote Springs".)
11 The project included over 43,000 acres of unimproved real property located north of Las Vegas in
12 the Counties of Clark and Lincoln.

13 5. In 2002, Plaintiffs had begun tracking the status and progress of Coyote
14 Springs located in the Counties of Clark and Lincoln, Nevada.

15 6. By 2002, Plaintiffs had become acquainted with Jon Lash, who was then
16 responsible for land acquisition for Pardee's parent company, Pardee Homes. Plaintiffs had
17 previously worked with Mr. Lash in the pursuit of different real estate transactions, but none were
18 ever consummated prior to the Coyote Springs transaction.

19 7. After learning that Mr. Whittemore had obtained water rights for Coyote
20 Springs, Plaintiffs contacted Mr. Lash and asked if he would be interested in meeting with Mr.
21 Whittemore of CSI, for the purposes of entering into an agreement for the purchase of real property
22 in Coyote Springs. When Mr. Lash agreed, Plaintiffs contacted Mr. Whittemore advising they had a
23 client interested in Coyote Springs and wanted to schedule a meeting.

24 8. Mr. Lash agreed to allow Plaintiffs to represent Pardee as a potential
25 purchaser, and a meeting was scheduled to take place at Pardee's office in Las Vegas. Present at the
26 meeting were Plaintiffs, Mr. Whittemore from CSI, and Mr. Lash and Mr. Klif Andrews from
27 Pardee. While this meeting was introductory in nature, it ultimately resulted in plans to structure a
28

1 deal between Pardee and CSI to develop Coyote Springs after approximately 200 meetings between
2 Pardee and CSI. During the extensive negotiating process, Mr. Whittemore, on behalf of CSI,
3 expressed CSI's decision to only sell certain portions of real estate at Coyote Springs. Pardee made
4 it clear that it only wanted to purchase the land designated as single-family detached production
5 residential ("Production Residential Property") at Coyote Springs. At that time it was understood by
6 Pardee and CSI, that CSI was to maintain ownership and control of all other land at Coyote Springs
7 including land designated as commercial land, multi-family land, the custom lots, the golf courses,
8 the industrial lands, as well as all other development deals at Coyote Springs.

9 9. Plaintiffs only participated in the initial meeting, as Pardee and CSI informed
10 Plaintiffs their participation was not required for any of the negotiations by Pardee to purchase
11 Production Residential Property. As such, Plaintiffs were the procuring cause of Pardee's right to
12 buy Production Residential Property in Coyote Springs from CSI.

13 **B. OPTION AGREEMENT BETWEEN CSI and PARDEE AND COMMISSION**
14 **AGREEMENT**

15
16 10. In or about May 2004, Pardee and CSI entered into a written agreement
17 entitled Option Agreement for the Purchase of Real Property and Joint Escrow Instructions ("Option
18 Agreement"), which set forth the terms of the deal, among many others, concerning Pardee's
19 acquisition of the Production Residential Property from CSI at Coyote Springs.

20 11. Prior to the Commission Agreement at issue in this case being agreed upon
21 between Pardee and Plaintiffs, the Option Agreement was amended twice. First, on July 28, 2004,
22 Pardee and CSI executed the Amendment to Option Agreement for the Purchase of Real Property
23 and Joint Escrow Instructions. Subsequently, on August 31, 2004, Pardee and CSI executed the
24 Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow
25 Instructions. (The Option Agreement, along with the subsequent amendments, will be collectively
26 referred to as the "Option Agreement"). Plaintiffs acknowledged receiving the Option Agreement
27 and the two amendments.
28

1 12. At the time of Pardee's and CSI's original negotiations, the land was the
2 rawest of all in terms of land development. No zoning, parceling, mapping, entitlements, permitting,
3 etc., had been accomplished. All of that work had yet to be done. At that time multiple issues were
4 outstanding that would impact the boundaries of any land to be acquired by Pardee from CSI for
5 Production Residential Property. Those issues included, among others, the BLM reconfiguration,
6 Moapa Dace and other wildlife protections, moving a utility corridor from Coyote Springs to federal
7 lands, and the design by Jack Nicklaus of the golf courses. At multiple places in the Option
8 Agreement it was acknowledged by CSI and Pardee that boundaries of various lands would change.

9 13. At the same time Pardee was negotiating with CSI, Pardee was also
10 negotiating with Plaintiffs concerning their finders' fee/commissions. Pardee and Plaintiffs
11 extensively negotiated the Commission Agreement dated September 1, 2004. Plaintiffs were
12 represented by James J. Jimmerson, Esq. throughout those negotiations. Plaintiffs offered edits, and
13 input was accepted into the Commission Agreement under negotiation, with certain of their input
14 accepted by Pardee. The Plaintiffs' and Pardee's obligations to each other were agreed to be set
15 forth within the four corners of the Commission Agreement. Plaintiffs and Pardee acknowledge that
16 the Commission Agreement was an arms-length transaction.

17 14. The Commission Agreement between Plaintiffs and Pardee provided that, in
18 exchange for the procuring services rendered by Plaintiffs, Pardee agreed to (1) pay to Plaintiffs
19 certain commissions for land purchased from CSI, and (2) send Plaintiffs information concerning the
20 real estate purchases made under the Option Agreement and the corresponding commission
21 payments.

22 15. Since Mr. Wolfram and Mr. Wilkes had already performed services for
23 Pardee, the Commission Agreement placed no affirmative obligation on them.

24 16. The Commission Agreement, dated September 1, 2004, was executed by
25 Pardee on September 2, 2004, by Mr. Wolfram on September 6, 2006, and Mr. Wilkes on September
26 4, 2004.

1 17. The Commission Agreement provides for the payment of "broker
2 commission[s]" to Plaintiffs in the event that Pardee approved the transaction during the
3 Contingency Period, equal to the following amounts:

4 (i) Pardee shall pay four percent (4%) of the Purchase Property Price
5 payments made by Pardee pursuant to Paragraph 1 of the Option
6 Agreement up to a maximum of Fifty Million Dollars (\$50,000,000);

7 (ii) Then, Pardee shall pay one and one-half percent (1-1/2%) of the
8 remaining Purchase Property Price payments made by Pardee pursuant
9 to paragraph 1 of the Option Agreement in the aggregate amount of
Sixteen Million Dollars (\$16,000,000); and

10 (iii) Then, with respect to any portion of the Option Property
11 purchased by Pardee pursuant to paragraph 2 of the Option
12 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).

13 18. The Commission Agreement states that all of the capitalized terms used in the
14 Commission Agreement shall have the exact meanings set forth in the Option Agreement. Copies of
15 the Option Agreement, the amendments including changes to the Purchase Property Price, and the
16 subsequent Amended and Restated Option Agreement were given to Plaintiffs by Stewart Title
17 Company, the escrow company chosen by Pardee and CSI to handle all of its land transactions.
18 Plaintiffs also acknowledge receiving these documents. However, Amendments 1 through 8 to the
19 Amended and Restated Option Agreement between CSI and Pardee were not provided to Plaintiffs
20 until after this litigation was commenced by Plaintiffs.

21 19. The term "Purchase Property Price" was defined in Amendment No. 2 to the
22 Option Agreement as Eighty-Four Million Dollars (\$84,000,000), which was payable in installments
23 over a period of time. The due dates for commissions' payable under paragraphs i and ii were
24 described in the Commission Agreement as follows:

25 Pardee shall make the first commission payment to you upon the Initial
26 Purchase Closing (which is scheduled to occur thirty (30) days following the
27 Settlement Date) with respect to the aggregate Deposits made prior to that
28 time. Pardee shall make each additional commission payment pursuant to

1 clauses (i) and (ii) above concurrently with the applicable Purchase Property
2 Price payment to Coyote.

3 20. By virtue of Amendment No. 2 increasing the Purchase Property Price from
4 \$66 million to \$84 million, Plaintiffs became entitled to commissions on the increased Purchased
5 Property Price, which they subsequently received.

6 21. Commission payments required under paragraphs i and ii were not dependent
7 upon acreage or location of the lands being acquired, or upon the closing of any land transaction. In
8 sum, when Pardee paid CSI a portion of the Purchase Property Price, under the agreed schedule,
9 then Plaintiffs were also paid their commission. Pardee and CSI anticipated that the Purchase
10 Property would be, and was, cooperatively mapped and entitled before the specific location of any
11 lands designated for single family detached production residential would be transferred by CSI to
12 Pardee.

13 22. The due date for any commissions payable under paragraph iii was described
14 in the Commission Agreement as follows: "Thereafter, Pardee shall make such commission
15 payment pursuant to clause (iii) above concurrently with the close of escrow on Pardee's purchase of
16 the applicable portion of the Option Property; provided, however, that in the event the required
17 Parcel Map creating the applicable Option Parcel has not been recorded as of the scheduled Option
18 Closing, as described in paragraph 9(c) of the Option Agreement, the commission shall be paid into
19 escrow concurrently with Pardee's deposit of the Option Property Price into escrow and the
20 commission shall be paid directly from the proceeds of said Escrow."

21 23. The general term "Option Property" is defined in the Option Agreement as
22 follows: "the remaining portion of the Entire Site which is or becomes designated for single-family
23 detached production residential use, as described below . . . in a number of separate phases (referred
24 to herein collectively as the "Option Parcels" and individually as an "Option Parcel"), upon the
25 terms and conditions hereinafter set forth." The general definition of "Option Property" was never
26 changed by CSI and Pardee in any documents amending either the initial Option Agreement or the
27 subsequent Amended and Restated Option Agreement. The definitions of other capitalized terms
28 found within the Commission Agreement were never changed by CSI and Pardee.

1 24. The Commission Agreement requires Pardee to provide Plaintiffs with
2 notifications and information concerning future transactions between Pardee and CSI under the
3 Option Agreement. Specifically, the Commission Agreement states:

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

11 25. After executing the Commission Agreement, Plaintiffs never entered into
12 another agreement with Pardee concerning the development of Coyote Springs.

13 26. Pardee's purchase of the "Purchase Property Price" property and any Option
14 Property designated in the future as single family detached production residential lands was a
15 separate and distinct transaction from any other purchases by Pardee from CSI for unrelated property
16 at Coyote Springs.

17 27. The relationship between Pardee and Plaintiffs was such that Plaintiffs
18 reasonably imparted special confidence in Pardee to faithfully inform them of the developments at
19 Coyote Springs which would impact their future commission payments. Pardee and CSI agreed to
20 designate documents relevant to the development of Coyote Springs as confidential. Among said
21 documents were documents relating to the designation of the type of property Pardee was purchasing
22 from CSI during the development of Coyote Springs that were part of a distinct and separate
23 agreement between Pardee and CSI.

24 28. The designation of the type of property Pardee was purchasing from CSI
25 during the development of Coyote Springs was material to Plaintiffs to verify if the commissions
26 they had received were accurate and, if not, what amount they were entitled as further commissions
27 pursuant to the Commission Agreement.

28 29. Pardee should have known that the Plaintiffs needed to have access to
information specifying the designation as to the type of property being purchased by Pardee from
CSI during the development of Coyote Springs to verify the accuracy of their commissions.

1 30. Although certain documents were public record regarding the development of
2 Coyote Springs, the documents referencing internally set land designations for certain land in
3 Coyote Springs were not available to Plaintiffs.

4 **C. PARDEE'S PERFORMANCE UNDER THE COMMISSION AGREEMENT**
5

6 31. Pardee did purchase "Purchase Property Price" property from CSI for
7 \$84,000,000.00. Plaintiffs have been paid in full their commissions on the \$84,000,000.00 Purchase
8 Property Price.

9 32. Plaintiffs were informed of the amount and due dates of each commission
10 payment for the Purchase Property Price: first through Stewart Title Company, and then Chicago
11 Title Company, pursuant to the Commission Agreement.
12

13 33. Under the express terms of the Commission Agreement, pursuant to
14 paragraphs i and ii, these commissions were based solely on the Purchase Property Price for the
15 land, not the number of acres acquired or the location of those acres. Under the Purchase Property
16 formula, they were entitled to a percentage of the Purchase Property Price. There was no benefit or
17 additional commission for additional acreage being purchased if there is no corresponding increase
18 in price.

19 34. Plaintiffs were paid a total of \$2,632,000.00 in commissions pursuant to
20 paragraphs i and ii of the Commission Agreement.

21 35. Pardee did not pay more than 84,000,000.00 as the Purchase Property Price to
22 CSI under the Option Agreement, the Amended and Restated Option Agreement, or any
23 amendments thereto. CSI has never received more than \$84,000,000.00 as payment under the
24 Option Agreement, the Amended and Restated Option Agreement, or any amendments thereto.

25 36. No commission to Plaintiffs is payable under clause (iii) of the Commission
26 Agreement unless the property purchased fell within the definition of Option Property purchased
27 pursuant to paragraph 2 of the Option Agreement.
28

1 Pardee as of the present time has not exercised any options to purchase single
2 family production residential property pursuant to paragraph 2 of the Option Agreement. Therefore,
3 Pardee as of the present time does not owe any commission to Plaintiffs under paragraph iii of the
4 Commission Agreement.

5 37. The other provision of the Commission Agreement alleged by Plaintiffs to
6 have been breached states as follows:

7 Pardee shall provide to each of you a copy of each written option
8 exercise notice given pursuant to paragraph 2 of the Option
9 Agreement, together with information as to the number of acres
10 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.

11 38. Pardee did provide information relating to the amount and due dates on
12 Plaintiffs' commission payments under paragraphs i and ii. Specifically, Plaintiffs were paid their
13 first commission at the Initial Purchase Closing and then each commission thereafter concurrently
14 with each Purchase Property Price payment made by Pardee to CSI pursuant to Amendment No. 2 to
15 the Option Agreement as was required by the Commission Agreement. Each commission payment
16 was made pursuant to an Order to Pay Commission to Broker prepared by Stewart Title (later
17 Chicago Title) which contained information including the date, escrow number, name of title
18 company, percentage of commission to be paid, to whom and the split between Plaintiffs. Each
19 Order to Pay Commission to Broker was signed by Pardee and sent to either Plaintiffs brokerage
20 firms or Plaintiffs directly. Each commission check received by Plaintiffs contained the amount,
21 escrow number, payee and payer, along with a memo explaining how the amount was determined.
22 When Plaintiffs were overpaid commissions, a letter was sent by Pardee explaining the overpayment
23 and how the amount and due dates to compensate for the overpayment would be handled. An
24 Amended Order to Pay Commission to Broker reflecting these changes was sent to and signed by
25 each Plaintiff. A letter was sent by Pardee to Plaintiffs informing them when Pardee made its last
26 payment of the Purchase Property Price to CSI.

27 39. However, from the documents in Plaintiffs' possession provided by Pardee,
28

1 Plaintiffs were unable to verify the accuracy of any commission payments that may have been due
2 and owing pursuant to paragraph iii of the Commission Agreement. The documents in Plaintiffs'
3 possession included the Option Agreement and Amendments No. 1 and No. 2 to the Option
4 Agreement, the Amended and Restated Option Agreement, various Orders to Pay Commissions, and
5 their commission payments. Amendments Nos. 1 through 8 to the Amended Restated Option
6 Agreement were not provided to Plaintiffs until after commencement of this litigation.

7 40. When Plaintiffs began requesting information regarding Pardee's land
8 acquisitions from CSI, the only information provided by Pardee was the location of the Purchase
9 Property purchased for the Purchase Property Price from CSI. All information provided was limited
10 to the single family production property acquisitions. Pardee informed the Plaintiffs that it had
11 purchased from CSI additional property at the Coyote Springs development, but took the position
12 that any documentation regarding the designations of the use of the additionally purchased property
13 was confidential and would not be provided to Plaintiffs. Interestingly, Pardee had already provided
14 to Plaintiffs the initial Option Agreement, Amendments No. 1 and 2 and the Amended Restated
15 Option Agreement, which were also confidential documents between Pardee and CSI.

16 41. Although Pardee co-developed with CSI a separate land transaction
17 agreement for the acquisition of lands designated for other uses than single family detached
18 production residential lots, Pardee had a separate duty to Plaintiffs pursuant to the Commission
19 Agreement to provide information so Plaintiffs could verify the accuracy of their commission
20 payments.

21 42. Without access to the information regarding the type of land designation that
22 was purchased by Pardee as part of the separate land transaction with CSI, Plaintiffs were not
23 reasonably informed as to all matters relating to the amount of their commission payments as they
24 could not verify the accuracy of their commission payments.

25 43. Although the complete documentation when provided in this litigation
26 verified that Plaintiffs were not due any further commissions at this time for the additional purchases
27 of land by Pardee, Pardee still had a duty to provide sufficient information regarding the designation
28

1 of the type of land that had been purchased to Plaintiffs. Plaintiff Wolfram attempted through public
2 records to ascertain information regarding the additional lands, but he was unable to verify the
3 required information of the land use designations.

4 44. Plaintiffs have also contended that they are entitled to a commission if Pardee
5 re-designates any of its land purchased from CSI to single family production residential property.
6 Plaintiffs are not entitled to commissions on any re-designation of lands by Pardee pursuant to the
7 Commission Agreement.

8 II. CONCLUSIONS OF LAW

9 A. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF CONTRACT

10 1. To sustain a claim for breach of contract, Plaintiffs must establish (1) the
11 existence of a valid contract between Plaintiffs and Defendant; (2) a breach by Defendant, and (3)
12 damages as a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 405 (1865); *Calloway v. City of*
13 *Reno*, 116 Nev. 250, 256, 993 P.3d 1259, 1263 (2000) (*overruled on other grounds by Olson v.*
14 *Richard*, 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)).

15 2. Contract interpretation strives to discern and give effect to the parties'
16 intended meaning...before an interpreting court can conclusively declare a contract ambiguous or
17 unambiguous, it must consult the context in which the parties exchanged promises. *Galardi v.*
18 *Naples Polaris*, 129 Nev. Adv. Op. 33, 301 P.3d 364, 367 (2013).

19 3. Contractual provisions should be harmonized whenever possible, and
20 construed to reach a reasonable solution. *Eversole v. Sunrise Villas VIII Homeowners Ass'n*, 112
21 Nev. 1255, 1260, 925 P.2d 505, 509 (1996).

22 4. The Commission Letter Agreement constitutes a valid and enforceable
23 contract between Plaintiffs and Defendant.

1 5. Pardee agreed to pay commissions and provide information to keep Plaintiffs
2 reasonably informed as to all matters relating to the amount and due date of their commissions
3 pursuant to the express terms of the Commission Agreement.

4 6. The language of the Commission Agreement required the payment of
5 commissions under paragraphs i and ii according to percentages of the Purchase Property Price.
6 Undisputedly, those commissions were paid.

7 7. The Commission Agreement also required Pardee to pay commissions on the
8 purchase of Option Property if Pardee exercised its option to purchase Option Property pursuant to
9 paragraph 2 of the Option Agreement.

10 8. Pardee has never exercised any such option.

11 9. Pardee paid Plaintiffs in full and timely commissions on the \$84,000,000.00
12 Purchase Property Price.

13 10. The Purchase Property Price was \$84,000,000.00.

14 11. CSI has not received more than \$84,000,000.00 for the single family detached
15 production residential land acquisition by Pardee from CSI at the Coyote Springs project.

16 12. From the very beginning, CSI and Pardee acknowledged that the specific
17 boundaries of the Purchase Property and Option Property may change, for a variety of reasons.
18 There are many references to the changing boundaries of property at Coyote Springs in Pardee's and
19 CSI's Option Agreement. There are many factors that necessitated those changes, including the
20 BLM configuration, moving the utility corridor, mapping, the subdivision process, the entitlement
21 and permitting processes, the Moapa Dace issue and other wildlife issues, and the design by Jack
22 Nicklaus of the golf courses. There were a number of factors that were out of CSI's and Pardee's
23 control that were expected to change and did change the boundaries and configuration of the
24 Purchase Property. As a result of those boundaries changing, so too did the potential boundaries for
25 Option Property change.

26 13. The Plaintiffs' commissions pursuant to paragraphs i and ii were solely based
27 on the Purchase Property Price, not the acreage acquired by Pardee or its location or its closing.
28

1 Therefore, the change in boundaries had absolutely no impact on the amount or due date of
2 Plaintiffs' commissions.

3 14. Plaintiffs were also entitled to be paid commissions if Pardee exercised
4 option(s) to purchase Option Property pursuant to paragraph 2 of the Option Agreement. To exercise
5 such an option is a multi-step process involving a myriad of written documents. If such an option
6 had been exercised by Pardee those documents would be found in the public record. Since Pardee as
7 of the present time has not exercised any options pursuant to paragraph 2 of the Option Agreement,
8 no commissions are due at the present time to Plaintiffs.

9 15. In addition, the Commission Agreement required Pardee to keep Plaintiffs
10 reasonably informed as to all matters relating to the amount and due dates of Plaintiffs' commission
11 payments.

12 16. Plaintiffs did not receive amendments 1 through 8 to the Amended and
13 Restated Option Agreement. Although those amendments did not change Plaintiffs' commissions
14 due under the Commission Agreement, the information contained in the amendments contained the
15 designation information about the separate land transactions involving multi-family, custom lots,
16 and commercial. This information was needed by Plaintiffs as it was necessary to determine the
17 impact, if any on their commission payments. However, Pardee could have provided the requisite
18 information in various forms other than the amendments. Pardee failed to provide information in any
19 form required by Plaintiffs to determine the accuracy of their commission payments.

20 17. Pardee did not keep Plaintiffs reasonably informed as to all matters relating to
21 the amount of their commission payments that would be due and owing pursuant to the Commission
22 Agreement. Therefore, Pardee breached the Commission Agreement.

23 18. Plaintiffs satisfied any and all of their obligations under the Commission
24 Agreement.

25 19. In order to award consequential damages, the damages claimed for the breach
26 of contract must be foreseeable. *See Barnes v. W.U. Tel. Co.*, 27 Nev. 438, 76 P. 931 (1904). Under
27 the watershed case, *Hadley v. Baxendale*, 156 Eng. Rep. 145, 151 (1854), foreseeability requires
28

1 that: (1) damages for loss must “fairly and reasonably be considered [as] arising naturally . . . from
2 such breach of contract itself,” and (2) the loss must be “such as may reasonably be supposed to
3 have been in the contemplation of both parties, at the time they made the contract as the probable
4 result of the breach of it.” See Clark County School District v. Rolling Plains Const., Inc., 117 Nev.
5 101, 106, 16 P.3d 1079, 1082 (2001) (disapproved of on other grounds, 117 Nev. 948). Stated
6 another way, the damages claimed for the breach of contract must be foreseeable. *Id.*

7 20. Plaintiffs suffered foreseeable damages due to Defendant’s breach of not
8 keeping Plaintiffs reasonably informed as to all matters relating to the amount due and owing on the
9 Commission Agreement in the form of their time and efforts attempting to obtain the information
10 owed to them pursuant to the Commission Agreement. The testimony by Plaintiff Wolfram was that
11 he expended 80 hours of time to obtain said information by going through public records and
12 contacting different sources. Using a rate of \$75.00 per hour for Mr. Wolfram’s time as a real estate
13 agent, the damages total \$6,000.00.

14 21. Plaintiffs also suffered damages in the form of the attorney’s fees and costs
15 incurred as they were necessary and reasonably foreseeable to obtain the requisite information
16 regarding the land designations of land acquired by Pardee from CSI in the Coyote Development
17 pursuant to the separate transaction between Pardee and CSI. Plaintiffs specifically requested
18 numerous times from Pardee information to determine the land designations of these additional
19 purchases, but to no avail. In fact, Mr. Lash on behalf of Pardee instructed a third party that said
20 information should not be provided. CSI was not able to provide the requisite information due to the
21 confidentiality agreement with Pardee. Plaintiffs had no alternative but to file suit, use the litigation
22 process to obtain the requisite information, and request an equitable remedy from this Court to
23 obtain said information in the future. The above-referenced facts allow this Court to award
24 reasonable attorney’s fees and costs as special damages. See Liu v. Christopher Homes, LLC, 103,
25 Nev. Adv. Op. 17, 321 P.3d, 875 (2014); Sandy Valley Assoc v. Sky Ranch Owners Assoc., 117 Nev.
26 948, 35 P.3d 964 (2001).

27 Mr. Jimmerson testified regarding the attorney’s fees and costs to pursue the
28

1 Plaintiffs' claim for acquiring the information from Pardee related to the Plaintiffs' commission
2 amounts based on billings contained in exhibits 31A. The damages for reasonable attorneys' fees
3 and costs are \$135,500.00.

4
5 **B. PLAINTIFFS' CAUSE OF ACTION FOR BREACH OF THE COVENANT OF**
6 **GOOD FAITH AND FAIR DEALING**

7 1. To sustain a claim for breach of the implied covenant of good faith and fair
8 dealing sounding in contract, Plaintiffs must establish: (1) Plaintiffs and Defendant were parties to
9 the contract; (2) the Defendant owed a duty of good faith to Plaintiffs; (3) the Defendant breached
10 that duty by performing in a manner that was unfaithful to the purpose of the contract; and (4)
11 Plaintiff's justified expectations were thus denied. See Perry v. Jordan, 111 Nev. 943, 947, 900
12 P.2d 335, 338 (1995);

13 2. An implied covenant of good faith and fair dealing is recognized in every
14 contract under Nevada law. Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114
15 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). Under the implied covenant, each party must act in a
16 manner that is faithful to the purpose of the contract and the justified expectations of the other party.
17 Morris v. Bank of America Nevada, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 (1994). The
18 implied covenant of good faith and fair dealing forbids arbitrary, unfair acts by one party that
19 disadvantages the other. Frantz v. Johnson, 116 Nev. 455, 465 n. 4., 999 P.2d 351, 358 (2000).

20 3. Plaintiffs, pursuant to the Commission Agreement, were entitled to
21 commissions for Purchase Price Property and Option Property. Plaintiffs had justifiable expectations
22 that Pardee would keep Plaintiffs reasonably informed as to all matters related to the amount and due
23 dates of their commission payments.

24 4. Plaintiffs needed sufficient information regarding purchases of land by Pardee
25 from CSI at Coyote Springs to enable Plaintiffs to verify the accuracy of commission payments. The
26 designation of the land purchased by Pardee from CSI was the basis for Plaintiffs' entitlement to
27 commissions pursuant to Option Property under iii of the Commission Agreement.
28

1 5. Pardee was not faithful to the purpose of the Commission Agreement by
2 failing to provide information regarding other land designations purchased by Pardee at Coyote
3 Springs so Plaintiffs could verify the accuracy of their commission payments. Without this
4 information, Pardee failed to keep Plaintiffs reasonably informed as to all matters relating to their
5 Commission Agreement.

6 6. Pardee did not act in good faith when it breached its contractual duty to keep
7 Plaintiffs reasonably informed as to all matters relating to the amount and due dates of their
8 commission payments. Plaintiffs did not breach any obligation they had to Pardee under the
9 Commission Agreement by requesting information regarding other land acquisitions by Pardee from
10 CSI at Coyote Springs. Plaintiffs acted in good faith at all times toward Pardee and did not deny
11 Pardee its justified expectations under the Commission Agreement.

12 7. Pardee suffered no recoverable damages from Plaintiffs' inquiries.

13 **C. PLAINTIFFS' CLAIM FOR AN ACCOUNTING**

14
15 1. An accounting is an independent cause of action that is distinct from the
16 equitable remedy of accounting. *See e.g. Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705 (1910);
17 *Young v. Johnny Ribiero Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Oracle USA, Inc. v. Rimini*
18 *Street, Inc.*, No. 2:10-CV-00106-LRH-PAL, 2010 WL 3257933 (D. Nev. Aug. 13, 2010); *Teselle v.*
19 *McLoughlin*, 173 Cal. App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009); *Mobius Connections*
20 *Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-RJJ, 2012 WL 194434 (D. Nev. Jan. 23,
21 2012).

22 2. To prevail on a claim for accounting, a Plaintiff must establish the existence
23 of a special relationship whereby a duty to account may arise. *See Teselle v. McLoughlin*, 173 Cal.
24 App. 4th 156, 92 Cal. Rptr. 3d 696 (Cal. App. 2009). The right to an accounting can arise from
25 Defendant's possession of money or property which, because of the Defendant's relationship with
26 the Plaintiff, the Defendant is obliged to surrender. *Id.*

27 3. This Court has previously held that for Plaintiffs to prevail on an independent
28

1 cause of action for an accounting, Plaintiffs must establish the existence of a special relationship of
2 trust whereby a duty to account may arise. *See Teselle v. McLoughlin*, 173 Cal. App. 4th 156 (2009);
3 *see also*, Order Denying Pardee's Motion for Partial Summary Judgment.

4 4. Courts have found the existence of a special relationship of trust when, in a
5 contractual relationship, payment is collected by one party and the other party is paid by the
6 collecting party. *Wolf v. Superior Court*, 130 Cal. Rptr. 2d 860 (Cal. Ct. App. 2003); *Mobius*
7 *Connections Group, Inc. v. Techskills, LLC*, No. 2:10-CV-01678-GMN-RJJ, 2012 WL 194434 (D.
8 Nev. Jan. 23, 2012).

9 5. In contractual relationships requiring payment by one party to another of
10 profits received, the right to an accounting can be derived from the implied covenant of good faith
11 and fair dealing inherent in every contract, because without an accounting there may be no way by
12 which such a party entitled to a share in profits could determine whether there were any profits.
13 *Mobius Connections Group v. Techskills, LLC, Id.*

14 6. The Court finds there is a special relationship of trust between Plaintiffs and
15 Pardee that entitles Plaintiffs to an accounting for the information concerning the development of
16 Coyote Springs in the future as it pertains to Plaintiffs' commissions on option property. There is no
17 way for Plaintiffs or their heirs to determine whether a commission payment is due in the future
18 without an accounting of the type of land of any future purchases by Pardee from CSI at Coyote
19 Springs. Access to said information is required to ensure the accuracy of commission payments that
20 may be due and owing in the future.

21 DECISION

22
23 Now, therefore, in consideration of the Findings of Fact and Conclusions of Law by this
24 Court, IT IS HEREBY ORDERED as follows:

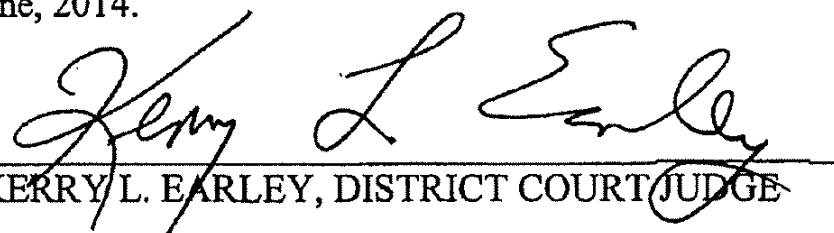
25 1. The Court finds that Defendant Pardee Homes of Nevada is liable to Plaintiffs for
26 breach of contract, breach of the covenant of good faith and fair dealing, and its failure to account to
27 Plaintiffs regarding the information concerning the development of Coyote Springs because it
28

1 pertained to Plaintiffs' present and potential future commissions. Damages are to be awarded to
2 Plaintiffs from Defendant in an amount totaling \$141,500.00

3 2. The Court finds that Plaintiffs are not liable to Defendant for breach of the implied
4 covenant of good faith and fair dealing. As such, no damages will be awarded to Defendant.

5 3. The Court orders both parties to provide to the Court within 60 days after entry of this
6 order supplemental briefs detailing what information should be provided - and under what
7 circumstances - by Pardee to Plaintiffs consistent with this decision. The Court will schedule after
8 receiving the supplemental briefs further proceedings to determine what information should be
9 provided by Pardee to Plaintiffs, and their heirs when applicable, as an accounting.

10
11 DATED this 25 day of June, 2014.

12
13 
14 KERRY L. EARLEY, DISTRICT COURT JUDGE

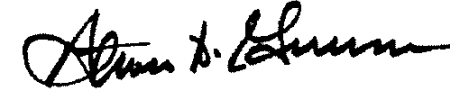
15
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on June 25, 2014, I mailed, electronically served, or placed a copy of
18 this order in the attorney's folder on the first floor of the Regional Justice Center as follows:

19
20 James M. Jimmerson, Esq. - Jimmerson Hansen
21 Pat Lundvall - McDonald Carano Wilson

22
23 
24 Kelly Tibbs
25 Judicial Executive Assistant

Exhibit E



CLERK OF THE COURT

BREF

JAMES J. JIMMERSON, ESQ.
Nevada Bar No.: 00264
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*Attorneys for Plaintiffs James
Wolfram and Walt Wilkes*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

PLAINTIFFS' TRIAL BRIEF PURSUANT TO EDCR 7.27

COME NOW, Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their counsel of record, James J. Jimmerson, Esq., Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of JIMMERSON HANSEN, P.C., and hereby file Plaintiffs' Trial Brief Pursuant to EDCR 7.27. This Trial Brief is based upon the papers and pleadings

///

///

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on file in this action, and the Memorandum of Points and Authorities attached hereto.

DATED this 21st day of October, 2013.

JIMMERSON HANSEN, P.C.

/s/ James J. Jimmerson, Esq.
JAMES J. JIMMERSON, ESQ.
Nevada State Bar No. 000264
LYNN M. HANSEN, ESQ.
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Attorneys for Plaintiffs
James Wolfram and Walt Wilkes

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' TRIAL BRIEF PURSUANT TO EDCR 7.27

I. INTRODUCTION

Trial is here.

Despite Plaintiffs' attempts to avoid a lawsuit and to resolve their claims for information without lawyers and the Court, Plaintiffs have been left no choice but to come before Your Honor and seek the relief available nowhere else. For three years, Plaintiffs sought to avoid litigation by requesting information concerning the development of Coyote Springs as it related to commission payments to which they were entitled under the September 1, 2004 Commission Letter Agreement with Pardee Homes of Nevada ("Pardee"). These requests should have ended the problem in its infancy. Unfortunately they did not. Now Plaintiffs sit ready for trial, having already spent almost three additional years in litigation and incurring over \$250,000 in attorney's fees just for information they are entitled to under their agreement with Pardee.

How unjust!

Plaintiffs have had to spend a fortune for information that should have been afforded to them in the normal course, and if not, surely upon their request. Were the need for the information and the implications of not receiving it not so immense, Plaintiffs would not be here. They would have taken their lumps from Pardee and moved on.

But the need for the information is great and the implications of not receiving it are mammoth. The legacies of James Wolfram and Walt Wilkes are at stake.

In 2004, Plaintiffs executed the Commission Letter Agreement with Pardee which capped off one of the largest, if not the largest, land transactions involving land brokers in the history of Nevada. Plaintiffs had facilitated the Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (the "Option Agreement") between Pardee and Coyote Springs Investment, LLC ("CSI"), an agreement whereby Pardee agreed to purchase thousands of acres of land and secured a forty-year option to buy tens of thousands more. If the option was completely exercised, Pardee would pay CSI well over

1 \$1,000,000,000 for the land known as Coyote Springs in Clark County and Lincoln County,
2 Nevada.

3 Importantly, Plaintiffs would receive a substantial commission on the deal. If the
4 option were completely exercised for the approximately 30,000 acres in Coyote Springs,
5 Plaintiffs could expect commissions exceeding \$6,000,000 for every 10,000 acres
6 designated as "Production Residential Property." Even before a single option parcel was
7 purchased, Plaintiffs were set to receive over \$2,000,000 in commissions. This was by far
8 the most lucrative transaction either Mr. Wilkes or Mr. Wolfram had been a part of, and it
9 represented a substantial sum of money for them individually and for their families. As the
10 Court knows, in 2004 Plaintiffs were both in their 60's when the initial transaction was
11 agreed to, and they may not survive to see the end of the forty-year option. This means
12 that their families and heirs would reap the benefit of their hard work.

13 But not if Pardee keeps withholding critical information from Plaintiffs. If Pardee
14 keeps operating in the dark, Plaintiffs and their heirs will never know if they would ever be
15 entitled to another commission and Plaintiffs' legacies could disappear. That is why
16 Plaintiffs are here and have taken on such costs. They are protecting their entitlement to
17 monies which may very well dwarf their current attorney's fees.

18 At trial, the evidence will show that Pardee wrongfully withheld information from
19 Plaintiffs despite their ongoing requests for it. Because the Commission Letter Agreement
20 bifurcated the calculation of commissions between those for the sale of Purchase Property
21 and those for the sale of Option Property, the agreement contained provisions requiring
22 Pardee to provide Plaintiffs with records and information when Option Property was
23 purchased, and mandated that, no matter what, Pardee would keep Plaintiffs "reasonably
24 informed as to all matters related to the amount and due date of [their] commission
25 payments." Further, Pardee promised to refrain from circumventing their obligations in the
26 Commission Letter Agreement. Defendant has acted in derogation of these covenants and
27 duties.

28

1 The evidence will show that Pardee purchased Option Property and yet never
2 alerted Plaintiffs of such purchases. Instead, Pardee treated all of their land transactions
3 as to have been for Purchase Property, despite the geographical proof that Defendant did
4 indeed purchase Option Property. Likewise, none of the requirements for the production of
5 records and information when Option Property was purchased were followed. Even after
6 Plaintiffs requested the information at all, Pardee failed to deliver the appropriate records.
7 Instead, Pardee, when it provided any information, gave an incomplete picture of the
8 events and occurrences related to Plaintiffs' commissions, "cherry-picked" the documents it
9 would produce, and never came forward with a candid response to Plaintiffs' inquiries.
10 Pardee even instructed the title company involved not to produce the records concerning
11 the land purchases in Coyote Springs.

12 Plaintiffs were prisoner to Defendant's wrongful actions. Defendant would not
13 produce the information; it prevented other informed parties from doing so; and it ensured
14 that the records were withheld from the public record by executing agreements containing
15 confidentiality provisions. Plaintiffs were left with no alternative other than to file suit and
16 gain access to the tools of discovery and the Court's equitable powers in order to compel
17 the production of the information.

18 Now the Court will hear testimony and consider evidence about Pardee's failure to
19 live up to its obligations under the law and under the Commission Letter Agreement, which
20 evidence was only discovered once Plaintiffs had the right to discovery and subpoena
21 power. The Court will learn that Plaintiffs were not paid their commissions according to the
22 appropriate formulas and that only Pardee has the information necessary to properly
23 calculate Plaintiffs' commissions. The Court will hear evidence of how Pardee acquired
24 land for which a commission would be owed to Plaintiffs, but that Pardee executed other
25 agreements to avoid paying those commissions. Finally, the Court will hear how these
26 transgressions would have gone undiscovered if Pardee were allowed to continue
27 withholding the information it is required to disclose under the Commission Letter
28 Agreement.

1 There is no adequate excuse or explanation for this conduct. The Court may hear
2 how the records had confidentiality clauses and how important maintaining that
3 confidentiality is. This is a red herring. The original Option Agreement as well as all
4 amendments thereto, including the Amended and Restated Option Agreement, had
5 confidentiality clauses, but Pardee produced those to Plaintiffs. The Court may hear how
6 the later amendments contained reference to other agreements for which Plaintiffs had no
7 interest. Again, another pretext for withholding the information. Pardee never produced
8 redacted versions of the amendments, keeping only the information relevant to Plaintiffs.
9 Pardee never produced a summary explanation of how the transactions affected Mr.
10 Wolfram's and Mr. Wilkes' commissions. Pardee never produced information explaining
11 how the land was being designated so that they could go to the Clark County Recorder's
12 office and confirm that the commissions were being calculated appropriately. Nothing even
13 resembling the appropriate disclosure ever took place. As such, the Court should find that
14 Plaintiffs are entitled to relief for the costs they had to incur in order to get the information
15 they were entitled to under the Commission Letter Agreement.¹

16 **II. LEGAL ARGUMENT**

17 **A. Defendant Purchased both Purchase Property and Option Property in**
18 **Coyote Springs**

19 As the Court is surely aware, much of this case hinges on whether Defendant
20 purchased Option Property from CSI. Because the purchase of Option Property places
21 additional obligations on Pardee, which it admits it did not fulfill, if Plaintiffs demonstrate
22 that Option Property was purchased the Court will find in favor of Plaintiffs. As will be
23 proven at trial, despite claims to the contrary, Pardee took down Option Property and did
24 not fulfill its duties upon so doing.

25
26 ¹ Defendant's counterclaim is meritless and relies upon the wild assertion that not only
27 were Plaintiffs appropriately informed, Plaintiffs acted in bad faith by requesting the
28 information from Pardee and causing it damages in the form of time and effort spent
responding to the requests. As expanded upon below, the counterclaim has no factual or
legal support.

1 Between 2004 and 2009, Defendant Pardee purchased in excess of 2100 acres of
2 land in Northern Clark County in Coyote Springs from CSI. This land was purchased in
3 five "take-downs" over the course of multiple years. A map of this land can be found as an
4 enclosure to Jon Lash's November 24, 2009 letter to James Wolfram at Pltfs' Ex. 15. This
5 property acquired by Pardee is both Purchase Property and Option Property as defined
6 under the Option Agreement.

7 The Option Agreement defines Purchase Property as follows: "Parcel 1 as shown
8 on Parcel Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332,
9 Official Records, Clark County, Nevada (containing approximately 3,605.22 acres)." Pltfs'
10 Ex. 2 at 1. By contrast, Option Property is defined as "the remaining portion of the Entire
11 Site which is or becomes designated for single-family detached production residential use."
12 *Id.* In short, Option Property is the balance of the property in Coyote Springs which is or
13 becomes designated as Production Residential Property. Therefore there are two critical
14 questions whose answers will decide whether the property taken down is Purchase
15 Property or Option Property: (1) is the property located outside the boundaries of Parcel 1
16 on Parcel-Map 98-57; and (2) if it is located outside Parcel 1, is the property designated for
17 Production Residential Property? If the Court answers these two questions in the
18 affirmative, it will have decided that Pardee purchased Option Property.

19 Examining the maps of the property purchased by Pardee, the Court will conclude
20 at trial that Defendant purchased Option Property. First, the Court will closely examine
21 Parcel Map 98-57 recorded on July 21, 2000, in the Clark County Recorder's Office, and
22 Parcel 1, located therein. See Pltfs' Ex. 25. Looking at Parcel Map 98-57, the Court will
23 make two observations. First, the Eastern and Western sides of Parcel 1 run parallel for
24 the vast majority of the parcel.² This conclusion concerning the parallel sides of Parcel 1 is
25 significant because the Eastern side of Parcel 1, for the purposes of locating the property
26

27 ² The Court can make this conclusion because the distance between the sides is the same
28 at multiple points. Simply looking at the 3 lines running horizontally across Parcel 1, the
Court can conclude that the lines are equidistant.

1 purchased by Pardee, will always be the same distance from U.S. Highway 93 (the
2 Western side of Parcel 1). As such, the Court will be able to measure the property's
3 distance from U.S. Highway 93 and immediately determine if it is outside or inside Parcel
4 1. Second, Parcel Map 98-57 indicates that the width of Parcel 1 is 7996.92 feet.³ With
5 these facts at the Court's disposal, the Court will quickly conclude that the land purchased
6 by Pardee is Option Property.

7 As will be proven at trial, Defendant took down property through the executions of a
8 number of amendments to the Amended and Restated Option Agreement. These various
9 amendments identify the parcels being purchased with reference to the parcel map where
10 the particular parcel is found. For example, in Amendment No. 5 to the Amended and
11 Restated Option Agreement, one part of the property being purchased is identified as
12 Parcel 2 of Book 113 Page 55 of Parcel Maps ("Parcel 2 of Parcel Map 113-55"). See
13 Pltfs' Ex. 10 at 2. It is in the course of examining Parcel Map 113-55 that the Court can
14 determine that the location of Parcel 2 of Parcel Map 113-55 is outside of Parcel 1 on
15 Parcel Map 98-57. See Pltfs' Ex. 30. Specifically, by measuring the distance from U.S.
16 Highway 93 to the eastern most portion of Parcel 2 of Parcel Map 113-55 and applying the
17 scale of Parcel Map 113-55, the Court will find that this eastern-most portion of Parcel 2 of
18 Parcel Map 113-55 is approximately 9175 feet east of U.S. Highway 93. This is significant
19 because, as confirmed earlier, the outer boundary of Parcel 1 on Parcel Map 98-57, and by
20 extension, Purchase Property, is 7996.92 feet east of U.S. Highway 93. This means that
21 the eastern-most portion of Parcel 2 of Parcel Map 113-55 is more than 1100 feet outside
22 the boundaries of Purchase Property and therefore, if appropriately designated, Parcel 2 of
23 Parcel Map 113-55 must contain Option Property.⁴

24
25 ³ The Court can make this calculation by adding the distances between the Eastern and
Western side of Parcel 1 located at the North side of Parcel 1.

26 ⁴ The Court can confirm that the eastern-most portion of Parcel 2 of Parcel Map 113-55 is
27 over 1100 feet outside of Parcel 1 on Map 98-57 by performing the same task (measuring
the distance from U.S. Highway 93 to the eastern-most edge of Parcel 2 of Parcel Map
28 113-55 and applying the appropriate scale) with Book 138 Page 51 of Plats at Pltfs' Ex. 26.
There the Court will have to measure across Sheets 5 and 6, but it will find that the

1 Amendment No. 5 to the Amended and Restated Option Agreement is not the only
2 place the Court will find that Pardee purchased Option Property. Pardee did it again by
3 executing Amendment No. 6 to the Amended and Restated Option Agreement. See Pltfs'
4 Ex. 11 at 2. In Amendment No. 6, Defendant purchased Parcel 3 and Parcel 4 of Parcel
5 Map 113-55. Referring to Parcel Map 113-55 and performing the same task as above, the
6 Court will find that large swaths Parcel 3 and Parcel 4 of Parcel Map 113-55 are outside of
7 Parcel 1 on Parcel Map 98-57. Specifically, the Court will find that eastern-most portions of
8 Parcel 3 and Parcel 4 are approximately 10,800 feet and 11,062.50 feet, respectively,
9 away from U.S. Highway 93.⁵ Again, this means Parcels 3 and 4 of Parcel Map 113-55 are
10 more than 2,800 and 3,000 feet outside the boundaries of Purchase Property, respectively,
11 and therefore, if appropriately designated, Parcels 3 and 4 constitute Option Property as
12 defined in the Option Agreement.

13 Performing this task conclusively establishes that Parcels 2, 3, and 4 of Parcel Map
14 113-55 are outside the boundaries of Purchase Property. However, notwithstanding this
15 geographical fact, the Court can readily conclude that Pardee's takedown of land under
16 Amendment No. 8 to the Amendment and Restated Option Agreement constituted the
17 purchase of Option Property without having to perform the tedious chore of measuring
18 distances on these Parcel and Plat Maps. See Pltfs' Ex. 13 at 9-10. Looking to
19 Amendment No. 8, the Court will find that under this agreement, Pardee purchased Lot 3
20 per Parcel Map 116, Page 35. See Pltfs' Ex. 13 at ex. "K". Referring the Court to Parcel
21 Map 116-35, found at Pltfs' Ex. 27, the Court can see that Lot 3 occupies the eastern-most
22 portion of Section 23 of Township 13S, R63E, Mount Diablo Meridian, Clark County,
23

24 eastern-most portion of Parcel 2 of Parcel Map 113-55 is approximately 9175 feet from
U.S. Highway 93.

25 ⁵ Again the Court can confirm that Parcels 3 and 4 of Parcel Map 113-55 are approximately
26 2,800 feet and 3,062.50 feet, respectively, outside of Parcel 1 on Map 98-57 by performing
27 the same task (measuring the distance from U.S. Highway 93 to the eastern-most edge of
Parcel 3 of Parcel Map 113-55 and applying the appropriate scale) with Book 138 Page 51
28 of Plats, again at Pltfs' Ex. 26. There the Court will have to once again measure across
Sheets 5 and 6, but it will find that the eastern-most portion of Parcels 3 and 4 are
approximately 10,800 and 11,062.5 feet from U.S. Highway 93, respectively.

1 Nevada, on the eastern-most portion of that Township. Parcel 1 on Parcel Map 98-57,
2 conversely, is located within sections 21 and 22 on the western-most portions of the same
3 Township. Looking to Sheets 5 and 6 on Parcel Map 98-57, the Court will find that
4 Sections in this Township are over 5300 feet wide—making Lot 3 per Parcel Map 116-35
5 over 8,778 feet outside the boundaries of Parcel 1. This means that some of the land
6 taken down as part of Amendment No. 8 is quite literally miles apart from the boundaries of
7 Purchase Property.

8 Now, as the Court will surely recognize, Option Property is not just determined by its
9 location (that is being outside Parcel 1 on Parcel Map 98-57). Option Property must also
10 be designated as Production Residential Property as defined on Page 2 of the Option
11 Agreement. See Pltfs' Ex. 2 at 2. For example, property designated for "single-family
12 residential lots," "roadways," "utilities," "schools," "parks," and "drainage ways" is
13 Production Residential Property. *Id.* Therefore, in order to establish that the land located
14 at Parcels 2, 3, and 4 of Parcel Map 113-55 and Lot 3 per Parcel Map 116-35 is Option
15 Property, the Court must know how that property is designated.

16 The Court can make such a determination by looking at the Exhibits to Amendment
17 Nos. 7 and 8 to the Amended and Restated Option Agreement. See Pltfs' Ex. 12, 13.
18 Specifically, the Court will find that at Exhibit B-2 to Amendment No. 7 is a map indicating
19 how the land within Parcel 2 of Parcel Map 113-55 is designated. Looking at the eastern-
20 most portion of Parcel 2, the Court will see that this parcel is designated as "Residential,"
21 meaning that it is designated as Production Residential Property. Therefore because
22 Parcel 2 is so designated and it is located outside the boundaries of Purchase Property, it
23 is Option Property. *Id.*

24 Performing the same task for Parcels 3 and 4 of Parcel Map 113-55 reveals the
25 same information. Exhibits B-4 and B-5 to Amendment No. 7 are maps reflecting the
26 designation of Parcels 3 and 4, respectively, and show that the vast majority of the parcels,
27 including the eastern-most portions of them, are designated as "Residential." See Pltfs'
28 Ex. 13 at B-4, B-5.

1 The same conclusion is found for Lot 3 per Parcel Map 116-35. This 11-acre parcel
2 located over 8700 feet outside of Parcel 1 on Parcel Map 98-57 is designated for
3 wastewater treatment plant and facilities. *Id.* at 9. This means that this lot is Production
4 Residential Property as defined in the Option Agreement as it is designated for "utilities,"
5 which is included in the description of Production Residential Property. *Pltfs' Ex. 2* at 2.
6 Overall, since these parcels are designated as Production Residential Property, and
7 because they are outside the boundaries of Purchase Property, they constitute Option
8 Property.

9 While tedious, this task of identifying the location and designation of the land
10 purchased by Pardee establishes not only that Pardee purchased Option Property as
11 defined in the Option Agreement, but also that it knew that it purchased Option Property.⁶
12 Given that Pardee purchased land that was miles outside the bounds of Purchase
13 Property, Pardee had to have known that it was purchasing Option Property. Even the
14 parcel closest to the outer-boundary of Purchase Property was still over 1100 feet inside
15 the territory for Option Property. That is why this case is so troubling. Despite Mr.
16 Wolfram's and Mr. Wilkes' good faith inquiries, Pardee still insisted that it had not
17 purchased Option Property and that their commissions were appropriately calculated and
18 paid. Such statements were false and Pardee is in breach of the Commission Letter
19 Agreement.

20 **B. Defendant Breached its Contractual Duties to Plaintiffs Under the**
21 **Commission Letter Agreement**

22 The Court is well-versed in the law surrounding breach of contract actions. To
23 sustain a claim for breach of contract, Plaintiffs must establish (1) the existence of a valid
24 contract between Plaintiffs and Defendant; (2) a breach by Defendant, and (3) damages as
25 a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 405 (1865); *Calloway v. City of*

26 _____
27 ⁶ If for some reason Pardee did not know it was purchasing Option Property as defined in
28 the Option Agreement, it was reckless in not knowing such a fact given that the land
Pardee took down was thousands of feet (and in some cases miles) outside of the
boundaries of Parcel 1 on Parcel Map 98-57.

1 *Reno*, 116 Nev. 250, 256, 993 P.3d 1259, 1263 (2000) (overruled on other grounds by
2 *Olson v. Richard*, 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)). "Contract
3 interpretation strives to discern and give effect to the parties' intended meaning...before an
4 interpreting court can conclusively declare a contract ambiguous or unambiguous, it must
5 consult the context in which the parties exchanged promises." *Galardi v. Naples Polaris*, --
6 - Nev. ---, ---, 301 P.3d 364, 367 (July 18, 2013). If a contract is unambiguous, the parties'
7 intent must be derived from the plain language of the contract. See *Canfora v. Coast*
8 *Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The Court may take
9 notice of the course of dealing between the parties and the trade usage of a contract's
10 terms to interpret a contract. *Galardi*, 301 P.3d at 367; *United Services Auto Ass'n v.*
11 *Schlang*, 111 Nev. 486, 493, 894 P.2d 967, 971 (1995); *Nevada Nat. Bank v. Huff*, 94 Nev.
12 506, 514, 582 P.2d 364, 370 (1978). Contractual provisions should be harmonized
13 whenever possible, and construed to reach a reasonable solution. *Eversole v. Sunrise*
14 *Villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505, 509 (1996). Applying
15 these principles, the Court will find that Pardee breached its obligations under the
16 Commission Letter Agreement.

17 Throughout this litigation Defendant has gravitated to the contractual issues raised
18 by Plaintiffs. As the Court surely remembers, Defendant's original motion for summary
19 judgment focused primarily on the breach of contract claim and, when that was
20 unsuccessful, Defendant filed another dispositive motion arguing that Plaintiffs' breach of
21 contract claim subsumed the cause of action for an accounting, rendering the accounting
22 no more than an equitable remedy (and not an independent cause of action). While it is
23 unclear how Defendant will dispute the breach of contract claim or if Pardee will raise a
24 new argument at trial, one thing is certain: the terms of the contract offer Defendant no
25 quarter from Plaintiffs' claims.

26 The Commission Letter Agreement reflects Pardee's obligation to (1) pay to
27 Plaintiffs certain commissions for land purchased from CSI; and (2) send Plaintiffs notices
28 and other information concerning the real estate purchases made under the Option

1 Agreement and the corresponding commission payments. As for the commission
2 payments, the Commission Letter Agreement provides for commissions equal to the
3 following amounts:

4 (i) Pardee shall pay four percent (4%) of the Purchase Property
5 Price payments made by Pardee pursuant to Paragraph 1 of
6 the Option Agreement up to a maximum of Fifty Million Dollars
(\$50,000,000);

7 (ii) Then, Pardee shall pay one and one-half percent (1-1/2%)
8 of the remaining Purchase Property Price payments made by
9 Pardee pursuant to paragraph 1 of the Option Agreement in the
aggregate amount of Sixteen Million Dollars (\$16,000,000);⁷
and

10 (iii) Then, with respect to any portion of the Option Property
11 purchased by Pardee pursuant to paragraph 2 of the Option
12 Agreement, Pardee shall pay one and one-half percent (1-
1/2%) of the amount derived by multiplying the number of acres
13 purchased by Pardee by Forty Thousand Dollars (\$40,000).

14 See Pltfs' Ex. 1 at 1.

15 According to the first two payment clauses, Plaintiffs are entitled to receive a
16 percentage of the Purchase Property Price payments.⁸ This means that when Defendant
17 purchased the Purchase Property, Plaintiffs were entitled to receive the commission
18 payment calculated by multiplying the price paid for Purchase Property by the appropriate
19 percentage (4% for the first \$50 million, 1½% for the balance of the remaining Purchase
20 Property Price) as stated above.

21 Not to be ignored, however, is the phrase "pursuant to Paragraph 1 of the Option
22 Agreement." The Court will remember that Defendant focused much of its attention on this
23 clause in the third subparagraph during the hearing on the motions for summary judgment.
24 This clause in the first and second subparagraphs is important because it explains that

25 ⁷ Amendment No. 2. to the Option Agreement, effective August 31, 2004, provided for an
26 increased Purchase Property Price of \$84 million. This increase was incorporated by the
27 Commission Agreement through the Re: line, "Option Agreement for the Purchase of Real
Property and Joint Escrow Instructions dates as of June 1, 2004, *as amended* (the 'Option
Agreement')." Pltfs' Ex. 1 at 1 (emphasis supplied).

28 ⁸ The Option Agreement defines the "Purchase Property Price" as "the purchase price of
the Purchase Property." Pltfs' Ex. 2 at 3.

1 payments for Purchase Property will be made in accordance to a four-step process as
2 detailed in the Option Agreement. See Pltfs' Ex. at 3-4. Instead of making one lump sum
3 payment for the Purchase Property, Pardee was to (1) deposit \$1 million into escrow at the
4 opening of escrow; (2) deposit \$9 million into escrow at least one business day prior to the
5 Initial Purchase Closing; (3) make thirty-two (32) monthly payments of \$1.5 million followed
6 by three monthly payments of \$2 million; and (4) make a final payment of \$2 million (plus
7 any balance owed on the Purchase Property) at least one business day prior to the
8 Purchase Closing. *Id.* As such, by using of the phrase "pursuant to Paragraph 1 of the
9 Option Agreement," Pardee refers specifically to the drawn-out process of the Purchase
10 Property payment structure and Plaintiffs know that they will be paid over the course of
11 several months.

12 Additionally, subparagraph (ii) calculates the balance of Plaintiffs' commissions as
13 equaling, "1 ½% of the remaining Purchase Property Price payments made by Pardee
14 pursuant to paragraph 1 of the Option Agreement in the aggregate amount of Sixteen
15 Million Dollars (\$16,000,000)." As the Court is aware, the Purchase Property Price
16 increased from \$66 million to \$84 million as of August 31, 2004 as described by
17 Amendment No. 2 to the Option Agreement. See Pltfs' Ex. 4 at 2. Defendant at trial may
18 (for the first time) argue that the Commission Letter Agreement only provided for
19 commissions for the first \$66 million of Purchase Property, and therefore Plaintiffs were
20 overpaid, but that argument would be belied by the language of the Commission Letter
21 Agreement. Indeed, the language in subparagraph (ii) is notably different than the
22 language in subparagraph (i). Instead of stating that Pardee will pay a percentage of
23 payments "up to a maximum" of a certain price (which is the language used to describe the
24 commissions owed under subparagraph (i)), subparagraph (ii) states that commissions will
25 be equal to 1½% of "*the remaining Purchase Property Price* in the aggregate amount of
26 \$16 million." Pltfs' Ex. 1 at 1 (emphasis supplied). By tying the rest of Plaintiffs' Purchase
27 Property commission to the remaining Purchase Property Price, the Commission Letter
28 Agreement afforded Pardee and CSI the flexibility to change the Purchase Property Price

1 (which they did on August 31, 2004) and preserve Plaintiffs' entitlement to the increased
2 Purchase Property Price payments. Any argument to the contrary would not only run
3 counter to the canons of contractual interpretation, but would almost surely confirm that
4 Defendant breached the implied covenant of good faith and fair dealing in its treatment of
5 Plaintiffs. The Court should appropriately reject such a claim.

6 Now, so far in the litigation, there has been no dispute as to the above interpretation
7 of the Commission Letter Agreement. What has been in dispute is the meaning of
8 subparagraph (iii) and the calculation of commissions for Option Property purchases.
9 Defendant may still maintain that it never took down any Option Property but that argument
10 would be easily dispatched when the Court simply looks at the location and the designation
11 of the property Pardee bought (as seen above). So Pardee will need another argument to
12 defeat the breach of contract claim—and the Court heard a bit about it during the hearing
13 on the motions for summary judgment. That is, even if Option Property was technically
14 purchased, it was not purchased "pursuant to paragraph 2 of the Option Agreement" and
15 therefore commissions are not due to Plaintiffs. *Id.* Such an argument would be as
16 meritless as it is desperate.

17 Unlike the corresponding phrase in subparagraphs (i) and (ii), the phrase "the
18 Option Property purchased by Pardee pursuant to paragraph 2 of the Option Agreement"
19 does not impose a complex procedure on the Buyer, Pardee. Instead, Paragraph 2
20 provides that "[Pardee] may exercise its Option during the Option Period described in
21 subparagraph (c) below⁹ by giving written notice of such exercise to Seller in the manner
22 set forth in paragraph 17 below." *Pltfs' Ex. 2* at 5. Written notice is made by (1) personal
23 delivery, (2) overnight courier, or (3) certified mail to the addresses listed in Paragraph 17
24 for Pardee, CSI and their respective counsel. *Id.* at 37-38. No other requirements for
25 option exercise notices besides the above notification procedure are specified in

26
27 ⁹ The Option Period is defined as the period commencing on the Settlement Date and
28 ending forty (40) years later. *Id.* at 6. The Settlement Date took place thirty (30) days
before Plaintiffs received their first commission payments in 2005. See *Pltfs' Ex. 1* at 2;
Def't's Ex. 1.

1 Paragraphs 2 or 17. Therefore, the Court can readily conclude that when Defendant
2 purchased the Option Property, it did so during the Settlement Period and appropriate
3 notice was given to CSI (as reflected by CSI's signature on the documents executing the
4 Option Property takedowns) and thus did so pursuant to Paragraph 2 of the Option
5 Agreement. Plaintiffs are entitled to the commissions as specified by subparagraph (iii).

6 Besides the obligation to pay the appropriate commissions to Plaintiffs, Pardee also
7 had an obligation to properly notify and inform Plaintiffs of the development of Coyote
8 Springs. Specifically, the Commission Agreement provides:

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

16 Pltfs' Ex. 1 at 2.

17 Pardee complied with none of the requirements in this paragraph of the
18 Commission Letter Agreement. First, Pardee never provided Plaintiffs copies of the
19 documents by which Pardee purchased the Option Property. Mr. Wolfram and Mr. Wilkes
20 will testify that despite numerous requests for documents, Pardee never provided them
21 with the required information. Second, Pardee never provided to Plaintiffs information as
22 to the number of acres of the Option Property being taken down or the future scheduled
23 closing date. Again, Plaintiffs will explain at trial that never once did Pardee provide them
24 with information as to the number of acres purchased outside Parcel 1 of Parcel Map 98-57
25 constituting Option Property, or about future scheduled closing dates. All that was
26 provided was a letter from Jon Lash to James Wolfram dated November 24, 2009
27 containing a total acreage calculation and past closing dates.

28 Defendant may again advance the claim that Option Property was not purchased
pursuant to Paragraph 2 of the Option Agreement and therefore no notices were due to
Plaintiffs. However, as demonstrated above, Pardee did in fact purchase Option Property

1 pursuant to Paragraph 2 of the Option Agreement and therefore Pardee did breach its
2 obligations under this sentence of the Commission Letter Agreement.

3 Third, Pardee failed to keep Plaintiffs reasonably informed as to all matters relating
4 to the amount and due date of their commission payments. Notwithstanding the specific
5 requirements to provide information when Option Property was purchased, Defendant
6 failed to appropriately inform Plaintiffs as required under this provision of the Commission
7 Letter Agreement. The key term in this sentence is "reasonably informed." Plaintiffs will
8 testify that with over seventy (70) years of combined experience in this field, to be
9 reasonably informed as to all matters related to the amount and due date of commission
10 payments, at a minimum, Pardee must have provided information whereby Plaintiffs could
11 verify the accuracy of the commission calculations. Besides coming from two brokers with
12 substantial experience, this interpretation makes sense within the context of the
13 Commission Letter Agreement. Given that the Pardee could purchase Option Property
14 across a forty (40) year time period, it would be essential that the brokers could verify the
15 accuracy of their commission payments in order to avoid fee disputes. Further, with so
16 much property in Coyote Springs (over 30,000 acres), the chance that a miscalculation
17 could result in a substantial underpayment (or overpayment) is substantial. Ensuring that
18 all parties have the information to confirm the accuracy of the commissions reduces the
19 risk of inaccurate payments and future disputes. Unfortunately for Plaintiffs, Pardee did not
20 see the merit in complying with this section of the Commission Letter Agreement and failed
21 to provide this information.

22 Defendant failed to keep Plaintiffs reasonably informed as required by the
23 Commission Letter Agreement. Specifically, Pardee failed to provide Plaintiffs with the
24 information necessary to verify the accuracy of their commissions. In order to comply with
25 the terms of the Commission Letter Agreement, Defendant must have timely provided
26 information concerning (1) the location of the land being taken down, and (2) the
27 designation of the property. Without both of these pieces of information Plaintiffs could not
28 verify that they were being paid the appropriate commissions. Without the location of the

1 property, Mr. Wolfram and Mr. Wilkes would not know if the property was Purchase or
2 Option Property. Without the designation of the property, Plaintiffs could not confirm that
3 they were being paid for all Production Residential Property being sold (as they are entitled
4 to commissions on the sale of Production Residential Property). As will be demonstrated
5 at trial, Pardee failed to appropriately alert Plaintiffs as to the location of the property being
6 taken down with reference to Parcel 1 of Parcel Map 98-57 and never identified the
7 designation of the property subject to purchase. As such, Pardee did not keep Plaintiffs
8 reasonably informed as to all matters related to the amount and due date of their
9 commission payments.

10 Lastly, Defendant breached its duty not to circumvent their obligations under the
11 Commission Letter Agreement. Under the Agreement, "Pardee, its successors and
12 assigns, shall take no action to circumvent or avoid its obligation to [Plaintiffs] as set forth
13 in the Agreement." *Id.* However, instead of faithfully complying with the Commission
14 Letter Agreement, Pardee entered into an agreement with CSI to purchase land for, *inter*
15 *alia*, custom lots. As stated by Jon Lash in his letter to Plaintiffs dated August 23, 2007,
16 "Since the execution of the original single-family land Option Agreement, the Seller of
17 Coyote Springs has decided not to pursue building the multi-family land and custom lot
18 parcels. Recently, Pardee entered into separate agreements under different values per
19 acre and terms than the original deal to purchase this additional acreage at Coyote
20 Springs... As land is purchased under these other agreements, you will not be entitled to
21 any commissions related to these other agreements." Pltfs' Ex. 16 at 2. Pardee's new
22 agreement to purchase land for custom lots is *per se* circumvention of the Commission
23 Letter Agreement.

24 Under the Option Agreement, Production Residential Property—the property for
25 which Plaintiffs are eligible for a commission—includes custom home lots. See Pltfs' Ex. 2
26 at 2 ("Production Residential Property means that portion of the Net Usable Acreage that
27 encompasses all of the Purchase Property and the Option Property, which includes,
28 without limitation, all single-family detached production residential lots (which shall

1 include lots on which custom homes are constructed by Buyer)...") (emphasis
2 supplied). Therefore, Pardee cannot claim that it is able to buy custom home lots and yet
3 avoid paying Plaintiffs the commissions owed to them. Using "separate agreements" for
4 this purpose is the very definition of circumvention and is an independent breach of the
5 Commission Letter Agreement.

6 As the Court can conclude, the breaches of contract are numerous and require this
7 Court's intervention. Due to the failure of Pardee to comply with the information-sharing
8 provisions of the Commission Letter Agreement, the amount of commissions owed to
9 Plaintiffs is still unknown, but can be remedied through accounting proceedings after trial.
10 Nevertheless, Plaintiffs are entitled to their damages in the form of their attorney's fees and
11 their time and effort spent attempting to retrieve the information owed to them under the
12 Commission Letter Agreement. Because Plaintiffs had no other way other than a lawsuit to
13 get access to the information required to be provided to them, Plaintiffs' attorney's fees and
14 costs are special damages. See *Sandy Valley Assoc. v. Sky Ranch Estates Owners*
15 *Assoc.*, 117 Nev. 948, 35 P.3d 964 (2001). Further, because it was foreseeable at the time
16 the parties entered into the Commission Letter Agreement that Plaintiffs would go looking
17 for alternate sources of information if Pardee failed to provide it as required, Plaintiffs are
18 entitled to reasonable compensation for their time and effort.

19 **C. Defendant Failed to Act in Good Faith and Denied Plaintiffs Their Justified**
20 **Expectations Under the Commission Letter Agreement**

21 Notwithstanding the facts that will prove the merit of Plaintiffs' breach of contract
22 claim, the Court need not perform the technical analysis of the Commission Letter
23 Agreement to know that Pardee has wronged Plaintiffs under the Commission Letter
24 Agreement. Were the Court to consider the spirit and purpose of the Commission Letter
25 Agreement it would know that Pardee did not act in good faith toward Plaintiffs and that
26 Defendant violated the purpose of the parties' agreement. Pardee's conduct is actionable
27 and is a violation of the implied covenant of good faith and fair dealing.
28

1 To sustain a claim for breach of the implied covenant of good faith and fair dealing
2 sounding in contract, Plaintiffs must establish: (1) Plaintiffs and Defendant were parties to
3 the contract; (2) the Defendant owed a duty of good faith to Plaintiffs; (3) the Defendant
4 breached that duty by performing in a manner that was unfaithful to the purpose of the
5 contract; and (4) Plaintiffs' justified expectations were thus denied. See *Perry v. Jordan*,
6 111 Nev. 943, 947, 900 P.2d 335, 338 (1995). "An implied covenant of good faith and fair
7 dealing is recognized in every contract under Nevada law." *Consolidated Generator-*
8 *Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256
9 (1998). Under the implied covenant, each party must act in a manner that is faithful to the
10 purpose of the contract and the justified expectations of the other party. *Morris v. Bank of*
11 *America Nevada*, 110 Nev. 1274, 1278 n. 2, 886 P.2d 454, 457 (1994). The implied
12 covenant of good faith and fair dealing "essentially forbids arbitrary, unfair acts by one
13 party that disadvantages the other." *Frantz v. Johnson*, 116 Nev. 455, 465 n. 4., 999 P.2d
14 351, 358 (2000).

15 The covenant of good faith and fair dealing has particular significance in the field of
16 brokering land sales. Because of the incentives to "cut out the middle man," Nevada law
17 recognizes the doctrine of "procuring cause" in order to protect a broker's entitlement to a
18 commission when the broker arranges a land transaction even when the strict terms of the
19 commission agreement would militate against such a payment. The Nevada Supreme
20 Court, in *Carrigan v. Ryan*, 109 Nev. 797, 799, 858 P.2d 29, 30 (1993) explained these
21 protections afforded to brokers under Nevada law, stating:

22 As this court explained in *Humphrey v. Knobel*, 78 Nev. 137,
23 141-45, 369 P.2d 872, 874-75 (1962), the doctrine of
24 "procuring cause" developed primarily to protect the broker
25 where he or she arranges a sale but nonetheless, according to
26 the strict terms of the broker's contract, the broker is not
27 otherwise entitled to a commission. See also 1 Harry D. Miller
28 & Marvin B. Starr, *Current Law of California Real Estate* § 2:20
(2d ed. 1989); D. Barlow Burke, Jr., *Law of Real Estate Brokers*
§ 3.4 (2d ed. 1992).

1 *Id.* Just as the Nevada Supreme Court protects brokers against overly-narrow readings of
2 commission agreements, so too should this Court.

3 The evidence at trial will conclusively establish that the purpose of the Commission
4 Letter Agreement was to: (1) pay Plaintiffs a commission for being the procuring cause of
5 the Option Agreement; and (2) keep them appropriately informed as to the development of
6 Coyote Springs as it pertained to their commission payments. The Court need only to look
7 to the language of the Option Agreement to confirm that one of the purposes of the
8 Commission Letter Agreement was to ensure Plaintiffs were paid commissions when
9 Purchase or Option Property was sold. As stated in the Option Agreement:

10 [U]pon and subject to the close of escrow for the Purchase
11 Property or any Option Parcel, Buyer shall pay any finder fee
12 owed to General Realty Group (Walt Wilkes) and Award Realty
Group (Jim Wolfram) pursuant to a separate agreement; said
fee shall be split equally.

13 Pltfs' Ex. 2 at 30.

14 The second purpose of the Commission Letter Agreement is equally clear.
15 Defendant was to "keep each [Plaintiff] reasonably informed as to all matters relating to the
16 amount and due dates of [their] commission payments." Pltfs' Ex. 1 at 2. If Plaintiffs were
17 not appropriately informed about the transactions affecting their commission payments,
18 Pardee could simply choose not to make the payments and Plaintiffs would be none the
19 wiser.

20 As will be demonstrated at trial, Pardee violated the implied covenant of good faith
21 and fair dealing and acted in such a way as to defeat the purpose of the Commission Letter
22 Agreement. The above-described breaches of the agreement all served to deny Plaintiffs'
23 justified expectations, and without retreading the ground covered above, Plaintiffs ask that
24 the Court take particular notice of how Pardee responded to Plaintiffs' requests for
25 information.

26 Pardee intentionally and unjustifiably withheld material facts when asked by
27 Plaintiffs for the information they were entitled to and only produced the information Pardee
28 wanted to disclose. For example, Jon Lash instructed individuals at Chicago Title to not

1 send to Plaintiffs copies (redacted or otherwise) of the amendments to the Amended and
2 Restated Option Agreement. See Deft's Exs. DD, II. However, Pardee did produce three
3 closing statements for land takedowns. Unfortunately for Plaintiffs, the only information on
4 the closing statements which connect the statements with the land acquired by Pardee are
5 the four word descriptions of the property in the top left hand corner of each statement (eg.
6 "1st Add'l Purchase Parcel"). See Pltfs' Ex. 9 at 1. These four word descriptions are
7 *defined terms* in the various amendments to the Amended and Restated Option
8 Agreement, which were never provided to Plaintiffs. Without the amendments, Plaintiffs
9 were left with three documents raising more questions than answers. The same pattern
10 emerges when Pardee revealed to Plaintiffs the location of certain land purchases.

11 In his November 24, 2009 letter to Mr. Wolfram, Jon Lash included a map of certain
12 takedowns in Coyote Springs. See Pltfs' Ex. at 3. However, the map was incomplete and
13 did not reflect all of the land acquisitions made by Pardee. Mr. Wolfram, when trying to get
14 the information he was owed, spent a significant amount of time at the Clark County
15 Recorder's office looking at maps of Coyote Springs and constructed a map showing that
16 Pardee had purchased many more parcels than were indicated on the map Mr. Lash sent.
17 See Pltfs' Ex. 23. Mr. Wolfram's request for an explanation for the discrepancy went
18 unanswered. *Id.* Indeed, when Mr. Wolfram requested information on the parcels he had
19 found that Pardee had purchased, Pardee sent copies of the publicly recorded deeds for
20 only some of Pardee's land transactions. See Deft's Ex. KK. Pardee basically cherry-
21 picked the information it would give to Mr. Wolfram—the Commission Letter Agreement be
22 damned.¹⁰

23
24
25 ¹⁰ Pardee cannot make the claim that it sent these documents in good faith as required by
26 the Commission Letter Agreement since Pardee sent none of the documents referenced in
27 this section to Walt Wilkes. The Agreement requires Pardee to keep "each of you"
28 reasonably informed" (referring to James Wolfram and Walt Wilkes). Without sending the
documents to Mr. Wilkes, Pardee cannot engage in revisionist history and claim now that it
was attempting to appropriate discharge its duties under the Commission Letter Agreement
in sending the maps, deeds and closing statements to Mr. Wolfram.

1 Pardee's conduct is not consistent with the acts of a party acting in good faith to
2 achieve the purpose of an agreement. At every turn Defendant did what it felt like and not
3 what it was obligated to: it bought Option Property and treated it like Purchase Property; it
4 entered into outside agreements with CSI concerning land for which Plaintiffs would be
5 entitled to a commission payment but excluded Mr. Wolfram and Mr. Wilkes from the
6 transaction; and it kept Plaintiffs in the dark about the transactions they should have been
7 informed of—all in spite of the agreement between Plaintiffs and Pardee.

8 As a result of this wrongful conduct, Plaintiffs have suffered substantial harm. Just
9 as in the case of their breach of contract claim, Plaintiffs were forced to hire an attorney
10 and incur substantial fees and costs to get the information they are entitled to. Such fees
11 and costs are appropriately characterized as special damages pursuant to *Sandy Valley*.
12 Likewise, Plaintiffs are entitled to compensation for the damages suffered for their
13 expenditure of time and effort in trying to get the information they were owed by Pardee
14 under the Commission Letter Agreement. See *Gray v. Don Miller & Associates, Inc.*, 35
15 Cal.3d 498, 505, 674 P.2d 253, 256 (Cal. 1984); *Barthels v. Santa Barbara Title Co.*, 28
16 Cal. App. 4th 674, 680, 33 Cal. Rptr. 2d 570, 581-82 (Cal. App. Ct. 1994).

17 **D. Defendant Has a Duty to Account to Plaintiffs But Failed to So Account**

18 Quite likely the most important claim in this action is Plaintiffs' claim for an
19 accounting. Unlike all of the other causes of action in this case, the claim for an
20 accounting is the only one which provides Plaintiffs the ability to recover what is most
21 important to them: the information concerning the development of Coyote Springs. Despite
22 what has become an unbelievably costly endeavor, Plaintiffs have held firm and pursued
23 the information for which they are entitled and have been long denied.

24 As the Court is keenly aware, an action for an accounting is a "proceeding in equity
25 for the purpose of obtaining a judicial settlement of the accounts of the parties in which
26 proceedings the court will adjudicate the amount due, administer full relief, and render
27 complete justice." *Oracle USA, Inc. v. Rimini Street, Inc.*, No. 2:10-CV-00106-LRH-PAL,
28 2010 WL 3257933, at *6 (D. Nev. Aug. 13, 2010). Under Nevada law, to prevail on a claim

1 for accounting, there must (1) be a special relationship between the parties, (2) mutual
2 accounts between the parties must be held by one of the parties, and (3) defendant has a
3 duty to render an accounting. *Mobius Connections Group, Inc. v. Techskills, LLC*, No.
4 2:10-CV-01678-GMN-RJJ, 2012 WL 194434, at *8 (D. Nev. Jan. 23, 2012).

5 In Nevada, the duty to account arises from a special relationship between the
6 parties. For example:

7 A fiduciary relationship, for instance, gives rise to a duty of
8 disclosure. See, e.g., *Foley v. Morse & Mowbray*, 109 Nev.
9 116, 125–26, 848 P.2d 519, 525 (1993). A duty to disclose
10 may also arise where the parties enjoy a “special relationship,”
11 that is, where a party reasonably imparts special confidence in
12 the defendant and the defendant would reasonably know of this
13 confidence. See *Mackintosh v. Jack Matthews & Co.*, 109 Nev.
14 628, 634–35, 855 P.2d 549, 553 (1993) (citing *Mancini v.*
15 *Gorick*, 41 Ohio App.3d 373, 536 N.E.2d 8, 10 (Ohio
16 Ct.App.1987)). A party’s superior knowledge thus imposes
17 a duty to speak in certain transactions, depending on the
18 parties’ relationship... Even when the parties are dealing at
19 arm’s length, a duty to disclose may arise from “the
20 existence of material facts peculiarly within the knowledge
21 of the party sought to be charged and not within the fair
22 and reasonable reach of the other party.” *Villalon v. Bowen*,
23 70 Nev. 456, 467–68, 273 P.2d 409, 415 (1954) (failure of
24 purported widow to tell the executor of her purported husband’s
25 estate that her prior marriage had not been terminated).

26 *Dow Chemical v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998). (emphasis
27 supplied).

28 The evidence in this action fully supports Plaintiffs’ entitlement to an accounting.
First, there can be no confusion that Plaintiffs and Defendant have a special relationship of
trust whereby Plaintiffs impart special confidence in Defendant and Defendant knows of
this confidence. It is undisputed that Plaintiffs were present at the initial meeting with Mr.
Lash and Mr. Whittemore, but were then excluded from any further meaningful contact with
Pardee or CSI as the development of Coyote Springs was planned. Plaintiffs had almost
no idea how Pardee and CSI were planning to develop Coyote Springs—and by extension,
no understanding of when they should expect a commission payment—which is why the
Commission Letter Agreement contains the provisions mandating that Pardee keep

1 Plaintiffs reasonably informed as to all matters concerning their commission payments.
2 See Pltfs' Ex. 1. Further, by instructing individuals at Chicago Title not to send the
3 appropriate information to Plaintiffs, Pardee knew that it was Plaintiffs' only possible source
4 of the information. See Deft's Exs. DD, II. By leaving Plaintiffs out of the planning process
5 and barring others from producing the necessary information about Coyote Springs,
6 Defendant left Plaintiffs no choice but to trust Pardee. In so having that trust, Defendant
7 owes Plaintiffs a duty to account to them.

8 Moreover, the relationship between the parties is such that the material facts
9 concerning the basis for Plaintiffs' commission payments are peculiarly within Pardee's
10 possession and not within the fair and reasonable reach of Plaintiffs. As was alluded to
11 above, Plaintiffs need more than what public records can reveal in order to stay reasonably
12 informed about their commission payments. While Plaintiffs can readily access land
13 records in the Clark and Lincoln County Records' offices, those offices do not possess
14 the information regarding how the land is designated under the Option Agreement.¹¹
15 Without knowing how Pardee and CSI designated the land, Plaintiffs could not know if they
16 are entitled to a commission since they may only receive a commission if the land is or
17 becomes designated as Production Residential Property. See Pltfs' Ex. 2 at 2. As such,
18 Defendant has a duty to account to Plaintiffs as the land is being taken down. See
19 *Epperson v. Roloff*, 102 Nev. 206, 213, 719 P.2d 799, 804 (1986) ("[W]here the defendant
20 alone has knowledge of material facts which are now accessible to the plaintiff. Under
21 such circumstances, there is a duty of disclosure.").

22 Despite this duty to account to Plaintiffs, Pardee inexplicably denied them the
23 information critical to confirm that they had been appropriately paid. As early as March of
24 2008, Jon Lash, responding to Plaintiffs' request for information, boldly stated, "There
25 should be no confusion over what property has been purchased. All commissions and
26 purchase monies have been paid through the same escrow account simultaneously.

27 _____
28 ¹¹ If information about property designation was publicly available, Defendant should have
produced such records during discovery. However, no such records were produced.

1 Thus, production of the documentation you request serves no purpose of mutual
2 benefit." See Pltfs' Ex. 17 (emphasis supplied). Apparently Pardee would only produce
3 the necessary information if it was mutually beneficial, without heed to its duty to account
4 or contractual obligations. What is truly stunning about this declaration is that one
5 sentence later Mr. Lash requested additional information from Plaintiffs, stating, "Naturally,
6 if there is additional information to consider, please pass it along." *Id.* How Mr. Lash could
7 so quickly dismiss Plaintiffs' request for information and yet make a similar request of them
8 is shocking. Unfortunately for Plaintiffs, this behavior was the norm for Pardee and not the
9 exception.

10 Defendant's denial of the necessary information continued through the discovery
11 process. Plaintiffs, through counsel, requested "copies of all sales agreements, purchase
12 agreements, option agreements, letter agreements, commission agreements, or any
13 amendments, addendums or additions thereto entered into by Coyote Springs
14 Investments, LLC and Pardee Homes from the beginning of the relationship to present."
15 See Pltfs' Ex. 33 at Request No. 11. In response Defendant referred Plaintiffs to the
16 Option Agreement, the two amendments thereto, and the Amended and Restated Option
17 Agreement. *Id.* No specific assertion of privilege or confidentiality was mentioned and yet,
18 Defendant failed to even acknowledge the existence of the eight amendments to the
19 Amended and Restated Option Agreement containing the terms of four additional
20 takedowns of land in Coyote Springs. *Id.* If it were not for CSI in responding to Plaintiffs'
21 subpoena, Plaintiffs would be completely ignorant of the eight amendments. Pardee's
22 wholesale evasion of Plaintiffs' requests is improper and necessitates the Court's
23 intervention to compel Defendant to account to Plaintiffs.

24 At trial the Court will hear why the accounting is so important to Plaintiffs. Mr.
25 Wolfram and Mr. Wilkes have worked hard all of their life earning their living from the
26 commissions gained from brokering land transactions. As real estate brokers over 60
27 years old, they secured an opportunity to pass on the fruits of their labor to their children
28 and grandchildren when they successfully brokered the transaction between Pardee and

1 CSI. Through Pardee's option to buy land from CSI for the next forty (40) years, Plaintiffs
2 have a chance to earn substantial commissions for the same forty-year period. While
3 Plaintiffs may pass on before this option expires, their children will be able to benefit from
4 their parent's efforts. That is why the accounting is so critical. Without the information to
5 confirm that they are receiving the appropriate commissions, there is no way to protect
6 Plaintiffs and their families from the capricious conduct of a faceless corporation. Plaintiffs
7 are honorable individuals and they deserve to be treated fairly. Their cause of action for an
8 accounting empowers the Court to provide them with that fair treatment.

9 **E. At All Times Plaintiffs Acted Honorably and Fairly Toward Defendant**

10 Defendant's counterclaim is perplexing. Setting aside for the moment all of the
11 facts discussed above concerning Defendant's wrongful and improper conduct and its
12 failure to treat Plaintiffs fairly, Defendant is advancing a counterclaim centering on the
13 allegation that Plaintiffs asked Defendant questions. Somehow, according to Defendant,
14 Plaintiffs acted in bad faith when they requested the information owed to them under the
15 Commission Letter Agreement and as a result, Pardee incurred damages in the form of the
16 time and effort expended responding to the inquiries. The counterclaim is meritless and
17 there is no evidence to support it.

18 To begin, the evidence at trial will not establish that Plaintiffs owed Defendant any
19 duty to leave it alone or refrain from asking questions about their commissions. The text of
20 the Commission Letter Agreement is silent on this issue and it stretches reason to
21 conclude that a party who owes a duty to disclose information may reasonably expect that
22 it may not be asked questions about that information. But that is what Pardee is claiming
23 and must prove to prevail on its counterclaim—that Mr. Wolfram and Mr. Wilkes not only
24 had no right to inquire as to Coyote Springs and their commissions, but that in doing so
25 they would acted in dereliction of their obligations under the Commission Letter
26 Agreement. The facts cannot and do not support Defendant's counterclaim.

27 But setting aside the clear absence of facts establishing that Plaintiffs were liable for
28 breaching the covenant of good faith and fair dealing, what may be even more far-fetched

1 is Defendant's claim for damages. Defendant claims that it had to expend substantial time
2 and effort in responding to Plaintiffs' inquiries. This damage claim begs the question—if
3 Defendant had some reasonable expectation that Plaintiffs would not ask them for
4 information, why Defendant spend hours and hours responding to the inquiries? If
5 Defendant is correct and Plaintiffs had no right to ask the questions they did, and if
6 responding would cause a substantial expenditure of resources, why did Defendant
7 respond? Why wouldn't Pardee attempt to mitigate damages and ignore Plaintiffs?¹² The
8 answer is simple: Plaintiffs had no obligation to stay silent when Defendant failed to live up
9 to its obligations under the Commission Letter Agreement, and when such inquiries were
10 made, Pardee spent time cherry-picking the information it would disclose instead of being
11 candid and up front with Plaintiffs.

12 In all reality, if Defendant was truly concerned about the time it had to spend
13 responding to Plaintiffs, the simple solution would be to hold a meeting, walk through the
14 documents, explain to Plaintiffs what was happening, and answer questions. Such a
15 meeting might very well have averted this lawsuit and saved the parties hundreds of
16 thousands of dollars in attorney's fees. Then again, such a meeting would be
17 characteristic of a company acting in good faith and truly working to resolve problems
18 before they arise—hardly descriptors for Pardee's conduct toward Plaintiffs.

19 III. CONCLUSION

20 At trial, Plaintiffs will conclusively establish that Defendant failed to appropriately
21 discharge its obligations under the September 1, 2004 Commission Letter Agreement.
22

23 ¹² This question highlights the critical distinction between Plaintiffs' and Defendant's claims
24 for time and effort damages. Unlike Defendant, who allegedly could have avoided
25 spending the time and effort responding to Plaintiffs' inquiries with no repercussions,
26 Plaintiffs could not afford to do nothing. The information they sought and were entitled to
27 was necessary to ensure that they were receiving the appropriate amount of commissions.
28 This difference between the parties demonstrates why Plaintiffs' time and effort are
compensable damages—because Plaintiffs had something to lose if they were not properly
informed and thus it was foreseeable at the time the Commission Letter Agreement was
executed that if Plaintiffs were not informed pursuant to the agreement, they would seek
the information elsewhere.

1 Defendant had a duty to appropriately calculate Plaintiffs' commission and to keep
2 Plaintiffs reasonably informed as to all matters related to the amount and due date of their
3 commission payments. Such duties went unfulfilled. As such, Plaintiffs are entitled to their
4 damages and to an accounting.

5 Dated this 21st day of October, 2013.

6 JIMMERSON HANSEN, P.C.

7
8 /s/ James J. Jimmerson, Esq.
9 JAMES J. JIMMERSON, ESQ.
10 Nevada State Bar No. 000264
11 LYNN M. HANSEN, ESQ.
12 Nevada State Bar No. 000244
13 JAMES M. JIMMERSON, ESQ.
14 Nevada State Bar No. 12599
15 415 South Sixth Street, Suite 100
16 Las Vegas, Nevada 89101
17 *Attorneys for Plaintiffs*
18 *James Wolfram and Walt Wilkes*
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28

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

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy PLAINTIFFS' TRIAL BRIEF
PURSUANT TO EDCR 7.27 was made on the 22nd day of October, 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 facsimile, pursuant to EDCR 7.26 (as amended)
☐ By receipt of copy as indicated below

Pat Lundvall, Esq.
Aaron D. Shipley, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, NV 89102
Attorneys for Defendant

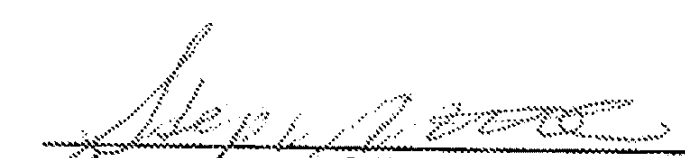

An employee of JIMMERSON HANSEN, P.C

Exhibit F



James J. Jimmerson *
Lynn M. Hansen *
Mario P. Lovato *
Michele L. Roberts
Soraya M. Velga
Shawn M. Goldstein
*ALSO ADMITTED IN CALIFORNIA

Mr. Charles E. Curtis
Legal Counsel
Pardee Homes
10880 Wilshire Blvd., Suite 1900
Los Angeles, CA 90024

Re: Coyote Springs Real Estate Commissions
Our Clients: Jim Wolfram Award Realty Group and
Walt Wilkes General Realty

Dear Mr. Curtis:

I am in receipt of your letter of July 10, 2009.

Respectfully, your letter ignores my clients' request for written documentation that was promised to be delivered to us by Mr. Stringer, Esq., as a result of our conversation and our letter of April 23, 2009, delivered to him. To date, we have yet to receive the promised documentation. As contained in our correspondence of April 23, 2009, we specifically request that Pardee Homes deliver to my clients the documents requested within the next fifteen (15) days. Specifically, the requested documents are restated herein as set forth in our April 23, 2009 correspondence, to wit:

"I will note that pursuant to the agreement reached between Award/General Realty and Pardee Homes in 2004, it was the obligation of Pardee Homes to set up a system to show to Award Realty and Mr. Wolfram what properties were being purchased by Pardee Homes, where they were located within the CSI Holdings, what the purchase price was, and to demonstrate to Award Realty and Mr. Wolfram what commissions were owed to them as a result of their agreement. General Realty and Award Realty believe that Pardee Inc. has done a poor job in this regard and has not met their contractual obligations. When you and I spoke, you told me that you knew of no other way for Mr. Wolfram and Mr. Wilkes to follow whether or not his company and himself have received the proper commissions except for 'following the dollar,' or to use your words, 'track the dollars' that have been paid by Pardee Homes, Inc. to CSI. Of course there is no way for my client to be able to do that without obtaining records that would be in Pardee Home Inc's possession regarding how much money has been spent by Pardee Homes Inc. to CSI and to ascertain whether or not the percentage commission otherwise that would be due pursuant to the agreement reached between

415 SOUTH SIXTH STREET, SUITE 100 • LAS VEGAS, NV 89101 • (702) 388-7171 • FAX: (702) 387-1167 • EMAIL: attorneys@jimmersonhansen.com

PH 000099

Mr. Charles E. Curtis
Legal Counsel
Pardee Homes
Re: Coyote Springs Real Estate Commissions
Our Clients: Jim Wolfram Award Realty Group and
Walt Wilkes General Realty

August 26, 2009
Page 2

Pardee Homes Inc., General Realty and Award Realty have in fact been paid. In this regard, I would ask you to provide to Mr. Wolfram a copy of all documents that would evidence the total property purchased and the amount of money that has been paid by Pardee Homes Inc. to CSI, broken down parcel by parcel and close of escrow by close of escrow, and a total from all those transactions, so as to allow Mr. Wolfram and Mr. Wilkes to ascertain whether or not their companies had in fact received the monies that he is entitled to. You mentioned in my telephone conversation that Mr. Wolfram would have seen that the closings total 84 million dollars and that Mr. Wolfram has been paid a commission based upon that figure. I am in receipt of a copy of your letter dated April 6, 2009 to Mr. Wolfram. As I prepare this letter to you, I am not certain I understand what exactly you are communicating to me here, since just the 776 acre purchase in August of 2008 would be approximately 30 million dollars by itself for which Mr. Wolfram states he did not receive a commission at the time of close of escrow or afterwards.

The information needed by Mr. Wolfram and to Mr. Wilkes to track the land purchases by Pardee Homes from CSI includes, but is not limited to, the following: the name of the seller, the buyer, the parcel numbers, amount of acres, purchase price, the commission payment schedule and amount, Title company contact information, Escrow number(s), copy of the close of escrow documents to see the terms and document date, document number and page number and order to pay commission. Would you please forward all of this information for every purchase by Pardee Homes of property from CSI from the time that Pardee purchased its initial real estate from Coyote Springs Inc. As part of this request, respectfully, is the request that this information provided relative to Pardee Home Inc's operations include the 91 acres in approximately January, 2008, and the 776 acres that Pardee Homes Inc. purchased from CSI in August of 2008, about which we spoke during our telephone conversation."

I do not feel it necessary to reiterate, again, Pardee Inc.'s obligation to provide the documents referenced herein as part of their contractual obligation to produce the requested information to our clients. My clients are hopeful that Pardee, Inc. will voluntarily

PH 000100

Mr. Charles E. Curtis
Legal Counsel
Pardee Homes
Re: Coyote Springs Real Estate Commissions
Our Clients: Jim Wolfram Award Realty Group and
Walt Wilkes General Realty

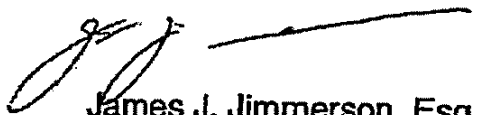
August 26, 2009
Page 3

produce, as has been promised, to voluntarily produce these documents at this time. Pardee's failure to do so would clearly establish a breach of contract by it, and such improper action would constitute intentional tortious behavior towards my client. My clients simply wish to be paid what they are owed and to possess all the documentation demonstrating the same.

Please forward these requested documents to us within the next fifteen (15) days.

Sincerely,

JIMMERSON HANSEN, P.C.



James J. Jimmerson, Esq.

JJ:ak

cc: Mr. Jim Wolfram

Wolfram 8-28-09 ltr to Charles Curtis ak

PH 000101

Exhibit G

MAY-19-2009 14:48 FROM: JIMMERSON HANSEN

7023871167

TO: 310 446 1212

P. 2/3



James J. Jimmerson •
Drew M. Hansen •
Michael A. Lovato •
Michelle L. Roberts •
Jocelyn M. Vargo •
Doreen M. Bickelstein •
WFO ADAPTED BY MICROFILM

May 19, 2009

VIA FACSIMILE & U.S. MAIL

Jim Stringer, Esq.
Pardee Homes Inc.
10880 Wilshire Boulevard
Suite 1900
Los Angeles, California 90024-4101

Re: Jim Wolfram Award Realty Group and Walt Wilkes General Realty –
Pardee Homes

Dear Mr. Stringer:

Reference is made to my letter of April 23, 2009.

To date, you have not responded to our request for documentation that you had told me by telephone would be available to me so that my clients could attempt to understand whether or not they have been paid appropriate commissions for the purchase transactions by Pardee from Coyote Springs Investment, LLC.

Despite the passage of nearly a month, we have not had the favor of your reply.

Pursuant to the terms of the contract between Pardee and my clients, there is an obligation to account for all purchases and sales and commissions. My clients are of the belief that they have not been paid for all of the sales which they are due, and Pardee's failure to comply with its contract constitutes a material breach of this contract for which my clients will be obliged to seek appropriate legal redress for the harm your company has, and is, causing them.

My clients would like to avoid that and would like to receive the information and accounting that they are entitled to and need. If they have been paid all that they are entitled to, which is what your position was in our last telephone call, it is important for Pardee to demonstrate the same as Pardee is obliged to produce this information. If not, my clients must be paid in full forthwith.

415 SOUTH SIXTH STREET, SUITE 100 • LAS VEGAS, NV 89101 • (702) 388-7171 • FAX: (702) 387-1167 • EMAIL: attorneys@jimmersonhansen.com
CONFIDENTIAL: This message and its contents are intended solely for the individual named.

PH 000105

MAY-19-2009 14:48 FROM: JIMMERSON HANSEN

7023871167

TO: 318 446 1212

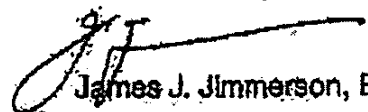
P.3/3

Jim Stringer, Esq.
Pardee Homes Inc.
May 19, 2009
Page 2

May I hear from you within the next week.

Sincerely,

JIMMERSON HANSEN, P.C.



James J. Jimmerson, Esq.

JJJ:ak

cc: Jim Wolfram
Walt Wilkes

MAILBOX FULL - 15-05-10 10:10:10 - 10:10:10 - 10:10:10

PH 000106

Exhibit H

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, et al.,
Plaintiffs,
vs.
PARDEE HOMES OF NEVADA,
Defendant.

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

REPORTER'S TRANSCRIPT OF BENCH TRIAL

BEFORE THE HON. KERRY L. EARLEY, DISTRICT COURT JUDGE

On Wednesday, October 23, 2013

At 8:30 a.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.
LYNN M. HANSEN, ESQ.

For the Defendant: 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 property as described in this Option Agreement as has
2 been recently entered into evidence.

3 You also will see evidence from the amendments
4 to the Amended and Restated Option Agreement confirming
5 that this is that designation.

6 So the evidence in this case will conclusively
7 demonstrate that Pardee repeatedly purchased Option
8 Property, and yet Pardee never treated it as such for
9 the purposes of plaintiffs' commissions.

10 Pardee -- representatives of Pardee will
11 testify and you will see e-mails and you will hear a
12 number of witnesses tell you that Pardee insisted that
13 it never purchased Option Property. If the Court finds
14 that not to be true, the Court must then apply to the
15 rest of the agreement to determine if there is a breach.
16 It must evaluate the rest of the facts to determine what
17 the damages are, et cetera, et cetera.

18 But the importance of the location of these
19 parcels cannot go understated, if only because the
20 definitions of Purchase Property and of Option Property
21 are in reference to these locations, to these geographic
22 facts.

23 Now, in addition to demonstrating to this Court
24 that Pardee purchased Option Property, plaintiffs will
25 demonstrate, the evidence will show, that Pardee

1 breached its duties under the September 1, 2004
2 Commission Letter Agreement.

3 The evidence will show that the commission
4 payments were inaccurate, were not properly calculated.
5 The evidence will show that in addition to improperly
6 calculating these commissions, Pardee -- and this is the
7 most important part of the case -- failed to keep
8 plaintiffs reasonably informed as to all matters related
9 to the amount and due date of their commissions.

10 You will hear evidence that in order to be
11 reasonably informed as to these pieces of information,
12 that Pardee had to provide evidence, had to provide
13 information, had to provide records allowing plaintiffs
14 to check, to verify that they had received the
15 appropriate commission payment at the appropriate time.

16 You will hear evidence that without that
17 information, the information that did not allow them to
18 do that, was no information at all. You will hear that
19 effectively plaintiffs were forced to trust Pardee and
20 could not check and make sure that they had received the
21 appropriate commission payments.

22 Now, these breaches are important not simply
23 because it's on a piece of paper between two parties.
24 It's important because of the magnitude of this
25 transaction. You will hear evidence that the Option

1 until a bench trial on the 7th. I can move everything
2 else around. That's not until November 7th. So that is
3 the only thing I don't want to move just because pro per
4 people don't understand when the Judge has to move
5 calendars, or they are not as gracious. So that is --
6 everything else we can move around. I will do whatever
7 you need.

8 So if that reassures you, I'll work around your
9 schedule. And you are not inconveniencing a jury or
10 anything, so I'm fine. I will make myself available.

11 (Remarks between counsel off the record.)

12 THE COURT: If that would work for you, that
13 will work for me.

14 MS. LUNDVALL: Thank you, Your Honor.

15 THE COURT: You're welcome. I promise I'll
16 give you whatever time you need.

17 MR. J.M. JIMMERSON: Thank you very much,
18 Your Honor.

19 -oOo-

20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
21 PROCEEDINGS.

22

23

24

25

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

Exhibit I

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, et al.,
Plaintiffs,
vs.
PARDEE HOMES OF NEVADA,
Defendant.

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

REPORTER'S TRANSCRIPT OF BENCH TRIAL

BEFORE THE HON. KERRY L. EARLEY, DISTRICT COURT JUDGE

On Monday, October 28, 2013

At 8:30 a.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.

For the Defendant: 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

CONFIDENTIAL

1 two years ago or four years ago to something you might
2 do ten years from now when the economy improves?

3 A. I don't think there's anything.

4 Q. Right.

5 A. I mean, Harvey can say the rest of the property
6 is going to be all golf courses or all commercial and we
7 would be precluded from buying it.

8 Q. I'm talking about the property you've already
9 bought. You bought multi-family property that is deemed
10 or designated multi-family. You told us so and
11 Mr. Whittemore confirms.

12 I'm asking you, you have that right to change
13 its use, do you not?

14 A. We have a right to.

15 Q. And so because you retain the right to change
16 the use, if you change it to residential, it would thus
17 entitle my clients to the compensation bargained for and
18 confirmed in their Commission Agreement; correct?

19 MS. LUNDVALL: Your Honor, I'm going to object
20 to that because it misstates what the Commission
21 Agreement would allow for. They were entitled to their
22 commissions at the closing, not at some later point in
23 time.

24 Q. (BY MR. J.J. JIMMERSON) If they change the use
25 of the property, Mr. Lash, and you change it to

1 THE COURT: Tomorrow at 10:00. That's the only
2 other glitch in the scheduling.

3 MS. LUNDVALL: Thank you, Your Honor.

4 THE COURT: I'll let you know tomorrow what I
5 can work out.

6 -oOo-

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

9

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

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

CONFIDENTIAL

Exhibit J

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)	
)	
PLAINTIFF,)	
)	
vs.)	CASE NO. A-10-632338-C
)	
PARDEE HOMES OF NEVADA,)	
)	
DEFENDANT.)	
)	

TRANSCRIPT
OF
TRIAL PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON THURSDAY, OCTOBER 24, 2013
AT 8:30 A.M.

APPEARANCES:

For the Plaintiff:	JAMES J. JIMMERSON, ESQ. JAMES M. JIMMERSON, ESQ.
For the Defendant:	PATRICIA K. LUNDVALL, ESQ. AARON D. SHIPLEY, ESQ.

Reported by: Loree Murray, CCR No. 426

1 willingness to come here and be here before us, and I
2 know that it was a terrible inconvenience, so that's
3 why we've set you out of order so you get in and out of
4 here by the break, and --

5 A. Well, I appreciate your willingness to
6 accommodate busy schedules. Thank you.

7 Q. Let's get the 800 pound gorilla out of the
8 way, you recently suffered an adverse setback legally;
9 is that right?

10 A. Criminally, yes. Civilly, no.

11 Q. Convicted of one false statement and alleged
12 improper activity regarding the election process?

13 A. The false statement count really is a
14 consequence of the other two counts. It is not a false
15 statement I made or perjurious statement made but is,
16 in fact, a felony that flows from a report which was
17 filed by the Senator Harry Reid campaign.

18 Q. Okay. We got that done, okay.

19 I'm here to talk to you about my clients'
20 entitlement to information and whether or not that
21 translates to dollars.

22 MS. LUNDVALL: Your Honor, from my
23 perspective, I appreciate as far as counsel or I would
24 appreciate if counsel didn't make comments --

25 THE COURT: The preparatory remarks? I think

District Court IV

1 necessary.

2 THE COURT: Okay.

3 * * * * *

4

5 ATTEST:

6 Full, true, and accurate transcription of proceedings.

7

8

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Loree Murray, CCR #426

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District Court IV

Exhibit K

FFCO

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 6th Street, Suite 100
Las Vegas, Nevada 89101
Tel No.: (702) 388-7171;
Fax No.: (702) 388-6406
lmh@jimmersonhansen.com
jmj@jimmersonhansen.com
*Attorneys for Plaintiffs James
Wolfram and Walt Wilkes*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES WOLFRAM and)	
WALT WILKES,)	CASE NO.: A-10-632338-C
)	DEPT. NO.: IV
Plaintiffs,)	
vs.)	Trial Date: October 23, 2013
)	Time of Trial: 8:30 a.m.
PARDEE HOMES OF NEVADA,)	
)	
Defendant.)	
And related claims.)	

**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND DECISION**

The bench trial in this action is set to commence on October 23, 2013, at 8:30 a.m. and will last approximately five judicial days. James J. Jimmerson, Esq., Lynn M. Hansen, Esq. and James M. Jimmerson, Esq. of Jimmerson Hansen, P.C., will appear on behalf of Plaintiffs, James Wolfram and Walt Wilkes. In anticipation of trial and pursuant to the Court's orders, Plaintiffs hereby submit their Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

A. The Parties

1. Plaintiffs James Wolfram and Walt Wilkes have been licensed real estate brokers working in Southern Nevada and the surrounding area for over 35 years.

2. Defendant Pardee Homes of Nevada ("Pardee") is a Nevada corporation operating as a residential homebuilder constructing homes and other structures in Southern Nevada and elsewhere. Pardee's current chief operating officer is Jon Lash.

B. The Parties' Interest in Developing Coyote Springs

3. In 2002, Plaintiffs had begun tracking the status and progress of the project located at Coyote Springs in the Counties of Clark and Lincoln, Nevada ("Coyote Springs"). The owner of the land at Coyote Springs was Coyote Springs Investment, LLC ("CSI"), managed by Harvey Whittemore.

4. Coyote Springs has approximately 30,000 acres of net usable property.

5. Plaintiffs had previously worked with Mr. Lash in the pursuit of different real estate transactions, but none were ever consummated prior to the Coyote Springs transaction.

6. In or about late 2003, Plaintiffs contacted Mr. Lash to inquire if Pardee would be interested in meeting Harvey Whittemore of CSI for the purposes of entering into an agreement for the purchase of real property in Coyote Springs.

7. Mr. Lash agreed to allow Plaintiffs to represent Pardee as a potential purchaser, and a meeting was scheduled to take place at Pardee's office in Las Vegas. Present at the meeting were Plaintiffs, Mr. Whittemore from CSI, and Mr. Lash and Klif Andrews from Pardee.

8. This meeting was the first time that Mr. Lash met Mr. Whittemore.

9. While this meeting was introductory in nature, it ultimately set in motion the plans to structure a deal to develop Coyote Springs and resulted in some 200 meetings between Pardee and CSI. As such, Plaintiffs were the procuring cause of Pardee's right to buy Production Residential Property in Coyote Springs.

C. The Option Agreement Between Coyote Springs Investment LLC and Pardee Homes of Nevada

10. In or about May, 2004, Defendant Pardee and non-party CSI entered into an Option Agreement for the Purchase of Real Property and Joint Escrow Instructions (the "Option Agreement"). This agreement detailed Pardee's purchase of property at Coyote Springs for the development of single-family homes and supporting property ("Production Residential Property"). Under the Option Agreement, CSI reserved to itself all rights to own and develop land not designated as Production Residential Property (eg. multifamily and commercial).

11. Prior to entering into the Option Agreement, Pardee had no contractual arrangement with CSI concerning the development of Coyote Springs.

12. Pursuant to the Option Agreement, Pardee was able to purchase a certain amount of property (approximately 3600 acres in Clark County) for the construction of single-family homes for a price of \$66 million.

13. While Pardee acquired record title to the 3600-acre parcel under the Option Agreement, Pardee was only going to acquire legal title to approximately 1500 acres of land. The balance of the 3600 parcel was set to revert back to CSI once CSI fulfilled its obligations concerning the Initial Developed Parcel.

14. Additionally, the Option Agreement gave Pardee the option to purchase the balance, or a portion thereof, of the property in Coyote Springs designated for single-family home development for up to forty (40) years for a certain price per acre as reflected by a price schedule in the Agreement.

15. Consistent with this two-pronged structure, the Option Agreement classified the property eligible for purchase as either "Purchase Property" or "Option Property."

16. The Option Agreement only allowed Pardee to purchase Production Residential Property through purchasing "Purchase Property" or exercising options for "Option Property." There were no provisions in the Option Agreement permitting Pardee to purchase or otherwise acquire Production Residential Property in any another manner.

1 17. The Purchase Property is defined in the Option Agreement as "Parcel 1 as shown
2 on Parcel Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332,
3 Official Records, Clark County, Nevada (containing approximately 3,605.22 acres)."

4 18. The Option Property is defined in the Option Agreement as "the remaining portion of
5 the Entire Site which is or becomes designated for single-family detached production
6 residential use."

7 19. In addition to reflecting the details of the land transaction between CSI and Pardee,
8 the Option Agreement reflected Mr. Wolfram's and Mr. Wilkes' right to collect a broker fee
9 or commission for their role in the deal. Specifically, the Option Agreement states, "[U]pon
10 and subject to the close of escrow for the Purchase Property or any Option Parcel, Buyer
11 shall pay any finder fee owed to General Realty Group (Walt Wilkes) and Award Realty
12 Group (Jim Wolfram) pursuant to a separate agreement; said fee shall be split equally."

13 20. The Option Agreement was amended twice in 2004. The first amendment was
14 executed on July 28, 2004 and was entitled Amendment to Option Agreement for the
15 Purchase of Real Property and Joint Escrow Instructions.

16 21. On August 31, 2004, Pardee and CSI executed the Amendment No. 2 to Option
17 Agreement for the Purchase of Real Property and Joint Escrow Instructions.

18 22. Amendment No. 2 to the Option Agreement was particularly significant and among
19 other changes, (1) it increased Purchase Property Price from \$66 million to \$84 million and
20 (2) it provided certain exhibits, including maps of the Entire Site, the Purchase Property,
21 and the Option Property, which were not included in the Option Agreement.

22 23. According to the maps attached to Amendment No. 2, the location of Purchase
23 Property stayed the same whether or not the BLM reconfiguration took place. See Exhibits
24 C-1 and C-2 to Amendment No. 2. Furthermore, the maps definitively indicated that the
25 Initial Developed Parcel was completely contained within the boundaries of Purchase
26 Property. See Exhibit D to Amendment No. 2.

1 24. Despite the substantial development and evolution of the plans for Coyote Springs,
2 Plaintiffs were not included in any of the meetings between CSI and Pardee after the initial
3 meeting.

4 **D. The Commission Letter Agreement between Plaintiffs and Defendant**

5 25. Plaintiffs and Pardee entered into a commission agreement whereby, in exchange
6 for services rendered by Plaintiffs, Pardee agreed to (1) pay to Plaintiffs certain
7 commissions for land purchased from CSI and (2) send Plaintiffs notices and other
8 information concerning the real estate purchases made under the Option Agreement and
9 the corresponding commission payments.

10 26. Since Mr. Wolfram and Mr. Wilkes had already performed services for Pardee, the
11 Commission Letter Agreement placed no affirmative obligations on them.

12 27. The Commission Letter Agreement, dated September 1, 2004 ("Commission Letter
13 Agreement"), was executed by Pardee on September 2, 2004, by Mr. Wolfram on
14 September 6, 2004, and Mr. Wilkes on September 4, 2004.

15 28. Plaintiffs signed the Commission Letter Agreement on behalf of Award Realty
16 Group Inc. and General Realty Corp. as Mr. Wolfram and Mr. Wilkes were then employed
17 by those two real estate companies, respectively. Since the execution of the Commission
18 Letter Agreement, Award Realty Group and General Realty each assigned to Mr. Wolfram
19 and Mr. Wilkes, respectively, all rights, title and interest under the Commission Letter
20 Agreement.

21 29. The Commission Letter Agreement provides for the payment of "broker
22 commission[s]" to Plaintiffs in the event that Pardee approved the transaction during the
23 Contingency Period, equal to the following amounts:

24 (i) Pardee shall pay four percent (4%) of the Purchase Property
25 Price payments made by Pardee pursuant to Paragraph 1 of
26 the Option Agreement up to a maximum of Fifty Million Dollars
(\$50,000,000);

27 (ii) Then, Pardee shall pay one and one-half percent (1-1/2%)
28 of the remaining Purchase Property Price payments made by
Pardee pursuant to paragraph 1 of the Option Agreement in the

1 aggregate amount of Sixteen Million Dollars (\$16,000,000); and

2 (iii) Then, with respect to any portion of the Option Property
3 purchased by Pardee pursuant to paragraph 2 of the Option
4 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).

5 30. As of September 6, 2004, the Option Agreement provided Pardee no method to
6 purchase Production Residential Property other than purchasing Purchase Property or
7 exercising options for Option Property. And because the Commission Letter Agreement
8 mandated that Pardee pay a commission to Plaintiffs for the purchase of Purchase
9 Property and the exercise of options for Option Property—the only ways for Pardee to
10 purchase Production Residential Property under the Option Agreement—Plaintiffs had a
11 justified expectation that they would be informed of and paid a commission for all
12 Production Residential Property acquired by Pardee.

13 31. By virtue of Amendment No. 2 increasing the Purchase Property Price from \$66
14 million to \$84 million, Plaintiffs became entitled to commissions on the increased Purchase
15 Property Price.

16 32. The Commission Letter Agreement requires Pardee to provide Plaintiffs with
17 notifications and information concerning future transactions between Pardee and CSI
18 under the Option Agreement. Specifically, the Commission Agreement states:

19 Pardee shall provide to each of you a copy of each written
20 option exercise notice given pursuant to paragraph 2 of the
21 Option Agreement, together with information as to the number
22 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.

23 33. Mr. Wolfram, Mr. Wilkes, and Mr. Lash are in agreement that in order to be kept
24 reasonably informed as to all matters related to the amount and due date of the
25 commission payments, Pardee, at a minimum, must provide information by which Plaintiffs
26 can verify the accuracy of Pardee's commission calculations and payment dates.
27
28

1 34. The Commission Letter Agreement has a non-circumvention clause, preventing
2 Pardee from evading its obligations under the Commission Letter Agreement. The
3 Commission Letter Agreement states, "Pardee, its successors and assigns, shall take no
4 action to circumvent or avoid its obligation to you set forth in the Agreement."

5 35. The non-circumvention clause, which contains the word "avoid," bars Pardee from
6 taking any action, whether intentional, reckless, negligent, or simply mistaken, which
7 serves to bypass Pardee's duties to pay Plaintiffs commissions for the purchase of
8 Production Residential Property and keep them informed as to all matters related to the
9 amount and due dates of their commission payments.

10 36. For example, the non-circumvention clause prohibits Pardee from failing to properly
11 pay and inform Plaintiffs in the event Pardee acquires Production Residential Property
12 through the use of separate agreements outside of the procedures set forth in the Option
13 Agreement, whether or not Pardee used the separate agreements for the specific purpose
14 of denying Plaintiffs their commissions. The non-circumvention clause further prohibits
15 Pardee from failing to properly pay and inform Plaintiffs in the event Pardee purchases
16 property other than Production Residential Property and later redesignates it to Production
17 Residential Property.

18 37. After executing the Commission Letter Agreement, Plaintiffs never entered into
19 another agreement with Pardee concerning the development of Coyote Springs.

20 38. The relationship between the parties was such that Plaintiffs reasonably imparted
21 special confidence in the Defendant to faithfully inform them of the developments at Coyote
22 Springs which would impact their future commission payments and Defendant knew of this
23 confidence. In failing to keep Plaintiffs informed as to the plans and negotiations between
24 Pardee and CSI, Pardee knew that Plaintiffs would be reliant on Pardee to provide them
25 with the appropriate information concerning the development of Coyote Springs.

26 39. The facts material to Plaintiffs' entitlement to future commissions were peculiarly
27 within the knowledge of Defendant and were not within the fair and reasonable reach of
28 Plaintiffs.

1 40. The records necessary to keep Plaintiffs reasonably informed as to the accuracy of
2 their commission payments were not public record and were only accessible from Pardee.
3 Klif Andrews, Pardee's President, testified that Pardee has internally set designations for
4 certain land in Coyote Springs, but has not filed paperwork with any public authority,
5 including Clark County, concerning those designations and thus Plaintiffs had no access to
6 the designation information for the land in Coyote Springs.

7 **E. Pardee's Performance Under the Commission Letter Agreement**

8 41. Defendant failed to faithfully discharge its duties and obligations under the
9 Commission Letter Agreement.

10 42. Pardee failed to keep Plaintiffs informed as to the land transactions between it and
11 CSI as required by the Commission Letter Agreement. After signing the Commission Letter
12 Agreement in September 2004, Pardee and CSI proceeded to amend the Option
13 Agreement nine (9) times from March 2005 until June, 2009.

14 43. Specifically, in March, 2005, Pardee and CSI entered into an "Amended and
15 Restated Option Agreement for the Purchase of Real Property and Joint Escrow
16 Instructions" (the "Amended and Restated Option Agreement").

17 44. The Amended and Restated Option Agreement redefined Purchase Property as
18 "portions of Sections 20 and 21 of T13S, R63E, M.D.M., Clark County, Nevada as more
19 fully described on Exhibit B..." containing approximately 511 acres.

20 45. In so redefining Purchase Property, the Amended and Restated Option Agreement
21 served to redefine Option Property since Option Property is "the remaining portion of the
22 Entire Site [other than Purchase Property] which is or becomes designated for single-family
23 detached production residential use." As a matter of mathematics, shrinking Purchase
24 Property had the effect of expanding potential Option Property since the Option Property
25 was effectively the rest of the land in Coyote Springs designated for Production Residential
26 Property.

27 46. After entering into the Amended and Restated Option Agreement, Pardee and CSI
28 amended that Amended and Restated Option Agreement eight (8) times after March of

1 2005. Pardee and CSI entered into Amendment No. 1 to Amended and Restated Option
2 Agreement for the Purchase of Real Property and Joint Escrow Instructions on July 28,
3 2006, Amendment No. 2 to Amended and Restated Option Agreement for the Purchase of
4 Real Property and Joint Escrow Instructions on September 30, 2006, Amendment No. 3 to
5 Amended and Restated Option Agreement for the Purchase of Real Property and Joint
6 Escrow Instructions on November 22, 2006, Amendment No. 4 to Amended and Restated
7 Option Agreement for the Purchase of Real Property and Joint Escrow Instructions on
8 December 20, 2007, Amendment No. 5 to Amended and Restated Option Agreement for
9 the Purchase of Real Property and Joint Escrow Instructions on May 12, 2008,
10 Amendment No. 6 to Amended and Restated Option Agreement for the Purchase of Real
11 Property and Joint Escrow Instructions on January 30, 2009, Amendment No. 7 to
12 Amended and Restated Option Agreement for the Purchase of Real Property and Joint
13 Escrow Instructions on April 24, 2009, and Amendment No. 8 to Amended and Restated
14 Option Agreement for the Purchase of Real Property and Joint Escrow Instructions on
15 June 18, 2009.

16 47. The Amendments to the Amended and Restated Option Agreement all contained
17 confidentiality clauses and were not part of the public record.

18 48. As part of these Amendments and other agreements, Pardee purchased Option
19 Property as defined in the Option Agreement. Specifically, Pardee purchased land which
20 was designated as Production Residential Property as defined in the Option Agreement
21 and which was located in Coyote Springs but outside the boundaries of Parcel 1 as shown
22 on Parcel Map 98-57 recorded July 21, 2000 in Book 2000072, as Document No. 01332.

23 49. Despite the purchase of Option Property, Pardee never produced copies of the
24 Amendments to the Amended and Restated Option Agreement to Plaintiffs, including
25 during the present litigation; Plaintiffs recovered copies of those documents from CSI by
26 subpoena.

27 50. For all intents and purposes, Pardee treated its purchases as if they were for
28 Purchase Property only. Pardee paid Plaintiffs' commissions entirely according to the price

1 of the acreage purchased and never calculated their commissions according to the number
2 of acres purchased outside of Parcel 1.

3 51. Pardee denied Plaintiffs the information they were entitled to in bad faith. Mr. Lash
4 explicitly instructed representatives of Chicago Title not to produce copies of these
5 amendments to Plaintiffs. Mr. Lash further instructed representatives of Chicago Title to
6 tell Plaintiffs that they had all of the documents, despite knowing that this was not true.

7 52. The only records provided by Pardee to both of the Plaintiffs regarding these
8 purchases were enclosed in two letters: one written by Jon Lash on August 23, 2007
9 concerning adjusting the commission payment schedule and another written by Mr. Lash
10 on March 14, 2008 declining to provide Plaintiffs with the maps they had requested.

11 53. Representatives of Pardee sent Mr. Wolfram (but not Mr. Wilkes) one letter dated
12 April 6, 2009, containing copies of three closing statements; and a second written by Jon
13 Lash on November 24, 2009, containing a map of some, but not all, of Pardee's land
14 purchases.

15 54. Representatives of Chicago Title provided Mr. Wolfram (but not Mr. Wilkes) copies
16 of certain deeds to the property Pardee purchased in Coyote Springs.

17 55. Pardee never produced any documents to either Plaintiff reflecting the designation
18 of the property purchased in Coyote Springs.

19 56. Pardee never produced any documents stating that the land shown on the map
20 attached to the November 24, 2009 letter was all of the Production Residential Property
21 Pardee owned in Coyote Springs at the time.

22 57. Pardee never explained to Mr. Wolfram and Mr. Wilkes how they were being paid,
23 despite Plaintiffs' repeated requests for such information.

24 58. As a matter of geography, Pardee purchased Option Property as defined in the
25 Option Agreement (land designated as Production Residential Property outside of Parcel
26 1), without providing the required notices to Plaintiffs reflecting the same or paying
27 Plaintiffs the appropriate commission under the Commission Agreement for the Option
28 Property purchase.

1 59. Plaintiffs have been paid \$2,510,000.00 in commission payments to date.
2 However, Pardee only paid Plaintiffs according to the formula for Purchase Property, not
3 the formula for Option Property. This payment is not the result of the appropriate
4 calculation of commission payments as reflected by the failure of Pardee to calculate the
5 number of acres of Option Property purchased multiplied by \$40,000.00 and one and one-
6 half percent (1.5%).

7 60. Pardee has purchased additional land for which Plaintiffs are entitled to a
8 commission, outside of the Amendments to the Amended and Restated Option Agreement.

9 61. Under a Multifamily Agreement, Pardee purchased approximately 225 acres of
10 Production Residential Property, but never paid Plaintiffs any commissions on those
11 purchases or informed them of those purchases.

12 62. According to Exhibit B-6 of Amendment No. 7 to the Amended and Restated Option
13 Agreement, one of the sections of Production Residential Property purchased is called
14 Residential 5 or "Res-5." Res-5 contains approximately 50.2 acres of land designated as
15 Production Residential Property and is located at the southeast corner of Denali Summit
16 Ave. and Coyote Springs Pkwy. Harvey Whittemore, Jon Lash, and Klif Andrews all
17 testified that Res-5 is the location of one of Pardee's first subdivisions. In furtherance of
18 this development, Pardee filed a Tentative Map with Clark County requesting approval for
19 this plan. In February 2011, the Clark County Commission sitting as the Clark County
20 Zoning Commission approved the application. No further applications have been filed with
21 Clark County concerning Res-5.

22 63. The land contained in Res-5 is zoned "R2" for single family homes.

23 64. Multifamily development may not take place on land zoned as R2 under Clark
24 County Development Title 30.40.110.

25 65. Taking Res-5 by itself, Plaintiffs should have received commissions in the amount
26 of \$30,120.00 (50.2 acres times \$40,000.00 per acre, times 1.5%). Pardee made no such
27 payment.
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 12:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

JOINT APPENDIX – VOLUME 64 OF 88

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Chronological Index to Joint Appendix

Date	Document Description	Volume	Labeled
12/29/2010	Complaint	1	JA000001- JA000006
01/14/2011	Amended Complaint	1	JA000007- JA000012
02/11/2011	Amended Summons	1	JA000013- JA000016
03/02/2011	Answer to Amended Complaint	1	JA000017- JA000023
10/25/2011	Transcript re Discovery Conference	1	JA000024- JA000027
11/08/2011	Scheduling Order	1	JA000028- JA000030
11/29/2011	Order Setting Civil Non-Jury Trial	1	JA000031- JA000032
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
12/16/2011	Notice of Entry of Stipulated Confidentiality Agreement and Protective Order	1	JA000040- JA000048
08/27/2012	Transcript re Hearing	1	JA000049- JA000050
08/29/2012	Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000051- JA000054
08/30/2012	Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000055- JA000060
09/21/2012	Amended Order Setting Civil Non-Jury Trial	1	JA000061- JA000062

Date	Document Description	Volume	Labeled
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 – filed under seal	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 – sections filed under seal	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
11/29/2012	Defendant's Opposition to Plaintiff's Counter Motion for Partial Summary Judgment Re: Real Parties in Interest	13	JA002054- JA002065
12/06/2012	Transcript re Status Check	13	JA002066- JA002080
01/07/2013	Reply Brief in Support of Defendant's Motion for Summary Judgment	13	JA002081- JA002101

Date	Document Description	Volume	Labeled
01/17/2013	Plaintiffs' Reply in Further Support of Their Counter Motion for Partial Summary Judgment	13	JA002102- JA002144
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1)	13	JA002145- JA002175
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
03/14/2013	Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002351- JA002353
03/15/2013	Notice of Entry of Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002354- JA002358
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
03/21/2013	Motion to File Second Amended Complaint	15	JA002434- JA002461
04/02/2013	Order re Order Denying Defendants Motion for Summary Judgment	16	JA002462- JA002464
04/03/2013	Notice of Entry of Order re Order Denying Defendants Motion for Summary Judgment	16	JA002465- JA002470

Date	Document Description	Volume	Labeled
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
04/26/2013	Transcript re Hearing	16	JA002527- JA002626
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
06/06/2013	Second Amended Complaint	16	JA002670- JA002677
07/03/2013	Answer to Second Amended Complaint and Counterclaim	16	JA002678- JA002687
07/09/2013	Transcript re Hearing	17	JA002688- JA002723

Date	Document Description	Volume	Labeled
07/15/2013	Plaintiffs Reply to Defendants Counterclaim	17	JA002724- JA002731
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
07/22/2013	Defendant's Motion for Partial Summary Judgment	17	JA002772- JA002786
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
07/23/2013	Transcript re Status Check	17	JA002809- JA002814
08/05/2013	Defendant Pardee Homes of Nevada's Response to Plaintiffs' Motions in Limine #1-5; And #20-25	17	JA002815- JA002829
08/06/2013	Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment	17	JA002830- JA002857
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
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
09/23/2013	Transcript re Hearing	18	JA002875- JA002987

Date	Document Description	Volume	Labeled
09/27/2013	Plaintiffs Supplement to Their Opposition to Defendants Motion for Partial Summary Judgment	19-21	JA002988- JA003203
09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
10/23/2013	Order Denying Motion for Partial Summary Judgment	21	JA003210- JA003212
10/23/2013	Transcript re Trial	22	JA003213- JA003403
10/23/2013	Trial Exhibit A	23	JA003404- JA003544
10/23/2013	Trial Exhibit B – filed under seal	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 – filed under seal	23	JA003632- JA003634
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

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit J – filed under seal	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 – filed under seal	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
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

Date	Document Description	Volume	Labeled
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 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
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

Date	Document Description	Volume	Labeled
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
10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit 9 – filed under seal	27	JA004313- JA004319
10/23/2013	Trial Exhibit 10 – filed under seal	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – filed under seal	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/23/2013	Trial Exhibit 21	28	JA004454
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Transcript re Trial	29-30	JA004463- JA004790
10/24/2013	Trial Exhibit VV	31	JA004791
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
10/25/2013	Notice of Entry of Order Denying Motion for Partial Summary Judgment	31	JA004812- JA004817
10/25/2013	Plaintiffs Trial Brief Pursuant to EDCR 7.27	31	JA004818- JA004847
10/28/2013	Transcript re Trial – filed under seal	32-33	JA004848- JA005227

Date	Document Description	Volume	Labeled
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235
10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/29/2013	Transcript re Trial – filed under seal	35	JA005264- JA005493
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
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 – filed under seal	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530

Date	Document Description	Volume	Labeled
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Transcript re Trial – filed under seal	44-45	JA006533- JA006878
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935
12/12/2013	Trial Exhibit 39	46	JA006936- JA006948
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
12/13/2013	Transcript re Trial - Part 1	46	JA006953- JA007107
12/13/2013	Transcript re Trial - Part 2	47-48	JA007108- JA007384
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
06/24/2014	Pardee's Motion to Expunge Lis Pendens – section filed under seal	48	JA007411- JA007456
06/25/2014	Findings of Fact, Conclusions of Law and Order	48	JA007457- JA007474
06/27/2014	Notice of Entry of Findings of Fact, Conclusions of Law and Order	48	JA007475- JA007494
07/14/2014	Opposition to Pardee's Motion to Expunge Lis Pendens	48	JA007495- JA007559
07/15/2014	Reply in Support of Pardee's Motion to Expunge Lis Pendens	48	JA007560- JA007570

Date	Document Description	Volume	Labeled
07/24/2014	Order Granting Motion to Expunge Lis Pendens	48	JA007571- JA007573
07/25/2014	Notice of Entry of Order Granting Motion to Expunge Lis Pendens	48	JA007574- JA007578
07/17/2014	Transcript re Hearing	49	JA007579- JA007629
07/31/2014	Transcript re Hearing	49	JA007630- JA007646
08/25/2014	Plaintiff's Accounting Brief Pursuant to the court's Order Entered on June 25, 2014	49	JA007647- JA007698
08/25/2014	Pardee Homes of Nevada's Supplemental Brief Regarding Future Accounting	49	JA007699- JA007707
05/13/2015	Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007708- JA007711
05/13/2015	Notice of Entry of Order on Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007712- JA007717
05/28/2015	Pardee's Motion for Attorney's Fees and Costs	49	JA007718- JA007734
05/28/2015	Appendix of Exhibits to Pardee's Motion for Attorney's Fees and Costs	50-51	JA007735- JA008150
06/15/2015	Judgment	52	JA008151- JA008153
06/15/2015	Notice of Entry of Judgment	52	JA008154- JA008158
06/19/2015	Plaintiffs, James Wolfram and Walt Wilkes' Memorandum of Costs and Disbursements	52	JA008159- JA008191

Date	Document Description	Volume	Labeled
06/24/2015	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed June 19, 2015	52	JA008192-JA008215
06/29/2015	Plaintiffs' Motion for Attorney's Fees and Costs	52-53	JA008216-JA008327
06/29/2015	Motion to Strike "Judgment", Entered June 15, 2015 Pursuant To NRC.P. 52 (B) And N.R.C.P. 59, As Unnecessary and Duplicative Orders Of Final Orders Entered on June 25, 2014 and May 13, 2015, and as Such, is a Fugitive Document	53	JA008328-JA008394
06/29/2015	Plaintiffs' Motion Pursuant to NRC.P 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395-JA008922
06/30/2015	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	57-58	JA008923-JA009109

Date	Document Description	Volume	Labeled
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
07/02/2015	Pardee Homes of Nevada's Motion to Amend Judgment	59	JA009207- JA009283
07/08/2015	Plaintiffs' Opposition to Pardee's Motion to Retax Costs	60-61	JA009284- JA009644
07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

Date	Document Description	Volume	Labeled
07/08/2015	Errata to Plaintiffs' Motion Pursuant to NRCF 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"	62	JA009653- JA009662
07/08/2015	Pardee's Emergency Motion to Stay Execution of Judgment: and Ex Parte Order Shortening Time	62	JA009663- JA009710
07/08/2015	Pardee's Supplemental Briefing in Support of its Emergency Motion to Stay Execution of Judgment	62	JA009711- JA009733
07/10/2015	Transcript re Hearing	62	JA009734- JA009752
07/10/2015	Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009753- JA009754

Date	Document Description	Volume	Labeled
07/10/2015	Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009755- JA009758
07/15/2015	Pardee Homes of Nevada's Opposition to Plaintiff's Motion for Attorney's Fees and Costs	62	JA009759- JA009771
07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	63	JA009772- JA009918
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
07/15/2015	Appendix of Exhibits to 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 Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	64	JA009944- JA010185
07/16/2015	Errata to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	65	JA010186- JA010202
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

Date	Document Description	Volume	Labeled
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
07/24/2015	Declaration of John W. Muije, Esq. In Support of Motion for Reconsideration	67	JA010523- JA010581
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
08/17/2015	Reply Points and Authorities in Support of Motion for Reconsideration	67	JA010670- JA010678
08/24/2015	Minute Order Denying Plaintiff's 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	JA010679
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 to Strike "Judgment" Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59	68	JA010723- JA010767
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

Date	Document Description	Volume	Labeled
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
12/08/2015	Plaintiffs' Supplement to Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	68	JA010866-JA010895
12/08/2015	Notice of Defendant Pardee Homes of Nevada's Non-Reply and Non-Opposition to "Plaintiff's Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees"	69	JA010896-JA010945
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
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
01/15/2016	Transcript re Hearing	70	JA010962-JA011167

Date	Document Description	Volume	Labeled
03/14/2016	Plaintiffs' Motion to Settle Two (2) Competing Judgments and Orders	70	JA011168- JA011210
03/16/2016	Release of Judgment	71	JA011211- JA011213
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
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
04/26/2016	Order from January 15, 2016 Hearings	71	JA011385- JA011388
05/16/2016	Judgment	71	JA011389- JA011391
05/17/2016	Notice of Entry of Judgment	71	JA011392- JA011396
05/23/2016	Plaintiffs' Memorandum of Costs and Disbursements	71	JA011397- JA011441
05/31/2016	Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	71	JA011442- JA011454
06/01/2016	Pardee Homes of Nevada's Motion to Amend Judgment	72	JA011455- JA011589
06/06/2016	Pardee's Motion for Attorney's Fees and Costs	72	JA011590- JA011614
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 1	73-74	JA011615- JA011866

Date	Document Description	Volume	Labeled
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 2	75-76	JA011867- JA012114
06/08/2016	Plaintiffs' Motion for Attorney's Fees and Costs	77	JA012115- JA012182
06/20/2016	Plaintiffs' Opposition to Pardee's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	77-79	JA012183- JA012624
06/21/2016	Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	80	JA012625- JA012812
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
06/27/2016	Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	82	JA013025- JA013170
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
08/02/2016	Plaintiffs' Reply in Support of Motion for Attorney's Fees and Costs	83-84	JA013205- JA013357

Date	Document Description	Volume	Labeled
08/02/2016	Plaintiffs' Reply in Support of Countermotion for Attorney's Fees and Costs	84-85	JA013358-JA013444
08/15/2016	Transcript re Hearing - August 15, 2016	86	JA013445-JA013565
09/12/2016	Plaintiffs' Brief on Interest Pursuant to the Court's Order Entered on August 15, 2016	86	JA013566-JA013590
10/17/2016	Pardee's Supplemental Brief Regarding Pre- and Post-Judgment Interest Pursuant to the Court's Order	86	JA013591-JA013602
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
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendants Motion to Amend Judgment	86	JA013613-JA013615
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013616-JA013618
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013619-JA013621
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013622-JA013628
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013629-JA013635

Date	Document Description	Volume	Labeled
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment	86	JA013636- JA016342
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
01/12/2017	Notice of Entry of Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013645- JA013648
01/12/2017	Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013649- JA013651
01/13/2017	Notice of Entry of Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013652- JA013656
02/08/2017	Pardee Notice of Appeal	86	JA013657- JA013659
04/07/2017	Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	86	JA013660- JA013668
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume I]	87	JA013669- JA013914
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume II]	88	JA013915- JA014065
04/27/2017	Plaintiffs' Response to Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014066- JA014068

Date	Document Description	Volume	Labeled
05/10/2017	Pardee's Reply in Support of Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014069- JA014071
05/12/2017	Plaintiffs' Opposition to Pardee's Motion Stay Execution of Judgment and Post-Judgment Orders	88	JA014072- JA014105
07/12/2007	Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014106- JA014110
07/14/2017	Notice of Entry of Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014111- JA014117
10/12/2017	Amended Judgment	88	JA014118- JA014129
10/13/2017	Notice of Entry of Amended Judgment	88	JA014130- JA014143
10/12/2017	Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014144- JA014146
10/13/2017	Notice of Entry of Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014147- JA014151
11/02/2017	Pardee Amended Notice of Appeal	88	JA014152- JA014154

Alphabetical Index to Joint Appendix

Date	Document Description	Volume	Labeled
01/14/2011	Amended Complaint	1	JA000007- JA000012
10/12/2017	Amended Judgment	88	JA014118- JA014129
09/21/2012	Amended Order Setting Civil Non-Jury Trial	1	JA000061- JA000062
02/11/2011	Amended Summons	1	JA000013- JA000016
03/02/2011	Answer to Amended Complaint	1	JA000017- JA000023
07/03/2013	Answer to Second Amended Complaint and Counterclaim	16	JA002678- JA002687
10/24/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment	1	JA000083- JA000206
10/25/2012	Appendix of Exhibits in Support of Defendant's Motion for Summary Judgment – filed under seal	2	JA000212- JA000321
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume I]	87	JA013669- JA013914
04/07/2017	Appendix of Exhibits in Support of Pardee's Motion to Stay Execution of Judgment and Post-Judgment Orders, [Volume II]	88	JA013915- JA014065
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 1	73-74	JA011615- JA011866

Date	Document Description	Volume	Labeled
06/06/2016	Appendix of Exhibits to Pardee Homes Motion for Attorney Fees and Costs - Volume 2	75-76	JA011867-JA012114
07/15/2015	Appendix of Exhibits to 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 Plaintiffs' Motion Pursuant to NRCP 52(b) and 59 to Amend the Court's Judgment Entered on June 15, 2015	64	JA009944-JA010185
07/15/2015	Appendix of Exhibits to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	63	JA009772-JA009918
05/28/2015	Appendix of Exhibits to Pardee's Motion for Attorney's Fees and Costs	50-51	JA007735-JA008150
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 – sections filed under seal	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
12/29/2010	Complaint	1	JA000001-JA000006
10/24/2012	Declaration of Aaron D. Shipley in Support of Defendant's Motion for Summary Judgment	1	JA000207-JA000211

Date	Document Description	Volume	Labeled
07/24/2015	Declaration of John W. Muije, Esq. In Support of Motion for Reconsideration	67	JA010523- JA010581
08/05/2013	Defendant Pardee Homes of Nevada's Response to Plaintiffs' Motions in Limine #1-5; And #20-25	17	JA002815- JA002829
07/22/2013	Defendant's Motion for Partial Summary Judgment	17	JA002772- JA002786
10/24/2012	Defendant's Motion for Summary Judgment	1	JA000063- JA000082
03/01/2013	Defendant's Motion in Limine to Exclude Plaintiffs' Claim for Attorneys' Fees as an Element of Damages (MIL #1)	13	JA002145- JA002175
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
11/29/2012	Defendant's Opposition to Plaintiff's Counter Motion for Partial Summary Judgment Re: Real Parties in Interest	13	JA002054- JA002065
04/08/2013	Defendant's Opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint	16	JA002471- JA002500
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
07/08/2015	Errata to Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to NRCP 52(b) and NRCP 59, as Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 and May 13, 2015, and as such, is a Fugitive Document	62	JA009645- JA009652

Date	Document Description	Volume	Labeled
07/16/2015	Errata to Pardee Homes of Nevada's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	65	JA010186- JA010202
07/08/2015	Errata to 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"	62	JA009653- JA009662
05/13/2015	Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007708- JA007711
06/25/2014	Findings of Fact, Conclusions of Law and Order	48	JA007457- JA007474
06/15/2015	Judgment	52	JA008151- JA008153
05/16/2016	Judgment	71	JA011389- JA011391

Date	Document Description	Volume	Labeled
08/24/2015	Minute Order Denying Plaintiff's 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	JA010679
03/21/2013	Motion to File Second Amended Complaint	15	JA002434- JA002461
06/29/2015	Motion to Strike "Judgment", Entered June 15, 2015 Pursuant to N.R.C.P. 52 (B) And N.R.C.P. 59, As Unnecessary and Duplicative Orders of Final Orders Entered on June 25, 2014 And May 13, 2015, And as Such, Is A Fugitive Document	53	JA008328- JA008394
12/08/2015	Notice of Defendant Pardee Homes of Nevada's Non-Reply and Non-Opposition to "Plaintiff's Opposition to Pardee Homes of Nevada's Motion to Amend Judgment and Countermotion for Attorney's Fees"	69	JA010896- JA010945
10/13/2017	Notice of Entry of Amended Judgment	88	JA014130- JA014143
06/27/2014	Notice of Entry of Findings of Fact, Conclusions of Law and Order	48	JA007475- JA007494
06/15/2015	Notice of Entry of Judgment	52	JA008154- JA008158
05/17/2016	Notice of Entry of Judgment	71	JA011392- JA011396
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013629- JA013635

Date	Document Description	Volume	Labeled
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion to Amend Judgment	86	JA013636- JA016342
01/10/2017	Notice of Entry of Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013622- JA013628
10/25/2013	Notice of Entry of Order Denying Motion for Partial Summary Judgment	31	JA004812- JA004817
07/25/2014	Notice of Entry of Order Granting Motion to Expunge Lis Pendens	48	JA007574- JA007578
06/05/2013	Notice of Entry of Order Granting Plaintiffs Motion for Leave to File a Second Amended Complaint	16	JA002665- JA002669
01/13/2017	Notice of Entry of Order on Defendant's Motion to Retax Plaintiffs' Memorandum of Costs Filed May 23, 2016	86	JA013652- JA013656
05/13/2015	Notice of Entry of Order on Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	49	JA007712- JA007717
07/10/2015	Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment; and Ex Parte Order Shortening Time	62	JA009755- JA009758
01/12/2017	Notice of Entry of Order on Plaintiffs' Countermotion for Attorney's Fees and Costs Pursuant to NRS 18.010 and EDCR 7.60	86	JA013645- JA013648
04/03/2013	Notice of Entry of Order re Order Denying Defendants Motion for Summary Judgment	16	JA002465- JA002470

Date	Document Description	Volume	Labeled
03/15/2013	Notice of Entry of Order re Order Granting Plaintiffs Countermotion for Summary Judgment	14	JA002354-JA002358
10/13/2017	Notice of Entry of Order Re: Defendant Pardee Homes of Nevada's Motion to Stay Execution of Judgment and Post-Judgment Orders	88	JA014147-JA014151
12/16/2011	Notice of Entry of Stipulated Confidentiality Agreement and Protective Order	1	JA000040-JA000048
08/30/2012	Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)	1	JA000055-JA000060
07/14/2017	Notice of Entry of Supplemental Order Regarding Plaintiffs' Entitlement to, and Calculation of, Prejudgment Interest	88	JA014111-JA014117
11/07/2012	Opposition to Defendant's Motion for Summary Judgment and Plaintiffs' Counter Motion for Partial Summary Judgment	2	JA000322-JA000351
07/14/2014	Opposition to Pardee's Motion to Expunge Lis Pendens	48	JA007495-JA007559
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendant's Motion for Attorney's Fees and Costs	86	JA013619-JA013621
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Defendants Motion to Amend Judgment	86	JA013613-JA013615
01/09/2017	Order and Judgment from August 15, 2016 Hearings Regarding Plaintiff's Motion for Attorney's Fees and Costs	86	JA013616-JA013618
10/23/2013	Order Denying Motion for Partial Summary Judgment	21	JA003210-JA003212

Date	Document Description	Volume	Labeled
04/26/2016	Order from January 15, 2016 Hearings	71	JA011385- JA011388
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

Date	Document Description	Volume	Labeled
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 – section filed under seal	48	JA007411- JA007456

Date	Document Description	Volume	Labeled
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 – sections filed under seal	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

Date	Document Description	Volume	Labeled
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

Date	Document Description	Volume	Labeled
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

Date	Document Description	Volume	Labeled
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

Date	Document Description	Volume	Labeled
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

Date	Document Description	Volume	Labeled
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

Date	Document Description	Volume	Labeled
10/24/2013	Transcript re Trial	29-30	JA004463- JA004790
10/28/2013	Transcript re Trial – filed under seal	32-33	JA004848- JA005227
10/29/2013	Transcript re Trial – filed under seal	35	JA005264- JA005493
10/30/2013	Transcript re Trial	37-38	JA005512- JA005815
12/09/2013	Transcript re Trial – filed under seal	40-41	JA005821- JA006192
12/10/2013	Transcript re Trial	42-43	JA006193- JA006530
12/12/2013	Transcript re Trial – filed under seal	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 – filed under seal	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 – filed under seal	23	JA003632- JA003634

Date	Document Description	Volume	Labeled
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 – filed under seal	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 – filed under seal	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

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

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

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

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

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

Dated this 28th day of February, 2018.

McDONALD CARANO LLP

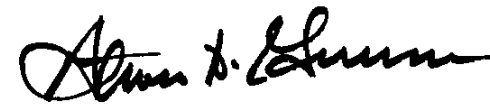
By: /s/ Rory T. Kay
Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 W. Sahara Ave., 12th Floor
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
lundvall@mcdonaldcarano.com
rkay@mcdonaldcarano.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

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

/s/ Beau Nelson
An Employee of McDonald Carano LLP



CLERK OF THE COURT

1 APEN
2 PAT LUNDVALL (NSBN 3761)
3 RORY T. KAY (NSBN 12416)
4 McDONALD CARANO WILSON LLP
5 2300 West Sahara Avenue, Suite 1200
6 Las Vegas, Nevada 89102
7 (702) 873-4100
8 (702) 873-9966 Facsimile
9 lundvall@mcdonaldcarano.com
10 rkay@mcdonaldcarano.com
11 *Attorneys for Defendant*
12 *Pardee Homes of Nevada*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JAMES WOLFRAM,
11 WALT WILKES

12 Plaintiffs,

13 vs.

14 PARDEE HOMES OF NEVADA,

15 Defendant.

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

APPENDIX OF EXHIBITS TO
PARDEE HOMES OF NEVADA'S
CONSOLIDATED OPPOSITION TO:

(1) PLAINTIFFS' 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

Hearing Date: August 5, 2015
Hearing Time: 9:00 a.m.

23 AND RELATED CLAIMS

25 ///

26 ///

28 ///

<u>Exhibit Description</u>	<u>Exhibit No.</u>	<u>Bates No.</u>
Plaintiffs' Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents	A	001-102
Excerpts from Reporter's Transcript of Bench Trial, dated December 13, 2013	B	103-112
Commission Agreement Dated September 1, 2004	C	113-117
Findings of Fact and Conclusions of Law	D	118-138
Plaintiffs' Trial Brief	E	139-169
August 26, 2009 Letter from James J. Jimmerson to Charles Curtis	F	170-173
May 19, 2009 Letter from James J. Jimmerson to Jim Stringer	G	174-176
Excerpts from Reporter's Transcript of Bench Trial, dated October 23, 2013 Reporter's	H	177-181
Excerpts from Reporter's Transcript of Bench Trial, dated October 28, 2013 Reporter's	I	182-185
Excerpts from Reporter's Transcript of Bench Trial, dated October 24, 2013	J	186-189
Plaintiffs' Proposed Findings of Fact and Conclusion of Law and Decision	K	190-212
Court issued a minute order on February 10, 2015	L	213-215
Notice of Entry of Order on Findings of Fact and Conclusions of Law and Supplemental Briefing re Future Accounting	M	216-222
May 29, 2015 Letter to the Honorable Kerry Earley	N	223-227
Notice of Entry of Judgment on June 15, 2015	O	228-233

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Notice of Entry of Order on Pardee's Emergency Motion to Stay Execution of Judgment	P	234-238
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DATED this 15th day of July, 2015.

MCDONALD CARANO WILSON LLP

/s/ Pat Lundvall
Pat Lundvall (NSBN 3761)
Rory T. Kay (NSBN 12416)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100
(702) 873-9966 Facsimile

*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 15th day of July, 2015, I served a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO PARDEE HOMES OF NEVADA'S CONSOLIDATED OPPOSITION TO: (1) PLAINTIFFS' 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**, via e-service through Wiznet as utilized in the 8th Judicial District on the following:

James J. Jimmerson
Holly A. Fic
Kim Stewart
JIMMERSON, HANSEN, P.C.
415 S. Sixth Street, Ste 100
Las Vegas, NV 89101

Attorney for Plaintiffs

and:

John W. Muije
John W. Muije & Assoc.
1840 E. Sahara Ave., #106
Las Vegas, NV 89104

Co-counsel for Plaintiffs

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

334348

Exhibit A

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

1 **LTWT**
2 JAMES J. JIMMERSON, ESQ.
3 Nevada Bar No. 000264
4 jjj@jimmersonhansen.com
5 I. PHILLIP ODUNZE, ESQ.
6 Nevada Bar No. 009885
7 ipo@jimmersonhansen.com
8 JIMMERSON HANSEN, P.C.
9 415 So. Sixth St., Ste. 100
10 Las Vegas, NV 89101
11 (702) 388-7171
12 Attorney for Plaintiffs
13 James Wolfram and Walt Wilkes

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

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

8/19/11
CASE NO.: A-10-6323338-C
DOCKET NO.: IV

16 **PLAINTIFFS' NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS**

17 COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their
18 attorneys, James J. Jimmerson, Esq. and I. Phillip Odunze, Esq., of the law firm of Jimmerson
19 Hansen, P.C., and hereby disclose the following witnesses and documents pursuant to NRCP
20 16.1.

21 **I.**

22 **WITNESSES**

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

- 25 1. James Wolfram
26 c/o Jimmerson Hansen, P.C.
27 415 South Sixth Street, Suite 100
28 Las Vegas, Nevada 89101
(702) 388-7171

Pastor\Brown & Brown\Disc\16.1 ltwt

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

3 2. Walt Wilkes
4 c/o Jimmerson Hansen, P.C.
5 415 South Sixth Street, Suite 100
6 Las Vegas, Nevada 89101
(702) 388-7171

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

9 3. Frances Butler
10 Chicago Title Company
11 Las Vegas, Nevada

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

15 4. PARDEE HOMES OF NEVADA
16 Custodian of Records
17 McDonald Carano Wilson LLP
18 100 West Liberty Street, 10th Floor
19 Reno, Nevada 89501
20 (775) 788-2000

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

25 5. PARDEE HOMES OF NEVADA
26 Person Most Knowledgeable
27 McDonald Carano Wilson LLP
28 100 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 Person Most Knowledgeable are expected to testify regarding the facts and

1 background of this case.

2 6. Jon Lash
3 c/o McDonald Carano Wilson LLP
4 100 West Liberty Street, 10th Floor
5 Reno, Nevada 89501
6 (775) 788-2000

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

9 7. Clifford Anderson
10 c/o McDonald Carano Wilson LLP
11 100 West Liberty Street, 10th Floor
12 Reno, Nevada 89501
13 (775) 788-2000

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

16 8. Harvey Whitmore
17 c/o Coyote Springs
18 Address Unknown

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

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

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

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

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

Plaintiff reserves the right to call any and all witnesses who may be disclosed or
deposed throughout the course of discovery.

Plaintiff reserves the right to call any and all of Defendant's witnesses; and

1 Plaintiff reserves the right to call any and all rebuttal witnesses.
2 Plaintiff's experts, if any, as yet unidentified.
3 Plaintiff reserves the right to supplement this list of witnesses as discovery progresses
4 and until the time of trial.
5 in this case.

6
7 II.

8 DOCUMENTS

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

- 11 1. Any and all written agreements between the Parties;
- 12 2. Any and all documents evidencing damages to the Plaintiffs;
- 13 3. Any and all correspondence between the Parties;
- 14 4. Any and all appropriate Custodian of Record documents;
- 15 5. Any and all pleadings in this matter;
- 16 6. Documents labeled Bates Numbers PLTL0001-PLTL00244;
- 17 7. Any and all documents the Defendants disclose; and
- 18 8. Any and all other relevant documents to this matter.

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

21 ///
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24 ///
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27 ///

28

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

III.

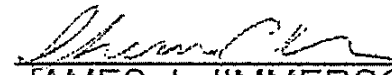
COMPUTATION OF DAMAGES

Plaintiffs calculate their damages to be all damages associated with the Defendant's breach of contract and the Defendant's failure to meet their obligations to the Plaintiffs, Attorney fees and costs of the suit. Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and supplement this response as the investigation and discovery in this case proceeds.

DATED: August 19th, 2011.

JIMMERSON HANSEN, P.C.

By:


JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 264
I. PHILLIP ODUNZE, ESQ.
Nevada Bar No. 9885
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for the Plaintiffs

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

RECEIPT OF COPY

I hereby certify that I _____ am an
employee of McDONALD CARANO WILSON LLP and on August ____, 2011, I received a
copy of the PLAINTIFFS' NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS
inclusive of Documents labeled Bates Numbers PLTL0001-PLTL00244 :

McDONALD CARANO WILSON LLP
Pat Lundvall, Esq.
Aaron Shipley, Esq.
2300 W. Sahara Ave. #1000
Las Vegas, NV 89102

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

10/26/12

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 jji@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 imj@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
21 Plaintiffs,
22
23 vs.
24
25 PARDEE HOMES OF NEVADA,
26
27 Defendant.

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

28 **PLAINTIFFS' FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF
WITNESSES AND DOCUMENTS**

COME NOW Plaintiffs, JAMES WOLFRAM and WALT WILKES, by and through their attorneys, Lynn M. Hansen, Esq., and James M. Jimmerson, Esq., of the law firm of Jimmerson Hansen, P.C., and hereby submits the following Fifth 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.

- 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

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

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

- 9 A. Option Agreement for the Purpose of Real Property and Joint Escrow
10 Instructions dated May 2004 (Bates No. PLTF0001-0080);
- 11 B. Amended and Restated Option Agreement for the Purchase of Real Property
12 and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-
13 0152);
- 14 C. Two Assignments of Real Estate Commission and Personal Certification
15 Agreement (Bates No. PLTF0153-0157A)
- 16 D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes
17 regarding the attached Commission letter dated September 1, 2004, (Bates No.
18 PLTF0158-0162);
- 19 E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and
20 Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- 21 F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No.
22 PLTF0175-0179);
- 23 G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer,
24 Esq., (Bates No. PLTF0180-0187);
- 25 H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer,
26 Esq., (Bates No. PLTF0188-0191);
- 27 I. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq.,
28 (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);

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

- 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
20 1424 through PLTF 10414 (on bottom right of documents bates stamped)
21 and rebated as bates nos: Cht 00001 through Cht 08998 (on bottom left of
22 documents bates stamped), including the Custodian of Records Subpoena
23 to Chicago Title Company including the executed Certificate of Custodian
24 of Records bates stamped as Cht 08997.
- 25 14. Stewart Title Company's previously bates stamped documents no. PLTF
26 0245 through PLTF 1423 and rebated as bates nos: Stwt 0001 through
27 1202. 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
5 General Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates
6 PLTF 10485.

7 24. Assignment of Rights, Title and Interest from Jerry Masini on behalf of
8 Award Realty to James Wolfram, dated December 20, 2010, bates PLTF
9 10486.

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

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

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

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

17 III.

18 COMPUTATION OF DAMAGES

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

22 There are two primary components to this calculation. The first component is the
23 loss of future commissions from future sales or takedowns of property located in Clark
24 County, subject to the September 1, 2004 Commission Letter Agreement. There
25 appears to be at least 3,000 acres of property, defined as Option Property under the
26 Option Agreement effective June 1, 2004, currently owned by Coyote Springs
27 Investment, LLC in Township 13 South, Range 63 East M.D.M., Clark County, Nevada.
28 Under the Option Agreement effective June 1, 2004, these 3,000 acres can be purchased
by Pardee and designated as Production 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

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

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

17 Finally, Plaintiffs must be compensated for the time and effort expended
18 attempting to discover from public records what information was owed to them under
19 the Commission Letter Agreement. Discovery is still ongoing therefore the Plaintiffs reserve
20 the right to amend and supplement this response as the investigation and discovery in this
21 case proceeds.

22 Dated this 26th October, 2012

23 JIMMERSON HANSEN, P.C.

24 
25 JAMES J. JIMMERSON, ESQ.
26 Nevada Bar No. 000264
27 LYNN M. HANSEN, ESQ.
28 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

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

RECEIPT OF COPY

The undersigned hereby acknowledges receipt of copy of PLAINTIFFS' FIFTH
SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS
on this 26th day of October, 2012, at 4:40 a.m./p.m. + 2 CDs

McDONALD CARANO WILSON, LLP

AARON D SHIPLEY / KLC

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

JIMMERSON HANSEN, P.C.
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Telephone (702) 388-7171 - Facsimile (702) 387-1167

10/29/12

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 jji@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 imj@jimmersonhansen.com
15
16 Attorney for Plaintiffs
17 *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
27
28

///

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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.

- 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

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 1. Any and all written agreements between the Parties;
- 2 2. Any and all documents evidencing damages to the Plaintiffs;
- 3 3. Any and all correspondence between the Parties;
- 4 4. Any and all appropriate Custodian of Record documents;
- 5 5. Any and all pleadings in this matter;
- 6 6. Documents labeled Bates Numbers PLTL0001-PLTL00244;
- 7 These documents are being reproduced as Plaintiffs' Initial NRCP 16.1 Disclosures of
- 8 Witnesses and Documents had duplicate documents. The duplicate copies have been
- 9 removed and the documents are listed as follows:
- 10 A. Option Agreement for the Purpose of Real Property and Joint Escrow
- 11 Instructions dated May 2004 (Bates No. PLTF0001-0080);
- 12 B. Amended and Restated Option Agreement for the Purchase of Real Property
- 13 and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-
- 14 0152);
- 15 C. Two Assignments of Real Estate Commission and Personal Certification
- 16 Agreement (Bates No. PLTF0153-0157A)
- 17 D. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes
- 18 regarding the attached Commission letter dated September 1, 2004, (Bates No.
- 19 PLTF0158-0162);
- 20 E. Amendment No. 2 to Option Agreement for the Purchase of Real Property and
- 21 Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- 22 F. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No.
- 23 PLTF0175-0179);
- 24 G. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer,
- 25 Esq., (Bates No. PLTF0180-0187);
- 26 H. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer,
- 27 Esq., (Bates No. PLTF0188-0191);
- 28 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 bates stamped) and rebated
21 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates
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 bates 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) 387-1167

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

3 Dated this 29th October, 2012

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

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 29th day of October, 2012, at 3:21 a.m./p.m.

16 McDONALD CARANO WILSON, LLP

17 **AARON D SHIPLEY** / *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

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

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 jmj@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*):

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ECC Supplement 7_mld.wpd/h

2/27/13

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

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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.

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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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- 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.

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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

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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 ///

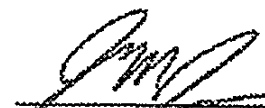
28

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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 27th February, 2013.

JIMMERSON HANSEN, P.C.


JAMES M. 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) 387-1187

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 27th day of February, 2013, as indicated below:

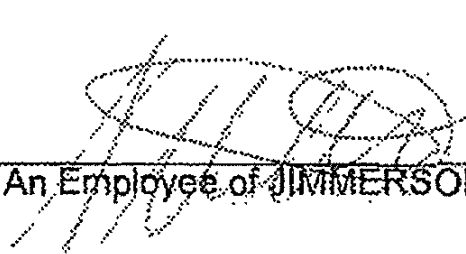
☒ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P. 5(b) addressed as follows below

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

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 jji@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' EIGHTH 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 Eighth Supplement to list of
witnesses and production of documents, as follows (*new items in bold*):

///

///

///

ECC Supplement 8_mtd.wpd/lh

3/20/13

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.

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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)
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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

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

Plaintiffs' experts, if any, as yet unidentified.

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

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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.
29. **Copy of redacted billing sheets representing attorney's fees charged by Jimmerson Hansen, P.C. from October 24, 2012 through February 21, 2013, bates PLTF 10497 through PLTF 10499.**
30. **Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C. from December 29, 2010 through February 4, 2013 bates PLTF 10500 through PLTF 10505.**

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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 June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South, Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June 1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production 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 Commission Letter Agreement has robbed Plaintiffs of this opportunity to be paid these commissions. Pardee's actions have served to reclassify the land originally labeled as Purchase Property and Option Property, and under the new reclassification, all Option Property has been removed from Clark County, thereby divesting Plaintiffs of any hope to collect any part of the \$1.8 million in commissions they could be paid had no reclassification occurred.

The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees **and costs** currently exceed \$102,700.00. This amount represents all work from the date of drafting of the Complaint in November 2010 through **February 20, 2013**. These attorney's fees **and costs** constitute damages pursuant to the September 1, 2004 Commission Letter Agreement. As stated in the Agreement, "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." Plaintiffs in bringing this suit expect to be the prevailing party and, as such,

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


1 are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract
2 and breach of the covenant of good faith and fair dealing.

3 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
4 discover from public records what information was owed to them under the Commission Letter
5 Agreement. **Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this**
6 **information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed**
7 **\$6,400.00 for their time.**

8 Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and
9 supplement this response as the investigation and discovery in this case proceeds.

10 Dated this 20th March, 2013.

JIMMERSON HANSEN, P.C.


JAMES M. 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) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' EIGHTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 20th day of March, 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


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

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 jji@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 imi@jimmersonhansen.com
15
16 Attorney for Plaintiffs
17 *James Wolfram and Walt Wilkes*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JAMES WOLFRAM AND WALT WILKES	}	CASE NO.: A-10-632338-C DEPT NO.: IV
13 Plaintiffs,		
14 vs.		
15 PARDEE HOMES OF NEVADA,		
16 Defendant.		

17 **PLAINTIFFS' NINTH 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 Eighth Supplement to list of
22 witnesses and production of documents, as follows (*new items in bold*):

23 ///
24 ///
25 ///
26
27
28

5/22/13

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.

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

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.

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;

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);

- 1 L. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No. PLTF0203-0205);
- 2
- 3 M. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash, (Bates No. PLTF0206-0209);
- 4
- 5 N. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0210-0211);
- 6 Bates Nos. PLTF0212-0244 are the duplicative documents produced in Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 7
- 8 7. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 9
- 10 8 Documents produced by Chicago Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 11
- 12 9. Documents produced by Coyote Springs Investments in response to Plaintiff's Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 - CSI_Wolfram0003004), attached hereto;
- 13
- 14 10. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 - PLTF10417), attached hereto;
- 15
- 16 11. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached hereto;
- 17
- 18 12. Non-Party Coyote Springs Investments, LLC's Supplement and Amended Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates PLTF10420-PLTF10424, attached hereto.
- 19
- 20 13. Chicago Title Company's previously bates stamped documents no. PLTF 1424 through PLTF 10414 (on bottom right of documents bates stamped) and rebated as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates stamped), including the Custodian of Records Subpoena to Chicago Title Company including the executed Certificate of Custodian of Records bates stamped as Cht 08997.
- 21
- 22 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.
- 23
- 24 15. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138, page 51, bates PLTF 10427 through PLTF 10438.
- 25
- 26 16. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116, page 35, bates PLTF 10439 through PLTF 10440.
- 27
- 28 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 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.
29. Copy of redacted billing sheets representing attorney's fees charged by Jimmerson Hansen, P.C. from October 24, 2012 through February 21, 2013, bates PLTF 10497 through PLTF 10499.
30. Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C. from December 29, 2010 through February 4, 2013 bates PLTF 10500 through PLTF 10505.
31. Copy of redacted billing sheets representing attorney's fees charged by Jimmerson Hansen, P.C. from February 21, 2013 through March 29, 2013, bates PLTF 10506 through PLTF 10508.
32. Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C. from February 27, 2013 through March 13, 2013 bates PLTF 10509 through 10510.
33. Copy of redacted billing sheets representing attorney's fees charged by Jimmerson Hansen, P.C. from April 1, 2013 through April 18, 2013, bates PLTF 10511 through PLTF 10512.

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

1 as the investigation and discovery in this case proceeds.

2
3 III.

4 COMPUTATION OF DAMAGES

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

8 There are two primary components to this calculation. The first component is the loss
9 of future commissions from future sales or takedowns of property located in Clark County,
10 subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least
11 3,000 acres of property, defined as Option Property under the Option Agreement effective
12 June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South,
13 Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June
14 1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production
15 Residential Property—a purchase and designation that would entitle Plaintiffs to a 1.5%
16 commission on a per-acre price of \$40,000.00. If 3,000 acres were purchased by Pardee
17 under this scenario, Plaintiffs would be entitled to \$1,800,000 in commissions. However,
18 Pardee's course of conduct in failing to appropriately discharge its duties under the
19 Commission Letter Agreement has robbed Plaintiffs of this opportunity to be paid these
20 commissions. Pardee's actions have served to reclassify the land originally labeled as
21 Purchase Property and Option Property, and under the new reclassification, all Option
22 Property has been removed from Clark County, thereby divesting Plaintiffs of any hope to
23 collect any part of the \$1.8 million in commissions they could be paid had no reclassification
24 occurred.

25 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees
26 and costs currently exceed **\$146,000.00**. This amount represents all work from the date of
27 drafting of the Complaint in November 2010 through **April 20, 2013**. Plaintiffs' attorney's fees
28 and costs constitute damages pursuant to the September 1, 2004 Commission Letter
Agreement. As stated in the Agreement, "In the event, either party brings an action to enforce

1 its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys'
2 fees and costs." Plaintiffs in bringing this suit expect to be the prevailing party and, as such,
3 are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract,
4 breach of the covenant of good faith and fair dealing, and for compelling the accounting
5 due to Plaintiffs.

6 As stated by the Court in its most recent minute order, Plaintiffs' claims for
7 attorney fee damages are governed by *Sandy Valley Assoc. v. Sky Ranch Estates*
8 *Owners Assoc.*, 117 Nev. 948 (2001). Pursuant to *Sandy Valley*, Plaintiffs calculate their
9 attorney fee damages as follows: all fees and costs incurred for filing the complaint,
10 prosecuting the claim for accounting, and seeking documents owed to Plaintiffs under
11 the September 1, 2004 Commission Letter Agreement (for the breach of contract and
12 breach of the covenant of good faith and fair dealing claims) plus one-third of the fees
13 and costs incurred for the prosecution of all of the claims (as one of the three claims
14 is for an accounting for which all of Plaintiffs' fees are damages). Exempt from the
15 damages are fees in connection with the prosecution of the breach of contract and
16 breach of the implied covenant of good faith and fair dealing claims, specifically not in
17 furtherance of the recovery of documents. To date, Plaintiffs' attorney fee damages are
18 greater than or equal to: \$102,960.00. Specifically, Plaintiffs' attorney fee damages for
19 the accounting claim equal or exceed \$102,960.00; for the claim for the breach of
20 contract equal or exceed \$7,307.50; and for the claim for the breach of the implied
21 covenant of good faith and fair dealing claims equal or exceed \$7,307.50.

22 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
23 discover from public records what information was owed to them under the Commission Letter
24 Agreement. Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this
25 information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed
26 \$6,400.00 for their time.

27
28

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

Dated this 22nd day of May, 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) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' NINTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 22nd day of May , 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

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


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

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 jmj@jimmersonhansen.com
15 Attorney for Plaintiffs
16 *James Wolfram and Walt Wilkes*

DISTRICT COURT
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' TENTH 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 submit the following Tenth Supplement to their list of
22 witnesses and production of documents, as follows (*new items in bold*):

23 ///

24 ///

25 ///

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 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

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.

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;

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:

1. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions dated May 2004 (Bates No. PLTF0001-0080);
2. Amended and Restated Option Agreement for the Purchase of Real Property and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
3. Two Assignments of Real Estate Commission and Personal Certification Agreement (Bates No. PLTF0153-0157A)
4. 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);
5. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
6. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
7. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
8. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
9. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
10. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);
11. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates No. PLTF0197-0202);

- 1 12. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No. PLTF0203-0205);
- 2
- 3 13. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash, (Bates No. PLTF0206-0209);
- 4
- 5 14. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0210-0211);
- 6
- 7 15. Bates Nos. PLTF0212-0244 are the duplicative documents produced in Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 8
- 9 16. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 10
- 11 17. Documents produced by Chicago Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 12
- 13 18. Documents produced by Coyote Springs Investments in response to Plaintiff's Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 - CSI_Wolfram0003004), attached hereto;
- 14
- 15 19. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 - PLTF10417), attached hereto;
- 16
- 17 20. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached hereto;
- 18
- 19 21. Non-Party Coyote Springs Investments, LLC's Supplement and Amended Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates PLTF10420-PLTF10424, attached hereto.
- 20
- 21 22. Chicago Title Company's previously bates stamped documents no. PLTF 1424 through PLTF 10414 (on bottom right of documents bates stamped) and rebated as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates stamped), including the Custodian of Records Subpoena to Chicago Title Company including the executed Certificate of Custodian of Records bates stamped as Cht 08997.
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- 23 23. 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.
- 24
- 25 24. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138, page 51, bates PLTF 10427 through PLTF 10438.
- 26
- 27 25. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116, page 35, bates PLTF 10439 through PLTF 10440.
- 28
26. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117, page 18, bates PLTF 10441 through PLTF 10443.
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- 28 27. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140, page 57, bates PLTF 10444 through PLTF10456.
28. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113, page 55, bates PLTF 10457 through PLTF 10462.

- 1 29. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,
2 page 57, bates PLTF 10463 through PLTF 10468.
- 3 30. Copy of redacted billing sheets representing attorney's fees charged by
4 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,
5 bates PLTF 10469 through PLTF 10481.
- 6 31. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 7 32. Assignment of Rights, Title and Interest from Jay Dana on behalf of General
8 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
- 9 33. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award
10 Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
- 11 34. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of
12 Walt Wilkes, bates PLTF 10487.
- 13 35. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
- 14 36. Assignment signed by Mark Carmen dated December 3, 2012 along with Exhibit
15 A signed by Jay Dana dated January 11, 2011, attached hereto as bates PLTF
16 10491 through PLTF 10493; and
- 17 37. Assignment signed by Peter J. Dingerson dated December 20, 2012 along with
18 Exhibit A signed by Jerry Masini dated December 20, 2010, attached hereto as
19 bates PLTF 10494 through PLTF 10496.
- 20 38. Copy of redacted billing sheets representing attorney's fees charged by
21 Jimmerson Hansen, P.C. from October 24, 2012 through February 21, 2013,
22 bates PLTF 10497 through PLTF 10499.
- 23 39. Copy of redacted costs representing costs expended by Jimmerson Hansen,
24 P.C. from December 29, 2010 through February 4, 2013 bates PLTF 10500
25 through PLTF 10505.
- 26 40. Copy of redacted billing sheets representing attorney's fees charged by
27 Jimmerson Hansen, P.C. from February 21, 2013 through March 29, 2013,
28 bates PLTF 10506 through PLTF 10508.
41. Copy of redacted costs representing costs expended by Jimmerson Hansen,
P.C. from February 27, 2013 through March 13, 2013 bates PLTF 10509
through 10510.
42. Copy of redacted billing sheets representing attorney's fees charged by
Jimmerson Hansen, P.C. from April 1, 2013 through April 18, 2013, bates PLTF
10511 through PLTF 10512.
43. **Color copy of the map as edited by James Wolfram, attached hereto as
bates PLTF 10513.**
44. **Color copy the original map from Jon Lash to James Wolfram of the entire
site, attached hereto as bates PLTF 10514.**

1 45. Three (3) color copies of maps from James Wolfram to Jon Lash, originally
2 produced by your office on April 21, 2010, attached hereto as bates PLTF
10515-10517; and

3 46. A further detailed computation of the attorney fee damages is found at
4 Exhibit "1" attached hereto. Exhibit "1" is a collection of the previously
5 produced attorney's fees with the highlighted sections representing the
6 line items which were aggregated at 100% plus the non-highlighted line
7 items which were aggregated at 33.3% to equal \$102,160.00. The pink
highlighted line items represent those damages for a breach of contract
and breach of the implied covenant of good faith and fair dealing claims,
which total \$7,602.50.

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

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

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

13 III.

14 COMPUTATION OF DAMAGES

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

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

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

6 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees
7 and costs currently exceed \$146,000.00. This amount represents all work from the date of
8 drafting of the Complaint in November 2010 through April 20, 2013. Plaintiffs' attorney's fees
9 and costs constitute damages pursuant to the September 1, 2004 Commission Letter
10 Agreement. As stated in the Agreement, "In the event, either party brings an action to enforce
11 its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys'
12 fees and costs." Plaintiffs in bringing this suit expect to be the prevailing party and, as such,
13 are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract,
14 breach of the covenant of good faith and fair dealing, and for compelling the accounting due
15 to Plaintiffs.

16 As stated by the Court in its most recent minute order, Plaintiffs' claims for attorney fee
17 damages are governed by *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117
18 Nev. 948 (2001). Pursuant to *Sandy Valley*, Plaintiffs calculate their attorney fee damages as
19 follows: all fees and costs incurred for filing the complaint, prosecuting the claim for
20 accounting, and seeking documents owed to Plaintiffs under the September 1, 2004
21 Commission Letter Agreement (for the breach of contract and breach of the covenant of good
22 faith and fair dealing claims) plus one-third of the fees and costs incurred for the prosecution
23 of all of the claims (as one of the three claims is for an accounting for which all of Plaintiffs'
24 fees are damages). Exempt from the damages are fees in connection with the prosecution
25 of the breach of contract and breach of the implied covenant of good faith and fair dealing
26 claims, specifically not in furtherance of the recovery of documents. To date, Plaintiffs'
27 attorney fee damages are greater than or equal to: **\$102,160.00**. Specifically, Plaintiffs'
28 attorney fee damages for the accounting claim equal or exceed **\$102,160.00**; for the claim for
the breach of contract equal or exceed **\$7,602.50**; and for the claim for the breach of the

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

1 implied covenant of good faith and fair dealing claims equal or exceed **\$7,602.50**.

2 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
3 discover from public records what information was owed to them under the Commission Letter
4 Agreement. Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this
5 information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed
6 \$6,400.00 for their time.

7 Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and
8 supplement this response as the investigation and discovery in this case proceeds.

9 Dated this 31st day of May, 2013.

10 JIMMERSON HANSEN, P.C.

11
12 
13 JAMES J. JIMMERSON, ESQ.

Nevada Bar No. 000264

14 LYNN M. HANSEN, ESQ.

Nevada Bar No. 0244

15 JAMES M. JIMMERSON, ESQ.

Nevada Bar No. 12599

16 415 So. Sixth St., Ste. 100

Las Vegas, NV 89101

17 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) 387-1167

RECEIPT OF COPY

I, the undersigned, is hereby in receipt of copy of the foregoing PLAINTIFFS' TENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS on the 31st day of May, 2013.

McDONALD CARANO WILSON, LLP

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

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 jji@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 jmi@jimmersonhansen.com
15 Attorney for Plaintiffs
16 *James Wolfram and Walt Wilkes*

DISTRICT COURT
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' ELEVENTH 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 submit the following Eleventh Supplement to their list
22 of witnesses and production of documents, as follows (*new items in bold*):

23 ///

24 ///

25 ///

26

27

28

6/3/13

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 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 15. James J. Jimmerson, Esq.
28 C/O JIMMERSON HANSEN, PC
415 South Sixth Street #100
Las Vegas, Nevada 89101

Mr. Jimmerson is a principal of Jimmerson Hansen, P.C and is expected to
testify regarding Plaintiffs' attorney's fees and costs.

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

1 Plaintiffs reserve the right to call any and all of Defendant's witnesses; and
2 Plaintiffs reserve the right to call any and all rebuttal witnesses.
3 Plaintiffs' experts, if any, as yet unidentified.
4 Plaintiffs reserve the right to supplement this list of witnesses as discovery
5 progresses and until the time of trial in this case.

6 II.
7 DOCUMENTS

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

- 10 1. Any and all written agreements between the Parties;
11 2. Any and all documents evidencing damages to the Plaintiffs;
12 3. Any and all correspondence between the Parties;
13 4. Any and all appropriate Custodian of Record documents;
14 5. Any and all pleadings in this matter;

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

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18 2. Amended and Restated Option Agreement for the Purchase of Real Property
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21 Agreement (Bates No. PLTF0153-0157A)
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23 regarding the attached Commission letter dated September 1, 2004, (Bates No.
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17. Documents produced by Chicago Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
18. Documents produced by Coyote Springs Investments in response to Plaintiff's Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 - CSI_Wolfram0003004), attached hereto;
19. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 - PLTF10417), attached hereto;
20. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached hereto;
21. Non-Party Coyote Springs Investments, LLC's Supplement and Amended Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates PLTF10420-PLTF10424, attached hereto.
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- 32 through PLTF 10505.
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- 34 Jimmerson Hansen, P.C. from February 21, 2013 through March 29, 2013,
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- 37 P.C. from February 27, 2013 through March 13, 2013 bates PLTF 10509
- 38 through 10510.
- 39 42. Copy of redacted billing sheets representing attorney's fees charged by
- 40 Jimmerson Hansen, P.C. from April 1, 2013 through April 18, 2013, bates PLTF

- 1 10511 through PLTF 10512.
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- 4 44. Color copy the original map from Jon Lash to James Wolfram of the entire site,
- 5 45. Three (3) color copies of maps from James Wolfram to Jon Lash, originally
- 6 produced by your office on April 21, 2010, attached hereto as bates PLTF
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- 8 46. A further detailed computation of the attorney fee damages is found at Exhibit
- 9 "1" attached hereto. Exhibit "1" is a collection of the previously produced
- 10 attorney's fees with the highlighted sections representing the line items which
- 11 47. **Emails dated from September 2008 between Nevada Title and Plaintiffs**
- 12 **with their attachments (commercial sales and parcels designated for the**
- 13 **upcoming BLM land action from Nevada Tile), attached hereto as bates**
- 14 **PLTF 10518-10527**

15 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any

16 parties or used at any depositions.

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

18 Plaintiffs reserve the right to identify and produce different and/or additional documents

19 as the investigation and discovery in this case proceeds.

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21 COMPUTATION OF DAMAGES

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24 to the Plaintiffs.

25 There are two primary components to this calculation. The first component is the loss

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27 subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least

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June 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South,

Range 63 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June

1, 2004, these 3,000 acres can be purchased by Pardee and designated as Production

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

11 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees
12 and costs currently exceed \$146,000.00. This amount represents all work from the date of
13 drafting of the Complaint in November 2010 through April 20, 2013. Plaintiffs' attorney's fees
14 and costs constitute damages pursuant to the September 1, 2004 Commission Letter
15 Agreement. As stated in the Agreement, "In the event, either party brings an action to enforce
16 its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys'
17 fees and costs." Plaintiffs in bringing this suit expect to be the prevailing party and, as such,
18 are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract,
19 breach of the covenant of good faith and fair dealing, and for compelling the accounting due
20 to Plaintiffs.

21 As stated by the Court in its most recent minute order, Plaintiffs' claims for attorney fee
22 damages are governed by *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117
23 Nev. 948 (2001). Pursuant to *Sandy Valley*, Plaintiffs calculate their attorney fee damages as
24 follows: all fees and costs incurred for filing the complaint, prosecuting the claim for
25 accounting, and seeking documents owed to Plaintiffs under the September 1, 2004
26 Commission Letter Agreement (for the breach of contract and breach of the covenant of good
27 faith and fair dealing claims) plus one-third of the fees and costs incurred for the prosecution
28 of all of the claims (as one of the three claims is for an accounting for which all of Plaintiffs'
fees are damages). Exempt from the damages are fees in connection with the prosecution

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1 of the breach of contract and breach of the implied covenant of good faith and fair dealing
2 claims, specifically not in furtherance of the recovery of documents. To date, Plaintiffs'
3 attorney fee damages are greater than or equal to: **\$102,160.00**. Specifically, Plaintiffs'
4 attorney fee damages for the accounting claim equal or exceed **\$102,160.00**; for the claim for
5 the breach of contract equal or exceed **\$7,602.50**; and for the claim for the breach of the
6 implied covenant of good faith and fair dealing claims equal or exceed **\$7,602.50**.

7 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
8 discover from public records what information was owed to them under the Commission Letter
9 Agreement. Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this
10 information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed
11 \$6,400.00 for their time.

12 Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and
13 supplement this response as the investigation and discovery in this case proceeds.

14 Dated this 3rd day of June, 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) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' ELEVENTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 3rd day of June, 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


An Employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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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 jji@jimmersonhansen.com
13 lmh@jimmersonhansen.com
14 jmi@jimmersonhansen.com
15 Attorney for Plaintiffs
16 *James Wolfram and Walt Wilkes*

DISTRICT COURT
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' TWELFTH 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 submit the following Twelfth Supplement to their list of
22 witnesses and production of documents, as follows (*new items in bold*):

23 ///

24 ///

25 ///

26

27

28

ECC-Supplement-12-Draft-7-19-13.wpd/lh

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 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 15. James J. Jimmerson, Esq.
28 C/O JIMMERSON HANSEN, PC
415 South Sixth Street #100
Las Vegas, Nevada 89101

Mr. Jimmerson is a principal of Jimmerson Hansen, P.C and is expected to
testify regarding Plaintiffs' attorney's fees and costs.

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

1 Plaintiffs reserve the right to call any and all of Defendant's witnesses; and
2 Plaintiffs reserve the right to call any and all rebuttal witnesses.
3 Plaintiffs' experts, if any, as yet unidentified.
4 Plaintiffs reserve the right to supplement this list of witnesses as discovery
5 progresses and until the time of trial in this case.

6 II.

7 DOCUMENTS

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

- 10 1. Any and all written agreements between the Parties;
11 2. Any and all documents evidencing damages to the Plaintiffs;
12 3. Any and all correspondence between the Parties;
13 4. Any and all appropriate Custodian of Record documents;
14 5. Any and all pleadings in this matter;

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

- 17 1. Option Agreement for the Purpose of Real Property and Joint Escrow
Instructions dated May 2004 (Bates No. PLTF0001-0080);
18 2. Amended and Restated Option Agreement for the Purchase of Real Property
and Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-
19 0152);
20 3. Two Assignments of Real Estate Commission and Personal Certification
21 Agreement (Bates No. PLTF0153-0157A)
22 4. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes
23 regarding the attached Commission letter dated September 1, 2004, (Bates No.
24 PLTF0158-0162);
25 5. Amendment No. 2 to Option Agreement for the Purchase of Real Property and
Joint Escrow Instructions, (Bates No. PLTF0163-0174);
26 6. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No.
27 PLTF0175-0179);
28 7. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer,
Esq., (Bates No. PLTF0180-0187);
8. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer,
Esq., (Bates No. PLTF0188-0191);

- 1 9. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq.,
2 (Bates No. PLTF0192-0193);
- 3 10. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E.
4 Curtis, (Bates No. PLTF0194-0196);
- 5 11. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates
6 No. PLTF0197-0202);
- 7 12. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No.
8 PLTF0203-0205);
- 9 13. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash,
10 (Bates No. PLTF0206-0209);
- 11 14. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq.,
12 (Bates No. PLTF0210-0211);
- 13 15. Bates Nos. PLTF0212-0244 are the duplicative documents produced in
14 Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 15 16. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces
16 Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 17 17. Documents produced by Chicago Title in response to Plaintiffs' Subpoena
18 Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 19 18. Documents produced by Coyote Springs Investments in response to Plaintiff's
20 Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 -
21 CSI_Wolfram0003004), attached hereto;
- 22 19. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 -
23 PLTF10417), attached hereto;
- 24 20. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached
25 hereto;
- 26 21. Non-Party Coyote Springs Investments, LLC's Supplement and Amended
27 Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates
28 PLTF10420-PLTF10424, attached hereto.
22. Chicago Title Company's previously bates stamped documents no. PLTF 1424
through PLTF 10414 (on bottom right of documents bates stamped) and rebated
as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates
stamped), including the Custodian of Records Subpoena to Chicago Title
Company including the executed Certificate of Custodian of Records bates
stamped as Cht 08997.
23. 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.
24. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,
page 51, bates PLTF 10427 through PLTF 10438.
25. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,

- 1 page 35, bates PLTF 10439 through PLTF 10440.
- 2 26. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,
- 3 page 18, bates PLTF 10441 through PLTF 10443.
- 4 27. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,
- 5 page 57, bates PLTF 10444 through PLTF 10456.
- 6 28. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113,
- 7 page 55, bates PLTF 10457 through PLTF 10462.
- 8 29. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,
- 9 page 57, bates PLTF 10463 through PLTF 10468.
- 10 30. Copy of redacted billing sheets representing attorney's fees charged by
- 11 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,
- 12 bates PLTF 10469 through PLTF 10481.
- 13 31. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 14 32. Assignment of Rights, Title and Interest from Jay Dana on behalf of General
- 15 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
- 16 33. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award
- 17 Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
- 18 34. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of
- 19 Walt Wilkes, bates PLTF 10487.
- 20 35. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
- 21 36. Assignment signed by Mark Carmen dated December 3, 2012 along with Exhibit
- 22 A signed by Jay Dana dated January 11, 2011, attached hereto as bates PLTF
- 23 10491 through PLTF 10493; and
- 24 37. Assignment signed by Peter J. Dingerson dated December 20, 2012 along with
- 25 Exhibit A signed by Jerry Masini dated December 20, 2010, attached hereto as
- 26 bates PLTF 10494 through PLTF 10496.
- 27 38. Copy of redacted billing sheets representing attorney's fees charged by
- 28 Jimmerson Hansen, P.C. from October 24, 2012 through February 21, 2013,
- 39 bates PLTF 10497 through PLTF 10499.
- 40 39. Copy of redacted costs representing costs expended by Jimmerson Hansen,
- 41 P.C. from December 29, 2010 through February 4, 2013 bates PLTF 10500
- 42 through PLTF 10505.
- 43 40. Copy of redacted billing sheets representing attorney's fees charged by
- 44 Jimmerson Hansen, P.C. from February 21, 2013 through March 29, 2013,
- 45 bates PLTF 10506 through PLTF 10508.
- 46 41. Copy of redacted costs representing costs expended by Jimmerson Hansen,
- 47 P.C. from February 27, 2013 through March 13, 2013 bates PLTF 10509
- 48 through 10510.
- 49 42. Copy of redacted billing sheets representing attorney's fees charged by
- 50 Jimmerson Hansen, P.C. from April 1, 2013 through April 18, 2013, bates PLTF

- 1 10511 through PLTF 10512.
- 2 43. Color copy of the map as edited by James Wolfram, attached hereto as bates
- 3 PLTF 10513.
- 4 44. Color copy the original map from Jon Lash to James Wolfram of the entire site,
- 5 attached hereto as bates PLTF 10514.
- 6 45. Three (3) color copies of maps from James Wolfram to Jon Lash, originally
- 7 produced by your office on April 21, 2010, attached hereto as bates PLTF
- 8 10515-10517; and
- 9 46. A further detailed computation of the attorney fee damages is found at Exhibit
- 10 "1" attached hereto. Exhibit "1" is a collection of the previously produced
- 11 attorney's fees with the highlighted sections representing the line items which
- 12 were aggregated at 100% plus the non-highlighted line items which were
- 13 aggregated at 33.3% to equal \$102,160.00. The pink highlighted line items
- 14 represent those damages for a breach of contract and breach of the implied
- 15 covenant of good faith and fair dealing claims, which total \$7,602.50.
- 16 47. Emails dated from September 2008 between Nevada Title and Plaintiffs with
- 17 their attachments (commercial sales and parcels designated for the upcoming
- 18 BLM land action from Nevada Tile), attached hereto as bates PLTF 10518-
- 19 10527.
- 20 48. **Computation of attorneys fees and billing from April 22, 2013 through May**
- 21 **21, 2013, attached hereto as bates PLTF 10528 through 10530.**
- 22 49. **Computation of attorneys fees and billing from May 20, 2013 through June**
- 23 **20, 2013, attached hereto as bates PLTF 10531 through 10533.**

24 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any

25 parties or used at any depositions.

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

27 Plaintiffs reserve the right to identify and produce different and/or additional documents

28 as the investigation and discovery in this case proceeds.

29 III.

30 COMPUTATION OF DAMAGES

31 Plaintiffs calculate their damages to be in excess of **\$1,930,000.00** associated with the

32 Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations

33 to the Plaintiffs.

34 There are two primary components to this calculation. The first component is the loss

35 of future commissions from future sales or takedowns of property located in Clark County,

36 subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least

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

15 The second component of this calculation is attorney's fees. Plaintiffs' attorney's fees
16 and costs currently exceed \$146,000.00. This amount represents all work from the date of
17 drafting of the Complaint in November 2010 through April 20, 2013. Plaintiffs' attorney's fees
18 and costs constitute damages pursuant to the September 1, 2004 Commission Letter
19 Agreement. As stated in the Agreement, "In the event, either party brings an action to enforce
20 its rights under this Agreement, the prevailing party shall be awarded reasonable attorneys'
21 fees and costs." Plaintiffs in bringing this suit expect to be the prevailing party and, as such,
22 are entitled to their reasonable attorney's fees as damages for Defendant's breach of contract,
23 breach of the covenant of good faith and fair dealing, and for compelling the accounting due
24 to Plaintiffs.

25 As stated by the Court in its most recent minute order, Plaintiffs' claims for attorney fee
26 damages are governed by *Sandy Valley Assoc. v. Sky Ranch Estates Owners Assoc.*, 117
27 Nev. 948 (2001). Pursuant to *Sandy Valley*, Plaintiffs calculate their attorney fee damages as
28 follows: all fees and costs incurred for filing the complaint, prosecuting the claim for
accounting, and seeking documents owed to Plaintiffs under the September 1, 2004

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


1 Commission Letter Agreement (for the breach of contract and breach of the covenant of good
2 faith and fair dealing claims) plus one-third of the fees and costs incurred for the prosecution
3 of all of the claims (as one of the three claims is for an accounting for which all of Plaintiffs'
4 fees are damages). Exempt from the damages are fees in connection with the prosecution
5 of the breach of contract and breach of the implied covenant of good faith and fair dealing
6 claims, specifically not in furtherance of the recovery of documents. To date, Plaintiffs'
7 attorney fee damages are greater than or equal to: **\$135,486.87**. Specifically, Plaintiffs'
8 attorney fee damages for the accounting claim equal or exceed **\$135,486.87**; for the claim for
9 the breach of contract equal or exceed \$7,602.50; and for the claim for the breach of the
10 implied covenant of good faith and fair dealing claims equal or exceed \$7,602.50.

11 Finally, Plaintiffs must be compensated for the time and effort expended attempting to
12 discover from public records what information was owed to them under the Commission Letter
13 Agreement. Specifically, Plaintiffs spent at least 80 hours in attempting to acquire this
14 information. At a fair hourly rate of \$80.00 per hour, Plaintiffs' damages equal or exceed
15 \$6,400.00 for their time.

16 Discovery is still ongoing therefore the Plaintiffs reserve the right to amend and
17 supplement this response as the investigation and discovery in this case proceeds.

18 Dated this 19TH day of July, 2013.

19 JIMMERSON HANSEN, P.C.

20
21 
22 JAMES M. JIMMERSON, ESQ.
23 Nevada Bar No. 000264
24 LYNN M. HANSEN, ESQ.
25 Nevada Bar No. 0244
26 JAMES M. JIMMERSON, ESQ.
27 Nevada Bar No. 12599
28 415 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) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of PLAINTIFFS' TWELFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS was made on the 19th day of July, 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


An Employee of JIMMERSON HANSEN, P.C.

JIMMERSON HANSEN, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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1 **SUPP**
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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
jjj@jimmersonhansen.com
7 lmh@jimmersonhansen.com
imj@jimmersonhansen.com
8 Attorney for Plaintiffs
James Wolfram and Walt Wilkes

9
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' THIRTEENTH 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 submit the following Thirteenth Supplement to their list
22 of witnesses and production of documents, as follows (*new items in bold*):

23 ///

24 ///

25 ///

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 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 15. James J. Jimmerson, Esq.
28 C/O JIMMERSON HANSEN, PC
415 South Sixth Street #100
Las Vegas, Nevada 89101

Mr. Jimmerson is a principal of Jimmerson Hansen, P.C and is expected to testify
regarding Plaintiffs' attorney's fees and costs.

16. Klif Andrews
Pardee Homes of Nevada
650 White Drive, Suite 100
Las Vegas, Nevada 89119

1 **Mr. Andrews is the President of Pardee Homes of Nevada and is expected to**
2 **testify about facts and circumstances about the case. Specifically he is expected to**
3 **testify concerning all production of residential property at Coyote Springs.**

4
5 **17. Chelsea Peltier**
6 **Slater Hanifan Group**
7 **5740 S. Arville, Suite #216**
8 **Las Vegas, Nevada 89118**

9 **Ms. Peltier is an employee of Slater Hanifan Group and is expected to testify**
10 **and is expected to testify about facts and circumstances about the case. Specifically**
11 **she is expected to testify concerning all production of residential property at Coyote**
12 **Springs.**

13 **18. Jerry Slater**
14 **Slater Hanifan Group**
15 **5740 S. Arville, Suite #216**
16 **Las Vegas, Nevada 89118**

17 **Mr. Slater is a principal of Slater Hanifan Group and is expected to testify and**
18 **is expected to testify about facts and circumstances about the case. Specifically he is**
19 **expected to testify concerning all production of residential property at Coyote**
20 **Springs.**

21 **19. Kenneth Hanifan**
22 **Slater Hanifan Group**
23 **5740 S. Arville, Suite #216**
24 **Las Vegas, Nevada 89118**

25 **Mr. Hanifan is a principal of Slater Hanifan Group and is expected to testify**
26 **and is expected to testify about facts and circumstances about the case. Specifically**
27 **he is expected to testify concerning all production of residential property at Coyote**
28 **Springs.**

29 **20. Jim Rizzi**
30 **Pardee Homes of Nevada**
31 **650 White Drive, Suite 100**
32 **Las Vegas, Nevada 89119**

1
2 **Mr. Rizzi is an employee of Pardee Homes and is expected to testify and is**
3 **expected to testify about facts and circumstances about the case. Specifically he is**
4 **expected to testify concerning all production of residential property at Coyote**
5 **Springs.**

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7 Plaintiffs reserve the right to call any and all witnesses who may be disclosed or
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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.

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;

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:

1. Option Agreement for the Purpose of Real Property and Joint Escrow Instructions
dated May 2004 (Bates No. PLTF0001-0080);
2. Amended and Restated Option Agreement for the Purchase of Real Property and
Joint Escrow Instructions dated March 28, 2005, (Bates No. PLTF0081-0152);
3. Two Assignments of Real Estate Commission and Personal Certification
Agreement (Bates No. PLTF0153-0157A)
4. Letter dated September 2, 2004 from Pardee Homes to Mr. Walt Walkes

- 1 regarding the attached Commission letter dated September 1, 2004, (Bates No. PLTF0158-0162);
- 2
- 3 5. Amendment No. 2 to Option Agreement for the Purchase of Real Property and Joint Escrow Instructions, (Bates No. PLTF0163-0174);
- 4 6. Letter dated April 6, 2009 from Pardee Homes to Mr. Jim Wolfram, (Bates No. PLTF0175-0179);
- 5 7. Letter dated April 23, 2009 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0180-0187);
- 6 8. Letter dated May 19, 2011 from James J. Jimmerson, Esq., to Jim Stringer, Esq., (Bates No. PLTF0188-0191);
- 7 9. Letter dated July 10, 2009 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0192-0193);
- 8
- 9 10. Letter dated August 26, 2009 from James J. Jimmerson, Esq., to Charles E. Curtis, (Bates No. PLTF0194-0196);
- 10 11. Letter dated November 24, 2009 from Jon E. Lash to Mr. Jim Wolfram, (Bates No. PLTF0197-0202);
- 11 12. Letter dated April 21, 2010 from Jim Wolfram to Mr. Jon Lash, (Bates No. PLTF0203-0205);
- 12 13. Letter dated May 17, 2010 from James J. Jimmerson, Esq., to Mr. John E. Lash, (Bates No. PLTF0206-0209);
- 13 14. Letter dated June 14, 2010 from Charles E. Curtis to James J. Jimmerson, Esq., (Bates No. PLTF0210-0211);
- 14 15. Bates Nos. PLTF0212-0244 are the duplicative documents produced in Plaintiffs' Initial 16.1 Disclosure of Documents and Witnesses.
- 15 16. Documents produced by Stewart Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF0245-PLTF1423);
- 16 17. Documents produced by Chicago Title in response to Plaintiffs' Subpoena Duces Tecum on CD, (Bates No. PLTF1424-PLTF10414);
- 17 18. Documents produced by Coyote Springs Investments in response to Plaintiff's Duces Tecum on CD, (Bates No. CSI_Wolfram 000014 - CSI_Wolfram0003004), attached hereto;
- 18 19. Coyote Springs Investment, LLC's Privilege Log, (Bates No. PLTF10415 - PLTF10417), attached hereto;
- 19 20. Affidavit of Custodian of Records, (Bates No. PLTF10418-PLTF10419); attached hereto;
- 20 21. Non-Party Coyote Springs Investments, LLC's Supplement and Amended Objection and Response to Plaintiff's Subpoena Duces Tecum, (Bates PLTF10420-PLTF10424, attached hereto.
- 21 22. Chicago Title Company's previously bates stamped documents no. PLTF 1424
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- 1 through PLTF 10414 (on bottom right of documents bates stamped) and rebated
2 as bates nos: Cht 00001 through Cht 08998 (on bottom left of documents bates
3 stamped), including the Custodian of Records Subpoena to Chicago Title
4 Company including the executed Certificate of Custodian of Records bates
5 stamped as Cht 08997.
- 6 23. Stewart Title Company's previously bates stamped documents no. PLTF 0245
7 through PLTF 1423 and rebated as bates nos: Stwt 0001 through 1202.
8 Documents Stwt 0699 and Stwt 0731 are copy coversheets and were
9 inadvertently bates stamped.
- 10 24. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 138,
11 page 51, bates PLTF 10427 through PLTF 10438.
- 12 25. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 116,
13 page 35, bates PLTF 10439 through PLTF 10440.
- 14 26. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 117,
15 page 18, bates PLTF 10441 through PLTF 10443.
- 16 27. Copy of Plat Map recorded in the Clark County Recorder's Office in Book 140,
17 page 57, bates PLTF 10444 through PLTF 10456.
- 18 28. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 113,
19 page 55, bates PLTF 10457 through PLTF 10462.
- 20 29. Copy of Parcel Map recorded in the Clark County Recorder's Office in File 98,
21 page 57, bates PLTF 10463 through PLTF 10468.
- 22 30. Copy of redacted billing sheets representing attorney's fees charged by
23 Jimmerson Hansen, P.C. from November 3, 2010 through October 19, 2012,
24 bates PLTF 10469 through PLTF 10481.
- 25 31. Affidavit of Peter J. Dingerson, bates PLTF 10482 through PLTF 10484.
- 26 32. Assignment of Rights, Title and Interest from Jay Dana on behalf of General
27 Realty Group Inc. to Walt Wilkes, dated January 11, 2011, bates PLTF 10485.
- 28 33. Assignment of Rights, Title and Interest from Jerry Masini on behalf of Award
Realty to James Wolfram, dated December 20, 2010, bates PLTF 10486.
34. Letter from Jeffrey King, M.D. dated November 1, 2011 regarding the health of
Walt Wilkes, bates PLTF 10487.
35. Affidavit of Jerry Masini, bates PLTF 10488 through PLTF 10490.
36. 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
37. 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.
38. Copy of redacted billing sheets representing attorney's fees charged by
Jimmerson Hansen, P.C. from October 24, 2012 through February 21, 2013,
bates PLTF 10497 through PLTF 10499.

- 1 39. Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C.
2 from December 29, 2010 through February 4, 2013 bates PLTF 10500 through
3 PLTF 10505.
- 4 40. Copy of redacted billing sheets representing attorney's fees charged by
5 Jimmerson Hansen, P.C. from February 21, 2013 through March 29, 2013, bates
6 PLTF 10506 through PLTF 10508.
- 7 41. Copy of redacted costs representing costs expended by Jimmerson Hansen, P.C.
8 from February 27, 2013 through March 13, 2013 bates PLTF 10509 through
9 10510.
- 10 42. Copy of redacted billing sheets representing attorney's fees charged by
11 Jimmerson Hansen, P.C. from April 1, 2013 through April 18, 2013, bates PLTF
12 10511 through PLTF 10512.
- 13 43. Color copy of the map as edited by James Wolfram, attached hereto as bates
14 PLTF 10513.
- 15 44. Color copy the original map from Jon Lash to James Wolfram of the entire site,
16 attached hereto as bates PLTF 10514.
- 17 45. Three (3) color copies of maps from James Wolfram to Jon Lash, originally
18 produced by your office on April 21, 2010, attached hereto as bates PLTF 10515-
19 10517; and
- 20 46. A further detailed computation of the attorney fee damages is found at Exhibit "1"
21 attached hereto. Exhibit "1" is a collection of the previously produced attorney's
22 fees with the highlighted sections representing the line items which were
23 aggregated at 100% plus the non-highlighted line items which were aggregated
24 at 33.3% to equal \$102,160.00. The pink highlighted line items represent those
25 damages for a breach of contract and breach of the implied covenant of good
26 faith and fair dealing claims, which total \$7,602.50.
- 27 47. Emails dated from September 2008 between Nevada Title and Plaintiffs with their
28 attachments (commercial sales and parcels designated for the upcoming BLM
land action from Nevada Tile), attached hereto as bates PLTF 10518-10527.
48. Computation of attorneys fees and billing from April 22, 2013 through May 21,
2013, attached hereto as bates PLTF 10528 through 10530.
49. Computation of attorneys fees and billing from May 20, 2013 through June 20,
2013, attached hereto as bates PLTF 10531 through 10533.
50. Documents regarding Coyote Springs Major Plan dated 8/4/2008, previously
produced as Bates Nos. CNTY00001-CNTY00543.
51. Documents regarding Coyote Springs Major Plan dated May 5, 2006,
previously produced as Bates Nos. CNTY00542-00898.
52. Documents regarding Coyote Springs Major Plan dated 6/2002, previously
produced as Bates Nos. CNTY00899-CNTY01193.
53. Documents regarding Coyote Springs Development Agreement dated
6/16/2004, previously produced as Bates Nos. CNTY01194-CNTY01262.
54. Documents regarding Coyote Springs Development Agreement dated

- 1 12/18/2002, previously produced as Bates Nos. CNTY01263-01334.
- 2 55. Notice of Final Action Clark County Zoning Commission dated 2/16/2011,
- 3 previously produced as Bates Nos. CNTY01335-01347.
- 4 56. Tentative Map Application filed 12/29/2010, previously attached as Bate
- 5 Nos. CNTY01348-01349.
- 6 57. Tentative Map Application 0094-10 Coyote Springs Village #4 approval
- 7 2/15/2011, previously produced as Bates Nos. CNTY01350-01351.
- 8 58. Map of Coyote Springs dated 5/23/2008, previously produced as Bates Nos.
- 9 CNTY01352.
- 10 59. Coyote Springs Village #4 tentative map dated 12/28/2010, previously
- 11 produced as Bates Nos. CNTY01353-01358.

12 Plaintiffs reserve the right to any and all documents the Defendants disclosed by any

13 parties or used at any depositions.

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

15 Plaintiffs reserve the right to identify and produce different and/or additional documents

16 as the investigation and discovery in this case proceeds.

17 III.

18 COMPUTATION OF DAMAGES

19 Plaintiffs calculate their damages to be in excess of **\$1,930,000.00** associated with the

20 Defendant's breach of contract and the Defendant's failure to faithfully meet their obligations

21 to the Plaintiffs.

22 There are two primary components to this calculation. The first component is the loss

23 of future commissions from future sales or takedowns of property located in Clark County,

24 subject to the September 1, 2004 Commission Letter Agreement. There appears to be at least

25 3,000 acres of property, defined as Option Property under the Option Agreement effective June

26 1, 2004, currently owned by Coyote Springs Investment, LLC in Township 13 South, Range 63

27 East M.D.M., Clark County, Nevada. Under the Option Agreement effective June 1, 2004,

28 these 3,000 acres can be purchased by Pardee and designated as Production 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