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ARIZONA CORPORATION COMMISSION

April 9, 2007

Re: James Rhodes, Rhodes Homes, et al
Perkins Mountain Utility Company; Docket No. SW-20379A-05-0489
Perkins Mountain Water Company; Docket No. W-20380A-05-0490

Dear Parties to the Docket:

Today, I am docketing in the above-referenced case the Affidavit of James Rhodes and the Affidavit of Mark James.

I would like to have this information considered as a late filed exhibit in this docket.

Sincerely,

William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Chairman Gleason
Commissioner Hatch-Miller
Commissioner Mayes
Commissioner Pierce
Brian McNeil
Ernest Johnson
Chris Kempley
Lyn Farmer
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Arizona Corporation Commission
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1 3. In September 2001 I signed a letter of intent to purchase over 3000
2 acres of land on which the James Hardie Company mining operations are
3 situated, located east of Red Rock Canyon (the "Property").
4

5 4. RD&D and my real estate development entities and I have been
6 clients of the law firm of Kummer Kaempfer Bonner & Renshaw (the "Kummer
7 Firm") since before 2002. Mr. James was associated with the Kummer Firm as a
8 specialist in water, natural resources, mining lands reclamation and
9 environmental law in 2002.
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11 5. Throughout 2002 I and others on behalf of RD&D consulted with
12 attorneys at the Kummer Firm on several matters, including the contemplated
13 purchase of the Property by my company for millions of dollars. The
14 consultation included legal advice I received from lawyers in the firm, including
15 Mr. James, concerning applying to rezone the Property and relations with public
16 entities to accomplish rezoning, including the Clark County Commission.
17

18 6. During the summer of 2002 I met with Mr. James on several
19 occasions. On one occasion I took him on a tour of the Property. We discussed
20 issues related to rezoning the Property. I disclosed confidential information to
21 Mr. James about my interest in and intention for development of the Property. In
22 response to my disclosures to him, Mr. James gave me his advice on strategies for
23 applying to Clark County authorities to rezone the Property so it could be
24 developed as we were discussing. Mr. James told me he thought residential
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1 development of the James Hardie mine site would be a benefit to the community
2 and that he would support it.

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4 7. During the visit to the Property with Mr. James, and during
5 meetings and telephone conversations thereafter, Mr. James recommended
6 actions for me to take which, he predicted, would result in rezoning of the
7 property so that it could be developed for residential use, as we had been
8 discussing for several weeks. Based in significant part on his advice, I closed
9 escrow on the purchase of the Property on March 21, 2003, for \$55,134,599.68.
10 Title to the Property was taken in the name of Gypsum Resources, LLC.
11

12
13 8. During the visit to the Property, Mr. James told me he supported
14 rezoning because he believed a good residential project was necessary to
15 properly reclaim the mine site. Mr. James said, as a former member of the Senate
16 Natural Resources Committee, that he was very familiar with reclamation laws
17 and knew that private development of the Property, as I was planning, would be
18 the best use for this unreclaimed mining site. He suggested to me a step-by-step
19 rezoning application process and applying to rezone a small portion of the
20 Property that sits inside the Red Rock Conservation Area as a vehicle to "wear
21 down" any opposition that might be offered to my proposed development. He
22 anticipated some opposition, which he said could be overcome by a combination
23 of the tactics he was recommending and the use of a mediator.
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AFFIDAVIT OF MARK JAMES

STATE OF NEVADA)
 : ss
COUNTY OF CLARK)

MARK A. JAMES being first duly sworn deposes and says as follows:

1. That I am the named defendant in the matter of *James Rhodes, Rhodes Design and Development Corporation, and Gypsum Resources, LLC v. Mark A. James*, Case No. A466041.

2. Having read the affidavit of Mr. Rhodes attached to the Ex Parte Motion for Injunctive and Declaratory Relief, I now categorically, unequivocally, and without reservation deny his allegation to the effect that I rendered legal advice to him or any related entity "concerning applying to rezone the property and relations with public entities to accomplish rezoning, including the Clark County Commission."

3. I respectfully suggest that the most compelling evidence that I was not representing Mr. Rhodes on the Red Rock matter is the fact that Rhodes personally, and through his attorney and lobbyist incessantly solicited my vote on the project since after the time that I announced my intention to seek election to the Clark County Commission. Indeed, my involvement in the Red Rock matter as a sitting member of the Clark County Commission has been a discussion of public commentary and debate for a period of months, all of which has been exhaustively followed by both the print and electronic media. Nevertheless, it was only after I announced that I would not support Mr. Rhodes' high density development plan in the Red Rock area that he then brought forward the allegation that he had consulted me in the role as an attorney, and not as a public official. In an effort to substantiate the fact that Mr. Rhodes had consulted me not as an attorney but rather with reference to my service in public office, I now ask the Court's indulgence to permit me to briefly present the following relevant timeline:

- Monday, May 20, 2002: I publicly announced my intention to seek election to the Clark County Commission, District F.
- On or about the late summer of 2002: At the request of Jim Rhodes, I traveled to the Red Rock area to view the general area of the site in which he was interested. Prior to agreeing to visit the site, Mr. Rhodes represented to me that he had also invited the likely winner of the District E race, Mr. Rory Reid. Mr. Rhodes further explained that he had also taken other Commissioners to the site and was soliciting their support for development. After meeting with Mr. Rhodes, I informed him that I would not pre-judge his ultimate plan but made it very clear to him that I envisioned resistance from the residents of Blue Diamond and the community at large. I explained to him that if he was to earn my support and vote, it would only be after a consensus had been reached with the affected parties, and, therefore, encouraged him to engage in an effort to assuage concerns of the affected constituents.
- Tuesday, November 5, 2002: I was elected to the position of Clark County Commissioner, District F.
- Monday, January 6, 2003: I was formally sworn in as Clark County Commissioner, District F.
- Tuesday, January 7, 2003: At the request of Erin Kenny, I met with her and attorney Jay Brown. Both inquired as to whether my position had changed one way or another on the issue of developing Red Rock. I explained to Mr. Brown and Ms. Kenny, as I had to Mr. Rhodes, that I had yet to see the development plan, but that it was important to build a consensus with the residents and the community at large if they expected my support and vote. Mr. Brown specifically

commented that at that time they were only asking that I keep an open mind. This communication is particularly memorable to me because Ms. Kenny had cautioned me that developers could be "dangerous" if you crossed them and further warned me about seeking a rehearing on yet another developer's plan. I thanked her for the warning, but nonetheless supported the effort to rehear an issue regarding a developer's plan despite the ominous tenor of her statement.

- Tuesday, February 18, 2003: On this date I met with the Red Rock Advisory Board and discussed the position of the Board with respect to development issues. Sometime thereafter, I received a phone call from Ms. Kenny asking me whether or not I had committed to vote against any development. Once again, I reiterated my stance that I would keep an open mind but was very much in favor of mediation or other consensus building tools to ensure that the residents and citizens concerned were protected.
- Tuesday, March 4, 2003: On this date I attended an interview which Erin Kenny had arranged for all of the Commissioners. Attending at staggered times, I was to appear at the hour of 3:30 p.m. The meeting was conducted by the Urban Land Institute, a private interest group which was brainstorming development issues. I informed this group, which was questioning me concerning the development of the Red Rock area, that I had not committed to vote one way or another because I had not yet seen the development plan and was unsure as to what could be accomplished by an effort to build a consensus with the Blue Diamond residents.
- Wednesday, March 23, 2003: On this date I met with Matt McKinney, a mediation consultant with Clark County, and discussed with him the Red Rock development issue. Shortly thereafter, Ms. Kenny contacted me on behalf of

Rhodes and once again inquired as to whether or not I had made a commitment on the matter. As in the past, I said I would keep an open mind but informed her I would soon be meeting with the residents of the Red Rock community on the issue. I am informed and believe that Ms. Kenny met with Matt McKinney on behalf of Rhodes in an effort to map out a strategy for securing the support of the residents.

- Thursday, March 27, 2003: In an effort to gain an understanding of all the concerns of the Blue Diamond area citizens, I committed to attend a meeting with all interested residents which was to be held at 6:00 p.m. that evening. Prior to the meeting and at the urging of Ms. Kenny, I once again met with Jim Rhodes and his attorney, Jay Brown. Rhodes discussed the fact that his company had publicly announced that it had purchased the Gypsum Mine and that this fact had been reported that very day in the *Las Vegas Sun*. See Exhibit 1 attached hereto. Mr. Rhodes told me that the property was a "fifty million dollar deal" and that it was important that I vote for him on the project. He then asked that I give him my assurances that I would do so. I told him I could not give him that assurance and once again reiterated that the input and support of the residents of Blue Diamond was viewed by me as a critical component in him getting my vote. It should be noted that prior to the time I made this statement, Ms. Kenny urged me not to meet with the Blue Diamond residents, characterizing them as "four hundred fanatics" and a "bunch of nuts." I told Ms. Kenny that I would nevertheless meet with the residents later that evening. As a result of that meeting, I encountered a level and intensity of opposition I was unprepared for. I became convinced that there was never any chance of arranging a mediation or a compromise which

would build any consensus for development among the residents. I was, moreover, influenced by the compelling force of the residents' arguments against high density development and their heartfelt commitment to the preservation of Red Rock for generations of Nevadans to follow.

- Friday, March 28, 2003: The following day I spent a number of hours reflecting upon my meeting with the residents and the overwhelming public opposition which had been voiced in that meeting regarding the development of Red Rock. I arrived at the conclusion I could not, in good conscience, support any high density development of the area.
- Saturday, March 29, 2003: During a rally which was held in support of a moratorium on development in the Red Rock area, my intention to introduce an ordinance banning high density development was publicly announced. Shortly thereafter, I received a phone call from Erin Kenny. Ms. Kenny was extremely upset and stated that I had not even listened to the final development proposal of Mr. Rhodes. I explained to Ms. Kenny that I had met with many parties on the matter including the Blue Diamond citizens, the ULI, the members of the Red Rock Overlay Committee, County staff, Jim Rhodes, and his attorney Jay Brown. I explained that I was very well familiar with all of the issues and that I was convinced that it was important to protect this environmentally sensitive land. Ms. Kenny argued the point that in her view it was not environmentally sensitive land and accused me of breaking my promise to keep an open mind on the issue. The conversation continued for a number of minutes and Ms. Kenny, in the heat of the conversation, made certain pointed remarks about my political future which may, in the mildest of terms, be characterized as hostile. Shortly after my phone call

with Ms. Kenny, I received a phone call from Jim Rhodes. Mr. Rhodes asked me not to discuss my position with the press and I told him it was too late for that, that I had already talked to both John L. Smith and Frank Geary from the *Las Vegas Review Journal*. Mr. Rhodes asked to meet with me again in an effort to convince me to vote for a zone change to allow more intensive development than RU. I explained to him that nothing prevented him from proposing a development for the land under existing zoning, but that intense development of that area would be wrong and threaten one of the most delicate and sensitive areas of the valley. He then said that if he wanted to develop the land under existing zoning restrictions, he wouldn't need my vote or the vote of other county commissioners for that matter. He, like Kenny, also said that I had broken my promise to keep an open mind on the matter. I reminded him that I had previously told him that I was troubled by the John Laing proposal and that I was not prepared to support a development of that nature. I also told him that he had failed to secure support of the Red Rock/Blue Diamond citizens and that the general public opinion strongly opposed development. As I did with Kenny, I told Mr. Rhodes that I had looked at all of the facts, listened to Erin Kenny and Jay Brown, spoken to the ULI, but that after meeting with the Red Rock citizens, there was simply no way I could vote for his proposal. He responded by saying "you're murdering me." He then accused me of reacting because the matter was "politically toasty." He stated that he had unlimited money to give me "political cover" to support his development. I declined his invitation. He then said that he would agree to wait "for years," until I was out of office before making any development proposal if I would simply back off and not support a bill proposed by Dina Titus or similar county measure.

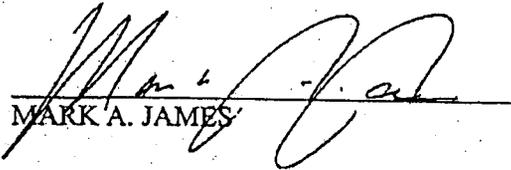
I told him I could not give him that promise. I did, however, tell him that I would meet with him at any time if he so desired, but that I had already committed my vote against his proposal. Since that time I have not heard from Mr. Rhodes.

- Sunday, March 30, 2003: The *Las Vegas Review Journal* reported that I had announced my intention to oppose high density development in the Red Rock area and to introduce an ordinance consistent with that intention. See Exhibit 2.
- Wednesday, April 9, 2003: In the late afternoon hours, I received a telephone call from attorney Chris Kaempfer who told me that he was calling me "strictly as a friend." He then told me that Jim Rhodes was going to try to "kill me." I asked him what he meant and he said that unless I would agree to recuse myself that Rhodes was going to sue me personally on the grounds that I had a conflict of interest. Kaempfer explained to me that Rhodes was going to claim that before I was on the Commission, I went with him to Red Rock and gave him legal advice. I told Mr. Kaempfer that Rhodes' claim was a lie and I that I was not going to be bullied into recusing myself; that I was elected to do a job and I was going to do it. Mr. Kaempfer then told me it was going to get "bad" for me because Rhodes was going to "pull out all the stops." He explained that Rhodes had "Jon Ralston on board" and that I could expect some "very ugly things" to be said about me in the future. I told him that Rhodes wouldn't get it on in court and that I intended to call my friend, Don Campbell, and hire him as my attorney. Shortly thereafter, Mr. Kaempfer called back and said that Rhodes was now going to go after Don Campbell, saying that he, too, had a conflict because Rhodes had spoken to Campbell as a lawyer in the past. Mr. Kaempfer explained that Rhodes was going to try to disqualify Campbell. It is important that I make plain that at no time

during my discussion with Mr. Kaempfer did he ever suggest that I had a conflict of interest because I had at one time been of counsel with his firm. Accordingly, I can only assume that Mr. Morris' assertion of this allegation in his affidavit in support of the ex parte motion is based upon a second hand account and misunderstanding of the content of the discussion which I had over the phone with Mr. Kaempfer that day.

4. In concluding this affidavit, I wish to make plain to the Court that I have never, under any circumstances, given Jim Rhodes legal advice concerning the Red Rock development or any substantially related matter. Since the day that I started my own firm, Mark James, Ltd., I have never rendered any professional services to Rhodes of any kind or type. Simply put, the allegations upon which this lawsuit has been filed are, without putting too fine a point on them, without any basis in truth.

DATED this 13th day of April, 2003.


MARK A. JAMES

SUBSCRIBED and SWORN to before

me this 13th day of April, 2003.


NOTARY PUBLIC, in and for said
County and State (seal).

