

2016

**John Mardesich, Plaintiff and Appellant, v. Antiiony Bros.
Construction, a Utah Corporation, Dba Anthony Bros. Pool & Spa;
Sun Hill Homes, l.c., and John Does I-X, Defendants and
Appellees.**

Utah Court of Appeals

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UTAH COURT OF APPEALS

JOHN MARDESICH,

Plaintiff and Appellant,

v.

ANTHONY BROS. CONSTRUCTION, a
Utah corporation, dba ANTHONY BROS.
POOL & SPA; SUN HILL HOMES, L.C.,
and JOHN DOES I-X,

Defendants and Appellees.

**ADDENDUM TO BRIEF OF
APPELLANT**

Case No: 20150730

District Court No. 080502342

ADDENDUM TO BRIEF OF APPELLANT

Appeal from Judge G. Michael Westfall's Decision
of the Fifth Judicial District Court
Washington County, Utah

Adam C. Dunn
Clifford V. Dunn
110 West Tabernacle
P.O. Box 2318
St. George, UT 84770
Attorney for Appellees

James L. Spendlove
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Attorney for Appellant

FILED
UTAH APPELLATE COURTS
APR 05 2016

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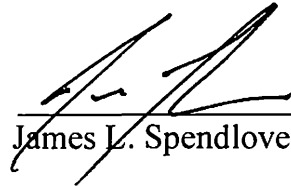
James L. Spendlove
JENSENBAYLES, LLP
216 W. St. George Blvd., Ste. 200
St. George, UT 84770
Attorney for Appellant

ADDENDA

- EXHIBIT A Sun Hill Homes, L.C. Real Estate Purchase Contract for Constructon
- EXHIBIT B Rosenberg Grading Plan
- EXHIBIT C December 2, 2013 Trial Transcript pp 42-54
- EXHIBIT D Findings, Conclusions and Judgment March 17, 2014.
- EXHIBIT E Decision and Order Granting Sun Hill Homes, L.C. Motion for New Trial
- EXHIBIT F June 29, 2015 Hearing Transcript pp 11-12.

DATED this 31st day of March, 2016.

JENSENBAYLES, LLP



James L. Spendlove

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2016, I caused to be served a copy of foregoing document, on the parties listed below as follows:

Party(ies) Served	Method of Service
Utah Court of Appeals 450 South State Street P.O. Box 140230 Salt Lake City, UT 84114-0230	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File <input type="checkbox"/> Email <input type="checkbox"/> Fax (Person agreed to service by fax.)
<i>Attorney for Defendant</i> Adam C. Dunn Clifford V. Dunn 110 West Tabernacle P.O. Box 2318 St. George, UT 84770	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (agreed to service by email.) <input type="checkbox"/> Electronic File

Wendi Perkins
PARALEGAL

EXHIBIT “A”

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**SUN HILL HOMES, L.C.
REAL ESTATE PURCHASE CONTRACT
FOR CONSTRUCTION**

**REAL ESTATE PURCHASE AGREEMENT
AND EARNEST MONEY DEPOSIT RECEIPT**

Date 16-Nov-2004**1. Summary of Terms**

1.1 Parties to Agreement. Sun Hill Homes LC, located at 2240 W. Sunbrook Drive # 1, St. George, Utah is the "Seller" of the property described below, and

Marie		Mardesich
First	Middle	Last
First	Middle	Last
28000 Charles Drive	Santa Clarita	CA 91350
Street	City	State

(861) 296-8403

Telephone

As the "Buyer"(s) offer to purchase the property described below and hereby delivers to the Broker as Earnest Money in the amount of

Five Thousand and no/100

Dollars,

(\$ 5,000.00),

by check ☒ cash ☐ other ☐

which upon acceptance of this offer by all parties shall be deposited in accordance with state law with the Sunbrook Realty Trust Account.

Received by

Brokerage Sunbrook Realty GroupTelephone 435-674-2900

1.2 Agreement to Purchase and Sell the Property. This Agreement sets forth the terms and conditions under which Seller agrees to sell, and Buyer agrees to purchase certain real property located in the Sunbrook Communities (the "Lot"), as described in Sections 1 & 2. All terms set forth in the Summary of Terms are an enforceable part of this agreement.

1.3 Property. Earnest Money is in receipt for the purchase of a lot in the Sunbrook Communities, in Washington County, Utah with improvements erected or to be erected thereon as further set forth herein. The Lot and improvements (the "Property" or "Home"), consist of the following:

Ver 8-13-04

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Buyer Initials mmSeller Initials JS

COMMUNITY Woodlands

PROPERTY ADDRESS _____

LOT/PHASE 8 PLAN Cottonwood ELEVATION _____ PLAT _____LOCATION OF GARAGE* ☒ LEFT SIDE ☐ RIGHT SIDE (As Buyer face the Lot from the street)
*Predetermined (See Plat for details)**1.4 Total Purchase Price and Financing**

Base Price	\$ <u>449,000.00</u>
Lot Premium	\$ <u>29,900.00</u>
Total Base Purchase Price	\$ <u>478,900.00</u>
Less Earnest Money Deposit	\$ <u>5,000.00</u>
Balance Due on or Before Closing	\$ <u>473,900.00</u>

The following additional financial terms are agreed to:

- 1) A 20% construction deposit will be required at start of construction.
- 2) Additional options/upgrade deposit due at design selection.

Buyer is put on notice that Seller reserves the right to verify availability of Buyer's funds prior to start of construction.

- Note: The Total Base Purchase Price may be adjusted according to any additional Design Center options, changes, or extras selected by Buyer prior to or during construction, or otherwise pursuant to this Agreement. SELLER AGREES TO PAY ALL BUILDING PERMIT AND CONNECTION FEES.

1.5 Estimated Construction Start Date: 30 days from design selections
(See details in Paragraph #6.1)
Estimated Closing Date: 6 months from excavation

Cash _____ Conventional financing _____ % Other _____

1.5.1. In the event that a portion of financing is necessary to complete this purchase, this Agreement is contingent upon Buyer securing a loan commitment. Within 7 (seven) days of execution of this Agreement, Buyer agrees to apply for

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Buyer Initials mmSeller Initials JB

and thereafter diligently seek to consummate a mortgage loan for the Property. Buyer represents that Buyer is qualified to obtain a loan for the Loan Amount sought and agrees that Seller may proceed in reliance upon that representation and incur expense to process this Agreement. Buyer agrees to make all payments as required and assist the prospective lender by completing and submitting to that lender all documents required by the lender for successful loan processing and thereafter secure loan approval from all necessary parties within 30 (thirty) days from the day of the acceptance of this Agreement.

1.5.2. In the event of Buyer's failure to comply with the foregoing requirements (time being of the essence) or if Seller is sooner informed that Buyer has failed to timely submit all requested forms and/or information to qualify or has failed to qualify for the contemplated financing, Seller shall be entitled to (i) transfer Buyer's loan application to a lender specified by Seller at no additional cost to Buyer, and in the event that a loan commitment is forthcoming from a new lender at substantially the same terms and rates as Buyer's initial loan request, Buyer shall be required to complete this Agreement and close on the Property, or (ii) Seller may consider Buyer in default and exercise Seller's rights set forth in Section 15. Provided, however, that if Buyer has unsuccessfully used all reasonable efforts to obtain a loan and Buyer's lender notifies Seller in writing no later than 30 days from the date of this Agreement, then this Agreement shall terminate and Seller shall refund the Earnest Money and all other sums paid to Seller by Buyer, less any costs incurred by Seller in relation to Buyer's loan application and the costs incurred by Seller for any Options Selected or non-standard features, including materials and supplies for the same ordered by Buyer or in Buyer's behalf, but not yet paid. Buyer further agrees to sign a document that this Agreement has been terminated and releasing Seller from any further obligations under this Agreement.

1.5.3. Buyer acknowledges that interest rates and loan fees on loans available to finance Buyer's purchase fluctuate and may increase or decrease during the period between the date of this Agreement and the date on which a lender commits to making a loan to Buyer. Buyer agrees that such fluctuations are of concern only to Buyer and Buyer's lender and shall not affect the rights or obligations between Buyer and Seller as set forth herein. Buyer agrees to pay any fees required by Buyer's lender or other costs associated with obtaining Buyer's loan at or before closing.

2. Description of the Property. The Property to be purchased by Buyer includes the Lot, the Home that has or will be constructed on the Lot, and all easements, rights-of-way and other rights owned by Seller and benefiting the Lot (excluding, however, any such easements, rights-of-way, common areas, or other rights which are offered through the Community Association and the Woodlands Association or retained for Seller's exclusive benefit).

Buyer Initials mmSeller Initials JB

3. Utilities to the Property. The Property, upon completion of construction, will have the following improvements: connection to public electricity, sewer and water, connection to natural gas, telephone and cable TV, paved streets for ingress and egress. Such improvements are included within the Purchase Price.

4. Holding of Money Deposited with Seller. All Earnest Money and other sums paid by Buyer to Seller, shall be maintained in a manner that complies with Utah law. Seller shall not be required to pay Buyer for, and Buyer shall not be entitled to any interest accruing on those funds.

5. Loan Closing Fees and Costs. Seller shall provide Buyer with written notice of substantial completion of Buyer's Home. Buyer agrees to cause Buyer's lender to pay the loan proceeds to Seller as part of the Purchase Price at closing. All fees, costs, and expenses relating to the loan and Buyer's application for a loan shall be paid by Buyer at or before the Closing, including all application fees, discount fees, origination fees, prepaid interest, "points", credit application fees, title policy premiums, survey fee, insurance premiums, recording fees, appraisal fees and escrows for taxes and insurance. Buyer is responsible to put all utilities in Buyer's name on or before taking occupancy.

5.1. Date. Seller shall attempt to notify Buyer approximately 30 days prior to the closing date so schedules may be established. There shall be no deviation from the Closing schedule set forth herein except upon written agreement of both Buyer and Seller.

5.2. Place. The Closing shall occur at the Sunbrook Sales Center, or at such place in Washington County, Utah as Seller may designate in the notice sent to Buyer regarding the Closing Date.

5.3. Documents. Upon Close of Escrow and recordation of the Special Warranty Deed (the "Deed") conveying fee title in the Property to Buyer, Seller shall deliver to Buyer a copy of the Deed, subject only to current taxes (not yet due and payable as of Closing), assessments, the Governing Documents for the community, and other restrictions, rights-of-way, easements, and other matters of record adversely affecting Buyer's use of the Property. Seller shall also sign and deliver such other documents as are customarily signed in Utah in connection with the conveyance of real property, including all required closing statements, releases, and evidence of authority to execute the documents.

5.4 Closing Costs. Seller shall pay the expense of preparing the Special Warranty Deed and the other documents described in Section 5.3 that are prepared and signed by Seller. Clear title evidenced by a standard owner's policy of title insurance in an amount equal to the Purchase Price shall be paid for by Seller. Seller shall also pay for one-half of the closing agent's closing or settlement fees. Buyer shall be responsible to pay at the Closing all other fees, costs and expenses relating to the Closing, including one-half of the closing agent's closing or settlement fees; the cost to prepare the

Buyer Initials

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Seller Initials

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documents (except the Deed) described in Section 5.3 to be signed by Buyer, all fees, costs, discount points, escrowed funds and other expenses associated with any Loan.

5.5. Seller's Liability at Closing. Seller shall not be liable to Buyer for any costs, expenses, liabilities, losses or damages incurred by Buyer as a result of a delay in the Closing, including without limitation, any increase in commitment fees, points or interest assessed or charged by any lender.

5.6. Prorations at Closing. All real property taxes relating to the Property for the year of the Closing shall be prorated between Seller as of the date of the Closing. If the amount of taxes for such year are not known at the time of Closing, the pro-rations shall be based on the latest information available at the time of Closing concerning assessed values and tax rates. Seller agrees to use the best available estimate to prorate taxes and such estimates shall be final as between both parties. Buyer shall be responsible for Buyer's membership in the Sunbrook Master Owners Association prorated according to the number of days remaining in the fiscal quarter in which Closing occurs. Thereafter, membership assessments will be due in accordance with the Governing Documents.

5.7. Actual Possession of Home by Buyer. Upon recordation of the Deed, Seller shall deliver to Buyer two (2) sets of keys for the Home and possession of the Property. At that time Buyer may begin occupancy.

5.8. Risk of Loss. All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed. After Closing all risk of loss shall be borne by Buyer, regardless of the date and time Buyer takes actual possession of the Home.

5.9. Survival. The covenants, disclaimers and agreements contained in this Agreement shall not be deemed to be merged into or waived by the instruments executed at Closing, but shall expressly survive the Closing and continue to be binding upon both parties.

6. Design Consultation. No later than seven (7) days following the date of this Agreement, Buyer must contact Roseann Campbell and schedule a consultation appointment to select the owner options ("Options") available to Buyer. Buyer's consultation appointment must be scheduled and take place within 30 days of the date of this Agreement. If construction of the Home has commenced, Buyer must meet as soon as possible but not later than seven (7) days from the date of this Agreement to make any remaining selections. During the consultation appointment, Buyer shall be given the opportunity to select Options for the following items and others that may be available: counter tops, lighting, floor covering, cabinets, and interior and exterior colors, all from a palette of colors and range of styles available for the model Buyer has selected. Buyer's final selections must be delivered to Seller in writing within fourteen (14) days after Buyer's consultation appointment. The options selected become an Addendum to this Agreement. Nothing in this Section 6 shall be

Buyer Initials mmSeller Initials JB

construed as a waiver of any of the requirements for approval from the Architectural Control Committee that may be set forth in the Governing Documents.

6.1. Prices for Options. The Prices for Options selected by Buyer shall be those in effect on the date of Buyer's final selection. All prices are subject to change prior to Buyer's final selection. Within seven (7) days after the date of Buyer's final selection Buyer must pay Seller a deposit (the "Option Deposit") equal to fifty percent (50%) of the price of the Options selected or non-standard features selected by Buyer, with the balance due at Closing. Options selected may not be available if Buyer delivers final selection to Seller later than stipulated in Section 7. All deposits or payments made by Buyer for non-standard options are non-refundable. A list of non-standard options is available from Seller.

6.2. Replacement Options Selected. If any Options chosen by Buyer are unavailable at the time of construction or Seller otherwise determines in Seller's sole discretion, that it is necessary for Buyer to select replacement Options, Buyer agrees to choose replacement items from Seller's then current inventory within seven (7) days after Buyer receives notice from Seller. If Buyer fails to timely select replacement Options, Seller may make a replacement selection for Buyer, which selection shall be as similar as reasonably possible to the items originally selected by Buyer.

6.3. Purchasing a Finished Home. Despite any conflicting terms in this Agreement, if Buyer is purchasing a home that has already been constructed, the above schedules are not applicable to Buyer. However, if Buyer requires any changes or if there are unfinished items in the home purchased by Buyer, Buyer must make final selection of all Options within (7) days of signing this Agreement.

6.4. Extra Options. Seller's model homes and promotional materials contain optional and extra design features such as floor coverings, decorator light fixtures, wall coverings, window treatments, furniture, built-ins, swimming pools or spas, and furnishings. These items shall not be included in Buyer's Home, unless specifically ordered and paid for in accordance with Section 7.

6.5. Construction Options and Options Selected. Buyer acknowledges that Seller shall not be obliged to construct or install, and that Seller shall not commence construction or installation of any Options or non-standard features until both parties have signed an amendment to this Agreement and Buyer has paid Seller the applicable Option Deposit.

6.6. Interest Charges on Items Not Paid. Amounts not paid by the scheduled dates, as indicated above, are subject to an interest charge of one and one-half percent (1.5%) per month.

7. Construction of the Home. Seller agrees to construct the Home on the Lot, including any options, change orders and any non-standard features described in this Agreement or any Amendment or addendum executed by both parties, in substantial conformity with

Buyer Initials mmSeller Initials JB

Seller's Standard Plans and Specifications as of the time of Start of Construction. All changes to Seller's Plans and Specifications requested by Buyer shall be evidenced by a written change order signed by Buyer and shall not be effective until accepted in writing by Seller.

7.1. Start of Construction. For purposes of this Agreement, the "Start of Construction" for the Home shall be understood to mean the date on which Seller issues the "Notice to Proceed" to contractors for the Home. The Notice to Proceed shall typically include a group of homes that is being constructed by Seller in a single sequence. Seller shall make reasonable efforts to send Buyer a written notice stating the date on which Start of Construction has occurred. Projections concerning start of Construction are estimates only. Seller shall not be required to commence construction on Buyer's Home until it is the next home scheduled for construction according to Seller's sequence of construction. Further, Seller stresses that many factors, including changes in construction plans, weather or acts of God may prevent Seller from doing so. Moreover, Buyer is responsible for performing certain obligations that may affect the timing of construction, such as scheduling a consultation appointment to select the Options, paying the down payment and timely applying for and obtaining approval of any loan. Buyer's failure to timely perform these obligations shall constitute a default of this Agreement and shall entitle Seller to terminate this Agreement and exercise any remedies for such default provided for herein.

7.2. Completion of Construction. Seller agrees to proceed with reasonable diligence to complete the Home in accordance with Seller's building schedule. Buyer understands, however, that scheduling of construction is difficult and that unexpected delays in completion are common. Seller shall use reasonable efforts to keep Buyer informed of the progress in the construction of Buyer's Home. Buyer understands and agree that Seller makes no guarantee as to the actual date of completion and that in no event shall Seller be responsible in any manner for any inconvenience, loss, damage, or expense to Buyer, including loss of loan commitment or interest rate lock, resulting from delays in construction.

A landscaping allowance is included in the price of Buyer's Home and landscaping will be completed prior to closing, if possible. In the event Buyer's landscaping is not complete at the time of closing (due to weather conditions), Buyer agrees to proceed with the normal closing and to place into escrow sufficient funds, to guarantee landscape completion in a timely manner.

7.3 Deadline for Completion of Construction. If Seller fails to complete construction of the Home within one (1) year from the date of this Agreement due to reasons other than Buyer's failure to comply with the terms of this Agreement, unanticipated events or acts of God, or any other reason that would excuse Seller from performance under Utah law, then Buyer may, as Buyer's sole and exclusive remedy, rescind this Agreement by delivery of written notice to Seller and receive a refund of Buyer's Earnest Money Deposit and all other sums paid by Buyer to Seller. Upon Buyer's rescission of this Agreement, this Agreement shall be terminated and neither

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party shall have further obligation under this Agreement, except for Seller's obligation to refund the monies specified above. Buyer's written notice to rescind this Agreement must be exercised and provided to Seller within thirty (30) days from the date this Agreement becomes eligible for recession.

8. Reserved Rights Re: Construction. Although Buyer is entitled to select and Seller shall endeavor to provide the Options described above, the Home shall not be constructed as nor deemed to be a custom Home. The Home is being constructed as a single structure within Seller's production housing development and shall be built according to the requirements of the overall development and construction program. Accordingly, Seller reserves the right to, at its sole discretion, make changes in the plans, specifications, and materials for the Home as and when Seller deems necessary or appropriate. For example, Seller may make changes in the building of the Home that are not reflected in the models Buyer has seen or in Seller's current plans and specifications due to Seller's on-going program of home building research and enhancement or the possibility of material shortages and discontinuations. These changes may also include variations in dimensions or measurement, e.g. distance between counter tops and cabinets in Buyer's kitchen may differ from those in the model Buyer selected in order to accommodate required clearance standards.

9. Final Inspection. As soon as possible after the substantial completion of construction, Seller shall schedule a final inspection of the Home to give Buyer or Buyer's representative the opportunity to have a pre-Closing "walk-through" inspection of the Home. Substantial completion shall occur when the City of St. George issues a certificate of occupancy. Seller shall make every reasonable effort to schedule the final inspection at a mutually convenient time, but the Closing cannot be delayed if Buyer or Buyer's representative is unable to participate in the final inspection. If Buyer or Buyer's representative is unable to participate in the final inspection, Buyer authorizes Seller to perform the final inspection on Buyer's behalf.

9.1. Punch List Items. The final inspection shall determine the remaining items to be completed, repaired or replaced. These items are commonly known as "punch list items". The existence of punch list items shall not entitle Buyer to delay closing, request a reduction in the Purchase Price, hold funds in escrow, or terminate this Agreement. Seller agrees to correct and/or complete the punch list items within a reasonable period of time either before or after the Closing and Buyer agrees to allow Seller's personnel to enter onto the Property (after giving Buyer reasonable notice) to correct and/or complete punch list items after the Closing.

10. Visits to the Construction Site: Assumption of Liability and Risk. A construction site is a dangerous place, especially for persons who are unaccustomed to the building industry or the risks associated with the construction of a house in progress. Seller therefore cannot permit Buyer to visit the Property during construction or prior to the Closing or otherwise enter any construction site within Sunbrook unless Buyer is accompanied by one of Seller's representatives. By signing this Agreement, Buyer agrees to assume all risk and responsibility for Buyer or anyone else accompanying Buyer with

respect to any damage, injury, or loss of life occurring while visiting the Property during construction, prior to Closing, or as a result of entering one of Seller's construction sites. Buyer further agrees to indemnify and hold Seller harmless against any loss or damage Seller may incur as a result of Buyer's visit to the Property during construction or prior to Closing, or because of Buyer's entrance into one of the construction sites, including matters arising out of Seller's contractor's negligence, or matters involving strict liability. All site visits wherein Buyer desires to enter into Buyer's Home shall be coordinated through the Seller's sales agent, who shall accompany Buyer where reasonably possible.

11. Changes in the Sunbrook Master Plans. The Sunbrook Development Master Plan as well as any other development plans prepared by Seller, may be amended or changed from time to time to provide for changes, modifications, or alterations to patterns; setbacks; type, number, style, or price of home; lot sizes and configurations; densities, recreational amenities; or other improvements. As Seller's plans are periodically updated and remain subject to change, Buyer understands that no statement by one of Seller's representatives or any sales associate regarding the planned use of property in or adjacent to Sunbrook should be understood by Buyer or anyone as a warranty or promise regarding Seller's future development plans. By execution of this Agreement, and as a material inducement to Seller to accept Buyer's offer to purchase the Property, Buyer waives any right to claim any damages, costs, liabilities, expenses or obligations against Seller, Seller's officers, employees, agents and subsidiaries for any changes to the Master Plan, and/or any other zoning ordinance or development plan for Woodlands or for adjacent properties, or for the annexation of additional land or other development plan changes in Sunbrook Communities.

12. Governing Documents, (CC&Rs), Design Guidelines, Articles, and Bylaws. Buyer acknowledges that the Property Buyer is purchasing under this Agreement is located within a common interest master planned community commonly known as Sunbrook Communities. Buyer further acknowledges that there are restrictions on how the Buyer can use the Property. These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions (CC&Rs) that Buyer should review prior to executing this Agreement. The CC&Rs become a part of the title to the Property. The CC&Rs bind Buyer and every future owner of the Property whether or not Buyer has read them or had them explained. The CC&Rs together with other "Governing Documents" (such as association articles, bylaws and rules and regulations) are intended to preserve the character and value of the properties in the community but may also restrict what Buyer can do to improve or change the Property and limit how Buyer can use and enjoy the Property. Buyer is therefore on notice that Buyer should review the CC&Rs and other Governing Documents before executing this Agreement to make sure that these limitations and controls are acceptable to Buyer.

Buyer further acknowledges that as an owner in a common interest community Buyer will be responsible for paying Buyer's share of expenses relating to common elements, such as landscaping, shared amenities in the operation of the homeowners association. The obligation to pay these assessments binds Buyer and every future owner of the

Property. Buyer must pay these dues whether or not Buyer agrees with the way the association is managing the properties or spending the assessments. The executive board of the association, as set forth in the Governing Documents, may have the power to change and increase the amount of the assessment and to levy special assessments against the Property to meet expenses.

Buyer acknowledges that Seller has made available, prior to Buyer's execution of this agreement, copies of the Governing Documents for Buyer's review and that Buyer has either reviewed or determined, at Buyer's own risk, not to review these Governing Documents.

13. Warranty (Ref to Buyer's Limited Warranty Statement, attached).

14. Specific Disclaimers. By signing this Agreement, Buyer agrees to purchase the Property subject to the following additional disclaimers and to release Seller from any liability, and to indemnify Seller from any liability, with respect to the following enumerated items. This list of items is not exhaustive and shall be deemed to include any and all other items or circumstances to which Seller has no duty or obligation pursuant to state or federal law:

14.1. The location of utility lines, utility improvements (such as, but not limited to, junction boxes, transformers or pedestals), and sewer taps that may vary from published plans;

14.2. Walls or fencing, which may encroach slightly on either side of, set back lines or actual lot lines;

14.3. Future improvements by Buyer, including walls, fencing, grading, landscaping or excavation work on the Lot which could disrupt drainage and/or retention and cause flooding or ponding if not correctly engineered (and Buyer hereby agrees to correctly engineer all such future improvements);

14.4. Seller is not responsible for and Seller's warranty does not cover cracking of concrete or stucco that may result from improper watering by Buyer near the foundation, sidewalk or driveway;

14.5. Seller is not responsible for and Seller's warranty does not cover the non-structural cracking of the concrete floor, or any non-structural cracking of any stucco, or any cracking of the tile grout that may be installed over the concrete floor, due to settling, expansion and contraction;

14.6. Any view from Buyer's Property that may change or be eliminated over time due to construction on the properties in the vicinity of Buyer's Property or growth in trees or other vegetation on or off Buyer's Property; and

14.7. Seller is not responsible for, and make no representations regarding the current or future health of any trees or other natural vegetation on or near the Property.

15. Cancellation and Remedies.

15.1. **Buyer's Default.** The following shall constitute default by the Buyer. Occurrence of any of the following gives Seller the right to cancel this Agreement and have no further obligation to Buyer. Upon default by Buyer of any terms of this Agreement, Seller shall be entitled to retain all Earnest Money and down payment up to a maximum of 15% of the Total Purchase Price, plus change orders, options, and extra money as agreed liquidated damages.

15.1.1. Failure to submit for loan application within seven (7) days of this Agreement.

15.1.2. Failure to furnish Seller with written evidence and preliminary approval for financing within thirty (30) days of this Agreement.

15.1.3. Failure to furnish Seller with written evidence of final approval for financing thirty (30) days prior to Start of Construction.

15.1.4. Failure to cooperate fully with the lender to obtain financing.

15.2. **Seller's Default.** If Seller fails to perform Seller's obligations under this Agreement and Buyer has otherwise complied with all of Buyer's obligations, then Buyer agrees, before exercising any other remedies, to deliver to Seller a written notice setting forth in detail the alleged failure of performance by Seller. Seller shall have thirty (30) days from the receipt of Buyer's notice to cure such failure of performance, if any, except that if the required performance cannot reasonably be completed by Seller within thirty (30) days, then Seller shall have a reasonable time within which to complete the remedial action, but in no event longer than sixty (60) days. If, at the expiration of said cure period, Seller shall not have cured the failure of performance, Buyer may, by further written notice to Seller, as Buyer's sole and exclusive remedy, terminate this Agreement and receive a refund of the Earnest Money and all other sums paid by Buyer to Seller to date, whereupon this Agreement shall be terminated without further liability to either party. In no event shall Seller be responsible for incidental or consequential damages.

15.3. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or Buyer's purchase of the Property shall be finally settled in accordance with the American Arbitration Association for the Real Estate Industry or the construction industry. A one person panel shall be utilized and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place in Washington County, Utah or at a place mutually agreed upon by both parties. In the event the claim relates to a construction defect, the American Arbitration Association rules for the construction industry shall apply. Such rules shall also apply if and to the extent that the alleged defect is covered by the limited warranty contained in this Agreement.

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Buyer Initials mm

Seller Initials MB

16. Construction of Agreement. The section headings in this Agreement are for reference purposes only and are not intended in any way to describe, interpret, or limit the scope, extent or intent of this Agreement. If any portion of this Agreement shall be deemed invalid or inoperative, only that portion of this Agreement shall be affected and the rest of this Agreement will remain valid and enforceable. This Agreement shall be construed in accordance with its plain meaning, and no presumption against the drafter hereof shall be employed.

17. Governing Law. This Agreement and the obligations under this Agreement shall be construed in accordance with and governed by the laws of the state of Utah.

18. No Investment Representations. None of Seller's employees, agents or representatives are authorized to make any representations regarding economic benefits to be derived from this transaction. Buyer is advised that economic benefits to be derived from this transaction may vary with individual circumstances and Buyer is required to rely upon Buyer's own attorney, accountant, or other counsel to the extent that Buyer desires guidance in regards to such matters.

19. Binding Effect: Joint and Several Obligations. This Agreement shall bind the heirs, executors, administrators, and successors of the parties hereto. If Buyer consists of more than one person or entity, Buyer's obligations hereunder shall be the joint and several obligations of all persons and/or entities comprising Buyer.

20. No Waiver. The waiver by Seller or Seller's failure to enforce any of the terms, conditions, or provisions of this Agreement shall not be construed as a waiver of any other subsequent term, condition, or provision of this Agreement.

21. Assignment Prohibited. Buyer may not assign this Agreement to another person without Seller's prior written consent. Any assignment shall be in Seller's sole and exclusive discretion.

22. Notices. All notices, unless otherwise specified in this Agreement, must be in writing and shall be effective when sent, postage prepaid, in the U.S. mail or hand delivered to the addresses shown on the Summary of Terms.

23. Time of Essence. Time is of the essence of all obligations in this Agreement.

24. Days. For purposes of this Agreement, any reference to "days" shall mean business or working days exclusive of legal holidays and weekends.

25. Attorney's Fees. In the event of any arbitration or mediation between Seller and Buyer, before or after the Closing, the prevailing party shall be entitled to an award of all attorney's fees and costs in an amount to be determined by the arbitrator or mediator hearing the matter. Any court or arbitration hearing any matter on appeal may also award such fees to the prevailing party in and for any prior mediation or arbitration.

26. Agency Acknowledgment. Buyer, by initialing below, acknowledge that Sunbrook Realty Group, L.C. represents Seller ("Seller") as Seller's real estate agent, and that prior to this Agreement, written disclosure of the agency relationship was provided to Buyer.

27. Definitions. All capitalized terms not defined in this Agreement shall have the same meaning set forth in the Governing Documents. The term "Agreement" shall mean this Real Estate Purchase Contract for Construction.

28. Authority of Signers. If Buyer is a corporation, partnership, trust, limited liability company, estate of other entity, Buyer warrants that Buyer has authority to bind such entity to the terms of this Agreement.

29. Complete Contract. This Agreement together with its addenda, any attached exhibits, and any subsequent change or extra orders, constitutes the entire Agreement between Buyer and Seller and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts, verbal or written, between Buyer and Seller. This Agreement cannot be changed, amended, or altered without the written agreement of Buyer and Seller, which written agreement must be signed by Buyer and an authorized representative of Seller. Seller has the right to assign any and all of Seller's rights and obligations under this Agreement without Buyer's consent.

30. Facsimile (Fax) Documents. Facsimile transmissions of the original signed Agreement, and retransmissions of the signed Agreement, shall be the same as delivery of an original. If the transaction involves multiple Buyers, facsimile transmissions may be executed in counterparts.

31. Additional Items. There [] are [✓] are not addenda to this Agreement containing additional items. If there are, the terms of the following addenda are incorporated into this Agreement by reference: 11-16-2004.

Buyer confirms and agrees as follows:

I HAVE READ THIS AGREEMENT IN ITS ENTIRETY AND UNDERSTAND THE TERMS AND PROVISIONS OF THIS AGREEMENT. I OFFER TO PURCHASE THIS PROPERTY SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. BUYER UNDERSTANDS THIS IS AN OFFER TO PURCHASE ONLY AND SELLER HAS NO OBLIGATION UNTIL THIS DOCUMENT IS SIGNED AND ACCEPTED BY THE SELLER. THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE IT IS ACCEPTED AND APPROVED BY SELLER AS NOTED BELOW. THE SALES ASSOCIATE IS NOT THE SELLER AND IS NOT AUTHORIZED TO ACCEPT THIS DOCUMENT ON BEHALF OF THE SELLER. BUYER SHALL PROMPTLY BE MAILED (OR FAXED, FOLLOWED BY MAIL, IF REQUESTED BY BUYER) A FINAL ACCEPTED PURCHASE AGREEMENT.

13

Buyer Initials mm

Seller Initials MB

"BUYER"

NAME Marie Mardesich DATE 12-4-04

NAME _____ DATE _____

RECEIPT OF THE EARNEST MONEY DEPOSIT SPECIFIED ABOVE IS HEREBY
ACKNOWLEDGED AND PRESENTATION OF THIS OFFER TO SELLER IS BEING
MADE BY: SUNBROOK REALTY GROUP, LC

SALES REPRESENTATIVE: Rosanne Campbell 12-4-04

APPROVAL: (Signature required for Acceptance or Counteroffer; *Initials only for
Rejection*).

☒ ACCEPTANCE: This offer is accepted and Seller agrees to sell the Property subject
to the terms and conditions contained in this Agreement.

☐ COUNTEROFFER: Seller presents for Buyer's acceptance the terms of Buyer's offer
subject to the execution of or modifications as specified in the attached Addendum # ____.

☐ REJECTION: Seller hereby rejects the foregoing Agreement, Seller's Initials ____.

"SELLER" SUN HILL HOMES, L.C., a Utah Limited Liability Company.

BY: Roger L. Stuefer TITLE President DATE 10/6/04

14

Buyer Initials mmSeller Initials RS

DOCUMENT RECEIPT

State laws require Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures

BUYER _____ DATE _____

BUYER _____ DATE _____

SELLER _____ DATE _____

I personally caused a final copy of this Agreement bearing all signatures to be
☐ mailed, ☐ faxed, ☐ hand-delivered on _____ 20____, postage
 prepaid to ☐ Seller ☐ Buyer.

Delivered by: _____

Buyer Initials MM

Seller Initials _____



AGENCY DISCLOSURE



This is a legally binding document. If it is not understood, consult with legal counsel.

NAME OF BUYER: MARIE MARDESICH (the "Buyer")
 NAME OF SELLER: SUNHILL HOMES, LLC (the "Seller")
 LOCATION OF PROPERTY: WOODLANDS #8 SUN BROOK (the "Property")
 AGENT REPRESENTING SELLER: ROSEANN CAMPBELL (the "Agent")
 BROKERAGE REPRESENTING SELLER: SUN BROOK REALTY GROUP (the "Company")

WHEN YOU ENTER INTO A DISCUSSION WITH A REAL ESTATE AGENT REGARDING A POTENTIAL REAL ESTATE TRANSACTION, YOU SHOULD, FROM THE OUTSET, UNDERSTAND WHO THE REAL ESTATE AGENT IS REPRESENTING IN THAT TRANSACTION. WHAT FOLLOWS IS A BRIEF BUT VERY IMPORTANT EXPLANATION REGARDING AGENCY RELATIONSHIPS AND THE REAL ESTATE AGENTS INVOLVED IN THIS TRANSACTION.

SELLER'S AGENT

A real estate agent who lists a seller's property for sale ("Seller's Agent"), acts as the agent for the seller only, and has fiduciary duties of loyalty, full disclosure, confidentiality and reasonable care to that seller. In practical terms, the seller hires a Seller's Agent to locate a buyer and negotiate a transaction with terms favorable to the seller. Although the Seller's Agent has these fiduciary duties to the seller, the Seller's Agent is, by law, responsible to all prospective buyers to treat them with honesty, fair dealing, and with good faith.

BUYER'S AGENT

A real estate agent that acts as agent for the buyer only ("Buyer's Agent") has the same fiduciary duties to that buyer that a Seller's Agent has to the seller. In practical terms, the buyer hires a Buyer's Agent to locate a suitable property and negotiate a transaction with terms favorable to the buyer. Although the Buyer's Agent has these fiduciary duties to the buyer, the Buyer's Agent is, by law, responsible to all prospective sellers to treat them with honesty, fair dealing, and with good faith.

AGENT OF BOTH BUYER AND SELLER

A real estate agent can, with the prior written consent of the buyer and seller, represent both the buyer and seller in the same transaction ("Limited Agent"). A Limited Agent has fiduciary duties to both the buyer and the seller, but the Limited Agent is also "limited" by a separate duty of neutrality in the negotiations between the buyer and seller.

CONFIRMATION OF AGENCY IN THIS TRANSACTION

The Property shown above is presently listed for sale through the Company. Consequently, the Company and the Agent are representing the Seller. The Buyer desires to have the Agent prepare an offer to purchase the Property. Although the Agent has agreed to prepare the Buyer's offer to purchase, by signing this Agency Disclosure form, the Buyer acknowledges and agrees that the Agent and the Company will represent the Seller in this transaction as a Seller's Agent. THE BUYER ACKNOWLEDGES THAT THE COMPANY AND THE AGENT HAVE ADVISED THE BUYER THAT THE BUYER IS ENTITLED TO BE REPRESENTED BY A BUYER'S AGENT WHO WILL REPRESENT ONLY THE BUYER. THE BUYER HAS HOWEVER, ELECTED NOT TO BE REPRESENTED BY A REAL ESTATE AGENT IN THIS TRANSACTION.

ACKNOWLEDGEMENT

I/we acknowledge receipt of a copy of this Agency Disclosure and understand and agree with the agency relationships confirmed herein.

Marie Mardesich 12-4-04 Buyer Date
Roseann Campbell 12-4-04 The Company by: (Authorized Agent) Date

Sunbrook Communities**Sequence of Construction**

February 11, 2004

Cut-off # 1 items below cannot be added, deleted, or changed after the pre-construction meeting.

Elevation
Room conversion
Fireplace options
Electrical options
Home electronics options
Alarm system options
Drywall options
Appliance options
Cabinet options
Flooring options
Coffer ceiling option
Garage option
Concrete options
Window options
Media center options
HVAC options
Plumbing options
Central vacuum options
Interior trim options
Exterior door options
Countertop options
Cultured marble options

Cut-off # 2 items below cannot be added, deleted, or changed once house has started framing.

Plumbing fixtures
Paint options
Mirrors options
Shower door options
Closet shelving options
Garage door options
Garage floor options

Homebuyer Marie Mardesich Date: 12-4-04

Homebuyer _____ Date: _____

SUNBROOK

DESIGN CENTER

Each new homeowner will have 4 hours with the Design Center to select and finalize their colors; additional time with the Design Center will be at \$ 100.00 per hour.

If a change in the plan is required, the homeowner will have 2 hours with the Design Center. Additional time for plan changes will be at \$ 100.00 per hour.

Marie Mardesich
Buyer

Buyer

Date: 12-4-04

EXCLUSIVE BUYER-BROKER AGREEMENT & AGENCY DISCLOSURE

THIS IS A LEGALLY BINDING AGREEMENT - READ CAREFULLY BEFORE SIGNING

DESIGNATED AGENCY BROKERAGE

THIS EXCLUSIVE BUYER-BROKER AGREEMENT is entered into on this 15th day of November, 2004, by and between Planet Real Estate (the "Company") and John and Maria Mardesich ("Buyer")

1. **TERM OF AGREEMENT.** The Buyer hereby retains the Company, including Clint Budweaks (the "Buyer's Agent") as the authorized agent for the Company, starting on the date listed above, and ending at 5:00 P.M. (MST) on the 15th day of June, 2005, or the closing of the acquisition of a property, which ever occurs first (the "Initial Term"), to act as the EXCLUSIVE Buyer's Agent in locating and/or negotiating for the acquisition of a property in Utah County, Utah. During the Initial Term of this Exclusive Buyer-Broker Agreement, and any extensions thereof, the Buyer agrees not to enter into another buyer-broker agreement with another real estate agent or brokerage.

2. **BROKERAGE FEE.** If the property acquired by the Buyer is listed with a brokerage, the selling commission paid to the Company by the listing brokerage shall satisfy the Buyer's obligation for the brokerage fee shown below. If, during the Initial Term, or any extension of the Initial Term, the Buyer, or any other person acting in the Buyer's behalf, acquires an interest in any real property, the Buyer agrees to pay to the Company a brokerage fee in the amount of \$ or 3 % of the acquisition price of the property. If the property is not listed with a brokerage, in the absence of a commission agreement with the owner of the selected property, the brokerage fee shown above shall be paid by the Buyer. Unless otherwise agreed to in writing by the Buyer and the Company, the brokerage fee shown above shall be due and payable on: (a) if a purchase, the date of recording of the closing documents; (b) if a lease, the effective date of the lease; or (c) if an option, the date the option agreement is signed. If the transaction is prevented by default of Buyer, the compensation shall be immediately payable to the Company.

3. **PROTECTION PERIOD.** If within 6 months after the termination or expiration of this Exclusive Buyer-Broker Agreement, Buyer or any person acting on the Buyer's behalf, enters into an agreement to purchase, exchange for, obtain an option on, or lease any property located for Buyer by Buyer's Agent or the Company, or on which Buyer's Agent negotiates in Buyer's behalf during the Initial Term, Buyer agrees to pay to the Company the brokerage fee referenced in Section 2.

4. **BUYER REPRESENTATIONS/DISCLOSURES.** THE BUYER WARRANTS THAT THE BUYER HAS NOT ENTERED INTO ANY OTHER BUYER-BROKER AGREEMENT WITH ANY OTHER BROKERAGE THAT IS STILL IN FORCE AND EFFECT. The Buyer will: (a) in all communications with other real estate agents, notify the agents in advance that the Buyer has entered into this Exclusive Buyer-Broker Agreement with the Company; (b) furnish the Buyer's Agent with relevant personal and financial information to facilitate the Buyer's ability to acquire a property; (c) exercise care and diligence in evaluating the physical and legal condition of the property selected by the Buyer; (d) hold harmless the Company and the Buyer's Agent against any claims as the result of any injuries incurred while inspecting any property; (e) upon signing of this Exclusive Buyer-Broker Agreement, personally review and sign the Buyer Due Diligence Checklist form; and (f) disclose to the Buyer's Agent all properties in which the Buyer, as of the date of this Exclusive Buyer-Broker Agreement, is either negotiating to acquire or has a present interest in acquiring.

5. **AGENCY RELATIONSHIPS.** By signing this Exclusive Buyer-Broker Agreement, the Buyer designates the Buyer's Agent and the Principal/Branch Broker for the Company (the "Broker"), as agents for the Buyer to locate properties for the Buyer's consideration and review. The Buyer also authorizes the Buyer's Agent or the Broker to appoint another agent in the Company to represent the Buyer in the event the Buyer's Agent or the Broker will be temporarily unavailable to service the Buyer. As agents for the Buyer, the Buyer's Agent and the Broker have fiduciary duties to the Buyer that include loyalty, full disclosure, confidentiality, and reasonable care. The Buyer understands, however, that the Buyer's Agent and the Broker may now, or in the future, be agents for a Seller who may have a property that the Buyer may wish to acquire. Then the Buyer's Agent and the Broker would be acting as Limited Agents - representing both the Buyer and seller at the same time. A Limited Agent has fiduciary duties to both the Buyer and the seller. However, those duties are "limited" because the agent cannot provide to both parties undivided loyalty, full confidentiality and full disclosure of all information known to the agent. For this reason, the Limited Agent is bound by a further duty of neutrality. Being neutral, the Limited Agent may not disclose to either party information likely to weaken the bargaining position of the other - for example, the highest price the Buyer will offer, or the lowest price the seller will accept. THE BUYER IS ADVISED THAT NEITHER THE BUYER NOR THE SELLER IS REQUIRED TO ACCEPT A LIMITED AGENCY SITUATION IN THE COMPANY, AND EACH PARTY IS ENTITLED TO BE REPRESENTED BY ITS OWN AGENT. By initiating here [] [] the Buyer authorizes the Buyer's Agent and the Broker to represent both the Buyer and the seller as Limited Agents when the Buyer's Agent and the Broker also represent the Seller of the Property the Buyer desires to acquire. If initiated above, the Buyer further agrees that when another agent in the Company represents the Seller, that agent will exclusively represent the Seller, the Buyer's Agent will exclusively represent the Buyer, and the Broker will act as Limited Agent. In either event, if initiated above, the Buyer and the seller will be asked to sign a separate Limited Agency Consent Agreement at the time the limited agency situation arises.

6. **PROFESSIONAL ADVICE.** The Company and the Buyer's agent are trained in the marketing of real estate. Neither the Company nor the Buyer's Agent are trained or licensed to provide the Buyer with professional advice regarding the physical condition of any property or regarding legal or tax matters. BUYER IS ADVISED NOT TO RELY ON THE COMPANY, OR ON ANY AGENTS OF THE COMPANY, FOR A DETERMINATION REGARDING THE PHYSICAL OR LEGAL CONDITION OF THE PROPERTY, including, but not limited to: past or present compliance with zoning and building code requirements; the condition of any appliances; the condition of heating/cooling, plumbing, and electrical fixtures and equipment; sewer problems; moisture or other problems in the roof or foundation; the availability and location of utilities; the location of property lines; and the exact square footage or acreage of the property. AS PART

Page 1 of 2 Buyer's Initials (AM) Date 11-16-04

UAR FORM 6

Instant
Form

This contract is for use by CLINT BUDWEAKS. Use by any other party is illegal and voids the contract.

OF ANY WRITTEN OFFER TO PURCHASE A PROPERTY, THE COMPANY STRONGLY RECOMMENDS THAT THE BUYER ENGAGE THE SERVICES OF APPROPRIATE PROFESSIONALS TO CONDUCT INSPECTIONS, INVESTIGATIONS, TESTS, SURVEYS, AND OTHER EVALUATIONS OF THE PROPERTY AT THE BUYER'S EXPENSE. IF THE BUYER FAILS TO DO SO, THE BUYER IS ACTING CONTRARY TO THE ADVICE OF THE COMPANY.

7. DISPUTE RESOLUTION. The parties agree that any dispute related to this Exclusive Buyer-Broker Agreement, arising prior to or after the acquisition of a property, shall first be submitted to mediation through a mediation provider mutually agreed upon by the Buyer and the Company. If the parties cannot agree upon a mediation provider, the dispute shall be submitted to the American Arbitration Association. Each party agrees to bear its own costs of mediation. If mediation fails, the other remedies available under this Exclusive Buyer-Broker Agreement shall apply.

8. ATTORNEY FEES. Except as provided in Section 7, in case of the employment of an attorney in any matter arising out of this Exclusive Buyer-Broker Agreement, the prevailing party shall be entitled to receive from the other party all costs and attorney fees, whether the matter is resolved through court action or otherwise. If, through no fault of the Company, any litigation arises out of the Buyer's employment of the Company under this Exclusive Buyer-Broker Agreement (whether before or after the acquisition of a property), the Buyer agrees to indemnify the Company and the Buyer's Agent from all costs and attorney fees incurred by the Company and/or the Buyer's Agent in pursuing and/or defending such action.

9. BUYER AUTHORIZATIONS. Buyer authorizes the Company and/or Buyer's Agent as follows: (check applicable boxes)
☐ Disclose after Closing to each MLS in which the Company participates, consistent with the requirements of the MLS, the final terms and sales price of the property acquired by Buyer under the terms of this Agreement; ☐ Communicate with Buyer for the purpose of soliciting real estate-related goods and services during and after the term of this Buyer-Broker Agreement, at the following numbers or email address: (hm) (wk) (cell) fax; and email; ☐ In any transaction for the acquisition of a property, Buyer agrees that the Earnest Money Deposit may be placed in an interest-bearing trust account with interest paid to the Utah Association of Realtors® Housing Opportunity Fund (UARHOF) to assist in creating affordable housing throughout the state. ☐ Buyer's Initials

10. ATTACHMENT. There ☐ ARE ☐ ARE NOT additional terms contained in an Addendum attached to this Exclusive Buyer-Broker Agreement. If an Addendum is attached, the terms of that Addendum are incorporated into this Exclusive Buyer-Broker Agreement by this reference.

11. EQUAL HOUSING OPPORTUNITY. The Buyer and the Company will comply with Federal, State, and local fair housing laws.

12. FAXES. Facsimile (fax) transmission of a signed copy of this Exclusive Buyer-Broker Agreement, and retransmission of a signed fax, shall be the same as delivery of an original. If this transaction involves multiple Buyers, this Exclusive Buyer-Broker Agreement may be executed in counterparts.

13. ENTIRE AGREEMENT. This Exclusive Buyer-Broker Agreement, including the Buyer Due Diligence Checklist form, contains the entire agreement between the parties relating to the subject matter of this Exclusive Buyer-Broker Agreement. This Exclusive Buyer-Broker Agreement shall not be modified or amended except in writing signed by the parties hereto.

THE UNDERSIGNED Buyer does hereby accept the terms of this Exclusive Buyer-Broker Agreement.

[Signature]
 (Buyer's Signature)

28000 CHARLES DR SANTA CLARITA CA 11-16-04
 (Address/Phone) (Date)
 (Cell) 296-8443 9150

[Signature]
 (Buyer's Signature)

SAME AS ABOVE 11-16-04
 (Address/Phone) (Date)

The Company
 By: [Signature] 11-16-04
 (Buyer's Agent) (Date)
 Clint Sudwaks

by: _____
 (Principal/Branch Broker) (Date)

WHITE: Broker

CANARY: Buyer's Agent

PINK: Buyer

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Page 2 of 2 Buyer's Initials [Signature] Date _____

UAR FORM 8

Important Terms

This contract is for use by CLINT SUDWAKS, Inc. by any other party is illegal and voids the contract.

ADDENDUM NO 1
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot # 8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$478,900.00 to \$654,899.00 due to Option Changes made in the amount of \$175,999.00.

*** Note: All credits for payments received will be given at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same..

☒ Seller shall have until 5:00 ☐ AM ☒ PM Mountain Time, September 20, 2005 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

<u><i>John Mardesich</i></u> <u>9-12-05</u>	<u><i>Marie Mardesich</i></u> <u>9-12-05</u>
[X] Buyer Signature Date Time	[X] Buyer Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☒ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM No.

<u><i>Raymond Stutford</i></u>	<u>9/13/05</u>				
(Signature)	(Date)	(Time)	(Signature)	(Date)	(Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

(Signature)	(Date)	(Time)	(Signature)	(Date)	(Time)

SUNBROOK

To : Design Center

From : Purchasing

Date : September 8, 2005

Re : Lot 8 Woodlands- John & Marie Mardesich- Modified Cottonwood

1	Re-Draw Fee	\$ 1,600	OK
2	Wall off Study/Great Room	\$ 1,600	OK
3	EyeBrow Arches (total 9)	\$ 1,200	OK
4	Add Rock (Full Height) to Fireplace	\$ 953	OK
5	Delete Closet & Tub- Add Walk-In Shower to Guest Bath	\$ 3,627	OK
6	Add Glass Block to Guest Shower	\$ 1,000	OK
7	Delete 3'0x5'0 SH Window in Great Room	N/C	OK
8	Add to Great Room the Covered Patio- Sq. Footage	\$ 5,500	OK
9	Built-In Entertainment Center: Great Room - Stain & glaze priced	\$ 16,379	OK
10	Built-In Bar (Per Drawing) - Stain & glaze priced	\$ 9,179	OK
11	Built-In Shelving Behind Bar - This was priced in item #10	Priced above	OK
12	Built-In Shelving in Master Retreat - Stain & glaze priced	Delete	OK
13	Add Tile to Great Room, Study, Office, Retreat, and Hallway	\$ 7,087	OK
14	Upgrade all Floor Tile to Kale Random	\$ 13,648	OK
15	Upgrade Carpet: Camelot Shagadelic Lambs Wool	\$ 2,616	OK
16	Add Hanging Light w/Switch in Great Room	\$ 87	OK
17	Add (5) Outlets and (3) Cable	\$ 280	OK
18	Add (14) Cans	\$ 952	OK
19	Add 2-L Line and Cable in Office	\$ 70	OK
20	Add Exhaust fan in Master Shower	\$ 187	OK
21	Laundry Counter-File	\$ 681	OK
22	Master Bath Tile	\$ 4,339	OK
23	Guest Bath Tile	\$ 1,423	OK
24	1/2 Bath Vanity - Slab Emperador Dark	\$ 91	OK
25	Knotty Alder Doors-Stained to Match Cabinets	\$ 10,799	OK
26	Knotty Alder Baseboards-Stained to Match Cabinets	\$ 3,127	OK
27	Knotty Alder Crown (8") in Master Bedroom Stained to Match Cabinets	\$ 1,314	OK
28	Cabinets Square Panel- Stained (to match Briarwood)	\$ 4,644	OK
29	Upgrade Kitchen Granite to "Golden Persa"	\$ 2,115	OK
30	Add Copper to Wood Hood like Briarwood	\$ 1,000	OK
31	Epoxy Garage Floor	Delete	OK
32	Add Silver Shield Insulation	Delete	OK
33	Add Central Vac - Beam rugmaster #2775 Serenity Plus	\$ 1,524	OK
34	Add Roll Text to Walls and Ceilings	\$ 1,894	OK
35	Add Glaze to Walls and Ceilings	\$ 5,683	OK
36	Add Recessed Niche Shampoo Shelf in Guest Bath Shower	\$ 214	OK
37	Stamp (Slate-Style) Color Concrete - Walkway, Courtyard, 2'skirt, Man Door Pad	\$ 4,858	OK
38	Color - Concrete Including 2' Skirt (Above)	-	OK
39	Tankless Water Heater Rinnai #2532FFUN-2 sep. controls (1 kitchen, 1 mstr bath)	\$ 1,650	OK
40	High Seat Elongated Kohler Toilets	\$ 214	OK
41	Surround Sound 4 Speakers in Master Bedroom and 2 Speakers in Master Bathroom	\$ 1,579	OK
42	Front Door Style (Like Briarwood Model)	\$ 3,931	OK
43	Add Hose Bib for Future Water Feature in Courtyard	\$ 250	OK
44	Add WP/GFI w/Switch for Future Fountain in Courtyard	\$ 173	OK
45	Add decorative border on floor archways in study, dining (2sides), Masterbed	\$ 2,040	OK
46	Upgrade Appliances to Wolf, KitchenAid dishwasher, & subzero fridge	\$ 11,660	OK
47	Upgrade fireplace unit to Extrodinaire w/ arch #FX-36DVXL Black	\$ 2,679	OK

SUNBROOK

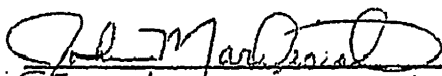
To : Design Center


From : Purchasing

Date : September 8, 2005

Re : Lot 8 Woodlands- John & Marie Mardesich- Modified Cottonwood

48	Add Glaze to Kitchen Cabinets	\$ 3,000	OK
49	Add Glaze to Wood Doors	\$ 2,933	OK
50	Vent Hood to Roof	\$ 400	OK
51	Independent Hood Insert - Vented to Roof	\$ 400	OK
52	Upgrade Duct Work for Exhaust Fans in Baths to 6" retrofit to std fans	\$ 600	OK
53	Anthracite SlGranite Sinks (\$450 Kitchen - \$250 Wet Bar)	\$ 700	OK
54	Glass Block over Master Bath Tub	\$ 960	OK
55	12" Hearth w/ Hearthstones on Fireplace	\$ 575	OK
56	Add Fridge Panels & Handles like the Briarwood Model	\$ 867	OK
57	Add 2 Tile-In Shampoo Shelves(12"w x 18"h) in Master Shower	\$ 429	OK
58	Upgrade Bath Faucets (except showers); Sinks-cabinet/Door Hardware Emtek	\$ 3,123	OK
59	Mirage Soaker Tub (from Whitewater) no jets	\$ 864	OK
60	Add Rock Wool to Interior Walls per plan	\$ 2,164	OK
61	Upgrade Attic Insulation to R50 Blown In	\$ 791	OK
62	Upgrade to Decora Night Light Switches throughout house	\$ 693	OK
63	Add 3 Mini Eyeballs & 1 can - delets fan rough in study	\$ 386	OK
64	Upgrade to 6cm Granite Edge on Wet Bar & Kitchen Counters	\$ 3,163	OK
65	Add 2 Monster Floor Plugs, 1 floor outlet, & 1 Sub Woofer Outlet in GreatRm	\$ 521	OK
66	Add Kinetico Water Softener "K-2030"	\$ 1,795	OK
67	Add Deluxe R/O From Kinetico in Garage w/ line to fridge, wet bar, kitchnsink	\$ 1,250	OK
68	Add rock to Exterior courtyard wall & home per plan	\$ 10,267	OK
69	Overage on Lighting Allowance - per Wilkinsons Invoice	\$ 414	OK
70	Tile Showers Up to 8ft height with Showerheads at 7 ft height	\$ 1,444	OK
71	Upgrade to Xenon Undercabinet Lighting from Std Florescent	\$ 750	OK
72	U-Line Undercounter Fridge w/ Icemaker #CO2075FS (Clear Ice is \$2885.00)	\$ 2,885	OK
73	Add Hot Water Recirculating Loop-Timer to Water Heater	\$ 600	OK
74	Add Wood Panel to Dishwasher with Handle to match fridge (per Jeremiah)	\$ 385	OK
75	Upgrade 3 Shower Faucets to Marielle ORB	\$ 193	OK
Total		\$ 175,999	


Signature


Signature

9-12-05
Date

ADDENDUM NO 2
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an ☒ [X] addendum ☐ [] counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot # 8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$654,899.00 to \$655,721.00 due to Change Order #1 made in the amount of \$822.00.

*** Note: All credits for payments received will be given at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ [X] Seller shall have until 5:00 ☐ [] AM ☒ [X] PM Mountain Time, September 30, 2005 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

<u>John Mardesich</u> 9-21-05 10:40 <input checked="" type="checkbox"/> [X] Buyer Signature Date Time P&T	<u>Marie Mardesich</u> 9-21-05 10:40 P&T <input checked="" type="checkbox"/> [X] Buyer Signature Date Time
--	---

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ [X] ACCEPTANCE: ☒ [X] Seller ☐ [] Buyer hereby accepts the terms of this ADDENDUM

☐ [] COUNTEROFFER: ☐ [] Seller ☐ [] Buyer presents as a counteroffer the terms of attached ADDENDUM No.

<u>Paul Stuttsford</u> 9/21/05 (Signature) (Date) (Time)	(Signature) (Date) (Time)	(Signature) (Date) (Time)	(Signature) (Date) (Time)
---	---------------------------	---------------------------	---------------------------

REJECTION: ☐ [] Seller ☐ [] Buyer rejects the foregoing ADDENDUM

(Signature)	(Date)	(Time)	(Signature)	(Date)	(Time)
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ADDENDUM NO 23
TO

Page 1 of 1

SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004, including any or all prior addenda and counteroffers, between Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: Woodlands, lot 8, Sunbrook more particularly described as Lot # 8 (Sunbrook Subdivision), Plat (Phase) 1, St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

Buyer has paid \$95,000 as the 20% construction deposit agreed to in the contract.

Total paid to date is \$100,000.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

[X] Seller [] Buyer shall have until 5:00 [] AM [] PM Mountain Time, 20, to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

Reep M. Mardesich 9/15/05
[] Buyer [] Seller Signature Date Time [] Buyer [] Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[X] ACCEPTANCE: [] Seller [] Buyer hereby accepts the terms of this ADDENDUM

[] COUNTEROFFER: [] Seller [] Buyer presents as a counteroffer the terms of attached ADDENDUM No. _____

X Marie Mardesich 9-21-05
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: [] Seller [] Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

16

Buyer Initials _____

Seller Initials _____

**ADDENDUM NO 4
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT**

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot # 8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$655,721.00 to \$659,928.00 due to Change Order #2 made in the amount of \$3,557.00 and Change Order #3 made in the amount of \$650.00.

*** Note: All credits for payments received will be given at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ Seller shall have until 5:00 ☐ AM ☒ PM Mountain Time, November 15, 2005 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

John Mardesich 11-7-05 2340 Marie Mardesich 11-7-05 2340 hrs
[X] Buyer Signature Date Time [X] Buyer Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM No

Kevin L. Sturford 11/8/05
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

**ADDENDUM NO 5
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT**

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot # 8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$659,928.00 to \$662,903.00 due to Change Order #4 made in the amount of \$2,975.00.

*** Note: All credits for payments received will be given at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ Seller shall have until 5:00 ☐ AM ☒ PM Mountain Time, December 15, 2005 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

John Mardesich 12-2-05 1130 Marie Mardesich 12-2-05 1130
[X] Buyer Signature Date Time [X] Buyer Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM No. _____

Rachel Hillford 12/7/05 1024
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

Received Time Dec. 2. 12:34PM

Feb. 1. 2006 2:19PM

COMMUNITIES

No. 7820

P. 3

ADDENDUM NO 56

TO

SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004, including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N. Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot #8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to increase from \$659,928.00 to \$662,028.00 due to Change Order made in the amount of \$2,100.00 for additional VL10 border in dining, study & master bedroom.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ Seller ☐ Buyer shall have until 5:00 ☐ AM ☒ PM Mountain Time, February 15, 2006, to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

John Mardesich
[X] Buyer [] Seller Signature Date Time

Marie Mardesich 2-1-06 1:30 pm
[] Buyer [] Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM No. *57*

Ray L. Stutz 2/3/06
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

**ADDENDUM NO. 6
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT**

This is an ☒ [X] addendum ☐ [] counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004, including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at 354 N. Lost Creek Drive, St. George, Utah 84770, more particularly described as Lot #8 Woodlands, Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to increase from \$662,028.00 to \$664,643.00 due to Change Order made in the amount of \$2,615.00 for additional concrete.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ [X] Seller ☐ [] Buyer shall have until 5:00 ☐ [] AM ☒ [X] PM Mountain Time, February 15, 2006, to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

** John Mardesich 02-09-06 * Marie Mardesich 2-9-06*
☐ [] Buyer ☐ [] Seller Signature Date Time 11:37 ☐ [] Buyer ☐ [] Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ [X] ACCEPTANCE: ☐ [] Seller ☐ [] Buyer hereby accepts the terms of this ADDENDUM

☐ [] COUNTEROFFER: ☐ [] Seller ☐ [] Buyer presents as a counteroffer the terms of attached ADDENDUM No.

Ray Stueford 2/9/06
 (Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ [] Seller ☐ [] Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

Received Time Feb. 9. 12:32PM

ADDENDUM NO 18

TO

SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot # 8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$664,643.00 to \$676,228.00 due to Change Order #6 made in the amount of \$11,585.00.

*** Note: All credits for payments received will be given at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ Seller shall have until 5:00 ☐ AM ☒ PM Mountain Time, February 25, 2006 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

John Mardesich 2-13-06 10:45 am Marie Mardesich 2-13-06 10:45 am
☒ Buyer Signature Date Time ☒ Buyer Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM No

Roger L. Stutzford 2/13/06 2:30 pm
 (Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

Received Time Feb. 13. 11:37AM
 (Signature) (Date) (Time) (Signature) (Date) (Time)

Mar. 3. 2006 3:25PM

JOK COMMUNITIES

No.8247 P. 1/1

ADDENDUM NO. ⁹8
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an ☒ ADDENDUM ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004, including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N. Lost Creek Drive, St. George, Utah 84770, more particularly described as Lot #8 Woodlands (Cottonwood) Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to increase from \$676,228.00 to \$676,821.00 due to Lighting Overage made in the amount of \$593.00.

Note: All credits for payments received will be given at closing.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ Seller ☐ Buyer shall have until 5:00 ☐ AM ☒ PM Mountain Time, March 10, 2006, to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

* John Mardesich 3-3-06 2:48 * Marie Mardesich 3-3-06
[X] Buyer [] Seller Signature Date Time [X] Buyer [] Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached.
ADDENDUM No.

John Mardesich 3/3/06 4pm
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

ADDENDUM NO 10
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT

This is an [X] addendum [] counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N. Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot #8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

This addendum is to clarify and correct a mathematical error made due to the duplicate numbering of Addendum "#5" made on February 1, 2006 which then threw off the rest of the Addendum Numberings and Totals. The purchase price should have increased from the previous addendum dated on December 2, 2005 correctly numbered Addendum #5. To clarify a list of all change orders should be the following:

Purchase Price	\$478,900.00
Original Option Changes	\$175,999.00
Change Order #1	\$ 822.00
Change Order #2	\$ 3,557.00
Change Order #3	650.00
Change Order #4	\$ 2,975.00
Change Order #5	\$ 2,100.00
Change Order #6	\$ 2,615.00
Change Order #7	\$ 11,585.00
Lighting Overages	\$ 593.00
Change Order #8 (Credit)	(\$ 1,229.00)
To date Purchase Price:	<u>\$678,567.00</u>

***Note: To date, the Mardesich's have paid \$5,000.00 in Earnest Money and \$95,000.00 in deposits. This money will be credited to the Mardesich's at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

Mar. 7. 2006 11:22AM

BROOK COMMUNITIES

No. 8306

P. 2

Page 2 of 2
Addendum #10 (Continued)

[X] Seller [] Buyer shall have until 5:00 [] AM [X] PM Mountain Time,
200_ to accept the terms of this ADDENDUM in accordance with the provisions of
Section 31 of the Agreement. Unless so accepted, the terms as set forth in this
ADDENDUM shall lapse.

→ John Mardesich 3-7-06 10:35 Marie Mardesich 3-7-06 10:35 PM
[X] Buyer [] Seller Signature Date Time [X] Buyer [] Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[X] ACCEPTANCE: [X] Seller [] Buyer hereby accepts the terms of this ADDENDUM

[] COUNTEROFFER: [] Seller [] Buyer presents as a counteroffer the terms of attached
ADDENDUM No. _____

John Mardesich 3/7/06 2 PM
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: [] Seller [] Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

**ADDENDUM NO 11
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT**

This is an [X] addendum [] counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N. Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot #8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$678,567.00 to \$678,821.00 due to Change Order in the amount of \$254.00.

***Note: To date, the Mardesich's have paid \$5,000.00 in Earnest Money and \$95,000.00 in deposits. This money will be credited to the Mardesich's at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

[X] Seller [] Buyer shall have until 5:00 [] AM [X] PM Mountain Time, April 15, 2006 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

<i>[Signature]</i>	04-11-06	10:50 am	<i>Maria Mardesich</i>	10:50 am	
<input checked="" type="checkbox"/> Buyer Signature	Date	Time	<input checked="" type="checkbox"/> Buyer Signature	Date	Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

[X] ACCEPTANCE: [X] Seller [] Buyer hereby accepts the terms of this ADDENDUM

[] COUNTEROFFER: [] Seller [] Buyer presents as a counteroffer the terms of attached ADDENDUM No. 2

(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: [] Seller [] Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

Received Time Apr.11. 10:50PM

May 15, 2006 2:11PM

SUN HILL HOMES COMMUNITIES

No. 9207 P. 1

**ADDENDUM NO 12
TO
SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT**

This is an ☒ addendum ☐ counteroffer to that SUN HILL HOMES REAL ESTATE PURCHASE CONTRACT ("the Agreement") with a Reference Date of November 16, 2004 including any or all prior addenda and counteroffers, between John & Marie Mardesich as Buyer(s) and Sun Hill Homes, L.C., a Utah Limited Liability Company, as Seller, regarding the property located at: 354 N. Lost Creek Drive, St. George, Utah 84770 more particularly described as Lot #8 Woodlands Plat (Phase) - St. George City, Washington County, UTAH.

The following is hereby incorporated as part of the Agreement:

The purchase price is to *increase from* \$678,821.00 to \$680,024.00 due to Change Order #10 in the amount of \$1,203.00.

***Note: To date, the Mardesich's have paid \$5,000.00 in Earnest Money and \$95,000.00 in deposits. This money will be credited to the Mardesich's at closing ***

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Agreement, including all prior addenda and counteroffers, these terms shall control. All other terms of the Agreement, including all prior addenda and counteroffers not modified by this ADDENDUM shall remain the same.

☒ Seller ☐ Buyer shall have until 5:00 ☐ AM ☒ PM Mountain Time, April 15, 2006 to accept the terms of this ADDENDUM in accordance with the provisions of Section 31 of the Agreement. Unless so accepted, the terms as set forth in this ADDENDUM shall lapse.

→ John Mardesich 05-15-06 Marie Mardesich 5-15-06
[X] Buyer Signature Date Time → [X] Buyer Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE: ☒ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM No. 11

Rae L. Stultford 5/15/06
(Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM

(Signature) (Date) (Time) (Signature) (Date) (Time)

Received Time May 15, 2:43PM

EXHIBIT “B”

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

EXHIBIT “C”

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

1 A. Yes.

2 THE COURT: When approximately was this photo taken,
3 sir?

4 THE WITNESS: This was about -- I would say
5 approximately November of 2004.

6 THE COURT: Okay, so pre-2005 flood year?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Now does the actual lot line itself --
9 back line of the lot -- lie over the embankment and down into the
10 riverbed?

11 THE WITNESS: Yes.

12 THE COURT: Okay. How much distance from the lot line
13 to the top of the embankment from the riverbed?

14 THE WITNESS: Well, where -- when this picture was
15 taken, I would say it was approximately 30 feet.

16 THE COURT: Okay. How much after the flooding and the
17 riprap was put in and all of that remediation was done, what's
18 the distance now?

19 THE WITNESS: The distance now is approximately 9.

20 THE COURT: Okay. So you gained as a result of the
21 remediation some additional -- we'll call it flat ground above
22 the riverbed?

23 THE WITNESS: Yes.

24 THE COURT: Okay. Go ahead, Counsel.

25 Q. BY MR. SPENDLOVE: If you'll turn to Exhibit 4, do you

1 recognize those?

2 A. Yes.

3 Q. What is it?

4 A. The top picture is a picture I took in July of 2005 when
5 they began to form the pad or the concrete pad for my home.

6 Q. The lower one?

7 A. The lower picture is -- was taken a few months after
8 that. It's the backyard of lot -- my lot, lot 8.

9 Q. So the house that's under construction there, that's
10 your house, correct?

11 A. Yes.

12 Q. Do these pictures fairly and accurately reflect the
13 state of your house and the yard at the time they were taken?

14 A. Yes.

15 Q. If you'll look at the lower picture, a little difficult
16 to see, but if you look there next to the doorway, there's a
17 board sticking out from the house. Do you see that?

18 A. Yes.

19 Q. Do you know who put those boards there?

20 A. Yes, I do.

21 Q. Why did you put those boards there?

22 A. Those boards were laid out for a plan -- future plan to
23 construct a patio cover.

24 Q. Do you know how long those boards are?

25 A. Those are eight foot studs.

1 Q. Again, a little difficult to see. I'll see if I can
2 blow it up, but those boards, when you placed them there, they
3 extended out to the edge of the level portion of your lot; is
4 that correct?

5 A. Yes.

6 THE COURT: And to the edge of the shadow, Counsel.
7 It's a remarkable juxtaposition.

8 Q. BY MR. SPENDLOVE: You took a number of photographs in
9 regards to the area of your backyard, correct?

10 A. Yes.

11 Q. Did you ever have any discussions with anyone at Sunhill
12 regarding this photograph or other photographs relating to the
13 placement of boards in your backyard?

14 A. Yes.

15 Q. Who did you speak with?

16 A. Roger Stratford.

17 Q. What was the nature of those discussions?

18 A. I was concerned about the placement of the house on the
19 pad, and that the -- one corner of the house, which is depicted
20 in the lower picture of this exhibit, that it was very close to
21 the embankment.

22 Q. Why was that a concern to you?

23 A. It was a concern to me because of the flood that
24 occurred in 2005, and it made me nervous that the foundation of
25 the house was approximately 14 feet from the embankment.

1 Q. During those discussions you had -- at least one
2 discussion you had with Roger Stratford, did he do anything to
3 alleviate your concerns?

4 A. Yes.

5 Q. What did he say?

6 A. He told me not to worry about it, that the pad was going
7 to be enlarged.

8 THE COURT: When you say pad, you mean the flat building
9 surface of the lot?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Did that happen in you gaining the
12 extra footage at the back of the lot?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 Q. BY MR. SPENDLOVE: Just to follow up with that -- the
16 Judge on that, did you have a later discussion with Roger
17 Stratford in regards to that -- what you've referred to as the
18 pad being enlarged?

19 A. Yes.

20 Q. When did that conversation occur?

21 A. That occurred sometime in 2005, probably spring of 2005.
22 I went into the sales office to speak with the designer. Roger
23 saw me, asked me to step in his office, and he asked me how I

24 liked -- how they had enlarged my pad. I said it looks great.

25 Q. Did you ever have any discussion after entering into the

1 REP-C with Roger in regards to the construction of a swimming
2 pool?

3 A. Yes.

4 Q. When did that occur?

5 A. If I understand your question, was that -- you mean
6 after this conversation or at any time?

7 Q. At any time.

8 A. Well, yes. We had conversations with Roger almost from
9 the beginning in regards to building a swimming pool on that lot.

10 Q. After you testified that you had this -- the enlargement
11 of your pad or I'll call it your backyard so we're more clear on
12 definitions, did you have discussions with Roger Stratford after
13 the enlargement of your backyard regarding a swimming pool?

14 A. Yes.

15 Q. What was the nature of those conversations?

16 A. Well, the -- just to confirm that we -- that we
17 were going to have a plan drawn up and that the plan would be
18 submitted, and -- to him and the architectural control committee,
19 and that it was large enough to construct a pool on.

20 MR. SPENDLOVE: Your Honor, I'd like to submit Exhibits
21 2, 3 and 4 to the Court.

22 THE COURT: Any objection to those, Counsel?

23 MR. BERRETT: No.

24 MR. DUNN: No, your Honor.

25 THE COURT: Counsel, let's go through the exhibits, all

1 that we have now that go from 5 until 25. Are there any
2 objections to the exhibits as prepared in the binder, No. 5
3 through 25, or can they be all stipulated to come in now?

4 MR. BERRETT: Judge, we're fine with all of them except
5 we've got a couple concerns that I could bring up. One, as to
6 Exhibit 15, it's a document which is entitled at the top,
7 "Anthony" --

8 THE COURT: Brothers Pool?

9 MR. BERRETT: Yeah. That's a document that was prepared
10 by the plaintiff, and that's his cost breakdown from his
11 analysis.

12 THE COURT: Okay.

13 MR. BERRETT: We're fine with it coming in as long as
14 you understand --

15 THE COURT: That it's not produced by Anthony Brothers.

16 MR. BERRETT: Right.

17 THE COURT: Okay, Counsel.

18 MR. BERRETT: It is a little confusing.

19 THE COURT: All right. That's fine with No. 15. What
20 other one do you want to point out, Mr. Berrett?

21 MR. BERRETT: As to No. 17, which is a document
22 entitled, "Cutting Edge, Incorporated," it's a document which the
23 plaintiff apparently obtained from Cutting Edge Incorporated
24 dealing with repairs or anticipated costs to fix the pool. Some
25 of the language in there is an opinion as to causation, as to

1 what caused the pool problem.

2 THE COURT: I could receive the document without having
3 to take any weight to the opinion at all. That's my job, right?

4 MR. BERRETT: That's true.

5 THE COURT: Okay. So No. 17 can come in with that
6 admonition. Anything else, Counsel?

7 MR. BERRETT: No, your Honor.

8 THE COURT: Mr. Dunn, from your standpoint can the
9 exhibits come in?

10 MR. DUNN: I have really no objection, your Honor.

11 THE COURT: All right. The exhibits then No. 1 through
12 27 are all received, and No. 28 is already in. That's the AGECE
13 report.

14 COURT CLERK: That's No. 27.

15 MR. SPENDLOVE: Number 27, correct.

16 THE COURT: Oh, No. 27 is AGECE.

17 MR. SPENDLOVE: And No. 26 was Ms. Campbell's affidavit.

18 THE COURT: Number 26 was the affidavit. We've already
19 got that in, so now all those exhibits are in and we can get back
20 to the nitty gritty.

21 (Exhibit Nos. 2, 3, 5 through 25 received into evidence)

22 MR. SPENDLOVE: Thank you, your Honor. It will make it
23 go a little bit faster here.

24 Q. BY MR. SPENDLOVE: If you could look at Exhibit 5?

25 A. Yes.

1 Q. It's a letter from Sunbrook Communities signed by Roger
2 Stratford in November of 2005?

3 A. Yes.

4 Q. Would this have been the first time you sought approval
5 from Sunbrook Communities and Roger Stratford regarding the
6 construction of a pool?

7 A. It was not the first time I spoke to Roger as far as the
8 construction of a pool. This was approval from the architectural
9 control committee concerning the fencing for the pool.

10 Q. Both Roger Stratford and Sunbrook Communities were aware
11 of your desire to build a pool?

12 A. Yes.

13 Q. Beginning that time. Looking now at Exhibit 6, you
14 recognize those?

15 A. Yes.

16 Q. The color one's on the screen. These have been
17 accepted, but can you just explain for us what is depicted in
18 these pictures?

19 A. These are pictures I took after the flood had occurred,
20 and the construction from the Army Corps of Engineers when they
21 were working in the wash area, building riprap along the river
22 bank, and the clearing of the back of the lot.

23 Q. In these pictures it's hard to see on there down in the
24 right hand corner there's a date of February 3rd, 2006. Would
25 that be your recollection as to the time these pictures were

1 taken?

2 A. Yes.

3 Q. You took these pictures?

4 A. Yes, I did.

5 THE COURT: I'm presuming that the top picture there is
6 the back of the home as it appeared at the time in February when
7 you took it?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 Q. BY MR. SPENDLOVE: I'll have you look at Exhibit 7.

11 A. Yes.

12 Q. Do you recognize that?

13 A. Yes.

14 Q. I'll kind of blow up -- it's in the right hand corner of
15 your -- the top right hand corner of the exhibit on the paper if
16 that's easier to read. It is a little small. This is a grading
17 plan for the subdivision. It says on the right hand side, "The
18 Point at Sunbrook." It's your understanding that that's now the
19 Woodlands, correct?

20 A. Yes.

21 Q. If we look kind of what I have blown up here on the
22 screen, that No. 8, that's your lot, correct, lot 8?

23 A. Yes.

24 Q. Let me back up at that right hand corner. That looks
25 like a cross section of the subdivision.

1 A. Yes.

2 Q. Where it says Lost Creek Drive, that's the street you're
3 located on, correctly -- correct?

4 A. Correct.

5 Q. Then it has a pad area. You see that level section that
6 says pad?

7 A. Yes.

8 Q. Then it starts to slope down, and there's a little note
9 with an arrow that says 25 foot building limits line. Do you see
10 that?

11 A. Yes.

12 Q. At the time you purchased your lot in those -- in the
13 previous pictures where the boards were out, do you know if your
14 lot complied with this grading plan?

15 MR. DUNN: Objection, your Honor. I don't -- I believe
16 that calls for an expert opinion.

17 THE COURT: I don't think so, Counsel. It's just a
18 matter of measurement and looking at -- from your observations
19 when you purchased the lot in 2004, did it seem to comply with
20 this general (inaudible) plan, sir?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 Q. BY MR. SPENDLOVE: After the discussion you with Roger
24 Stratford regarding increasing the backyard area of your lot,
25 that was then increased in -- sometime prior to February of 2006.

1 Did the slope for your lot begin more than -- or let me back up
2 and ask it the other way around so it will make more sense. I
3 believe earlier you testified that the slope was now rather than
4 25 feet or more from the edge of your lot line, it's now only 9,
5 correct?

6 A. Yes.

7 Q. Were you involved in any way, other than the discussions
8 you've had with Roger Stratford, in placing that additional
9 material in your backyard?

10 A. No.

11 Q. Were you ever given or provided a copy of a separate
12 grading plan?

13 A. No.

14 Q. Do you know if a grading plan was created for lot 8
15 which accurately reflects how it was eventually constructed?

16 A. I've never seen one.

17 Q. During your discussion with Roger Stratford where he
18 informed you that -- or asked you regarding the changes to the
19 backyard on lot 8, did you have any discussion with him at that
20 time regarding the soils that were placed on lot 8?

21 A. No.

22 Q. Did you discuss with Roger Stratford at that time your
23 intended use for the newly enlarged portion of lot 8?

24 A. Yes.

25 Q. What was the nature of that discussion?

1 A. Originally we were planning on putting in an infinity
2 edge pool. When the lot was enlarged, there was not a need to
3 put an infinity edge pool in. We now had a larger area that we
4 could place the pool on, and so we opted not to proceed with
5 doing an infinity edge along the -- which would place the back
6 part of the pool on the embankment or slope.

7 THE COURT: Mr. Mardesich, we probably ought to define
8 infinity edge pool in case some appellate court looks at what you
9 and I know about an infinity edge pool. I would describe an
10 infinity edge pool as a swimming pool where if you stand on one
11 side of it, the opposite side of the pool itself is simply the
12 surface of the water. It -- trailing down off over a small
13 waterfall into a catch facility of some kind so that the view off
14 the opposite side of the infinity edge is just looking across the
15 surface of the water as through you were looking on the upriver
16 side of Niagara Falls, the effect being a much smaller scale.
17 You were thinking of doing that because the lot was not as deep
18 when you first built the house, but after the floods and the
19 remediation it was deep enough that you could have a regular edge
20 on the far side. Have I got that correct?

21 THE WITNESS: Yes.

22 THE COURT: Counsel, is that an adequate description of
23 what an infinity edge -- he and I are speaking exactly and
24 understanding what we're talking about, but anybody want to make
25 any other record about that definition?

1 MR. SPENDLOVE: No, your Honor. I thought that was
2 better than I could have done.

3 THE COURT: Okay. Go ahead, then, Mr. Spendlove.

4 Q. BY MR. SPENDLOVE: At that time when you had these
5 discussions with Roger Stratford about changing from an infinity
6 edge pool to a normal pool, did he have -- did he discuss
7 anything with you regarding the soils?

8 A. No.

9 Q. Did he ever -- at that time -- let's start at that time.
10 At that time did he inform you of the need for you to retain an
11 engineer to build a swimming pool?

12 A. No.

13 Q. Did he ever voice any concerns to you in regards to the
14 newly added soil in your backyard not being compatible for the
15 construction of a swimming pool?

16 A. No.

17 Q. So after that discussion with Roger Stratford, was it
18 your understanding that the entire level portion of your yard
19 would be able to be used as buildable area for backyard
20 improvements?

21 A. Yes.

22 Q. Did anyone from Sunhill ever discuss the grading plan
23 which is Exhibit 7 with you?

24 A. No.

25 Q. Did anyone from Sunhill ever explain to you that the

EXHIBIT “D”

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The Order of Court is stated below:

Dated: March 17, 2014
03:21:54 PM

/s/ James L. Shumate
District Court Judge



Robert M. Jensen - 7557
James L. Spendlove - 11198
JENSENBAYLES, LLP
Counsel for Third-party Defendants
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St. George, UT 84770
Telephone: (435) 674-9718
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IN THE FIFTH DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

JOHN MARDESICH, an individual Plaintiff/Counterclaim Defendant, v. ANTHONY BROS. CONSTRUCTION, a Utah corporation, dba ANTHONY Bros POOL & SPA; SUN HILL HOMES, L.C., and JOHN DOES I-X, Defendants/Counterclaimant	FINDINGS, CONCLUSIONS AND JUDGMENT Civil No. 080502342 Judge James L. Shumate
ANTHONY BROS. CONSTRUCTION, a Utah corporation, dba ANTHONY BROS. POOL & SPA, Third-party Plaintiff vs. MARIE MARDESICH, an individual, Third-party Defendant.	

This matter was tried before the Court on December 2, 2013 through December 3, 2013. On December 3, 2013, the Court ruled from the bench in this matter, and the Court having fully reviewed the evidence and law pertaining to this matter, sets out its ruling as follows:

FINDINGS AND CONCLUSIONS

1. Sun Hill was the developer and promoter of certain properties within the Sunbrook Communities, located in Washington County, Utah.
2. On or about July 31, 2003, Rosenberg Associates provided a Geotechnical Investigation for Sun Hill Homes for the property that would come to be known as the Pointe at Sunbrook which is also known as the Woodlands at Sunbrook, the subdivision where the Plaintiff's Lot 8 is located.
3. In addition to the Geotechnical Investigation, Rosenberg Associates prepared a Grading Plan for the Pointe at Sunbrook which is also known as the Woodlands at Sunbrook, the subdivision where the Plaintiff's Lot 8 is located.
4. Prior to entering into the REPC, Sun Hill, retained Applied Geotechnical Engineering Consultants, Inc., (hereinafter "AGEC") to perform various tests and evaluations on Lots 1-3 and 5-17 in the Woodlands Subdivision, which resulted in a September 21, 2004 AGEC Geotechnical Investigation.
5. On or about December 4, 2004, Plaintiff entered into a Real Estate Purchase Contract for Construction (hereinafter "REPC") with Sun Hill with regard to the property which is the subject of this litigation (hereinafter "Property" or "Lot 8").
6. The REPC, dated November 16, 2004, was signed by Marie Mardesich, who was defined in the REPC as "Buyer".
7. John and Marie Mardesich signed twelve (12) addenda to the REPC from September 12, 2005 to May 15, 2006.
8. On or about May 16, 2006, Plaintiff and Sun Hill "closed" on the sale of the Property and Sun Hill conveyed the Property to Plaintiff and Third-Party Defendant by Special Warranty Deed (hereinafter "Warranty Deed") which was recorded on or about June 6, 2006.

9. After the property had been deeded to Plaintiff and Third-Party Defendant by Sun Hill, Plaintiff hired Anthony Bros. to construct a pool in the backyard of Lot 8 at the Woodlands.

10. After June 6, 2006, Plaintiff contracted with Defendant Anthony Bros. Construction to construct a pool at the Property conveyed to it by Sun Hill (hereinafter "Pool").

11. Plaintiff never had a contract with Sun Hill for Sun Hill to construct the Pool.

12. Sun Hill did not construct the Pool and the Pool was constructed at the Property after Plaintiff accepted title to the Property.

13. Defendant Anthony Bros Construction applied for and received a building permit for the Pool from the City of St. George on or about September 1, 2006.

14. Anthony Bros dug and excavated the hole for the Pool before commencing the construction or the installation of the Pool.

15. The pool and spa experienced significant differential settlement after construction.

16. Plaintiff John Mardesich had a copy of the soils report and offered it to Anthony Brothers Construction.

17. Anthony Brothers Construction did not accept the copy of the soils report and at that time was placed on notice of potential soils issues.

18. During the construction of the pool, while the rebar was being placed in the pool prior to the application of gunite, Jared Hanks of AGECE noticed the construction of the swimming pool and went to Anthony Brothers Construction and disclosed potential soils conditions.

19. Plaintiff John Mardesich did not state to Anthony Brothers that the state of the lot was pool ready.

20. The action against Anthony Brothers was initiated within the one year time frame provided by the pool contract, and in addition, such time frame is contrary to public policy.

21. The industry standard and construction of swimming pools and spas is a one inch differential in elevation from one side of the pool or spa to the other.

22. The swimming pool at the Mardesich home is out of level by approximate 1.2 inches,

and has the potential for additional movement.

23. The spa is clearly out of the one inch standard and has a differential elevation of 1.9 inches.

24. John Mardesich did attempt to contact Anthony Brothers approximately sixty times without response relating to the swimming pool, creek and spa. As a result of Mr. Mardesich's attempts to contact Anthony Brothers with no response, the statute of limitations in the contract was tolled.

25. Exhibit 1 presented at trial the Real Estate Purchase Contract for construction is the agreement between Plaintiffs and Defendant Sun Hill Homes.

26. Exhibit 29 as presented at trial is not a part of the contract as it includes a signature line but contains no signature.

27. At the time Lot 8 was subdivided, it was prepared and graded according to the grading plan prepared by Rosenberg Associates.

28. In 2005, the expectations as contracted by the parties were changed as a result of external forces, and Defendant Sun Hill was required to adapt to the changes and had a right to change the grading of Lot 8.

29. Defendant Sun Hill Homes reasonably used the services provided by NRSC to make changes to the grading of Lot 8.

30. As a result of the changes made by NRSC the buildable area of Lot 8 was substantially increased and every linear foot of soil added to Lot 8 required that approximately 27 yards of soil be added to Lot 8.

31. Exhibit 6, as presented at trial, demonstrates the placement of the riprap and additional soil on Lot 8.

32. The changes to the grading plan and the placement of additional soil on Lot 8 occurred while Lot 8 was under the control of Sun Hill Homes.

33. Defendant Sun Hill Homes was aware, through its agents, Roseanne Campbell and Roger Stratford of Plaintiffs' intention to build a swimming pool in the backyard of Lot 8.

34. While the original plans for the swimming pool had contemplated an infinity pool, the additional soil added to Lot 8 while under the control of Sun Hill Homes resulted in changed plans for the swimming pool.

35. The decision to change the style of the swimming pool built was a result of the changed grading of Lot 8 and was reasonable.

36. After the change in grading to Lot 8, Sun Hill Homes took no action to investigate the effect the changed grading had on the suitability of the Lot for the construction of a swimming pool.

37. The REPC poses a duty on Sun Hill Homes to investigate the suitability of the soil added to Lot 8 for its intended use as a buildable lot for the construction of a swimming pool.

38. The risk of loss associated with the placement of as much as fifteen feet of additional soil on Lot 8 was left unaddressed by the parties.

39. Where there is no express understanding as to the changed circumstances, the risk associated with the placement of the additional soil is placed in the hands of Sun Hill Homes.

Based upon the findings and conclusions above;

IT IS HEREBY ORDERED that Plaintiff John Mardesich and third-party defendant Marie Mardesich are hereby awarded judgment, which judgment shall be joint and several, against the defendants Anthony Brothers Construction and Sun Hill Homes in the amount of \$179,000.00 plus interest in the amount of \$60,320.55 which is calculated at a rate of ten percent (10%) from date of filing the Amended Complaint which was July 22, 2010, through the date of judgment of December 3, 2013, plus attorney's fees as allowed by contract in the amount of \$64,953.03, for a total of \$303,913.58. In addition, the judgment amount of \$303,913.58 shall continue to accrue post-judgment interest at the rate of 2.13 percent.

DATED this _____ day of March, 2014.

END OF ORDER

**Findings, Conclusions and Judgment
Mardesich v. Sun Hill Homes
Page 6**

EXHIBIT “E”

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Date **FILED**
10-17-14
Fifth District Court • Washington County
By _____

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH

JOHN MARDESICH, an individual,
Plaintiff/Counterclaim Defendant,

vs.

ANTHONY BROS. CONSTRUCTION, a
Utah corporation, dba ANTHONY BROS.
POOL & SPA; SUN HILL HOMES, L.C.,
and JOHN DOES I-X,

Defendants/Counterclaimant.

ANTHONY BROS. CONSTRUCTION, a
Utah corporation, dba ANTHONY BROS.
POOL & SPA,

Third-Party Plaintiff,

vs.

MARIE MARDESICH,

Third-Party Defendant.

**DECISION AND ORDER GRANTING
SUN HILL HOMES, L.C.'s MOTION
FOR A NEW TRIAL**

Case No. 080502342

Judge G. Michael Westfall

On March 17, 2014, Judge Shumate signed the Findings, Conclusions and Judgment ("Judgment") for this case, which was tried before him on December 2 and 3, 2013. On March 28, Defendant Sun Hill Homes, LC ("Sun Hill") filed a motion to vacate the Judgment, a motion

for a new trial, and a motion to stay execution of the Judgment, as well as a memorandum supporting each motion. On April 11, Plaintiff John Mardesich and Third Party Defendant Marie Mardesich filed memoranda opposing these motions.¹ On April 22, Defendant filed a reply in support of the motion for a new trial, and asked that all three motions be submitted for decision (no reply was filed for either of the other motions). On August 1, Sun Hill posted a supersedeas bond, which, by stipulation of the parties, resolves the motion for a stay. On August 19, the court heard oral argument on the other two motions, verbally denied the motion to vacate, and took under advisement the motion for new trial ("Motion").

ANALYSIS

I. Successor Judge's Authority to Overrule Trial Judge Under Rule 59

The Motion is premised on the grounds that the Judgment is contrary to law and unsupported by sufficient evidence. The court's first concern, as expressed at the hearing on August 19, is its authority to essentially reverse Judge Shumate based on an alleged error of law. Rule 59 of the Utah Rules of Civil Procedure provides, in pertinent part:

(a) **Grounds.** Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new

¹ "Plaintiffs' Response Memorandum in Opposition to Defendant Sun Hills [sic] Motion for a New Trial" is referred to herein as "Opp to Motion."

findings and conclusions, and direct the entry of a new judgment:

...

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(a)(7) Error in law.

Clearly, a mistake of law may be raised via a motion for a new trial. Subdivision (a)(7) explicitly identifies this as a ground for relief under the rule, and the appellate courts have repeatedly so indicated. See, e.g., Richards v. Siddoway, 24 Utah 2d 314, 317, 471 P.2d 143, 145 (1970) (recognizing that nonclerical error resulting “from the failure of the judge to follow the written agreement” could “be corrected by a timely motion for a new trial,” among other things); AFCC Ltd. v. Kahler, 2012 UT App 124, ¶ 3, 278 P.3d 1070, 1071 (“[A]n appeal or motion for new trial, rather than a [Rule] 60(b) motion, is the proper avenue to redress mistakes of law committed by the trial judge, as distinguished from clerical mistakes caused by inadvertence”) (quoting Franklin Covey Client Sales, Inc. v. Melvin, 2000 UT App 110, ¶ 21, 2 P.3d 451) (other citation omitted). The rule is no different where a motion for a new trial is presented to a successor of the judge who sat at the trial. See Interlake Distributors, Inc. v. Old Mill Towne, 954 P.2d 1295, 1300 (Utah Ct. App. 1998) (“[W]hen Judge Schofield took over this case from Judge Burningham, Judge Schofield had the authority to grant a new trial on the basis of legal error.”). The court sees no reason to conclude that an “insufficiency of the evidence” claim under rule 59 should be treated any differently. Accordingly, the court considers the mistakes of law and

insufficiency of evidence claims asserted here.

II. Claimed Errors of Law

A. Parol evidence and existence of duty

Sun Hill challenges Judge Shumate's conclusion that "[t]he REPC poses [sic] a duty on Sun Hill Homes to investigate the suitability of the soil added to Lot 8 for its intended use as a buildable lot for the construction of a swimming pool." Judgment, ¶ 37. Sun Hill argues that such a duty could only be found by violating the parol evidence rule.

Sun Hill quotes the following case excerpts relating to the parol evidence rule: "Parol evidence is inadmissible to vary, alter, control, or contradict the terms of a written instrument, in an action founded upon such writing, between the parties or privies thereto." Garrett v. Ellison, 93 Utah 184, 72 P.2d 449, 451 (1937).

Thus, if a contract is integrated, parol evidence is admissible only to clarify ambiguous terms; it is "not admissible to vary or contradict the clear and unambiguous terms of the contract." The application of the parol evidence rule is therefore a two-step process: "First, the court must determine whether the agreement is integrated. If the court finds the agreement is integrated, then parol evidence may be admitted only if the court makes a subsequent determination that the language of the agreement is ambiguous."

We have defined an integrated agreement as "'a writing or writings constituting a final expression of one or more terms of an agreement.'" To determine whether a writing is an integration, a court must determine whether the parties adopted the writing "as the final and complete expression of their bargain."

Tangren Family Trust v. Tangren, 2008 UT 20, ¶¶ 11-12, 182 P.3d 326, 330 (footnotes and

emphasis omitted).

Sun Hill asserts that its contract with Plaintiffs ("REPC")² is "fully integrated,"³ and does not place any "duty on Sun Hill to prepare the backyard for a pool,"⁴ but in fact provides "that Sun Hill could modify the plans and specifications for the lot,"⁵ "states that it is the Buyers [sic]

² The REPC was actually entered into between Sun Hill and Marie Mardesich, the latter of which is a third-party defendant here. For convenience, however, the court follows the lead of counsel for Mr. and Mrs. Mardesich in generally referring to them jointly as "Plaintiffs."

³ Section 29 of the REPC provides:

Complete Contract. This Agreement together with its addenda, any attached exhibits, and any subsequent change or extra orders, constitutes the entire Agreement between Buyer and Seller and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts, verbal or written, between Buyer and Seller. This Agreement cannot be changed, amended, or altered without the written agreement of Buyer and Seller, which written agreement must be signed by Buyer and an authorized representative of Seller. Seller has the right to assign any and all of Seller's rights and obligations under this Agreement without Buyer's consent.

⁴ Section 6.4 of the REPC provides, in pertinent part: "**Extra Options.** Seller's model homes and promotional materials contain optional and extra design features such as . . . swimming pools or spas These items shall not be included in Buyer's Home, unless specifically ordered and paid for in accordance with Section 7." It is undisputed that Plaintiff did not order these extra options from Sun Hill or pay Sun Hill for them, and nowhere on the face of the contract is any duty imposed on Sun Hill to ensure the suitability of the soil for a swimming pool.

⁵ Section 8 of the REPC provides:

Reserved Rights Re: Construction. Although Buyer is entitled to select and Seller shall endeavor to provide the Options described above, the Home shall not be constructed as nor deemed to be a custom Home. The Home is being

duty to correctly engineer the excavating and landscaping for the pool,"⁶ Motion at 14, and "explicitly excludes any representations from [Sun Hill's] agents that are outside the REPC."⁷

constructed as a single structure within Seller's production housing development and shall be built according to the requirements of the overall development and construction program. Accordingly, Seller reserves the right to, at its sole discretion, make changes in the plans, specifications, and materials for the Home as and when Seller deems necessary or appropriate. For example, Seller may make changes in the building of the Home that are not reflected in the models Buyer has seen or in Seller's current plans and specifications due to Seller's on-going program of home building research and enhancement or the possibility of material shortages and discontinuations. These changes may also include variations in dimensions or measurement, e.g. distance between countertops and cabinets in Buyer's kitchen may differ from those in the model Buyer selected in order to accommodate required clearance standards.

Section 1.3 of the REPC indicates that the terms "'Property' or 'Home'" refer to "[t]he Lot and improvements".

⁶ Section 14 of the REPC provides, in pertinent part:

Specific Disclaimers. By signing this Agreement, Buyer agrees to purchase the Property subject to the following additional disclaimers and to release Seller from any liability, and to indemnify Seller from any liability, with respect to the following enumerated items. This list of items is not exhaustive and shall be deemed to include any and all other items or circumstances to which Seller has no duty or obligation pursuant to state or federal law:

...
14.3. Future improvements by Buyer, including walls, fencing, grading, landscaping or excavation work on the Lot which could disrupt drainage and/or retention and cause flooding or ponding if not correctly engineered (and Buyer hereby agrees to correctly engineer all such future improvements)[.]

⁷ Section 11 of the REPC provides:

Changes in the Sunbrook Master Plans. The Sunbrook Development Master

Motion at 16. Therefore, according to Sun Hill, Judge Shumate improperly relied on parol evidence in holding that Sun Hill had a contractual duty to investigate whether the soil added to the backyard was suitable for a swimming pool.

In response, Plaintiffs argue that the parol evidence rule was not violated because the REPC was not “the final and complete expression of [the parties’] bargain.” Tangren, 2008 UT 20, ¶ 12 (footnote and emphasis omitted). Rather, Plaintiffs stress Judge Shumate’s finding that “[i]n 2005, the expectations as contracted by the parties were changed as a result of external forces, and Defendant Sun Hill was required to adapt to the changes and had a right to change the grading of Lot 8.” Judgment, ¶ 28. Because the parol evidence rule only excludes “parol evidence

Plan as well as any other development plans prepared by Seller, may be amended or changed from time to time to provide for changes, modifications, or alterations to patterns; setbacks; type, number, style, or price of homes; lot sizes and configurations; densities, recreational amenities; or other improvements. As Seller’s plans are periodically updated and remain subject to change, Buyer understands that no statement by one of Seller’s representatives or any sales associate regarding the planned use of property in or adjacent to Sunbrook should be understood by Buyer or anyone as a warranty or promise regarding Seller’s future development plans. By execution of this Agreement, and as a material inducement to Seller to accept Buyer’s offer to purchase the Property, Buyer waives any right to claim any damages, costs, liabilities, expenses or obligations against Seller, Seller’s officers, employees, agents and subsidiaries for any changes to the Master Plan, and/or any other zoning ordinance or development plan for Woodlands or for adjacent properties, or for the annexation of additional land or other development plan changes in Sunbrook Communities.

Sun Hill’s reliance on this provision is puzzling, given that it clearly relates only to representations about development plans, which are not at issue here.

of contemporaneous or prior conversations, representations or statements,” Spears v. Warr, 2002 UT 24, ¶ 19, 44 P.3d 742, 750 (citation and brackets omitted), overruled on other grounds by RHN Corp. v. Veibell, 2004 UT 60, 96 P.3d 935, and Tangren, 2008 UT 20, Plaintiffs maintain that Judge Shumate properly considered “evidence of a subsequent change in the parties’ intent and expectations” Opp to Motion at 5.

Plaintiffs’ argument, however, fails to account for the fact that Judge Shumate made no finding that the parties ever mutually agreed that Sun Hill would be responsible to ensure the suitability of the soil for a swimming pool. He only found that Sun Hill was aware of Plaintiffs’ intention to build a swimming pool in their backyard, see Judgment, ¶ 33, and that the absence of any agreement between the parties as to “[t]he risk of loss associated with the placement of as much as fifteen feet of additional soil on Lot 8” resulted in such risk being “placed in the hands of Sun Hill Homes.” Judgment, ¶¶ 38-39.

Thus, although the circumstances clearly changed in 2005, and although the parties’ expectations clearly changed regarding the size of Plaintiffs’ backyard, there does not appear to be any reasonable basis for finding that Sun Hill had a contractual duty under the REPC to investigate the soil’s suitability for a swimming pool, particularly when section 14 of the REPC expressly allocates to Plaintiffs the responsibility for proper engineering of improvements involving excavation, which would include an improvement such as the swimming pool here.

Plaintiffs nevertheless assert that Judge Shumate properly implied a contract term, given

that "the REPC is silent regarding the risk of loss associated with the placement of additional soil on Lot 8." Opp to Motion at 6. They point out that

[a] term is implied-in-law where the contract is silent. An implied-in-law term will be imposed even though the parties may not have intended it and binds the parties to a legally enforceable duty. However, the court can only supply reasonable terms to supplement a contract which is silent.

Ross v. Epic Eng'g. PC, 2013 UT App 136, ¶ 14 n.4, 307 P.3d 576 (quoting Allstate Enters., Inc. v. Heriford, 772 P.2d 466, 468 (Utah Ct. App. 1989) (citations omitted)).

Far from being silent, however, the REPC clearly imposes on Plaintiffs the responsibility for proper engineering of an improvement such as the swimming pool here. It is unreasonable to circumvent this express provision by purporting to fill a void about the risk of loss associated with placement of additional soil. Thus, the court agrees that the Judgment should be amended to correct the legal error that occurred when a contract duty was imposed on Sun Hill to investigate the suitability of the soil for a swimming pool. Absent such duty, there is no basis for holding Sun Hill liable for breach of contract and it is therefore unnecessary to address Sun Hill's arguments regarding general and special damages.

ORDER

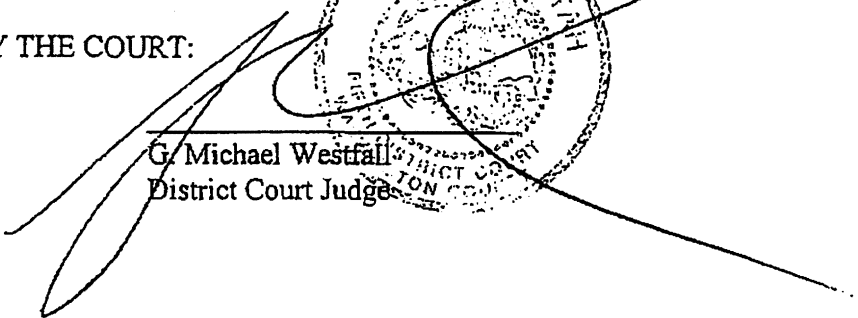
For the foregoing reasons, it is hereby ORDERED, ADJUDGED, and DECREED that:

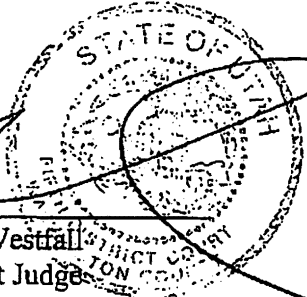
1. Defendant Sun Hill Homes, L.C.'s Motion for a New Trial is granted and the court's Findings of Fact, Conclusions of Law and Judgment shall be amended to conform to this

Decision. Sun Hill is directed to file proposed Amended Findings, Conclusions and Judgment in accordance with rule 7 of the Utah Rules of Civil Procedure. The issue of attorney fees may be addressed by further motion.

Dated this 17th day of October, 2014.

BY THE COURT:


G. Michael Westfall
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080502342 by the method and on the date specified.

EMAIL: BILL A BERRETT berrettlaw@gmail.com
EMAIL: ADAM DUNN acdunn@dunnfirm.com
EMAIL: CLIFFORD V DUNN cvdunn@dunnfirm.com
EMAIL: ROBERT M JENSEN rjensen@jensenbayles.com
EMAIL: JAMES L SPENDLOVE jspendlove@jensenbayles.com

Date: 10/20/2014

/s/ MICHELL HARDMAN

Deputy Court Clerk

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080502342 by the method and on the date specified.

EMAIL: BILL A BERRETT berrettlaw@gmail.com

EMAIL: ADAM DUNN acdunn@dunnfirm.com

EMAIL: CLIFFORD V DUNN cvdunn@dunnfirm.com

EMAIL: ROBERT M JENSEN rjensen@jensenbayles.com

EMAIL: JAMES L SPENDLOVE jspendlove@jensenbayles.com

10/20/2014

/s/ MICHELL HARDMAN

Date: _____

Deputy Court Clerk

Printed: 10/20/14 13:17:12

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EXHIBIT “F”

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1 any future improvements, including walls, fencing, grading,
2 landscaping or excavation work.

3 THE COURT: Okay.

4 MR. DUNN: And therefore there is no initial breach by
5 Sunhill.

6 THE COURT: Right. Well, and I don't find that there's
7 an initial breach by Sunhill. This is one of those difficult
8 situations where obviously minds can differ. I'd like to think
9 that reasonable minds can differ, because Judge Shumate saw it
10 one way and then something -- it came back before me, and I've
11 had the opportunity to look at, and frankly, I didn't see it the
12 same way that he did and I issued my decision.

13 So I anticipate that the attorney fees are going to
14 escalate in this case, and that's unfortunate, but I do find
15 consistent with what I had already ruled that the plaintiffs
16 are -- or the defendant Sunhill was entitled to their attorney
17 fees consistent with the contract. There was no initial breach
18 by them. They complied with their contractual obligations, so
19 their attorney fees as requested are awarded.

20 MR. SPENDLOVE: Thank you, your Honor.

21 THE COURT: All right.

22 MR. SPENDLOVE: I presume that Mr. Dunn will prepare --

23 THE COURT: And if you'll prepare the judgment, if it
24 hasn't already been prepared, and I'm not sure that it has.

25 MR. DUNN: I don't believe it has, your Honor.

1 THE COURT: All right. If you'll prepare that, submit
2 it to me, I'll sign it, and I guess we can see where it goes from
3 there. Thank you.

4 MR. SPENDLOVE: Thank you, your Honor.

5 MR. DUNN: Thank you, your Honor.

6 (Hearing concluded)