

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

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

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

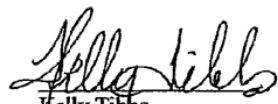
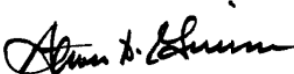
22
23 
24 Kelly Tibbs
25 Judicial Executive Assistant

Exhibit 2

Exhibit 2

JA013386



CLERK OF THE COURT

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

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

8 JAMES WOLFRAM,
9 WALT WILKES,

10 Plaintiffs,

11 vs.

12 PARDEE HOMES OF NEVADA,

13 Defendant.

A- 10- 632338- C

CASE NO.:
DOCKET NO.: XXI | I

14 **COMPLAINT**

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

18 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Accounting)

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

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

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

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

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

SECOND CLAIM FOR RELIEF

(Breach of Contract)

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

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

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

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

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

9 **THIRD CLAIM FOR RELIEF**

10 **(Breach of Good Faith and Fair Dealing)**

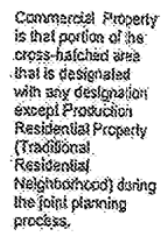
11 26. Plaintiffs reallege and incorporate herein each and every allegation contained
12 in paragraphs 1 through 25, inclusive, herein above.

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

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

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

25 30. As a direct and proximate result of Defendant's breach of the covenant of
26 good faith and fair dealing, Plaintiffs have been forced to bring this matter before the Court.
27 Accordingly, Plaintiffs are entitled to an award of reasonable attorneys' fees and costs.
28



Resource Concepts, Inc.

Exhibit L-2

Docket 72371 Document 2018-08050

Exhibit 4

Exhibit 4



JON E. LASH
Sr. Vice President
(310) 475-3525 ext. 251
(310) 446-1285

September 1, 2004

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

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

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

Gentlemen:

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

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

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

PH 000135

JA013354

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

JA013355

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

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

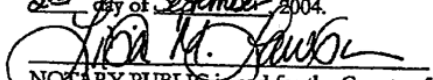
Sincerely,

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: 
Jon E. Lash
Senior Vice President

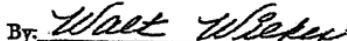


SUBSCRIBED and SWORN to before me this
2nd day of September, 2004.

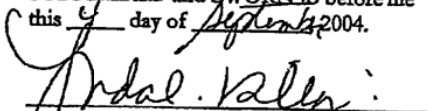

NOTARY PUBLIC in and for the County of
Los Angeles, State of California

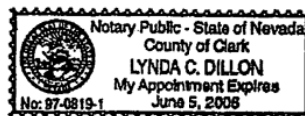
Agreed to and accepted:

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



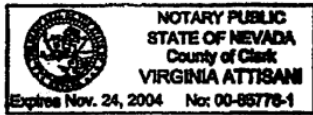
Mr. Walt Wilkes
Mr. Jim Wolfram
September 1, 2004
Page 4

AWARD REALTY GROUP

By: Jim Wolfram
Jim Wolfram

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

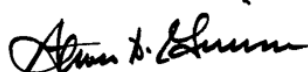
Virginia Attisani
NOTARY PUBLIC in and for the County
of Clark, State of Nevada



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PH 000138

JA013357



CLERK OF THE COURT

1 RPLY

2 JAMES J. JIMMERSON, ESQ.

3 Nevada State Bar No. 000264

4 jjj@jimmersonlawfirm.com

5 MICHAEL C. FLAXMAN, ESQ.

6 Nevada State Bar No. 12963

7 mcf@jimmersonlawfirm.com

8 THE JIMMERSON LAW FIRM, P.C.

9 415 South Sixth Street, Suite 100

10 Las Vegas, Nevada 89101

11 Telephone: (702) 388-7171

12 Facsimile: (702) 380-6406

13 Attorneys for Plaintiffs

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 JAMES WOLFRAM; and ANGELA L.

17 LIMBOCKER-WILKES as trustee of the

18 WALTER D. WILKES AND ANGELA L.

19 LIMBOCKER-WILKES LIVING TRUST,

20 Plaintiffs,

21 vs.

22 PARDEE HOMES OF NEVADA,

23 Defendant.

CASE NO.: A-10-632338

DEPT. NO.: IV

COURTROOM NUMBER: 16B

PLAINTIFFS' REPLY IN SUPPORT OF
COUNTERMOTION FOR ATTORNEY'S
FEES AND COSTS

Hearing Date: August 10, 2016

Hearing Time: 9:00 a.m.

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

24 COMES NOW, Plaintiffs, JAMES WOLFRAM and ANGELA L. LIMBOCKER-
25 WILKES as trustee of the WALTER D. WILKES AND ANGELA L. LIMBOCKER-WILKES
26 LIVING TRUST (hereinafter collectively "Plaintiffs"), by and through their counsel of
27 record, James J. Jimmerson, Esq. and Michael C. Flaxman, Esq. of THE JIMMERSON
28 LAW FIRM, P.C., and hereby submits their Reply in Support of their Countermotion for
Attorney's Fees and Costs, filed in conjunction with their Opposition to Defendant,
Pardee Homes of Nevada's (hereinafter "Pardee"), Motion to Amend Judgment.

JA013358

1 This Reply is based on the pleadings and papers on file, the Memorandum of
2 Points and Authorities and exhibits attached hereto, and any and all argument that may
3 be adduced at the time of the hearing of this matter.

4 DATED this 2nd day of August, 2016.

5 Respectfully submitted by:

6 THE JIMMERSON LAW FIRM, P.C.

7
8 By: Michael C. Flaxman
9 JAMES J. JIMMERSON, ESQ.
10 Nevada State Bar No. 000264
11 jjj@jimmersonlawfirm.com
12 MICHAEL C. FLAXMAN, ESQ.
13 Nevada State Bar No. 12963
14 mcf@jimmersonlawfirm.com
15 415 South Sixth Street, Suite 100
16 Las Vegas, Nevada 89101
17 Attorneys for Plaintiffs

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION AND STATEMENT OF FACTS**

20 In an effort to pull the wool over this Court's eyes and in an attempt to delay the
21 inevitable, Pardee still maintains the ludicrous position that the Plaintiffs are (1) not
22 entitled to attorney's fees as special damages and (2) not the prevailing party in this
23 instant action. As has been the case throughout the course of the extensive post-
24 judgment motion practice initiated by Pardee, Plaintiffs do not wish to beat the proverbial
25 dead horse and waste this Court's precious time and energy. However, based upon
26 Pardee's incessant need to continue to distort facts already briefed and assert claims
27 already adjudicated, Plaintiffs are left with no choice but to rebut Pardee's baseless
28 contentions.

Pardee's request for this Court to amend its findings and judgment in this case is
based on two (2) separate contentions. First, Pardee argues that Plaintiffs are not able
to recover their attorney's fees as special damages because this case was a "standard
breach of contract case." See Motion at 10:27-28. Secondly, Pardee contends that

1 this Court erred in omitting language reflecting Plaintiffs' purported "failure" to recover
2 any additional claimed commissions from Pardee, which they allege to be the "most
3 substantial issue of the case" in Pardee's perspective. See Motion at 2:3-6.

4 In regards to Plaintiffs' entitlement to attorney's fees as special damages, this
5 Court has extensively addressed and considered the very same arguments that Pardee
6 once again attempts to rehash. The basis upon which Pardee's contentions is made is
7 that the Court did not have adequate time to consider the *Sandy Valley* and *Liu* decisions
8 prior to entering its Findings of Fact, Conclusions of Law, and Order ("FFCLO") on June
9 25, 2014, attached hereto as **Exhibit 1**. As was referenced in Plaintiffs' Opposition to
10 Pardee's instant Motion, the Court's FFCLO specifically cites the *Liu* case. Even if the
11 parties did not have the chance to "fully brief" *Liu* for the Court, the Court took it upon
12 itself to thoroughly review the case and incorporate the findings within *Liu* in the
13 subsequent FFCLO of June 25, 2014. The Court was not blind to the Nevada Supreme
14 Court's decision while this case was taken under submission after a three (3) week trial,
15 commencing on October 23, 2013 and ending on December 13, 2013. The Court read
16 the *Liu* decision and, based upon the holdings therein, concluded that the Plaintiffs were
17 entitled to include a portion of its attorneys' fees as special damages.

18 Pardee, in attempting to rebut the foregoing, argues that their Motion to Amend is
19 appropriate to correct "manifest legal or factual errors [...] or to notify the court of an
20 intervening change in controlling law." See Reply at 10:14-15. To support such an
21 argument, Pardee claims that attorney's fees cannot be recovered as special damages
22 in a routine breach-of-contract case. As was briefed in Plaintiffs' Opposition, Pardee has
23 improperly misapplied the *Liu* discussions by claiming that recovery of attorney's fees as
24 special damages in a breach of contract claim may only be recovered when the breach
25 causes the former party to incur fees in a legal dispute brought by a third party. At no
26 point in the discussion in *Liu* does the Court suggest that the three (3) specific scenarios
27 are the only circumstances where an award of fees as special damages would be
28 allowed. In fact, *Liu*, citing *Sandy Valley*, confirmed that attorney fees may be recovered

1 when they are pled as such pursuant to NRCP 9(g) and are proven to be a "natural and
2 proximate consequence of the injurious conduct." See *Liu* 321. P.3d at 878. Plaintiffs'
3 Second Amended Complaint adequately pled Plaintiffs' claim for attorney fees as special
4 damages, which was subsequently proven at trial. As such, the Plaintiffs are clearly
5 entitled to receive an award of attorney's fees as special damages.

6 A cursory review of the Plaintiffs' Complaint is enough for this Court to determine
7 that Pardee's injurious conduct naturally and proximately caused Plaintiffs' expenditure
8 of attorney's fees. Paragraphs 8 through 15 of the Complaint detail how, over the course
9 of twenty (20) months, Plaintiffs tried in vain to retrieve the information and documents
10 owed to them under the September 1, 2004 Commission Letter Agreement. See
11 Plaintiffs' Complaint, dated December 29, 2010, attached hereto as **Exhibit 2**. After
12 numerous attempts to procure said information that they were rightfully and legally
13 entitled to under the Commission Agreement, the Plaintiffs had no other recourse but to
14 hire counsel, file suit, and use the power of discovery and appeal to the Court to compel
15 an accounting and the production of the information already owing to Plaintiffs, which
16 was subsequently granted by this Court in its May 16, 2016 Final Judgment. Pardee's
17 actions were the direct and proximate cause of Plaintiffs' incurring attorney's fees in this
18 action and, based on that cause and effect, Plaintiffs are entitled to recoup those fees as
19 special damages.

20 The second basis for Pardee requesting this Court to amend its judgment is that
21 the Plaintiffs were not the prevailing party in this action. No matter how hard Pardee tries
22 to rewrite history and distort the record, this Court's FFCLO and its May 16, 2016
23 Judgment, attached hereto as **Exhibit 3**, speak for themselves. It is clear to any lay
24 person, let alone this distinguished Court, that each of the aforementioned documents
25 are replete with language indicating that Plaintiffs prevailed on each of the three (3)
26 causes of action they set forth in their Complaint and subsequent Amended Complaints
27 thereafter. Over the course of the litigation, Plaintiffs, despite Pardee's erroneous
28 statements to the contrary, never asked this Court to award them a figure of \$1.8 million

1 in lost future commissions or any permutation of said amount. This case was about
2 gaining information and, as discussed *inter alia*, the Plaintiffs were forced to file a lawsuit
3 only because of the consistent and willful refusal of Pardee to keep Plaintiffs reasonably
4 informed as the Commission Agreement required during the course of Pardee's
5 development of Coyote Springs. Only if it was discovered that Plaintiffs believed that
6 Pardee had exercised its option to acquire additional land outside of the boundaries of
7 the original takedown of properties, through an accounting, additional commissions may
8 have been due.

9 Pardee's reliance on Plaintiffs' NRCP 16.1 Disclosures is misguided to say the
10 least. As this Court made very clear during the most recent hearing on January 15, 2016,
11 a party may initiate a "theory" during discovery but, over the course of litigation, that
12 theory may either change or, in some cases, be totally abandoned. See January 15,
13 2016 Hearing Transcript at 76:8-24, attached hereto as **Exhibit 4**. Neither party
14 introduced any of these disclosures into evidence at trial, nor did Pardee ask the Court
15 to review 16.1 disclosures at any time before, during, or after trial. *Id.* Absent from
16 Pardee's Reply in Support of their Motion to Amend Judgment is any rebuttal to this
17 Court's position at the January 15, 2016 Hearing as it pertains to who was the prevailing
18 party. The Court made crystal clear to both sides that this case was centered on a claim
19 for information and not on some phantom claim for lost future commissions. *Id.* at 76:8-
20 24, 102:5-15. In essence, what Pardee is attempting to do is use a hypothetical damage
21 figure, which was provided to Pardee, only after a motion was filed by Pardee
22 demanding the same, as somehow evidencing that Plaintiffs requested and were
23 entitled to lost future commissions. Nothing could be further from the truth and the Court's
24 own statements at the most recent hearing prove Plaintiffs' contentions and rebuttals to
25 Pardee's erroneous allegations.

26 Based upon the foregoing analysis, it is clear that Pardee's instant Motion is just
27 another attempt by Pardee to delay the inevitable and waste this Court's time. Pardee is
28 using exhaustive post-judgment motion practice to delay an award that is rightfully owed

1 to Plaintiffs in the amount of \$141,500.00. In order to make a statement to Pardee and
2 put a stop to this nonsense once and for all, this Court should grant Plaintiffs'
3 Countermotion for Attorney's Fees and Costs in light of Pardee's frivolous and erroneous
4 filing of its Motion to Amend Judgment. Pardee's recent actions are nothing more than
5 delay tactics, disguised as motion practice, so that they can somehow form a foundation
6 upon which to file an appeal. Such actions are unwarranted to say the least and, as such,
7 this Court should grant Plaintiffs' Countermotion in light of the same.

8 II. LEGAL ARGUMENT

9 EDCR 7.60(b) provides in relevant part as follows:

10 The court may, after notice and an opportunity to be heard, impose upon
11 an attorney or a party any and all sanctions which may, under the facts
12 of the case, be reasonable, **including** the imposition of fines, **costs or**
attorney's fees when an attorney or a party **without just cause**:

- 13 (1) Presents to the court a motion or an opposition to a motion which is
14 **obviously frivolous, unnecessary or unwarranted.**
15 (2) Fails to prepare for a presentation.
16 (3) So **multiplies** the proceedings in a case as to increase costs
unreasonably and **vexatiously.**
17 (4) Fails or refuses to comply with these rules.
18 (5) Fails or refuses to comply with any order of a judge of the court.
(Emphasis added).

19 In addition, NRS 18.010 provides in relevant part as follows:

20 In addition to the cases where an allowance is authorized by specific
21 statute, the court may make an allowance of attorney's fees to a
prevailing party:

22 (a) When he has not recovered more than \$20,000; or

23 (b) Without regard to the recovery sought, when the court finds that the
24 claim, counterclaim, cross-claim or third-party complaint or defense of
25 the opposing party was brought or **maintained without reasonable**
26 **ground or to harass the prevailing party.** The court shall liberally
27 construe the provisions of this paragraph in **favor of awarding**
28 **attorney's fees in all appropriate situations.** It is the intent of the
Legislature that the **court award attorney's fees** pursuant to this
paragraph and impose sanctions pursuant to Rule 11 of the Nevada
Rules of Civil Procedure in **all appropriate situations to punish for and**
deter frivolous or vexatious claims and defenses because such claims

1 and defenses overburden limited judicial resources, hinder the timely
2 resolution of meritorious claims and increase the costs of engaging in
3 business and providing professional services to the public.
(Emphasis added).

4 Based upon the foregoing, this Court can easily determine that Pardee's entire
5 Motion to Amend Judgment is vexatious, frivolous and unwarranted. The Court has
6 extensively heard, addressed and adjudicated of the very same arguments that Pardee
7 attempts to rehash in its instant Motion. The *Liu* case was specifically cited in this Court's
8 FFCLO and is not meant to serve as exhaustive list of all cases in which a party can
9 claim attorney's fees as special damages. Pardee's injurious actions, which were
10 enumerated in this Court's FFCLO, were the direct and proximate causes of the Plaintiffs
11 seeking counsel to file suit and compel Pardee to comply with the Commission
12 Agreement the parties had entered into. As such, Plaintiffs are entitled to receive
13 attorney's fees as special damages, which were specifically pled in the Complaint and
14 Amended Complaints on file with this Court.

15 Moreover, Pardee has continuously and repeatedly maintained the position that
16 Plaintiffs were not the prevailing party in this action. This Court's own statements to the
17 contrary at the most recent hearing, which were outlined in great detail in Plaintiffs'
18 Opposition to Pardee's instant Motion, speak for themselves. Pardee's "win-at-all-cost"
19 mindset has caused the Plaintiffs to incur an unnecessary amount of expenses, not only
20 to defend against the instant Motion to Amend Judgment, but also the other slew of post-
21 judgment motion practice initiated by Pardee. In consideration of the same, Plaintiffs are
22 requesting that this Court grant their Countermotion for Attorney's Fees and Costs in the
23 amount of \$6,170.00 pursuant to NRS 18.010 and EDCR 7.60.

24 With respect to determining the reasonableness of counsel's services, certain
25 factors must be addressed, known as the *Brunzell* factors. *Brunzell v. Golden Gate*
26 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). As to the qualities of the advocate, the
27 James J. Jimmerson, Esq. is an AV rated, Preeminent Lawyer, with many further
28 accolades. As to the "character and quality of the work performed," we ask the Court to
find our work in this matter to have been adequate, both factually and legally, in which

1 we have diligently reviewed the applicable law, explored the relevant facts, and have
2 properly applied one to the other. Finally, as to the result reached, this remains to be
3 determined when the Court rules on the present matter but, based on this Court's prior
4 statements at the hearing on January 15, 2016, the Plaintiffs expect Pardee's Motion to
5 be summarily denied. As was the case before, during and after trial, in preparation of the
6 drafting of Plaintiffs instant Opposition, the case law was thoroughly researched and
7 briefed, the facts were thoughtfully presented, and ample substantiation was provided.
8 Based on the foregoing, the Court should award Plaintiffs their attorney's fees in the
9 amount \$6,170.00 pursuant to NRS 18.010 and EDCR 7.60 for having to defend against
10 such an unwarranted and baseless Motion on the part of Pardee.

11 **III. CONCLUSION**

12 For the reasons stated herein, Plaintiffs respectfully request this Court grant their
13 Countermotion for Attorney's Fees and Costs incurred herein in the amount of \$6,170.00
14 for having to defend against the meritless and baseless filing of Pardee's Motion to
15 Amend Judgment.

16 DATED this 2nd day of August, 2016.

17 Respectfully submitted by:

18 THE JIMMERSON LAW FIRM, P.C.

19 By: Michael C. Flaxman
20 JAMES J. JIMMERSON, ESQ.
21 Nevada State Bar No. 000264
22 MICHAEL C. FLAXMAN, ESQ.
23 Nevada State Bar No. 12963
24 415 South Sixth Street, Suite 100
25 Las Vegas, Nevada 89101
26 Attorneys for Plaintiffs
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE JIMMERSON LAW FIRM, P.C., and that on this 2 day of August, 2016, I caused a document entitled **PLAINTIFFS' REPLY IN SUPPORT OF COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS** to be served as follows:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;
- ☒ by hand-delivery with signed Receipt of Copy.

To the parties listed below at the address, email address, and/or facsimile number indicated below:

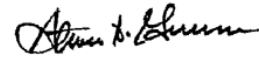
Pat Lundvall, Esq.
Rory T. Kay, Esq.
MCDONALD CARANO WILSON, LLP
2300 W. Sahara Ave., Suite 1000
Las Vegas, Nevada 89102
Attorneys for Defendant



An Employee of The Jimmerson Law Firm, P.C.

Exhibit 1

Exhibit 1


CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 JAMES WOLFRAM and
5 WALT WILKES,

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

6 Plaintiffs,

Trial Date: October 23, 2013

7 vs.

8 PARDEE HOMES OF NEVADA,

9 Defendant.

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 I. FINDINGS OF FACT

24 A. THE PARTIES

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

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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
11 keep each of you reasonably informed as to all matters relating to the
12 amount and due dates of your commission payments.

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

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

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.
24
25
26
27
28

KERRY L. EARLEY
DISTRICT JUDGE
DEPARTMENT IV

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

on the date they are personally delivered or received by the overnight courier or postmarked.

19. Broker Commissions and Finder Fees.

Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller that, except as provided below, no broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any of such transactions. In the event of any such claims for additional broker's or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then Buyer shall indemnify, hold harmless and defend Seller from and against such claims if they shall be based upon any statement or representation or agreement by Buyer, and Seller shall indemnify, hold harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller. Notwithstanding the foregoing, upon and subject to the close of escrow for the Purchase Property or any Option Parcel, Buyer shall pay any finder fee owed to General Realty Group (Walt Wilkes) and Award Realty Group (Jim Wolfram) pursuant to a separate agreement; said fee shall be split equally.

20. Tax Deferred Exchange.

The parties acknowledge that Seller may desire to locate suitable property for the purpose of arranging for and facilitation a tax-deferred exchange of real property. Buyer shall cooperate fully with such exchange; provided, however, that (i) Buyer shall not be required to take title to any other real property, (ii) Seller shall indemnify and hold Buyer harmless from and against any claim, demand, cause of action, liability or expense (including attorneys' fees) in connection therewith, including (without limitation) any increase in escrow fees or charges resulting from such exchange, and (iii) Seller acknowledges and agrees that Buyer has not made and will not make any representation or warranty as to the effectiveness for tax purposes of any said exchange.

21. Assignment.

Neither party may assign its rights under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided,

however, that Seller's consent shall not be necessary with respect to an assignment by Buyer of its rights hereunder to a corporation, limited liability company, partnership or joint venture of which Buyer or its parent company owns not less than sixty percent (60%) of the aggregate ownership interest in each of net profits, net losses, distributions and capital, provided that Buyer shall control the major decisions concerning the development and sale of the Buyer's Property on behalf of such transferee. In connection with any said approved assignment, the assignee shall assume the assignor's obligations hereunder, but the assignor shall nevertheless remain liable therefor. Notwithstanding any provision to the contrary in this paragraph 10, Seller may assign this Agreement in whole or in part and from time to time during the term hereof to Coyote Springs Land Development Corporation, a Nevada corporation ("CSLD"), or such other affiliated entity so long as Harvey Whittemore retains management control; provided, that concurrently with such assignment Seller conveys that portion of the Purchase Property or the Option Property to CSLD or such other successor entity and Seller remains liable for the construction of the Commercial Improvements.

22. Marketing.

Commencing the Initial Purchase Closing and continuing during the term of this Agreement, Buyer and Seller shall each contribute to a joint marketing fund in an amount of Five Hundred Thousand Dollars (\$500,000) per year. Such funds shall be expended for the benefit of the Coyote Springs Master Development as a whole, as approved by a committee consisting of members representing both parties (the "Marketing Committee"). The initial Marketing Committee shall consist of Harvey Whittemore and Jon Lash. In addition, Buyer and Seller shall each fund and operate its individual marketing program concerning its project(s) constructed within the Entire Site.

23. Attorneys Fees.

In the event it becomes necessary for either party to bring an action pursuant to this Agreement, the prevailing party shall be entitled to all costs and expenses incurred in the prosecution or defense of such action, including reasonable attorneys' fees.

24. Time of Essence.

Time is expressly made the essence of this Agreement and each and every provision hereof of which time of performance is a factor.

25. Incorporation of Prior Agreements.

This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter (including the Original Agreement) shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

26. Interpretation.

The language in all parts 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 Buyer or Seller. Unless "business day" is specified, the term "day" means a calendar day. The term "business day" means any day other than a Saturday, Sunday or Federal or State of Nevada holiday. If the last day for any act falls on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.

27. Non-Disclosure of Transaction.

From the date hereof to the date which is one year following the last Option Closing hereunder or the termination of Buyer's Option, neither party shall disclose to the general public or media any information regarding this Agreement and the terms and provisions thereof without the other party's prior written permission except as otherwise legally required. However, nothing in this paragraph shall prohibit or restrict either party from disclosing such information to its attorneys, accountants, lenders, engineers and other consultants as deemed necessary in connection with the performance of this Agreement. Each party further agrees that it shall not disclose the economic terms of this Agreement, such as price or terms of the purchase, without the prior written permission of the other party. Notwithstanding the foregoing, Buyer shall have the right to deliver a redacted version of this Agreement (with the economic terms whited-out) to a proposed member of the Venture described in Section 8(e) above.

28. Counterparts.

This Agreement and any amendment or supplements to it, and the Escrow Instructions herein referred to, may be executed in counterparts, and all counterparts together shall be construed as one document. Signatures may be by facsimile provided that original signatures are delivered to the intended party by personal delivery or by commercial courier for delivery on the next business day.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day and year first above written.

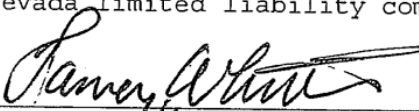
PARDEE HOMES OF NEVADA, a Nevada
corporation

By _____
Its _____

By _____
Its _____

"Buyer"

COYOTE SPRINGS INVESTMENT LLC,
a Nevada limited liability company

By 
Its Manager

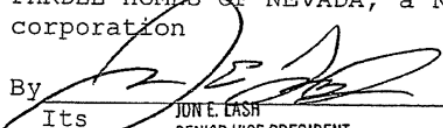
"Seller"

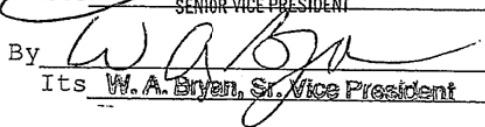
23. Counterparts.

This Agreement and any amendment or supplements to it, and the Escrow Instructions herein referred to, may be executed in counterparts, and all counterparts together shall be construed as one document. Signatures may be by facsimile provided that original signatures are delivered to the intended party by personal delivery or by commercial courier for delivery on the next business day.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day and year first above written.

PARDEE HOMES OF NEVADA, a Nevada
corporation

By 
Its JUNE E. LASH
SENIOR VICE PRESIDENT

By 
Its W. A. Bryan, Sr. Vice President

"Buyer"

COYOTE SPRINGS INVESTMENT LLC,
a Nevada limited liability company

By _____
Its _____

"Seller"

LIST OF EXHIBITS

- A. Description of Entire Site
 - A-1 Assuming BLM Reconfiguration has not occurred
 - A-2 Assuming BLM Reconfiguration has been completed
- B. Map of Purchase Property
- C. Map of Option Property
 - C-1 Assuming BLM Reconfiguration has not occurred
 - C-2 Assuming BLM Reconfiguration has been completed
- D. Map of Initial Developed Parcel and Phasing Plan
- E. Option Property Prices
- F. Memorandum of Option Agreement
- G. Form of Deed
- H. Declarations
- I. Map of Commercial Property
 - I-1 Assuming BLM Reconfiguration has not occurred
 - I-2 Assuming BLM Reconfiguration has been completed
- J. Description of Commercial Improvements
- K. Master Declaration
- L. List of Property Contracts
- M. Intentionally omitted.
- N. Intentionally omitted.
- O. FIN 46 Questionnaire
- P. Deed of Trust
- Q. Form of Remainder Deed
- R. Declarations Memorandum
- S. Jointly Financed Improvements

MAP OF ENTIRE SITE

restatedopag032905cde2.doc

EXHIBIT "A"

PH 000048

JA013320

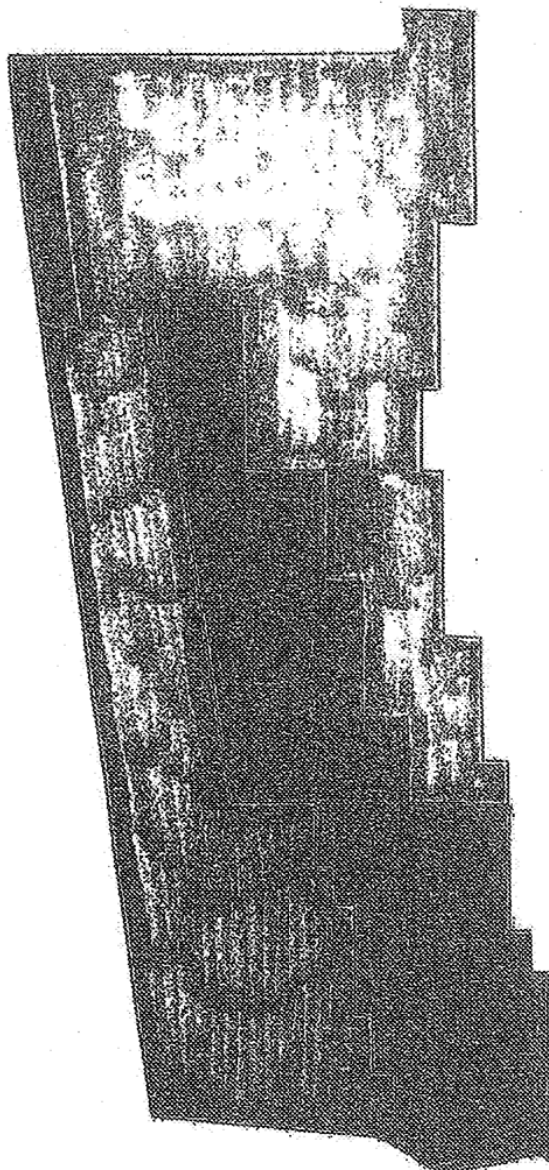
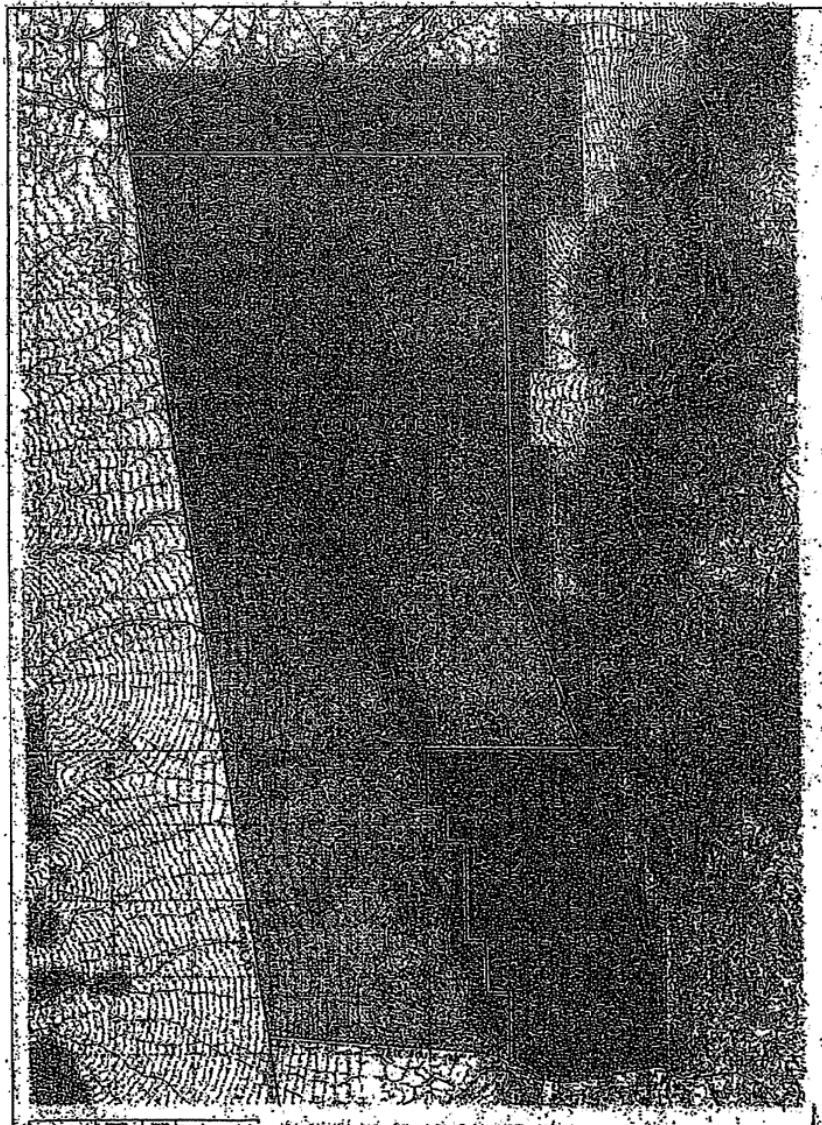


Exhibit A-1

PH 000049

JA013321



COYOTE SPRINGS INVESTMENT
FUTURE LAND STATUS

LEGEND

Exhibit A-2

PH 000050

JA013322

MAP OF PURCHASE PROPERTY
And
Legal Description

All that certain real property situate in Township 13 South,
Range 63 East, M.D.M., Clark County, Nevada, described as
follows:

Section 20: Lots 1, 8 and 9; and

Section 21: Lots 1, 2, 5 and 7, N $\frac{1}{4}$, and N $\frac{1}{4}$ SE $\frac{1}{4}$.

EXHIBIT "B"

restatedopag032905cds2.doc

PH 000051

JA013323

OF THE MOUNT. DIABLO MERIDIAN, NEVADA
EVALUATED DIARRIAS

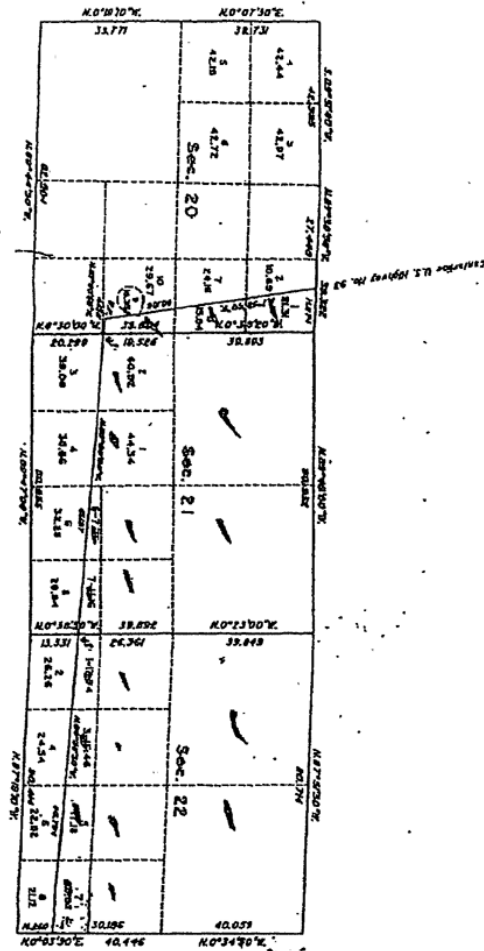


Exhibit B-1

PH 000052

JA013324

MAP OF OPTION PROPERTY

EXHIBIT "C"

restatedopag012905cds2.doc

PH 000053

JA013325

Parcel boundaries and phasing may be modified during development. As used on this Exhibit, the term Traditional Residential Neighborhoods means the Production Residential Property and the Option Property is that portion of the Production Residential Property located outside the boundary of the Initial Property.

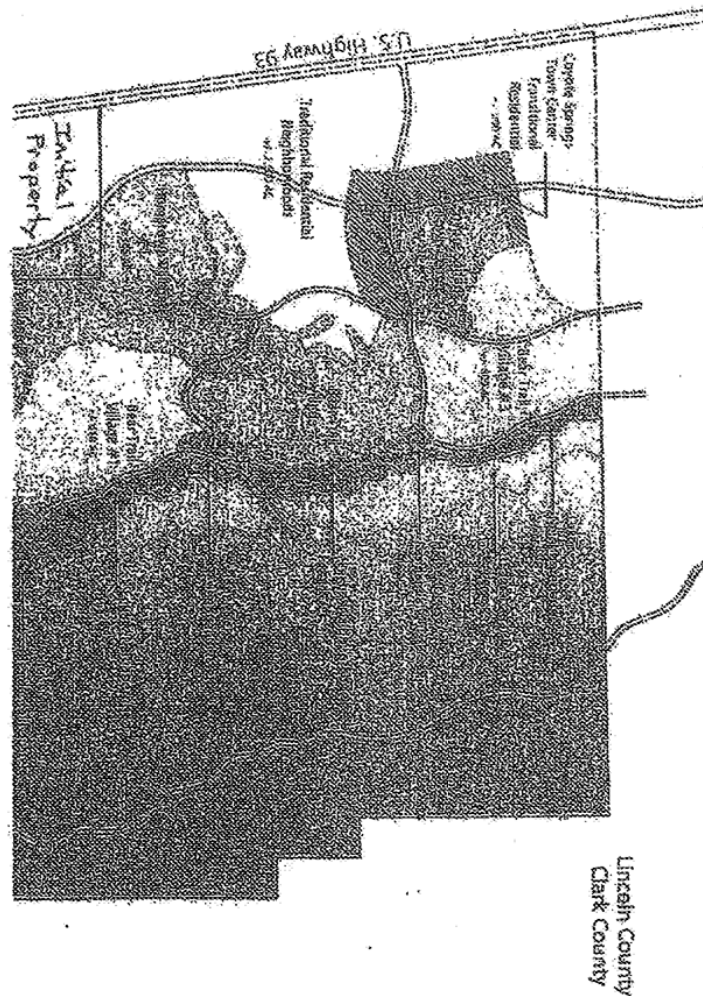


Exhibit C-1

PH 000054

JA013326

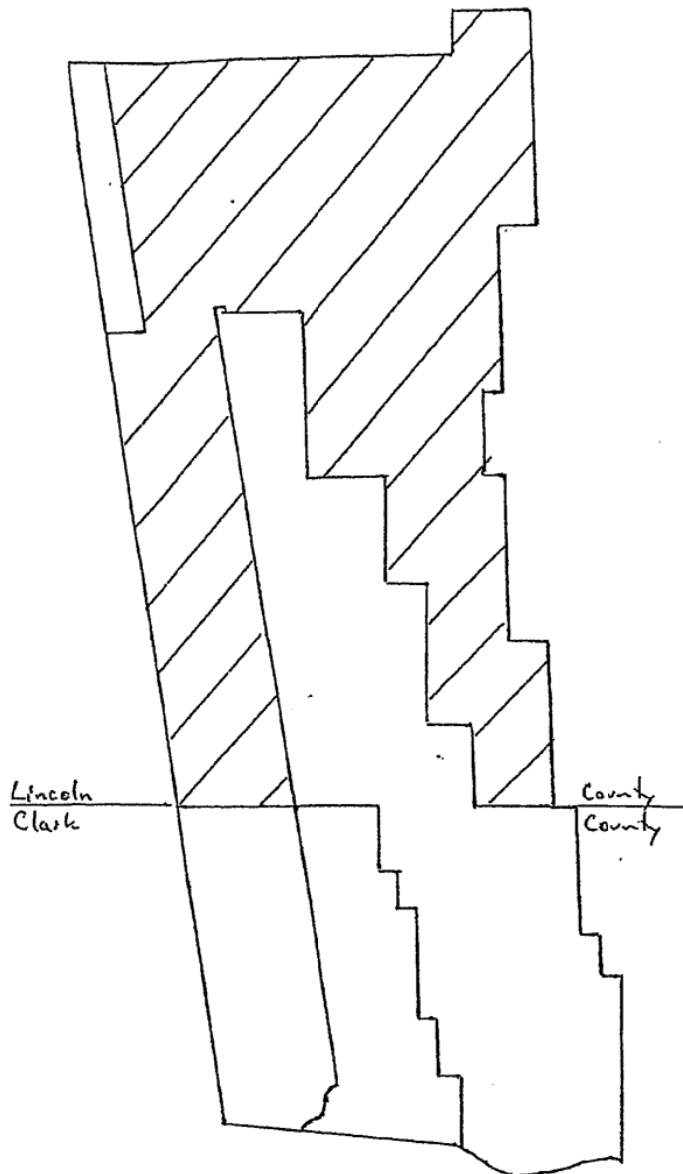


Exhibit C-1

The Option Property is that portion of the cross-hatched area designated as Production Residential Property or Traditional Residential Neighborhood during the joint planning process.

PH 000055

JA013327

Notes: When shown the following conditions apply: new configuration is to be determined in line of any approval

Parcel boundaries and phasing may be modified during development. As used on this Exhibit, the term Traditional Residential Neighborhoods means the Production Residential Property and the Option Property is that portion of the Production Residential Property located outside the boundary of the Initial Property.

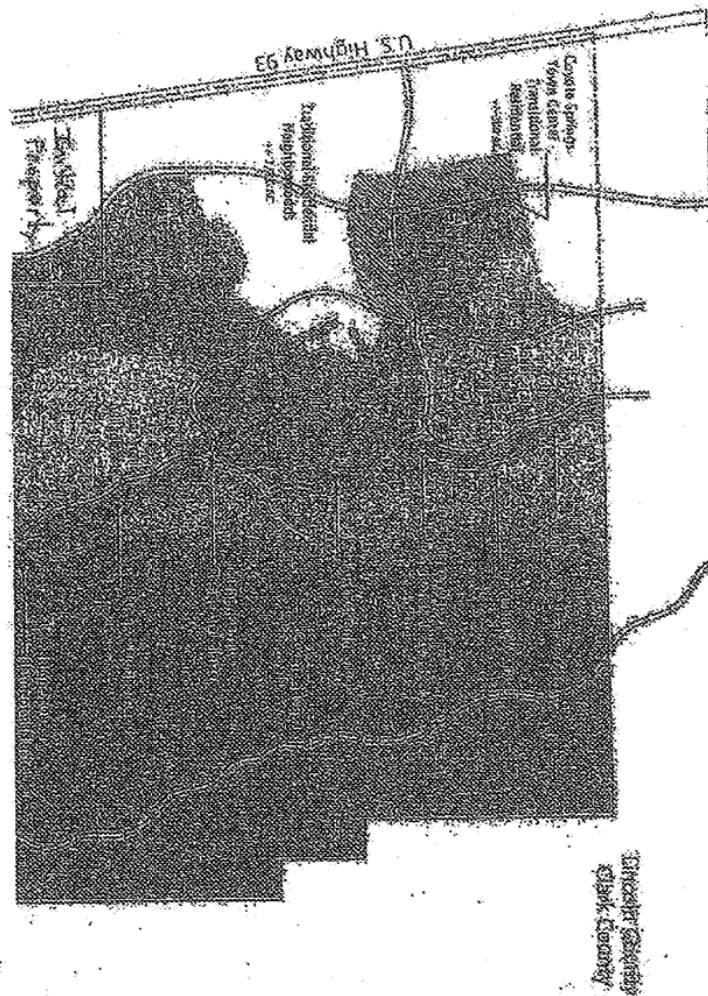
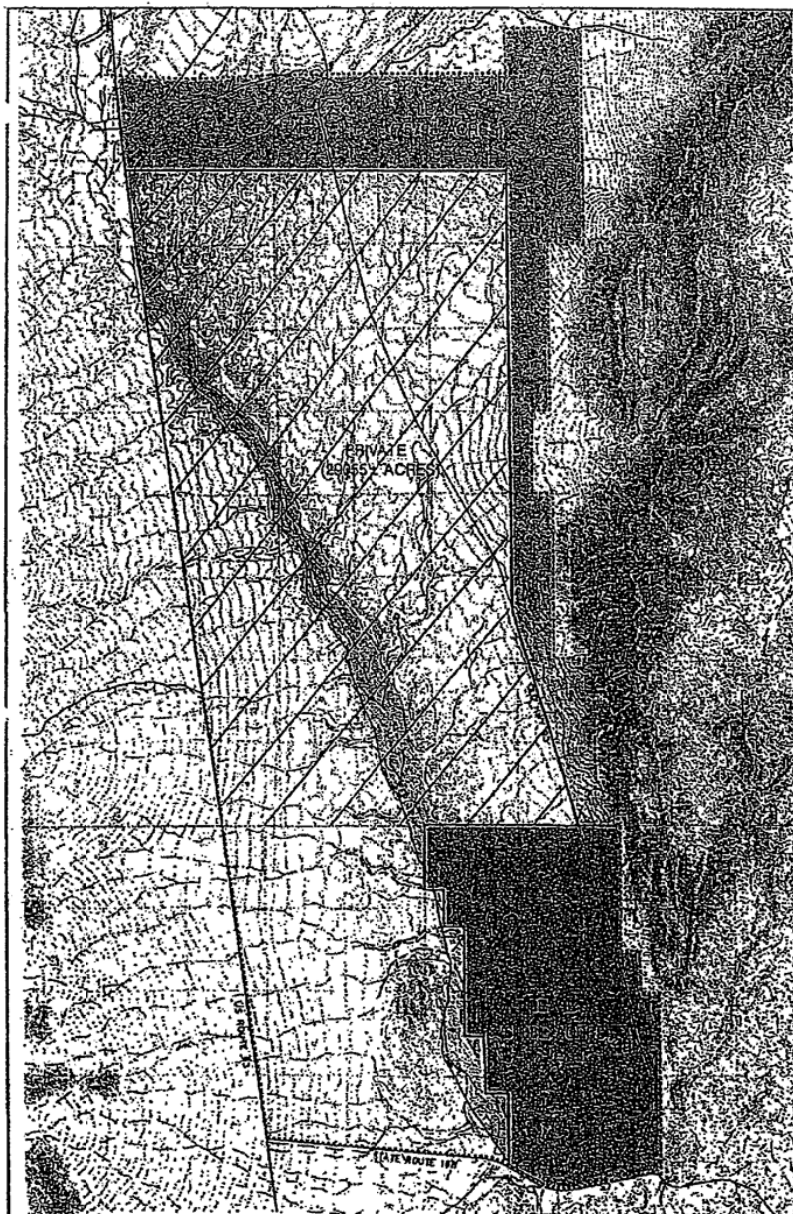


Exhibit C-2

PH 000056

JA013328



The Option Property is that portion of the diagonal lined area that is designated as Production Residential Property (Traditional Residential Neighborhood) during the joint planning process.

COYOTE SPRINGS INVESTMENT FUTURE LAND STATUS

Exhibit C-2

- LEASE (LAND MANAGEMENT CO.)
- LEASE (LAND PLANT CO.)
- PRIVATE LAND
- STATE (MAY BE EXCLUDED FOR FUTURE PLANNING)
- Resource Concepts, Inc.

PH 000057

JA013329

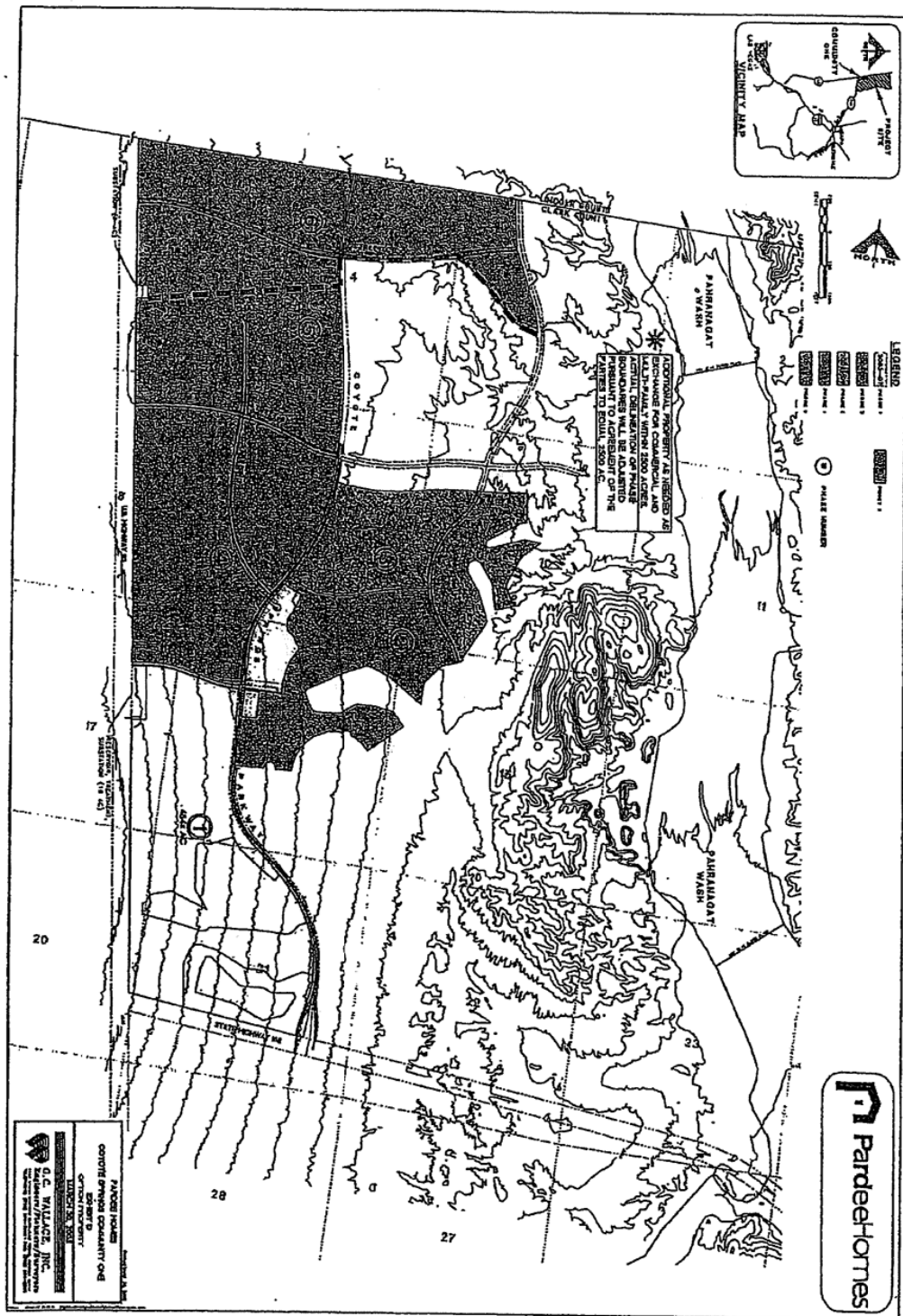
MAP OF INITIAL DEVELOPED PARCEL AND PHASING PLAN

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EXHIBIT "D"

PH 000058

JA013330



As used on this Exhibit the term Traditional Residential Property means the Production Residential Property which is also described as the Option Property together with the Purchase Property. The Initial Developed Parcel is located in the southern portion of the area marked Traditional Residential Neighborhood and this parcel is Phase 1 of the Production Residential Property. Buyer anticipates the development phases of the Production Residential Property to start along the southerly boundary and move northward to adjacent areas.

(Buyer hereby agrees to pay for the survey and the cost of the survey shall be borne by the Buyer)

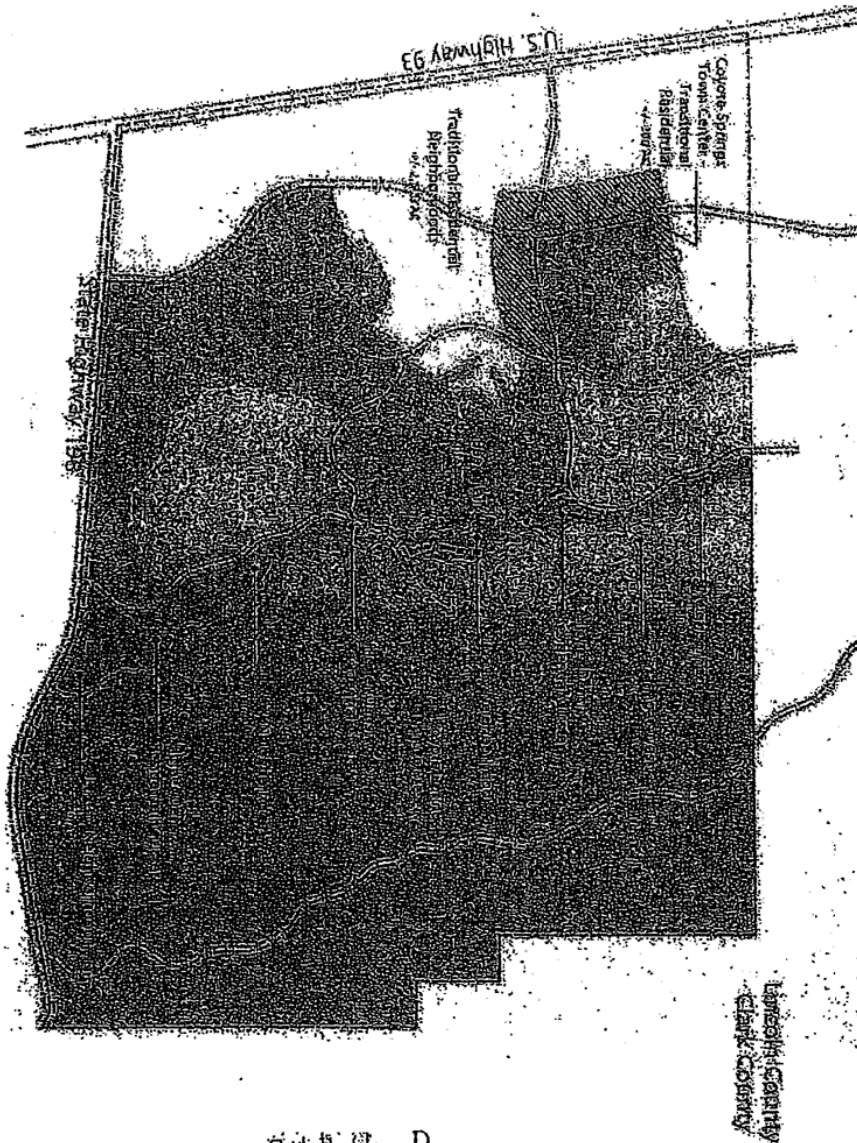


Exhibit D

PH 000060

JA013332

OPTION PROPERTY PRICES

[SEE ATTACHED CHART]

restatedopag032905cds2.doc

EXHIBIT "E"

PH 000061

JA013333

COYOTE SPRINGS OIL PAYMENT SCHEDULE	
YEAR	PRICE PER ACRE
0-5	\$40,000.00
6	\$42,800.00
7	\$45,700.00
8	\$48,001.00
9	\$52,432.00
10	\$56,102.00
11	\$60,310.00
12	\$64,033.00
13	\$68,086.00
14	\$74,323.00
15	\$80,542.00
16	\$86,885.00
17	\$93,044.00
18	\$101,459.00
19	\$109,578.00
20	\$118,342.00
21	\$128,097.00
22	\$138,958.00
23	\$152,205.00
24	\$165,523.00
25	\$180,006.00
26	\$198,656.00
27	\$214,847.00
28	\$234,720.00
29	\$258,432.00
30	\$280,162.00
31	\$307,467.00
32	\$337,445.00
33	\$370,546.00
34	\$408,454.00
35	\$448,034.00
36	\$491,897.00
37	\$542,247.00
38	\$597,765.00
39	\$658,098.00
40	\$725,623.00

HW
JEL

EXHIBIT "E"

restatedopag032905cds2.doc

PH 000062

JA013334

FORM OF MEMORANDUM OF OPTION

EXHIBIT "F"

PH 000063

JA013335

A portion of APN: 009-00-001-004

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

PARDEE HOMES OF NEVADA
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024
ATTN: MR. JON E. LASH

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT ("Memorandum") is entered into as of the 1st day of April, 2005, pursuant to an Amended and Restated Option Agreement ("Option") by and between COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability company ("Optionor"), and PARDEE HOMES OF NEVADA, a Nevada corporation ("Optionee"), hereby agree as follows:

1. Optionor hereby grants to Optionee an option to purchase certain real property located in the County of Clark, State of Nevada, which property is more fully described in Exhibit A attached hereto and incorporated herein (the "Option Property").

2. The option to purchase shall commence on the above date and shall terminate, to the extent not exercised, on the fortieth (40th) anniversary of the above date, or as otherwise set forth in the Option Agreement and shall otherwise be subject to the terms and conditions contained therein.

3. As a result of the recordation of this Memorandum that certain Memorandum of Option Agreement by and between Optionor and Optionee dated September 10, 2004, and recorded on September 10, 2004 in Book 20040910, as Instrument No. 0004064, Official Records, Clark County, Nevada, is hereby terminated and of no further force or effect.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum of Option Agreement as of the day and year first above written.

COYOTE SPRINGS INVESTMENT LLC,
a Nevada limited liability company

By: _____
Robert R. Derck, Chief Operating Officer

"Optionor"

CDS/ph
032905/ccoptionmm.wpd/6

1

PH 000064

JA013336

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: _____
Its _____

"Optionee"

CDS/ph
032905/ccoptionmm.wpd/6

2

PH 000065

JA013337

Exhibit A

Legal Description of Option Property

Those certain lots or parcels of land that are or become designated by mutual agreement of Optionor and Optionee as Production Residential Property (as defined in the Option) located within Township 13 South, Range 63 East, M.D.M., Clark County, Nevada, described as follows:

Sec. 2, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 3, all;
Sec. 4, all;
Sec. 5, Lots 1, 2, 5, 8, 10, 11, and 18, SE $\frac{1}{4}$ NB $\frac{1}{4}$, and E $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 8, Lots 1, 2, 9, 10, 11 and 18, E $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 9, all;
Sec. 10, all;
Sec. 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
Sec. 14, W $\frac{1}{2}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 15, all,
Sec. 16, all,
Sec. 17, Lots 1, 4, 5, and 8;
Sec. 22, Lots 1, 3, 5, and 7, N $\frac{1}{2}$, N $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 23, Lots 1, 3, 5, and 7, SE $\frac{1}{4}$ NB $\frac{1}{4}$, W $\frac{1}{4}$ NB $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{4}$ SW $\frac{1}{4}$; and
Sec. 26, Lot 1.

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2005, by Robert R. Derck, as Chief Operating Officer of COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability company.

Notary Public

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2005, by _____, as _____ of PARDEE HOMES OF NEVADA, a Nevada corporation.

Notary Public

A portion of APNs: 008-201-03;
008-201-04; 008-201-05; and
008-201-07

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

PARDEE HOMES OF NEVADA
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024
ATTN: MR. JON E. LASH

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT ("Memorandum") is entered into as of the 1st day of April, 2005, pursuant to an Amended and Restated Option Agreement ("Option Agreement") by and between COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability company ("Optionor"), and PARDEE HOMES OF NEVADA, a Nevada corporation ("Optionee"), hereby agree as follows:

1. Optionor hereby grants to Optionee an option to purchase certain real property located in the County of Lincoln, State of Nevada, which property is more fully described in Exhibit A attached hereto and incorporated herein (the "Option Property").
2. The option to purchase shall commence on the above date and shall terminate, to the extent not exercised, on the fortieth (40th) anniversary of the above date, or as otherwise set forth in the Option Agreement and shall otherwise be subject to the terms and conditions contained therein.
3. As a result of the recordation of this Memorandum, that certain Memorandum of Option Agreement by and between Optionor and Optionee dated September 4, 2004, and recorded on September 13, 2004 in Book 191, Page 130, as Instrument No. 123052, Official Records, Lincoln County, Nevada, is hereby terminated and of no further force or effect.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum of Option Agreement as of the day and year first above written.

COYOTE SPRINGS INVESTMENT LLC,
a Nevada limited liability company

By: _____
Robert R. Derck, Chief Operating Officer

"Optionor"

CDS/ph
032505/loptionmm.wpd/3

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: _____
Its _____

"Optionee"

CDS/ph
032505/lcoptionmun.wpd/3

Exhibit A

Legal Description of Option Property

Those certain lots or parcels of land that are or become designated by mutual agreement of Optionor and Optionee as Production Residential Property (as defined in the Option) located within Lincoln County, Nevada, described as follows:

Township 11 South, Range 63 East, M.D.M.:

Section 13, S½;
Section 19, that portion lying easterly of the westerly boundary of the transmission corridor, that boundary being ½ mile easterly of the centerline of U.S. Highway 93;
Section 20, all;
Section 21, all;
Section 22, all;
Section 23, all;
Section 24, all;
Section 25, all;
Section 26, all;
Section 27, all;
Section 28, all;
Section 29, all;
Section 30, that portion lying easterly of the westerly boundary of the transmission corridor, that boundary being ½ mile easterly of the centerline of U.S. Highway 93;
Section 31, that portion lying easterly of the westerly boundary of the transmission corridor, that boundary being ½ mile easterly of the centerline of U.S. Highway 93;
Section 32, all;
Section 33, all;
Section 34, all;
Section 35, all; and
Section 36, W½.

Township 12 South, Range 63 East, M.D.M.:

Section 1, Lots Three (3), Four (4), South Half (S½) of the Northwest Quarter (NW¼) and the Southwest Quarter (SW¼);
Section 2, Lots One (1) thru Four (4), South Half (S½) of the North Half (N½) and the South Half (S½);
Section 3, Lots One (1) thru Four (4), South Half (S½) of the North Half (N½) and the South Half (S½);
Section 6, that portion lying between the Centerline of U.S. Highway 93 and the Western boundary of the transmission corridor, that boundary being ½ mile Easterly of the Centerline of U.S. Highway 93, excluding that portion of the North Half (N½) of the North Half (N½) lying between the Centerline of U.S. Highway 93 and the Western boundary of the transmission corridor; and that portion lying Easterly of the Western boundary of the transmission corridor, that boundary being ½ mile Easterly of the Centerline of U.S. Highway 93;

Sections 7, 18, 19, 29, 30, 32 all lying Easterly of the Centerline of U.S. Highway 93;
Sections 5, 9, 16, 21, 28, 33, that portion lying Westerly of the Eastern boundary of the transmission
corridor, that boundary being 1 1/4 miles from the Centerline of U.S. Highway 93.

Section 8, all;

Section 10, all;

Section 11, all;

Section 12, West Half (W 1/2) of the West Half (W 1/2);

Section 13, West Half (W 1/2);

Section 14, all;

Section 17, all;

Section 20, all;

Section 23, North Half (N 1/2) and the Southeast Quarter (SE 1/4);

Section 24, West Half (W 1/2);

Section 25, all;

Section 26, East Half (E 1/2);

Section 36, all;

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2005, by Robert R. Derck, as Chief Operating Officer of COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability company.

Notary Public

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on _____, 2005, by _____, as _____ of PARDEE HOMES OF NEVADA, a Nevada corporation.

Notary Public

CDS/ph
032505/cooptionmm.wpd/3

A portion of APNs: 008-201-03;
008-201-04; 008-201-05; and
008-201-07

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

PARDEE HOMES OF NEVADA
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024
ATTN: MR. JON E. LASH

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT ("Memorandum") is entered into as of the 1st day of April, 2005, pursuant to an Amended and Restated Option Agreement ("Option Agreement") by and between COYOTE SPRINGS INVESTMENT LLC, a Nevada limited liability company ("Optionor"), and PARDEE HOMES OF NEVADA, a Nevada corporation ("Optionee"), hereby agree as follows:

1. Optionor hereby grants to Optionee an option to purchase certain real property located in the County of Lincoln, State of Nevada, which property is more fully described in Exhibit A attached hereto and incorporated herein (the "Option Property").

2. The option to purchase shall commence on the above date and shall terminate, to the extent not exercised, on the fortieth (40th) anniversary of the above date, or as otherwise set forth in the Option Agreement and shall otherwise be subject to the terms and conditions contained therein.

3. As a result of the recordation of this Memorandum, that certain Memorandum of Option Agreement by and between Optionor and Optionee dated September 4, 2004, and recorded on September 13, 2004 in Book 191, Page 130, as Instrument No. 123052, Official Records, Lincoln County, Nevada, is hereby terminated and of no further force or effect.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum of Option Agreement as of the day and year first above written.

COYOTE SPRINGS INVESTMENT LLC,
a Nevada limited liability company

By: _____
Robert R. Derck, Chief Operating Officer

"Optionor"

CDS/ph
032805/2ndloptionmm.wpd/1

PH 000073

JA013345

PARDEE HOMES OF NEVADA,
a Nevada corporation

By: _____
Its _____

"Optionee"

CDS/ph
032805/2ndloptionmm.wpd/1

Exhibit A

Legal Description of Option Property

Those certain lots or parcels of land that are or become designated by mutual agreement of Optionor and Optionee as Production Residential Property (as defined in the Option) located within Lincoln County, Nevada, described as follows:

[legal description to be added upon BLM reconfiguration]

MAP OF COMMERCIAL PROPERTY

restatedopag032905cds2.doc

EXHIBIT "I"

PH 000076

JA013348

Commercial Property - all
parcels within shaded area
except those designated
Traditional Residential
Neighborhoods (Production
Residential Property) during
the joint planning process.

Lincoln County

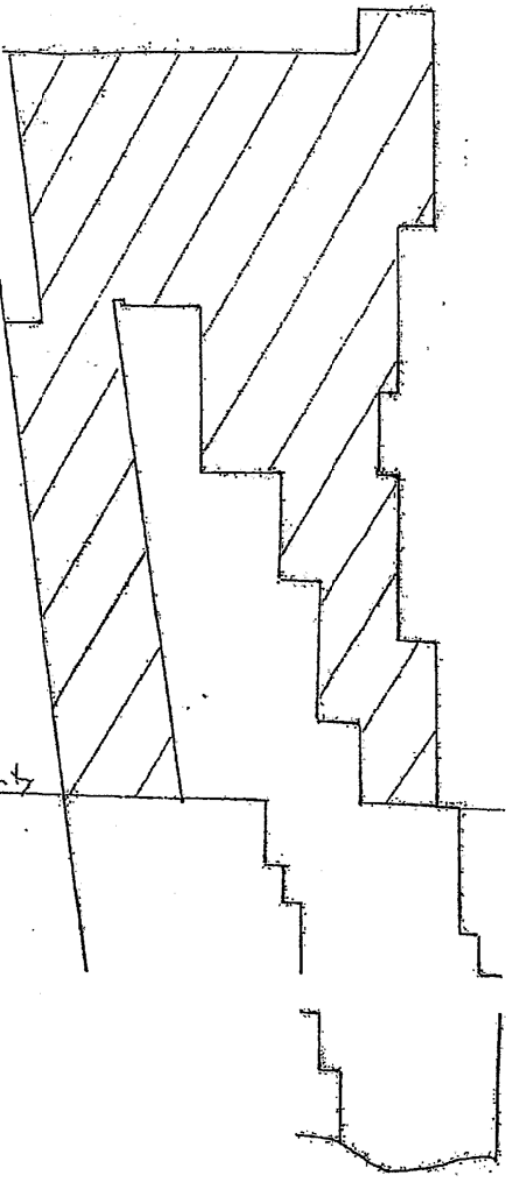


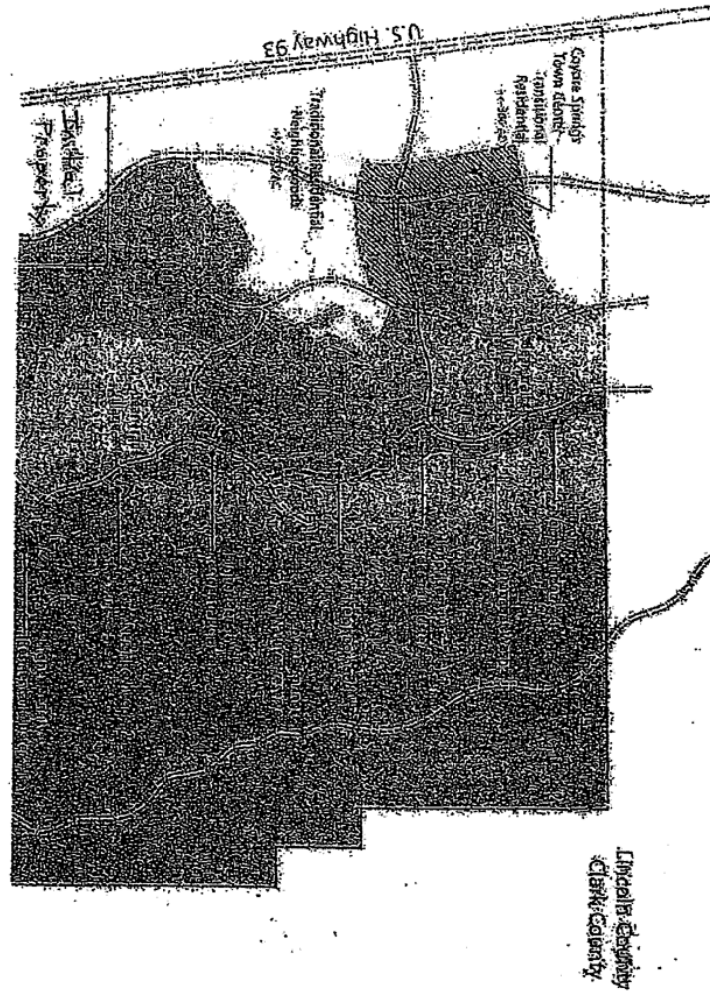
Exhibit E-1

PH 000077

JA013349

Parcel boundaries and phasing may be modified during development. Commercial Property means all parcels and uses except the Production Residential Property shown as Traditional Residential Neighborhoods on this Exhibit.

Scale: 1 inch equals 1/2 mile. Boundary lines are shown as dashed lines. All other lines are shown as solid lines.



CLARK COUNTY, VIRGINIA
COMPREHENSIVE ZONING MAP
EXHIBIT I - Map of Clark County, Virginia
CLARK COUNTY, VIRGINIA

Exhibit I-1

PH 000078

JA013350

Cape Royal
Orange County
Florida
U.S. Highway 93
Cape Royal
Transitional Residential
Tropical Islands
Neighborhoods

COGNATE SPIN. SCALING SYSTEM, INC.
COGNATE SPINNINGS
EXHIBIT - Map of Clark County, Nevada
March 2005
K85011112200505

JA013351

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

Electronically Filed
~~Feb 28 2018~~ 02:33 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 84 OF 88

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Attorneys for Appellant

Chronological Index to Joint Appendix

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06/29/2015	Plaintiffs' Motion Pursuant to NRCp 52(b) and 59 to Amend The Court's Judgment Entered on June 15, 2015, to Amend the Findings of Fact/conclusions of Law and Judgment Contained Therein, Specifically Referred to in the Language Included in the Judgment at Page 2, Lines 8 Through 13 and the Judgment At Page 2, Lines 18 Through 23 to Delete the Same or Amend The Same to Reflect the True Fact That Plaintiff Prevailed On Their Entitlement to the First Claim for Relief For an Accounting, and Damages for Their Second Claim for Relief of Breach of Contract, and Their Third Claim for Relief for Breach of the Implied Covenant for Good Faith and Fair Dealing and That Defendant Never Received a Judgment in its Form and Against Plaintiffs Whatsoever as Mistakenly Stated Within the Court's Latest "Judgment – sections filed under seal	54-56	JA008395- JA008922
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

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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
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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

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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
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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
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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
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04/26/2013	Transcript re Hearing	16	JA002527- JA002626
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Dated this 28th day of February, 2018.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 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

shall be the real property shown on the map attached hereto as Exhibit "I" and made a part hereof; provided, however, that the actual boundaries of the Commercial Property are subject to change based upon the processing of the Seller Entitlements for the Entire Site and market conditions.

Seller and Buyer acknowledge and agree that Seller shall transfer, from time to time during the term hereof, its custom lots and the right to develop and sell such custom lots to Coyote Springs Land Development Corporation, a Nevada corporation, an affiliate of Seller, so long as such corporation agrees in writing to be bound by the terms and conditions contained in this Agreement.

(b) So long as Buyer continues to make the Deposit and the Additional Deposits, Seller shall construct the improvements listed on Exhibit "J" attached hereto and made a part hereof (the "Commercial Improvements") and pay the fees for such improvements. The Commercial Improvements shall include the construction of one or more golf courses consisting of at least twenty-seven (27) holes (at least 18 of which shall be a Nicklaus designed course), including the clubhouse and other amenities, the village center and related infrastructure improvements for the benefit of Buyer's residential development on the Purchase Property. Seller agrees to expend at least Sixty-Eight Million Dollars (\$68,000,000) prior to the Final Purchase Closing to construct the Commercial Improvements, which amount is subject to adjustment as described in paragraph 7(d) below. Seller shall cause the Commercial Improvements to be performed or constructed by duly licensed engineers, general contractors and subcontractors in a good and workmanlike manner, and in accordance with (i) the improvement plans approved by Buyer (which will not be unreasonably withheld or delayed), (ii) all applicable laws, regulations, codes and ordinances, (iii) all requirements of governmental authorities and other duly qualified bodies having jurisdiction with respect to each work of improvement, and (iv) generally accepted engineering standards concerning geotechnical and soils conditions, taking into consideration the recommendations of Seller's and Buyer's soil engineers. Seller shall supervise and direct the Commercial Improvements using its customary standards of skill and attention and shall diligently pursue the same to completion. Seller shall be responsible for obtaining all permits and approvals from governmental authorities required for the Commercial Improvements. Seller shall commence construction of the Commercial Improvements as soon as reasonably possible after the Initial Purchase Closing and shall substantially

complete the Commercial Improvements prior to the Final Purchase Closing or as otherwise specified in said Exhibit "J". Except in the event of a force majeure, if at any time Seller is not spending the required funds or otherwise making adequate progress regarding the commencement and/or completion of the Commercial Improvements in accordance with this Agreement and the schedule contained in the aforesaid Exhibit "J" (a "Seller Default"), in Buyer's reasonable judgment, then Buyer's obligation to make the Additional Deposits described in paragraph 1(b) above and Buyer's minimum purchase requirements set forth in paragraph 9(d) below shall be suspended (and all subsequent time periods shall be extended by the period of time equal to such suspension) until such Seller's Default is cured. In addition, Buyer reserves the right at any time following such Seller Default to require that any future Additional Deposits are paid directly to one or more contractors performing work on the Commercial Improvements. Seller shall keep Buyer reasonably informed as to the progress of the construction and completion of the Commercial Improvements.

(c) In addition to the rights and remedies contained in paragraph 6(b) above, the parties agree as follows:

(i) If Seller fails to commence or diligently pursue the construction of the Commercial Improvements, Buyer may give written notice to Seller describing the nature of the Seller's failure to have commenced or have diligently pursued the construction of the Commercial Improvements and of its intent to undertake construction of such Commercial Improvements instead of the Seller (the "Default Notice"). If the Seller fails to commence or complete construction within thirty (30) days after receipt of the Default Notice, Buyer may, directly or through its agents or contractors, construct and complete the applicable Commercial Improvements so long as it commences construction within thirty (30) days following the date of the Default Notice. Seller shall assign to Buyer all rights, to the extent assignable, to the plans, permits and specifications for the improvements to be constructed by Buyer.

(ii) If Seller fails to commence or complete construction (as applicable) in a timely manner following receipt of the Construction Notice and thereafter Buyer fails to commence construction within the applicable period or, once started, it fails to diligently prosecute such construction until completion, Seller shall have the right to give notice (containing substantially the same information as the Default Notice described above) and regain control over the construction

in the aforesaid fashion if thirty (30) days pass after the Seller's notice without Buyer's commencement or continuation of work.

(iii) If Buyer constructs some or all of the Commercial Improvements pursuant to this paragraph 6(c), Seller shall pay to Buyer one hundred ten percent (110%) of the actual costs incurred by Buyer, together with interest at the rate of ten percent (10%) per annum commencing upon the date the costs are incurred and continuing until paid. Upon completion of each element of the Commercial Improvements, Buyer shall submit its invoice to Seller covering the costs to be reimbursed, together with reasonable supporting detail. Seller shall pay to Buyer the amount owed within thirty (30) days of its receipt of the invoice. Notwithstanding anything contained herein to the contrary, Buyer may, at its sole option, apply all or any portion of the amount owed by Seller pursuant to this paragraph 6(c)(iii) to any amounts payable by Buyer to Seller pursuant to this the Agreement.

(d) If construction has not commenced on a shopping center containing (at a minimum) a supermarket and drug store located within the Commercial Property (the "Commercial Project") by the twenty-fourth calendar month following the month in which Buyer opens its model home complex to the public, and assuming the Option remains in effect, Seller and Buyer shall negotiate in good faith with respect to Buyer's purchase of at least twenty (20) acres of land located within the Commercial Property for development as a shopping center. For the purpose of this paragraph 6(c), "commencement of construction" shall be deemed to have occurred only after a building permit has been obtained, rough grading has been completed and the pouring of foundations for the Commercial Project has commenced.

7. Production Residential Property.

(a) Buyer will construct a single family residential project on the portion of the Production Residential Property purchased by it in conformance with the terms and conditions of (i) this Agreement, (ii) the Development Agreement applicable to such property, (iii) a plan for development (including plotting plans and floor plans) to be prepared by Buyer and approved by Seller on its own behalf and on behalf of the Design Review Committee formed pursuant to the Master Declaration described in paragraph 10(a) below) pursuant to the Declarations and (iv) Seller's design criteria, development standards and improvement

standards contained in the Coyote Springs Design Guidelines (the "Design Guidelines"). True and complete copies of the Design Guidelines have been delivered to Buyer. Seller agrees not to unreasonably withhold, condition or delay its approval to any plans submitted pursuant to this paragraph 7(a).

(b) Following the Settlement Date, and continuing throughout the term of this Agreement, the parties agree, subject to the Master Association, to negotiate in good faith regarding any necessary modifications to the Declarations and the Design Guidelines with respect to future phases of development of the Residential Property.

(c) At such time as Buyer is required to improve, dedicate or transfer any land for school or park purposes in connection with Buyer's development of the Production Residential Property (the "Park/School Land"), Seller agrees to sell such Park/School Land to Buyer at a purchase price equal to fifty percent (50%) of the Option Property Price applicable to such land in accordance with Exhibit "E" attached hereto. Upon such transfer, Buyer shall be responsible for any improvements required for such land and may retain any proceeds from the sale or dedication thereof.

(d) Buyer shall construct a recreation center consisting of at least fifteen thousand (15,000) square feet, including related infrastructure and park facilities, and a lake consisting of at least fifteen (15) acres, all for the benefit of its residential development on the portion of the Entire Site purchased by it (collectively, the "Recreation Facilities"). The Recreation Facilities shall be subject to the Declarations described above, and the parties shall cooperate so that the Recreation Facilities qualify as a recreation center under the terms of the Development Agreement. Notwithstanding paragraph 7(c) above, Seller hereby agrees to transfer legal title to up to fifteen (15) acres of land within the Entire Site to Buyer, without cost, for such purpose, which land shall be at a location which is mutually acceptable. The remainder of the land necessary for the Recreational Facilities shall be deemed Park/School Land for purposes of Section 9(c) above. Buyer shall be responsible for paying any and all costs for the construction of the Recreation Facilities on such land. Subject to paragraph 3(e) above, Buyer shall complete such Recreation Facilities prior to the date which is the later of September 10, 2007 or two (2) years following the date upon which Buyer obtains all necessary permits for such improvements (the "Completion Deadline"). If any portion of the Recreation

Facilities costs are paid for or reimbursed by the GID, then Seller shall receive a credit against the amounts otherwise due Buyer from Seller for Seller's contribution to Buyer for the costs incurred by Buyer in constructing infrastructure to serve the Commercial Improvements in an amount equal to thirty percent (30%) of the amount of such GID reimbursement or payment, up to a maximum reduction of Six Million Dollars (\$6,000,000). In addition to the foregoing, Buyer shall use its commercially reasonable efforts to cause the Clark County School District to open one or more schools to serve residents of the Entire Site prior to September 10, 2008.

(e) In addition to the Production Residential Property, Seller shall sell to Buyer, at Buyer's request, the following land in Lincoln County: (1) up to a total of fifty (50) acres for development as neighborhood commercial centers (not to exceed a total of three (3) such commercial centers, each no greater than 20 acres), subject to Seller's right to approve the prospective business owner and/or operator; and (2) sites designated for Church and similar uses that would otherwise be located outside the Production Residential Property.

8. Other Agreements.

(a) Buyer shall be responsible for dedicating required utility easements within the Production Residential Property and for paying all utility connection, extension, service and any other fee, deposit, charge or obligation imposed by each and every provider of a utility service levied in connection with Buyer's development of all or any portion of the Production Residential Property. Further, Buyer shall dedicate all lands required by any governmental entity within the Production Residential Property (except for parks and schools as described in paragraph 7(c) above) for locating any governmental facility and shall construct or cause the construction, at Buyer's sole cost and expense, all public facilities and roads required within the Production Residential Property and all off-site improvements required in connection with the approval of a tentative or final map for all or any portion of the Production Residential Property. In addition, Buyer shall improve and/or convey, as applicable, to the Master Association, GID or federal government, as applicable, and at Buyer's sole cost and expense, all reserve, open space lands (excluding any open space golf areas) and common areas within or adjacent to any Production Residential Property; provided, that Buyer's obligations shall be limited to fifty percent (50%) of land and improvement costs

if the opposite side of such reserve, open space or common area abuts Commercial Property.

(b) Seller shall be responsible for dedicating required utility easements within the Commercial Property and for paying all utility connection, extension, service and any other fee, deposit, charge or obligation imposed by each and every provider of a utility service levied in connection with Seller's development of all or any portion of the Commercial Property. Further, Seller shall dedicate all lands required by any governmental entity within the Commercial Property for locating any governmental facility and shall construct or cause the construction, at Seller's sole cost and expense, all public facilities and roads required within the Commercial Property and all off-site improvements required in connection with the approval of a tentative or final map for all or any portion of the Commercial Property. In addition, Seller shall improve and/or convey, as applicable, to the Master Association, GID or federal government, as applicable, and at Seller's sole cost and expense, all reserve, open space lands and common areas within or adjacent to any Commercial Property; provided that Seller's obligations shall be limited to fifty percent (50%) of land and improvement costs if the opposite side of such reserve, open space or common area abuts Production Residential Property.

(c) In addition to the rights and remedies under paragraphs 6(b) and 6(c) above, the parties agree as follows: On or before Seller's receipt of the third (3rd) Additional Deposit payment pursuant to paragraph 1(b) above, and continuing on a quarterly basis thereafter, Seller shall furnish to Buyer accountings of the out of pocket costs expended to such date for the Commercial Improvements, together with reasonable supporting detail (collectively, the "Incurred Commercial Costs"). In the event that for any reason whatsoever the amount of the Incurred Commercial Costs is less than One Million Two Hundred Thousand Dollars (\$1,200,000) multiplied by the number of full months elapsing between the Initial Purchase Closing and the date of such report (the "Minimum Commercial Costs"), Buyer's obligation to make the Additional Deposits shall be suspended unless and until Buyer receives an accounting showing that the Incurred Commercial Costs exceed the Minimum Commercial Costs as of such date. Upon Buyer's receipt of an accounting showing that the Incurred Commercial Costs exceed the Minimum Commercial Costs to that date, Buyer shall promptly pay to Seller the aggregate amount of any unpaid Additional Deposits which were previously delayed pursuant to this paragraph 8(c). In the event any dispute exists as to whether payment of any Additional Deposit

is required, the parties agree to submit the dispute to binding arbitration before the American Arbitration Association, with the costs of such arbitration to be paid one-half (½) by each party.

(d) The parties have agreed on a cost sharing arrangement for certain infrastructure improvements benefiting the Initial Developed Property and the Commercial Improvements, which arrangement is set forth and described on Exhibit "S" attached hereto and made a part hereof (the "Jointly Financed Improvements"). Subject to paragraph 3(e) above, Buyer will complete such Jointly Financed Improvements prior to the Completion Deadline described in paragraph 7(d) above. Without limiting the generality of this paragraph 8, the parties will meet periodically to determine the cost sharing arrangement for future infrastructure improvements which benefit both the Production Residential Property and the Commercial Property, which shall be determined in the same manner as the arrangement set forth in said Exhibit "S" based upon the properties' respective usage and impact of such improvements. The parties further agree that Seller, at its option, may pay for some or all of its share of such improvement costs by the transfer of portions of the Option Property (at the price provided in the Agreement) or upon such other financing terms which are mutually acceptable.

(e) Seller acknowledges that Buyer is discussing with American Nevada Corporation and/or other experienced real estate developers the formation of a limited liability company or other entity (the "Venture") for the purpose of purchasing portions of the Production Residential Property (the "Venture Parcel") from Buyer after it purchases the same from Seller. In the event of the formation of such Venture, it is contemplated that the Venture would serve as "master developer" with respect to the residential development to be constructed on the Venture Parcel, upon the Venture's assumption of Buyer's obligations contained herein with respect to the Venture Parcel, and subject to the terms and conditions set forth herein, in which capacity the Venture would sell finished residential lots within such development to merchant builders, including Buyer. Notwithstanding anything contained in the Master Declaration to the contrary, the parties have agreed that the Venture Parcel will remain subject to the restrictions and approval procedures contained in the Declarations. Upon any transfer of a portion of the Venture Parcel to any merchant builder other than Buyer, the parties shall cause to be recorded against such property the Development Declaration described in the Master Declaration.

9. Exercise of Option to Purchase Portion of Option Property.

Notwithstanding anything in this Agreement to the contrary, Seller hereby grants to Buyer an Option or Options to purchase a portion or portions of the Option Property as hereinafter set forth. Buyer may elect to exercise its Option to purchase a portion, but not all, of the Option Property by written notice during the Option Period pursuant to the following terms and conditions:

(a) Buyer may elect to exercise its Option to purchase a portion of the Option Property designated by it in compliance with the terms and conditions hereinafter set forth (referred to herein as an "Option Parcel"). The purchase price for each Production Residential Property acre in the Option Parcel shall be the Option Property Price as determined pursuant to paragraph 2 above as in effect on the date upon which Buyer exercises its Option.

(b) Buyer shall exercise its Option and purchase one or more Option Parcels at the locations and in the order shown on the phasing plan (the "Phasing Plan") which shall be prepared by Buyer and submitted to Seller (accompanied by copies of the conditions of approval to the Approved Tentative Map) during the Option Period. Seller shall have the opportunity to review and approve Buyer's proposed Phasing Plan, which approval may not be unreasonably withheld, conditioned or delayed. It is understood, however, that the first phase(s) shall be located in the portion of the Option Property within Clark County. The parties acknowledge and agree that Seller would be reasonable in objecting to any proposed Phasing Plan on the basis of inadequate access to utilities, roads and other offsite improvements to all phases of the Option Property or non-compliance with the provisions of this Agreement, mitigation requirements, the Design Guidelines and other similar documents. Failure to respond in writing within thirty (30) days following receipt of the proposed Phasing Plan shall be deemed to constitute Seller's approval thereof. If Buyer desires to modify the approved Phasing Plan at any time during the Option Period in any material respect, whether or not such change is instituted by any of the Authorities, such proposed modification shall be submitted in writing to Seller for its approval, which approval may not be unreasonably withheld, conditioned or delayed. Seller's approval rights shall be interpreted in the same manner as described above with respect to its approval of

the original Phasing Plan. Failure by Seller to respond in writing within fifteen (15) days following receipt of the proposed modification shall be deemed to constitute Seller's approval thereof.

(c) The close of escrow for the purchase of any Option Parcel or the remainder of the Option Property shall be the later of (i) thirty (30) days following Buyer's notice of exercise, or (ii) recordation of the final map creating the subject Option Parcel as a legal parcel; the purchase and sale of said property shall be consummated in the manner described in paragraph 4 above. Each Option Parcel shall be annexed into the Master Association prior to the recording of the respective Option Deed. If Buyer exercises its Option for an Option Parcel and the required Parcel Map has not been recorded, the Option shall remain in effect so long as Buyer deposits in Escrow the required Option Property Price within 30-days following Buyer's notice of exercise.

(d) Notwithstanding anything contained herein to the contrary, Buyer's Option shall automatically terminate unless Buyer has exercised its Option for one or more Option Parcels consisting of at least an aggregate of two hundred (200) acres per year commencing on the date which is six (6) years after the Initial Purchase Closing, determined on a cumulative basis. Notwithstanding the foregoing, the minimum requirement for any year shall be suspended (and all subsequent time periods shall be extended by the period of time equal to such suspension) if and to the extent that water service is not available for the Option Parcel(s) for which Buyer is scheduled to exercise its Option pursuant to the Phasing Plan.

(e) If Buyer purchases the Purchase Property and thereafter exercises its Option to purchase an Option Parcel which is located within the Purchase Property Remainder, the procedure set forth in paragraph 4(e) above shall be applicable.

10. Title Insurance; Condition of Title.

(a) At any Purchase Closing or any Option Closing, as applicable, Buyer's title to the property being purchased shall be insured by a standard form of CLTA Owner's Policy of Title Insurance or, at Buyer's election, an ALTA Owner's Extended Coverage Policy of Title Insurance subject to the conditions set forth in subparagraph (b) below (the "Title Policy"), issued by the Title Company with liability in the amount of the Purchase Property Price (or the portion of the Purchase Property Price

applicable to the phase of the Purchase Property being purchased) with respect to the Purchase Property or the Total Option Property Price (with respect to the Option Property or applicable Option Parcel), showing title to such property vested in Buyer, subject only to:

- (i) Non-delinquent real property taxes;
- (ii) The Permitted Encumbrance theretofore approved by Buyer pursuant to paragraph 2(a) above;
- (iii) The Declarations Memorandum;
- (iv) The Declaration of Covenants, Conditions and Restrictions and Grant of Easements for the Coyote Springs Community Association to be recorded immediately prior to the Initial Purchase Closing, which shall be substantially in the form of Exhibit "K" attached hereto and made a part hereof (the "Master Declaration"); and
- (v) Any other matters consented to, created or caused by Buyer prior to or at the applicable close of escrow.

(b) If Buyer elects to obtain an ALTA Owner's Extended Coverage Policy of Title Insurance, it may do so on the following conditions: (i) Seller shall pay for the cost of the CLTA coverage and Buyer shall pay for the additional cost of obtaining the ALTA coverage, including any ALTA survey, and (ii) the issuance of an ALTA title policy shall not be a condition to the close of escrow, nor shall any delay in the issuance thereof entitle Buyer to extend the date for the Purchase Closing or the Option Closing.

(c) Title Company's commitment to issue the Title Policy to Buyer shall be a condition to the close of escrow for the benefit of Buyer. Buyer and Seller each agree to deliver to Title Company such proof of their respective authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby as may be reasonably required by the other party or Title Company.

(d) Buyer acknowledges and agrees that the Purchase Property and all Option Property located within Clark County is and will remain subject to the Clark County Section 10 Permit and the associated Clark County Multi-Species Habitat

Conservation Plan. Further, Buyer acknowledges and agrees that the Purchase Property shall be developed subject to the Coyote Springs Multi-Species Habitat Conservation Plan as drafted March 2004 or as subsequently modified as a condition of FWS approval and Section 10 Permit issuance. The Master Declaration will impose these conditions on the Purchase Property and Option Property on or before the Settlement Date, and such conditions are and will remain to be deemed permitted encumbrances on the Purchase Property and the Option Property during the term of this Agreement.

11. Governmental Entitlements.

(a) Seller's transfer of the Purchase Property (or any portion hereof) and, if Buyer exercises its Option, each Option Parcel hereunder shall include all rights, titles and interests of Seller in and to any and all agreements, maps, permits, certificates, approvals, awards, deposits, licenses, utilities, government entitlements and other rights and privileges relating to or appurtenant to such property.

(b) During the term of the Agreement, Seller shall, at its expense, make and process one or more applications and/or filings with Clark County, Lincoln County and/or any other applicable governmental and quasi-governmental authorities (the "Authorities"), to (i) adopt or amend the General Plan and/or the Specific Plan for the Entire Site, if necessary, (ii) change the zoning of the Entire Site, if necessary, (iii) enter into one or more Development Agreements with the applicable Authorities providing for the orderly development of the Entire Site for residential and commercial uses, (iv) obtain approval of one or more village development plans and (v) obtain approval of one or more Multi-Species Habitat Plans for the Entire Site (collectively, the "Seller Entitlements"). It is understood and agreed that the parties will initially focus on the Seller Entitlements applicable to the portion of the Entire Site located in Clark County. Seller agrees to obtain Seller Entitlements which provide for at least thirteen thousand (13,000) acres of Production Residential Property, of which two thousand five hundred (2,500) acres are located within Clark County, although Seller shall utilize its commercially reasonable efforts to obtain Seller Entitlements providing for at least fifteen thousand (15,000) acres of Production Residential Property. Seller shall consult with Buyer regarding such filings and shall otherwise keep it reasonably informed of Seller's progress. In this regard, Seller shall use reasonable efforts to give advance notice to Buyer of meetings with

representatives of the Authorities and provide to Buyer's representatives an opportunity to attend. Prior to filing any applications or filings concerning the Seller Entitlements with the applicable Authorities, Seller shall provide copies to Buyer for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Provided that no uncured default by Seller under this Agreement then exists, Buyer hereby agrees to cooperate with Seller and to execute any and all applications, documents and instruments reasonably requested by Seller in order to facilitate Seller's processing of the Seller Entitlements in a timely manner, all at Seller's expense, so long as such documents satisfy the requirements set forth above in this paragraph 11.

(c) During the term of this Agreement, Buyer shall, at its sole expense, make and process one or more applications and/or filings with the applicable Authorities (as Seller's agent when applicable), to obtain the following (collectively, the "Buyer Entitlements"): (i) one or more final subdivision maps, lot line adjustments, parcel maps or other appropriate instruments (referred to herein collectively as the "Parcel Maps" and individually as the "Parcel Map") in order to separate the Initial Developed Parcel from the remainder of the Purchase Property, the Option Property from the remainder of the Entire Site and each Option Parcel from the remainder of the Option Property so that each Option Parcel can be transferred to Buyer as a legal parcel in compliance with all applicable subdivision laws, regulations and ordinances; (ii) one or more tentative subdivision tract maps on the Production Residential Property, containing terms and conditions which satisfy the requirements described below (each of which is referred to herein as a "Tentative Map"); and (iii) one or more final subdivision tract maps based on the Approved Tentative Map defined below (each of which is referred to herein as a "Final Map"). Buyer shall first obtain the written consent of Seller and the Design Review Committee prior to submitting any said application or filing, which consent may not be unreasonably withheld, conditioned or delayed. Failure to respond to any proposed application or filing within fifteen (15) days of receipt shall be deemed approval. In this regard, Buyer shall use reasonable efforts to give advance notice to Seller of meetings with representatives of the Authorities and provide to Seller's representatives an opportunity to attend. Notwithstanding the foregoing, it is understood and agreed that Seller shall approve the Buyer Entitlements or the conditions thereto so long as adoption thereof would (i) comply with this Agreement, (ii) conform with the Design Guidelines, Development Agreement and other Seller

Entitlements covering the Option Property, and (iii) call for the use of the Option Property as a single family residential development which accommodates the construction of residences comparable to the structures constructed by Buyer in its existing developments in the Las Vegas, Nevada area. Provided that no uncured default by Buyer under this Agreement then exists, Seller hereby agrees to cooperate with Buyer and to execute any and all applications, documents and instruments requested by Buyer in order to facilitate Buyer's processing of the Buyer Entitlements in a timely manner, all at Buyer's expense, so long as such documents satisfy the requirements set forth above in this paragraph 11(c). The Tentative Map(s) concerning the Option Property as approved by the applicable Authorities (after the expiration of any applicable appeal period) shall be referred to herein as the "Approved Tentative Map".

(d) The parties each agrees to comply with the terms and conditions contained in the Development Agreement(s) covering the applicable portion of the Entire Site owned by it.

(e) During the term of this Agreement, Buyer and Seller agree to cooperate with respect to the formation of one or more GID or other assessment, facilities or improvement districts concerning the construction of certain infrastructure improvements benefiting the Production Residential Property and the Commercial Property.

(f) Seller and Buyer agree to cooperate with each other in respect to the dedication of local streets and parkways to governmental authorities.

(g) Seller hereby represents and warrants to Buyer that (i) the County of Lincoln has given final approval of the service plan for the GID and final approval of the service plan for the fire district created for the Entire Site and that such service plans will be amended to remove those lands situated in Clark County from the respective service territories; (ii) the County of Clark has given final approval of the service plan for the Coyote Springs - Clark County GID; provided, that such service plan is subject to County approval of amendments to the service plan in connection with authorization to provide extermination and abatement, streets and alleys, storm drainage or flood control, street lighting, garbage and refuse disposal, recreation facilities, noxious weed control and endangered or threatened species preservation services; (iii) pursuant to NRS Chapter 318, the only party who may protest or appeal the

creation of the GID is Seller; and (iii) the proceeds of such GID financing can be utilized for infrastructure improvements in Lincoln County and Clark County, as appropriate. The parties have agreed that Buyer shall take the lead with respect to underwriting and structuring decisions concerning any and all GID financings, including (without limitation) selecting the underwriter, bond counsel, assessment engineer, financial advisor, assessment engineer and appraiser; provided, however, that major decisions concerning the GID shall be subject to Seller's approval, which shall not be unreasonably withheld or delayed. Similarly, the parties have agreed that Seller shall take the lead with respect to presentations to the County Commission, subject to Buyer's assistance and cooperation. The parties have further agreed that the infrastructure improvements which are jointly constructed or financed by the parties shall have priority for inclusion in the improvements financed by the GID. If no reference to the GID appears on record as of the Initial Purchase Closing, the parties shall cause to be recorded an appropriate instrument giving public notice that the Entire Site is covered by the GID.

(h) The parties agree to comply with the terms of that certain letter agreement dated as of March 4, 2005 with respect to the allocation of the Utility Corridor relocation costs.

12. Seller's Warranties, Representations and Covenants.

As a material consideration for Buyer entering into this Agreement, Seller hereby covenants, warrants and represents to Buyer as follows:

(a) Seller is a limited liability company duly organized and existing in good standing under the laws of the State of Nevada. Seller has full power and authority to enter into this Agreement and carry out its undertakings hereunder.

(b) Seller is the sole owner of the Production Residential Property and has the right to enter into this Agreement for the purchase and sale of the Production Residential Property. There are no liens or encumbrances against the Production Residential Property other than those of record. Seller has obtained or will obtain before the Close of Escrow all required consents, releases and permissions, and has complied with or will comply with in all material respects the applicable statutes, laws, ordinances, rules and regulations of any kind or nature in order to comply with its obligations under

this Agreement. No approval of any governmental authority, court or third party is required in order for Seller to assign and transfer the Production Residential Property to Buyer as contemplated hereby.

(c) Neither Seller nor, to its knowledge, any tenant or former owner of the Residential Property has stored or disposed of toxic substances or hazardous wastes on the Production Residential Property except for fertilizers and pesticides applied in connection with customary farming activities on the Production Residential Property. Seller is not aware of any operations or conditions on or near the Production Residential Property which violate any law or regulation applicable to toxic substances or hazardous wastes and/or environmental conditions.

(d) The person(s) executing this Agreement on behalf of Seller are authorized to do so and, upon such execution, this Agreement shall constitute the valid and binding obligation of Seller, enforceable against it in accordance with its terms.

(e) Except for any agreements which are terminable at will without penalty or premium, Seller has not entered into any agreements, commitments or understandings concerning the Production Residential Property by which Buyer would be bound following the applicable Close of Escrow except for any documents and any agreements listed in Exhibit "L" attached hereto and made a part hereof (the "Property Contracts") which have been signed or are pending. Seller has delivered (or will deliver pursuant to paragraph 3 above) copies of all such Property Contracts or recent drafts thereof. Following the expiration of the Contingency Period, Seller shall not amend any executed Property Contracts or make any material modifications to the unsigned Property Contracts without Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

(f) There is no litigation, administrative proceeding, arbitration proceeding, judgment, consent decree or governmental investigation outstanding, pending or (to Seller's knowledge) threatened against, or relating to, the Production Residential Property or the transactions contemplated hereby.

(g) The execution of this Agreement and the consummation of the transaction contemplated hereby will not result in a breach of any term or provision or constitute a default under any contract, agreement, instrument,

understanding, judgment or decree to which Seller is a party or by which Seller or the Production Residential Property is bound.

(h) No work of improvement on the Production Residential Property has been commenced which has not been completed, and Seller has paid in full each provider of labor, services, equipment and materials for each work of improvement commenced or completed on the Production Residential Property. All such works of improvement (including grading) performed by or on behalf of Seller on or near the Production Residential Property (i) have been performed in a good and workmanlike manner in accordance with all map conditions and applicable plans and specifications, (ii) comply with all applicable governmental regulations, and (iii) have been completed without any defects.

(i) To Seller's knowledge, there is no existing violation of any applicable statutes, ordinances, rules and regulations of any governmental or other agency relating to the operation, ownership or use of the Production Residential Property.

(j) Seller shall not hypothecate, transfer, encumber or affirmatively take any other action with respect to the Production Residential Property which would render it unable to convey the Production Residential Property (or the applicable portion thereof) to Buyer at the applicable close of escrow pursuant to this Agreement.

(k) Seller shall diligently pursue to completion the BLM Reconfiguration in Lincoln County and the Seller Entitlements and shall keep Buyer reasonably informed of its progress in connection therewith. Similarly, Seller shall use its best efforts to obtain any necessary water rights and water service for the Entire Site in a timely fashion to enable Buyer to purchase the Purchase Property and Option Parcels in accordance with the schedule contemplated hereby. Seller shall forward to Buyer copies of all documents relating to the BLM Reconfiguration and the Seller Entitlements promptly following its receipt thereof. Seller shall notify Buyer prior to any scheduled meetings with representatives of the applicable Authorities, and Buyer shall have the right to designate one or more consultants to be present.

(l) The materials described in paragraph 3(a)(iv) above which have been or will be delivered to Buyer constitute all of the documents and information in Seller's possession or

control which are material to the ownership and development of the Production Residential Property.

(m) During the term of this Agreement, Seller agrees to deliver to Buyer, upon reasonable request, copies of financial statements, tax returns and/or other financial information required by Buyer, in its reasonable judgment, in order to comply with FIN 46, including such matters which are deemed necessary in light of Seller's responses to the Questionnaire described in paragraph 3(a) above.

(n) All representations and warranties set forth herein shall be true as of each close of escrow hereunder and shall survive said close of escrow and any investigation by Buyer hereunder.

13. Representations, Warranties and Covenants of Buyer.

As a material consideration for Seller entering into this Agreement, Buyer hereby represents and warrants to Seller as follows:

(a) Buyer is a corporation duly organized and existing in good standing under the laws of the State of Nevada.

(b) Buyer has the full right, power, and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(c) The person(s) executing this Agreement on behalf of Buyer and any other documents executed and delivered on behalf of Buyer pursuant hereto are and will be duly authorized to do so by Buyer.

(d) This Agreement and all the documents to be executed by Buyer and delivered to Seller at the Close of Escrow are and will be duly authorized, executed, and delivered by Buyer.

(e) Buyer agrees that, except as specifically contained in this Agreement, (i) the Purchase Property and each Option Parcel shall be conveyed to Buyer in their "as is" condition; (ii) Seller makes no representations or warranties of any kind whatsoever as to the Purchase Property or any Option Parcel, its condition or any other aspect thereof, including without limitation any patent or latent physical condition of the Purchase Property or Option Parcel or the presence of

hazardous or regulated materials on the Purchase Property or any Option Parcel or any other environmental condition relating to the Purchase Property or any Option Parcel; and (iii) Buyer hereby waives any and all claims against Seller for any and all matters and conditions of the Purchase Property and each Option Parcel. Buyer hereby acknowledges and agrees that by accepting the Deeds to the Purchase Property and each Option Parcel, except as expressly provided herein to the contrary, (1) Buyer and its agents have examined and are satisfied with the Purchase Property and the Option Parcels, the tentative boundaries of the Purchase Property and the Option Parcels, the soils on the Purchase Property and Option Parcels, any existing easements effecting the Purchase Property and the Option Parcels, utility availability, and all laws, ordinances, regulations, permitted used and other matters relating to the Purchase Property and Option Parcels; (2) Buyer is accepting the Purchase Property and the Option Parcels in their "as is" condition and confirming that the same is satisfactory for the uses and purposes intended by Buyer; (3) Buyer is acknowledging that Seller has not made, does not make, and has not authorized anyone else to make any representation as to the past, present and future condition or use of the Purchase Property or Option Parcels; and (4) Buyer is assuming all risks with respect to the Purchase Property and Option Parcels. Seller and Buyer acknowledge and agree that the terms and conditions of this paragraph 13(e) concerning the condition of the Purchase Property and Option Parcels shall survive and remain in effect after the each and every closing.

(f) Buyer acknowledges that Seller is relying on the exemption afforded by NRS 119.12013 in connection with the sale of the Purchase Parcel and each Option Parcel to Buyer.

(g) All representations and warranties set forth herein shall be true as of each close of escrow hereunder and shall survive such close of escrow.

14. Liquidated Damages; Specific Performance.

(a) IN THE EVENT BUYER FAILS TO CONSUMMATE THE PURCHASE OF THE PURCHASE PROPERTY OR THE OPTION PROPERTY, IF BUYER EXERCISES ITS OPTION, EXCEPT AS RESULT OF THE FAILURE OF THE CONDITIONS AS STATED HEREIN AND/OR SELLER'S DEFAULT, IT IS AGREED THAT THE SOLE LIABILITY OF BUYER SHALL BE THAT SELLER SHALL BE ENTITLED TO ANY DEPOSIT, ADDITIONAL DEPOSITS, COST REIMBURSEMENTS (TO THE EXTENT NOT REFUNDABLE) AND OPTION CONSIDERATION PAID HEREUNDER, LESS SELLER'S SHARE OF ANY ESCROW AND TITLE CHARGES THEN OWING, WHICH AMOUNT SHALL BE ACCEPTED BY

SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, IT BEING AGREED THAT SAID SUM CONSTITUTES A REASONABLE ESTIMATE OF SELLER'S DAMAGES PURSUANT TO APPLICABLE LAW. SELLER SHALL HAVE NO OTHER REMEDY FOR BUYER'S DEFAULT; PROVIDED, HOWEVER, THAT BUYER SHALL REMAIN LIABLE FOR ITS INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT. SELLER AND BUYER AGREE THAT IT WOULD BE IMPOSSIBLE TO PRESENTLY PREDICT WHAT DAMAGES SELLER WOULD SUFFER IN SUCH EVENT. BUYER DESIRES TO LIMIT THE DAMAGES FOR WHICH IT MIGHT BE LIABLE UNDER THIS AGREEMENT, AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS WHICH WOULD OCCUR IF SELLER FILED A LAWSUIT TO COLLECT DAMAGES.

Buyer's Initials

Seller's Initials

(b) In the event of Seller's default hereunder, Buyer shall, in addition to any other available remedies, be entitled to the return of any and all funds paid to Seller and/or then held by Escrow Holder, including any interest thereon.

(c) Nothing herein contained shall limit or preclude Buyer from the remedy of specific performance of this Agreement in event of Seller's default. Seller acknowledges that Seller's failure to perform will cause substantial losses and irreparable harm to Buyer, and Seller acknowledges that under such circumstances Buyer will be without an adequate legal remedy to cure such failure to perform by Seller and that damages for such failure to perform would be speculative and not cure the losses suffered by Buyer; that the Production Residential Property is unique; and that Buyer under such circumstances will be entitled to specific performance in addition to any other remedies available hereunder.

(d) Notwithstanding any other provision of this Agreement to the contrary, a termination of this Agreement shall not affect the prior conveyance of any portion of the Production Residential Property to Buyer or the rights and remedies of the parties hereto with respect to such previously conveyed portion of the Production Residential Property.

15. Right of Entry and Access.

(a) Seller hereby grants to Buyer the right of entry upon the Entire Site, which right shall extend throughout the Contingency Period and term of this Agreement, for the purpose of conducting its soils tests and other inspections and studies, and doing other work required by Buyer hereunder, at the sole

cost and expense of Buyer and subject to full compliance with (i) the Clark County MSHCP, (ii) the draft or approved Coyote Springs MSHCP, as applicable, including tortoise translocation prior to land disturbance, and (iii) the requirements of NRS ch. 527 and NAC ch. 527. Buyer shall defend, indemnify and hold Seller and the Entire Site and Seller's members, partners, officers, directors, shareholders and agents ("Seller's Indemnitees") free and harmless from any and all liens, losses, claims, demands, damages, liabilities or costs of any kind whatsoever (including reasonable attorneys' fees and court costs) arising or resulting from or in connection with the activities of Buyer, its agents and employees upon the Entire Site prior to the transfer of legal title to the Residential Property to Buyer. As a condition to Buyer's entering upon the Entire Site, Buyer shall deliver to Seller a certificate of insurance for Broad Form Comprehensive Commercial liability insurance (on an occurrence basis) to limits of at least Two Million Dollars (\$2,000,000) naming Buyer as the insured and Seller as an additionally insured party with respect to such activities on the Entire Site. Buyer shall keep such insurance in effect prior to the close of escrow for the last Option Parcel within the Option Property or termination of this Agreement. Notwithstanding the foregoing, if Buyer desires to conduct grading on any portion of the Production Residential Property not owned by Buyer pursuant to subparagraph (c) below, Buyer shall increase the insurance coverage to Five Million Dollars (\$5,000,000) (as evidenced by a certificate of insurance delivered to Seller), and Buyer shall keep such insurance in effect until such grading and other work are completed. In the event the entire Residential Property is not purchased by Buyer hereunder, Buyer agrees to repair any damage concerning the unpurchased portion of the Entire Site resulting from its activities described in this subparagraph.

(b) From and after the Initial Purchase Closing, Seller agrees to maintain the portion of the Entire Site owned by it in substantially the same condition as it exists as of the Initial Purchase Closing. During the term of this Agreement Seller shall not commence any work of improvement or engage in any operations involving toxic or hazardous substances on the Residential Property without obtaining Buyer's prior written consent.

(c) From and after the Initial Purchase Closing, Seller hereby grants to Buyer an easement and license for access, ingress, egress, grading and construction purposes over and upon the portion of the Entire Site owned by Seller (the

portion of the Entire Site owned by Seller at any applicable time is sometimes referred to herein as the "Seller's Property"), which is located within a one-half (½) mile radius of the portion of the Entire Site owned by Buyer, which easement and license shall include the right to (i) move and remove dirt, aggregate and fill from portions of the Seller's Property and to place such dirt, aggregate and fill upon other portions of the Seller's Property and to compact all such dirt, aggregate and fill or dispose of the same outside of the Seller's Property, all in a manner consistent with the Approved Grading Plan (as defined below) and in compliance in material respects with applicable laws and regulations, (ii) replace, repair, reconstruct, alter, maintain and inspect one or more golf courses, a waste water treatment plant and/or other infrastructure improvements which are called for by the conditions of the Approved Tentative Map(s) and/or the Approved Grading Plan with respect to the Production Residential Property or otherwise required in connection with Buyer's development thereof (the "Infrastructure Improvements"), including Buyer's development of so much of the Option Property as is purchased by it (the portion of the Production Residential Property which has been purchased by Buyer at any applicable time is sometimes referred to herein as the "Buyer's Property"); and (iii) place upon the Entire Site a construction trailer and/or temporary office facility (the "Facilities") and to use such Facilities for office, construction, supervision and other such purposes related to Buyer's development of the Buyer's Property. For purposes of this Agreement, the "Approved Grading Plan" shall mean the grading plan for the Option Property approved by the applicable Authorities. Before submitting a proposed grading plan to the Authorities, Buyer shall obtain Seller's approval thereof, which will not be unreasonably withheld, conditioned or delayed. Failure by Seller to respond in writing within fifteen (15) days following receipt of any proposed grading plan shall be deemed to constitute Seller's approval thereof. The easement and license granted herein shall continue until the first to occur of the purchase by Buyer of the entire Production Residential Property or the completion of all Infrastructure Improvements.

(d) If Buyer purchases the Purchase Property and its Option is terminated prior to Buyer's purchase of the entire Option Property and Buyer fails to complete the necessary Infrastructure Improvements on or adjacent to Buyer's Property, then effective upon such date, Buyer hereby grants to Seller a license and easement over the Buyer's Property, covering the rights described in subparagraph (c) above as may be necessary

to allow Seller to complete any unfinished Infrastructure Improvements on or adjacent to such property and any other infrastructure improvements necessary for Seller's Property. The easement and license granted herein shall continue until the completion of all Infrastructure Improvements. In addition, Buyer grants such rights to Seller to enter upon the Production Residential Property to the extent reasonably necessary for Seller's construction of any improvements or infrastructure to be constructed by Seller with respect to the Commercial Property. The parties agree to coordinate the scheduling of their respective improvements to minimize the interference with the activities of the other party.

(e) The parties agree to negotiate in good faith with respect to the reimbursement for the costs of any oversizing of Infrastructure Improvements constructed by Buyer or Seller which benefit the Seller's Property and the Buyer's Property; provided, however, any such reimbursement shall be subject to the regulations and practices of the applicable Authorities and utilities companies.

(f) Possession of the Purchase Property (or the applicable portion thereof) shall be delivered to Buyer at the applicable Purchase Closing. If Buyer exercises its Option and purchases the Option Property or any Option Parcel, possession of such property shall be delivered to Buyer at the applicable close of escrow.

16. Indemnification.

(a) As an inducement to Buyer entering into this Agreement, Seller for itself, its successors and assigns, hereby agrees to indemnify, hold harmless and defend Buyer, its successors and assigns, from and against any and all payments, expenses, costs, suits, debts, claims, demands, actions, losses, liabilities, damages and obligations, including without limitation court costs and attorneys' fees of every nature and description whatsoever, directly or indirectly connected with any material inaccuracy by Seller in any representation or the material breach of any warranty hereunder by Seller or the material nonperformance of Seller's obligations hereunder.

(b) As an inducement to Seller entering into this Agreement, Buyer for itself, its successors and assigns, hereby agrees to indemnify, hold harmless and defend Seller, its successors and assigns, from and against any and all payments, expenses, costs, suits, debts, claims, demands, actions, losses,

liabilities, damages and obligations, including without limitation court costs and attorneys' fees of every nature and description whatsoever, directly or indirectly connected with any material inaccuracy by Buyer in any representation or the material breach of any warranty hereunder by Buyer or the material nonperformance of Buyer's obligations hereunder

(c) In the event that either party ("first party") shall become obligated to the other ("second party") pursuant to the foregoing indemnities or in the event that any suit, action, investigation, claim or proceeding has begun, made or instituted as a result of which first party may become obligated to second party hereunder, second party shall give prompt notice to first party of the terms of such event. First party agrees to defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding at its sole cost and expense. Second party shall have the right but not the obligation to participate at its own expense in the defense thereof, by counsel or second party's choice. In the event first party (or its successors and assigns) fail to defend, contest or otherwise protect against such suit, action, investigation, claim or proceeding, second party shall have the right to do so, including (without limitation) the right to make any compromise or settlement thereof, and second party shall be entitled to recover the entire cost thereof from first party, including (without limitation) reasonable attorneys' fees and disbursements, if any, in collecting such indemnity from first party.

17. Further Assurances.

(a) Buyer and Seller shall each fully cooperate in good faith with the other in connection with the requirements imposed by this Agreement upon the other, to the end that neither party shall act in any unauthorized manner to impede the other in performing its obligations under this Agreement. Without limiting the generality of the foregoing, after the Purchase Closing and/or the Option Closing for any Option Parcel, Seller agrees to cooperate with and assist Buyer in connection with Buyer's ownership of the Buyer's Property, including (without limitation) executing any and all plans, documents or applications with governmental authorities and/or utilities reasonably required by Buyer to permit Buyer to develop the Buyer's Property under applicable laws and regulations, all at Buyer's expense.

(b) From and after the Initial Purchase Closing, if requested by Buyer, Seller shall reasonably cooperate with Buyer (at no material cost or expense to Seller) and shall not unreasonably withhold or delay its approval with respect to the formation by the applicable Authorities of one or more assessment or improvement districts concerning the maintenance of certain common, non-residential and/or open space areas included within the Production Residential Property. In connection with any such approval, Seller shall not object to any proceedings before the applicable Authorities regarding the formation of the applicable district(s).

18. Notices.

Any notice, demand or advice required herein shall be in writing and personally delivered or sent by overnight courier or mailed by registered or certified mail by depositing the same in the United States mail depository for mailing in a sealed envelope with postage prepaid and addressed as follows:

To Buyer: Pardee Homes of Nevada
10880 Wilshire Boulevard
Suite 1900
Los Angeles, California 90024
Attn: Mr. Jon E. Lash
Senior Vice President

With a Copy to: Sandler and Rosen, LLP
1801 Avenue of the Stars
Suite 510
Los Angeles, California 90067
Attn: Steven E. Levy, Esq.

To Seller: Coyote Springs Investment LLC
2215 Hedgewood Drive
Reno, Nevada 89501
Attn: Mr. Harvey Whittemore

With a copy to: Carl D. Savely, General Counsel
Wingfield Nevada Group
6600 N. Wingfield Parkway
Sparks, Nevada 89436

or such other addresses as the respective parties may from time to time designate by notice in writing to the other. All such notices, demands or advises shall be deemed to have been served