

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

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~~Feb 28 2018~~ 11:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

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Dated this 28th day of February, 2018.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP

1 said, Harvey, we want to do it this way and this
2 way. Harvey may not have known about our commission
3 and done it a different way and switched it and then
4 it all of a sudden they took down a different type
5 of property. They called it a different type of
6 property and they didn't have to pay us a commission
7 on a different type of property.

8 Q. Do you have any evidence, any evidence that
9 in fact that Pardee has paid more than \$84 million
10 to Coyote Springs Investment, LLC?

11 A. Not to the best of my knowledge. That
12 doesn't mean they didn't.

13 (Exhibit 3 marked.)

14 BY MS. LUNDVALL:

15 Q. Mr. Wilkes, I'm going to hand you what's
16 been marked as Exhibit 3 to your deposition.

17 A. Yes, ma'am.

18 Q. The Exhibit 3 is an "Amendment to Option
19 Agreement For the Purchase of Real Property and
20 Joint Escrow Instructions." The date on this is the
21 28 day of July of 2004. Do you see that at the top?

22 A. I do.

23 Q. And this is between Coyote Springs and
24 Pardee Homes of Nevada?

25 A. I do.

1 Q. And under the "Recitals," Page 1, makes
2 reference to that certain option agreement that was
3 dated June 1 of 2004. Do you see where I'm at?

4 A. Yes.

5 Q. Then you understand that to be referencing
6 back then to Exhibit 2 that I handed you earlier?

7 A. Where is she at.

8 Q. Do you see under the recital?

9 A. Okay. Yes.

10 Q. The second recital says "By this amendment,
11 the parties hereto desire to amend the agreement in
12 certain respects."

13 A. Yes.

14 Q. Do you see where I'm at?

15 A. Yes.

16 Q. And the that wasn't unusual in your
17 business, was it?

18 A. No. They could make amendments and
19 everything but they should give us copies of it.

20 Q. Through this litigation you received copies
21 of these documents, have you not?

22 A. Through this litigation, yeah, eventually,
23 after the lawyers had to -- Mr. Jimmerson had to
24 crack down on the other attorneys that were in it,
25 Stringer and the other one.

1 Q. Do you know whether or not this first
2 amendment made any changes to the property purchase
3 price that's referenced in your commission letter?

4 A. If you want me to sit here and study this
5 for 20 minutes, I can give you an answer. But
6 legally, I don't know. That's what the attorney is
7 for.

8 Q. Sir, I will represent to you that there
9 wasn't any change in the property purchase price in
10 the first amendment.

11 A. Okay.
12 (Exhibit 4 marked.)

13 BY MS. LUNDVALL:

14 Q. What I would like to do, then, is to hand
15 you what's been marked as Exhibit 4 to your
16 deposition. With any of these documents, sir, feel
17 free to spend as much time as you like before I ask
18 any questions to you.

19 Exhibit 4 makes reference to "Amendment
20 No. 2 to Option Agreement For the Purchase of Real
21 Property If and Joint Escrow Instructions." Do you
22 see the title on that?

23 A. Yes, I do.

24 Q. And this bears the date, then, of the 31st
25 day of August of 2004; do you see where I'm at?

1 A. Where is the date? I don't see the date.

2 Q. First paragraph.

3 A. Okay.

4 Q. See the date of August?

5 A. Got it.

6 Q. August 31 of 2004?

7 A. Yes, ma'am.

8 Q. And this is an amendment, then, to the
9 option agreement that we have already looked at, and
10 it is between Coyote Springs and Pardee Homes of
11 Nevada?

12 A. Okay.

13 Q. Do you see where I'm making reference to?

14 A. I do.

15 Q. Now, I'm hoping that on your calendar that
16 July 28 is before September 1. Is that a fair
17 statement?

18 A. July 28 is before September 1, right.

19 Q. And August 31 is before September 1 as
20 well?

21 A. That's correct.

22 Q. So if these two amendments were entered
23 into before your commission letter, then, you would
24 be able to claim the benefit of these two
25 amendments, correct?

1 A. Would you say that again?

2 Q. If in fact these two amendments were
3 entered into before your commission letter, based
4 upon the subject line, you get to claim the benefit
5 then of that, correct?

6 A. No, we should be able to claim the benefit
7 anyway. They never gave us any of this stuff. We
8 never seen any of this stuff. Do you think we
9 wouldn't take advantage of a higher commission if we
10 had got something like this?

11 Q. Let me walk you through it and see whether
12 or not that you have.

13 During the course of this litigation you
14 have received copies of these documents, have you
15 not?

16 A. This is -- to the best of my knowledge,
17 this is the first time I have seen this.

18 Q. Do you know whether or not your counsel has
19 received these copies?

20 A. Probably.

21 Q. But what you are suggesting to me is that
22 you may not have seen these before?

23 A. That's correct.

24 Q. But I don't have any control over what your
25 counsel shares with you. Would you agree with that

1 statement?

2 A. Well, yes. And I would also share with you
3 this knowledge. I was in California. Jim was
4 handling most of this stuff, and Jim was the one
5 having the meetings with Mr. Jimmerson and he would
6 give me ideas of what was going on, but I couldn't
7 remember all of that stuff.

8 Q. Let me take you back to Exhibit 1 which is
9 the contract that's at issue.

10 A. The commission agreement?

11 Q. Yes, sir.

12 Once we get past the salutation which says
13 "Gentlemen," the first sentence there reads "This
14 letter is intended to confirm our understanding
15 concerning the pending purchase by Pardee from
16 Coyote of certain real property located in the
17 counties of Clark and Lincoln, Nevada pursuant to
18 the above referenced option agreement."

19 Did I read that correctly?

20 A. Yes, I did.

21 Q. So the properties then that are referenced
22 in the option agreement that has a definition in the
23 "re" line is the subject matter of this particular
24 letter, correct?

25 A. What do you mean "the gray line"?

1 Q. You and I are not communicating on this
2 point. A "re" line to me is a subject line, not a
3 "gray" line, the "re" line.

4 MS. HANSEN: See the R-E, that's what she
5 is referring to.

6 THE WITNESS: I know what that is.

7 BY MS. LUNDVALL:

8 Q. My apologies?

9 A. I call it "regarding" line.

10 Q. I will use your terms.

11 A. No. No, you can use yours. That's fine.

12 Q. The regarding line, then, makes reference
13 to which agreement that's at issue, correct?

14 A. The regarding line makes -- makes issue --

15 Q. Makes reference to the agreement that is at
16 issue under your commission letter, correct?

17 A. Yes.

18 Q. The second line under your commission
19 letter says "Except as otherwise defined herein, the
20 capitalized words used in this agreement shall have
21 the meanings as set forth in the option agreement."

22 Did I read that correctly?

23 A. Yes.

24 Q. And you understood that to mean that if
25 there were capitalized terms in the option

1 agreements and in the amendments, that those
2 capitalized terms, then, would have those same
3 meanings for your commission letter, correct?

4 A. I didn't understand that before but I
5 understand it now.

6 MS. LUNDVALL: I need to take a break.

7 (Off the record.)

8 BY MS. LUNDVALL:

9 Q. We are on paragraph number 1 on the
10 commission agreement.

11 A. Yes, ma'am.

12 Q. I can see during the time that I was gone
13 that you added some yellow highlight to that
14 document?

15 A. You are not supposed to be looking.

16 Q. Is that right?

17 A. Yes.

18 Q. Did you add any additional highlight to
19 Exhibit No. 1, which was the commission letter?

20 A. No, just the same ones.

21 Q. What I want to do is stick with the
22 commission letter for a little bit. We were on the
23 last sentence of that first paragraph that says that
24 the capitalized terms in the option agreement are
25 the same terms, then, that would apply for purposes

1 of your commission letter. Do you see that?

2 A. Yes.

3 Q. As you sit here today, you now have an
4 understanding that those capitalized terms then
5 control the interpretation of your commission
6 letter, correct?

7 A. When you say the "capitalized terms," where
8 it says 50 million dollars that's capitalized and
9 the 16 million that's --

10 Q. There are two words, "contingency period."
11 Do you see in the second paragraph?

12 A. I see the "contingency period."

13 Q. I don't want you to highlight anything.
14 The highlight is very important to me and I don't
15 want to add unless I ask you to.

16 A. Okay.

17 Q. You see "contingency period"?

18 A. Yes.

19 Q. That's capitalized, correct?

20 A. Yes.

21 Q. In the option agreement, there is a
22 definition of contingency period; do you now have
23 that understanding?

24 A. Yes.

25 Q. You now understand that whatever that

1 definition is in the option agreement is the same
2 definition that controls for your commission letter,
3 correct?

4 A. According to the commission letter, with
5 the exception of the fact that this should -- we
6 should have been paid for 66 million, 16 million and
7 another 18 million, which is 84 million. Outside of
8 that, yes, that's correct.

9 Q. What I want to do is just stick, then, to
10 the capitalized terms.

11 A. Okay.

12 Q. Those capitalized terms, if there is
13 definition in the option agreement, those
14 definitions control for your commission letter,
15 correct?

16 A. Okay. Yes.

17 Q. If we go then down to the second full
18 paragraph on your commission letter, it breaks out
19 into three separate paragraphs how you are going to
20 be paid on your commission. Correct?

21 A. Yes, ma'am.

22 Q. One little "i" indicates that you are going
23 to get 4 percent of the purchase property price
24 payments, correct?

25 A. Right.

1 Q. Up to \$50 million?

2 A. Right.

3 Q. And.

4 Two little "ii" says you are going to get
5 1-1/2 percent of the remaining purchase price in the
6 aggregate amount of 16 million. Do you see where
7 I'm at?

8 A. I do.

9 Q. And purchase property price is all in
10 capitals, correct?

11 A. Yes.

12 Q. So to figure out what the definition, then,
13 of the purchase property price is, what we need to
14 do is go to the option agreement, correct?

15 A. If you say so.

16 Q. Let's start with Exhibit No. 2.

17 A. Okay. We are there.

18 Q. Exhibit No. 2, if you turn to Page 3 --

19 A. All right.

20 Q. -- do you see about the a third of the way
21 down the page there is a little "b"?

22 A. Yes.

23 Q. And you see the words "PURCHASE PROPERTY
24 PRICE" that's in caps and paren there?

25 A. It 66 million.

1 Q. \$66 million, do you see that?

2 A. Right.

3 Q. Let's go now to Exhibit No. 3, which was
4 the first amendment.

5 A. Okay.

6 MS. HANSEN: She is asking you to look at
7 another document.

8 THE WITNESS: Sorry. Okay.

9 BY MS. LUNDVALL:

10 Q. Feel free to spend as much time with this
11 as you want, sir, but I cannot find any changes to
12 the purchase property price in this first amendment.

13 A. I cannot either, but I will take your word
14 for it.

15 Q. And the document will control. You won't
16 need to take my word for it.

17 Go to Exhibit No. 4. What you are going to
18 see is the second amendment.

19 A. Right.

20 Q. That was entered into between Pardee and
21 CSI. If I can take you to Page 2 of Exhibit 4,
22 which was the second amendment, do you see that the
23 purchase property price now went up to \$84 million?

24 A. That's what I highlighted.

25 Q. Okay.

1 A. Yes.

2 Q. Are you aware that you have been paid
3 commissions on \$84 million?

4 A. No, I'm not. In fact, I think we should be
5 paid commissions on 84 million. We didn't see any
6 of this stuff until after we signed the other. It's
7 like they slipped it in on us.

8 Q. If the purchase price went up and you were
9 getting a percentage, then, of the purchase price,
10 that would be a good thing for you, right?

11 A. Say that again.

12 Q. If the purchase price went up under these
13 amendments and, as your commission letter indicates
14 you were getting paid on the purchase property
15 price, you believe you are entitled to that
16 increase, right?

17 A. Absolutely.

18 Q. And you believe that you should be entitled
19 to the increase up to whatever the definition is
20 found within these amendments, correct?

21 A. I believe I'm entitled -- we are entitled
22 to the purchase price of 84, which should be payable
23 as follows, I guess.

24 Q. All right.

25 A. You know, I'm not really good in these

1 amendments. I didn't study them. I let Jimmerson
2 look into them.

3 Q. You would assume that most people would
4 follow the advice of their attorney, right?

5 A. Yes.

6 Q. And you two were following the advice of
7 your attorney, correct?

8 A. Yes.

9 Q. What I want to do is take you then back to
10 Exhibit 1, which is your commission letter.

11 A. Okay. I've got a helper here. Make it
12 quicker for you.

13 Q. Okay.

14 A. Okay. I'm there.

15 Q. All right.

16 A. Page 1.

17 Q. Page 1 at "iii"?

18 A. Yes.

19 Q. At "iii," it makes reference to the option
20 property.

21 A. Purchase by Pardee pursuant to paragraph 2
22 of the option agreement. Pardee shall pay 1 and 1/2
23 percent -- yes.

24 Q. So iii, in sum, then says if in fact there
25 is option property that's purchased by Pardee

1 pursuant to paragraph 2 of the option agreement,
2 then you are going to get a percentage, then you are
3 going to get paid a commission on that purchase,
4 correct?

5 A. Yes.

6 Q. You are going to get 1-1/2 percent of any
7 amount that's multiplied by the number of acres,
8 purchased by Pardee by \$40,000, correct?

9 A. Yes, because this is where we are paid by
10 acres.

11 Q. So if in fact -- well, let's go to the
12 option agreement, see if we can find a definition
13 for you, then, of option property.

14 I'll go ahead and take you back to Exhibit
15 No. 2 again.

16 A. Page 2.

17 Q. Start on Page 1, sir.

18 A. Page 1.

19 Q. See at the very bottom there is a reference
20 to option property, very bottom of the page?

21 A. Talking about B?

22 Q. Yes.

23 A. Okay. The very bottom of the page, buyers
24 option -- (sotto voce). Yeah.

25 Q. Okay.

1 A. I don't understand what that means though.

2 Q. You do see a definition of option property
3 here?

4 A. Yeah. Let me look at it again. Number of
5 separate phases, what does that mean? That was a
6 question.

7 Q. I understand that, but this is my
8 opportunity to ask you questions, not vice versa.
9 Just trying to point you to the definitions of
10 option property.

11 A. Okay.

12 Q. All right. Then what I want you to do is
13 to go to Page 5 of Exhibit 2 and you will see
14 paragraph 2, "Grant of Option"?

15 A. Yes. (Sotto voce) -- expire five years
16 following the settlement date.

17 Q. To your knowledge, has Pardee purchased any
18 property pursuant to paragraph 2 from Coyote
19 Springs?

20 A. I have no documentation. I have no way of
21 knowing that. They have not provided us anything.

22 Q. The option agreement makes reference to an
23 option property deed, if in fact that Pardee took a
24 property pursuant to that paragraph. Have you
25 received or found in Lincoln County or in Clark

1 **County copies of any option property deeds?**

2 A. No, but that doesn't mean there has not
3 been any because sometimes recordings take forever
4 before they show up, especially on properties of
5 this size, especially with new parcel numbers,
6 especially with a new area. That doesn't mean there
7 wasn't -- that they didn't take anything down.

8 **Q. Let me ask you this.**

9 Have you had the opportunity to review any
10 of these option agreements or their amendments that
11 have been provided to your counsel?

12 A. No. We gave them to Mr. Jimmerson, let him
13 review the things, and we did what he told us.

14 **Q. Were you aware, then, of in fact that the**
15 **BLM was going to be doing reconfigurations of the**
16 **land grants?**

17 A. I just thought of something on the last
18 question. Do you want me to rephrase that?

19 **Q. Feel free to go back to it and then I will**
20 **ask my next question.**

21 MS. LUNDVALL: We will have the court
22 reporter read back the second-to-last question.

23 (Thereupon, the record was read by the
24 court reporter as follows: "Q. Have you
25 had the opportunity to review any of these

1 option agreements or their amendments that
2 have been provided to your counsel?")

3 THE WITNESS: I do remember that we -- I do
4 remember that we skimmed through them, but we did
5 not understand all the legal stuff on them so we
6 took them to Jimmerson. So we did kind of -- when
7 we got the escrow instructions, we did -- and the --
8 and the -- we didn't get any amendments, but we got
9 the escrow instructions. We did skim through those,
10 and it was too confusing for us so we took them to
11 Jimmerson.

12 BY MS. LUNDVALL:

13 Q. Any of the commission payments that you
14 received, you received those directly from the
15 escrow company, correct?

16 A. Absolutely.

17 Q. You are aware that your commission letter
18 had been supplied to the escrow company, correct?

19 A. From Pardee to the escrow company, yes.

20 Q. And that's a fairly typical arrangement as
21 part of an escrow company's obligations in opening
22 an escrow, correct?

23 A. Yes, especially if you are representing the
24 buyer.

25 Q. So to the extent that your commission

1 letter was provided, then, to the escrow company,
2 your payments then were received from the escrow
3 company, correct?

4 A. Yes.

5 Q. At no point in time did you receive any
6 payments directly from Pardee?

7 A. Absolutely not.

8 Q. At no time did you receive payments
9 directly from CSI, Coyote Springs?

10 A. No, the only payments came through the
11 title company.

12 Q. So each time, then, that there was some
13 type of land takedown, an exchange of monies between
14 Pardee and CSI, the escrow company was involved in
15 that transaction --

16 A. Yes.

17 Q. -- were you aware of that?

18 A. Yes.

19 Q. That's fairly typical, correct?

20 A. Yes.

21 Q. And the escrow company then was paying
22 pursuant to escrow instructions, correct?

23 A. Yes.

24 Q. And your commission letter then was part of
25 those escrow instructions, to your knowledge?

1 A. Yes. However --

2 Q. I want to turn your attention to --

3 MS. HANSEN: Go ahead and finish your
4 answer.

5 THE WITNESS: I said yes, however, all we
6 got was checks. We still never got any
7 documentation or maps or anything as to which parcel
8 was going down.

9 BY MS. LUNDVALL:

10 Q. That's exactly the next section I wanted to
11 talk to you about.

12 A. Oh, good. We can skip it now.

13 Q. I want to take you back to Exhibit No. 1,
14 please.

15 A. Yes, ma'am. Exhibit 1, which would be the
16 commission letter. Okay.

17 Q. There is a paragraph in the commission
18 letter that speaks to Pardee's obligation to provide
19 information to you, is there not?

20 A. Where is that paragraph at?

21 Q. It's on Page 2.

22 MS. HANSEN: The one you highlighted.

23 THE WITNESS: Okay. Yes.

24 BY MS. LUNDVALL:

25 Q. As a matter of fact, you provided highlight

1 to that portion, correct?

2 A. That's correct.

3 Q. And it's your opinion, in fact, that this
4 portion of the commission letter may have been
5 breached by Pardee; is that right?

6 A. Well, let me read it one more time.

7 Q. Okay.

8 A. You had me highlight it. I read it pretty
9 quick. "Pardee shall provide to you a copy of each
10 written option exercise given pursuant to paragraph
11 2 of the option agreement, together with information
12 as to the number of acres involved in the scheduled
13 closing date. In addition, Pardee shall keep each
14 of you reasonably informed as to all matters. All
15 matters relating to the amount and due dates of your
16 commission payments."

17 Which they did not do.

18 Q. What I want to do is focus your attention
19 strictly on the first sentence.

20 A. Okay.

21 Q. First sentence says that you are going to
22 get "a copy of each written option exercise notice
23 given pursuant to paragraph 2 of the option
24 agreement, together with information as to the
25 number of acres involved and the scheduled closing

1 date."

2 Did I read that correctly?

3 A. Yes.

4 Q. My question to you, sir, is that if there
5 has been no written option exercise notice, in other
6 words, if Pardee has never sent an exercise notice
7 to CSI that we are going to take down additional
8 properties pursuant to paragraph 2, then there was
9 nothing that they could provide to you. Do you have
10 that understanding?

11 A. They were not going to take down anything,
12 but they were supposed to keep us advised what they
13 were going to do, what their plans were and
14 everything. So no, I think they should have let us
15 know we are not going to take this option down to --
16 example, December 1st, and then we will take this
17 option down.

18 They were supposed to keep us a party to
19 this. That's why we agreed to get out of -- that's
20 why we agreed to let them go on to the meetings
21 without us. They were going to keep us advised of
22 every little detail.

23 Q. I want you to focus on the language here.

24 A. Just one second. I got to get a hard candy
25 here.

1 The first sentence, right?

2 **Q. On this first sentence, this first sentence**
3 **only makes reference to paragraph 2 of the option**
4 **agreement --**

5 A. Okay.

6 **Q. -- do you see that?**

7 A. Yes.

8 **Q. Do you have any knowledge, in fact, that**
9 **Pardee did exercise an option under paragraph 2 of**
10 **their option agreement?**

11 A. Which was paragraph 2? Let me look at it.
12 This one?

13 **Q. Yes, that's correct.**

14 A. Paragraph 2 is up here. Right. That's a
15 legal question. I can't answer that. I'm not an
16 attorney. Brokers have been taught from the
17 beginning of time, you are not an attorney, do not
18 practice, you will get in trouble.

19 **Q. Let me ask you a factual question.**

20 A. Okay.

21 **Q. Do you have any facts to indicate that**
22 **there has been any exercise of options by Pardee**
23 **from CSI?**

24 A. Well, the Clark County maps that Jim looked
25 at showed an awful lot more property than what these

1 options covered, so yes, I do.

2 Q. Okay.

3 A. Based on the maps, okay, without parcel
4 numbers, without everything, but based on the maps,
5 looks like they took down a lot more property.

6 Q. Parcel numbers are a matter of public
7 record, are they not?

8 A. Well, when you go down to Clark County --
9 yes, but when you are talking about new parcel maps
10 and new things, you don't get the deeds or anything
11 until later on. But parcel numbers should be a
12 matter of record. And Jim got some parcel numbers
13 from the county down there which he felt belonged --
14 were takedowns of Pardee, and that's why we think
15 there was a lot more acreage.

16 Q. Parcel maps are also a matter of public
17 record, are they not?

18 A. Yes.

19 Q. Directing your attention, then, down to --

20 A. With the exception -- with the exception of
21 Pardee doesn't want anything to show. They have
22 tremendous power with the county. They don't want
23 anything to show on -- they don't want anything to
24 show on the maps or anything in the newspaper. They
25 slow it up considerably.

1 Q. You tell me what facts and what evidence
2 did you have that any representative of Pardee has
3 improperly influenced Clark County or Lincoln County
4 on what has been recorded or is a matter of
5 assessor's record?

6 A. I have no evidence, except what you told
7 me.

8 Q. Pure speculation is what you are telling
9 me; is that right?

10 A. There's an awful lot of property that
11 wasn't there.

12 Q. Pure speculation; is that correct?

13 MS. HANSEN: I don't want you to raise your
14 voice at my witness. He is answering your
15 questions.

16 THE WITNESS: You can call it speculation
17 if you want, but when you see large parcels of land
18 taken down, it sure makes you -- you know, it sure
19 makes you wonder.

20 BY MS. LUNDVALL:

21 Q. You have no facts or evidence in support of
22 the suspicions that you just articulated, correct?

23 A. Just the parcel maps.

24 Q. Directing your attention back to Exhibit
25 No. 1, please.

1 A. Yes, ma'am.

2 Q. There is a two-sentence paragraph that
3 starts "In the event any sum of money is due."

4 A. Where are you at?

5 Q. I'm on Page 2, sir.

6 A. Oh. Last paragraph.

7 MS. HANSEN: No, right here.

8 BY MS. LUNDVALL:

9 Q. Second to the last paragraph.

10 A. "In the event any sum of money due remains
11 unpaid for a period of 30 days shall bear the rate
12 of 10 percent per annum from the date until paid."

13 Q. Do you contend that there is a sum of money
14 due to you?

15 A. Based on the maps and information we
16 certainly -- we certainly think that there could be.
17 There is more property. There is more property, we
18 haven't been able to identify them.

19 Q. How much?

20 A. Oh, I have no idea.

21 Q. Second sentence reads "In the event either
22 party brings an action to enforce his rights under
23 this agreement, the prevailing party shall be
24 awarded reasonable attorneys fees and costs."

25 Did I read that correctly?

1 A. Yes.

2 Q. Do you understand that if, in fact, that
3 it's Pardee that is the prevailing party, that it
4 will be entitled an award of reasonable attorneys
5 fees and costs against you and Mr. Wolfram?

6 A. How much are there in attorneys fees?

7 Q. Do you have that understanding?

8 A. I have that understanding, but you asked me
9 how much. Is it over 10,000?

10 (Exhibit 5 marked.)

11 BY MS. LUNDVALL:

12 Q. Mr. Wilkes, I'm going to hand you what's
13 been marked as Exhibit 5 to your deposition.

14 A. Any particular page or do you want me to
15 read the whole thing?

16 Q. My question to you is a fairly simple one.

17 This is a copy of the amended complaint
18 which is the operative complaint in this litigation.
19 Did you have an opportunity to see this document
20 before it was put on file on your behalf?

21 A. You know, I don't think I have ever seen
22 this one.

23 Q. Feel free, sir, to spend as much time with
24 it, then, as you like. I'm going to ask you a few
25 questions on it. Okay?

1 A. Okay. Hang on a second. Okay, go ahead.

2 Q. You don't think that you have seen this
3 before?

4 A. To the best of my knowledge, no.

5 Q. But you trusted your attorney to file an
6 accurate and complete document on your behalf?

7 A. Absolutely. Jimmerson is the best in town.

8 Q. What additional information is it that you
9 seek from Pardee?

10 A. What do we seek from them?

11 Q. What additional information do you seek
12 from Pardee?

13 A. Any and all documentation, parcel maps,
14 anything at all that's -- can help us track the
15 sales from Coyote Springs to Pardee or from Pardee
16 back to Coyote Springs on any trades, anything at
17 all that would help us track that.

18 Q. Do you have any knowledge that would
19 suggest that Pardee and CSI have done any
20 transactions that have not been subject of an
21 escrow?

22 A. I don't have knowledge, but the way things
23 are going on, I want to know.

24 Q. You have asked for documentation from
25 Stewart Title --

1 A. Sorry. No, I don't.

2 Q. Are you aware that you have asked for
3 documentation from Stewart Title company?

4 A. We have asked -- Stewart Title company
5 takes their orders from Pardee. They don't give
6 us -- we asked for documentation. They would not
7 give us anything.

8 Q. Are you aware that your counsel has
9 subpoenaed documents from Stewart Title?

10 A. No, I didn't know that. I'm glad he has.

11 Q. Are you aware that your counsel has already
12 subpoenaed documents from Chicago Title?

13 A. I wasn't aware of that, no. I'm glad he
14 has.

15 Q. Are you aware of any other title companies
16 that have been used by Pardee and CSI to effectuate
17 their transactions?

18 A. Stewart Title, I think.

19 Q. Other than Stewart Title and other than
20 Chicago Title, are you aware of any other title
21 companies that have been used by Pardee and CSI to
22 effectuate the transactions between the two?

23 A. You know, First American might have been in
24 there. I don't know. I'm not sure.

25 Q. Did you receive any commission checks from

1 First American?

2 A. I don't remember.

3 Q. You received commission checks, though,
4 from Stewart, did you not?

5 A. Yes.

6 Q. And you received commission checks from
7 Chicago Title, did you not?

8 A. Yes.

9 Q. Any other commission checks from any other
10 title company that you received concerning this
11 transaction?

12 A. To the best of my knowledge, no.

13 (Exhibit 6 marked.)

14 BY MS. LUNDVALL:

15 Q. Mr. Wilkes, I hand you what's been marked
16 as Exhibit 6 to your deposition. Did you receive a
17 copy of this letter?

18 A. I saw a copy of this letter long after --
19 well, I saw it, I guess it must have been 2007 that
20 it's dated here so I would assume I saw it in 2007.
21 I didn't understand it.

22 Q. Did you read the letter?

23 A. Basically I glanced over it. I have not
24 read it. I was waiting to talk to counsel about it.

25 Q. After receiving the letter in 2007, did you

1 call Mr. Lash and ask him any questions concerning
2 it?

3 A. No, I have not talked to Mr. Lash for
4 years. Jim was the one that did the talking to him.
5 I was very upset about the commission.

6 MS. HANSEN: You have finished answering.

7 THE WITNESS: Okay.

8 (Exhibit 7 marked.)

9 BY MS. LUNDVALL:

10 Q. Mr. Wilkes, I hand you what's been marked
11 as Exhibit 7 to your deposition.

12 A. Yes, ma'am.

13 Q. This is a letter that bears the date of
14 April 6 of 2009.

15 A. Yes, ma'am.

16 Q. Earlier you indicated that Mr. Wolfram was
17 the individual who was asking questions of Pardee;
18 is that correct?

19 A. Yeah.

20 Q. And this is a letter that is directed to
21 Mr. Wolfram from Jim Stringer with Pardee Homes?

22 A. Okay.

23 Q. Do you see that?

24 A. Yes.

25 Q. Did Mr. Wolfram then share the information

1 in this letter with you?

2 A. Yes.

3 Q. In this letter it makes references that
4 Pardee made its last land payment to Coyote for a
5 total amount of \$84 million. Do you see where I'm
6 making reference?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. Yes, I see that.

10 Q. Do you have any indication that Pardee has
11 paid more than \$84 million to CSI for the property?

12 A. Not at the present time, but we should be
13 being paid for the 84 million on commission.

14 Q. Did you ever call Mr. Stringer and ask him
15 any questions concerning this letter?

16 A. Jim called several times, Mr. Jimmerson
17 called several times, and finally we got something
18 like this out of them, which was nowhere near what
19 everything we asked for.

20 Q. They gave you the balance of the closing
21 statements between Pardee and CSI that were appended
22 to this letter, correct?

23 A. You know, I assume so. I don't remember.

24 Q. Did you take a look at those at the time
25 that you received a copy?

1 A. I don't think --

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

4 A. Briefly.

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

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

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

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

16 MS. HANSEN: You have answered.

17 THE WITNESS: Okay.

18 (Exhibit 8 marked.)

19 BY MS. LUNDVALL:

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

22 A. Okay.

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

25 A. Okay.

1 Q. Did Mr. Wolfram share a copy of this letter
2 with you?

3 A. I don't know.

4 Q. Feel free to take a look at it, see if it
5 will refresh your recollection, sir.

6 A. I can't answer that. Jim was the one that
7 took all of the information. He was meeting with
8 the attorney. I was in California. You know, I --

9 MS. HANSEN: If you don't know, answer you
10 don't know.

11 THE WITNESS: No, I don't know.

12 BY MS. LUNDVALL:

13 Q. Directing your attention, then, I want to
14 focus your attention particularly to the bottom of
15 Exhibit 8, please.

16 A. First page, Exhibit 8, initial takedown.

17 Q. He writes on here "Listed below is a
18 narrative description of the land takedowns, as well
19 as a corresponding color-coded map."

20 Then it talks about the initial takedown.
21 If you go to Page 2 there is a description of
22 takedown one, a takedown two, a description of
23 takedown three, a description of takedown four and a
24 description of takedown 5.

25 Do you see where I'm making reference to?

1 A. I see that. I do not remember this letter.

2 Q. Do you have any indication or information
3 that, in fact, that there was more takedowns rather
4 than what was described in this letter?

5 A. Well, you know, this letter is dated
6 November 24, 2009. We sure deserved them long
7 before that.

8 Q. Were you harmed by any delay in information
9 being given to you?

10 A. Just that we were going to get them, don't
11 worry, it's coming and it never did, not even to the
12 attorney. The attorney was on the phone with
13 Mr. Stringer for months.

14 Q. Directing your attention, then, to the
15 bottom Page 2, it gives you the date of the closings
16 on the takedowns as well, does it not?

17 A. It gives dates, yes.

18 Q. All right. And it gives you the purchase
19 prices that were paid for each one of the closings,
20 correct?

21 A. Okay.

22 Q. Do you see where I'm at?

23 A. I do.

24 Q. And you also can see where it says that
25 Pardee still has over \$116,000 on account from the

1 \$84 million option agreement deposits. Do you see
2 where I'm at?

3 A. I do.

4 Q. If you take that 116, combine it then with
5 all of the purchase prices, -- have you done that?

6 A. No.

7 Q. Do you know that you get \$84 million?

8 A. I will take your word for it.

9 Q. Okay. From what I understand you to
10 suggest, sir, is that this information is the type
11 of information that you wanted to seek from Pardee;
12 is that right?

13 A. Partial.

14 Q. It had identified all of the takedowns,
15 when they occurred, what the prices were concerning
16 that; is that right?

17 A. Yes.

18 Q. And enclosed a color coded map concerning
19 the parcels that have been taken down; is that
20 right?

21 A. Right.

22 Q. At any point after this did you contact
23 Mr. Lash and ask him any questions concerning the
24 information found within this letter?

25 A. No.

1 (Exhibit 9 marked.)

2 BY MS. LUNDVALL:

3 Q. So you don't feel left out, let's mark this
4 one. How about that.

5 A. I have a hunch we are going to be here
6 until midnight.

7 Q. Sir, I have handed you what's been marked
8 Exhibit 9 to your deposition.

9 A. Yes.

10 Q. This is a document that's the Amended and
11 Restated Option Agreement For the Purchase of Real
12 Property and Joint Escrow Instructions. Do you see
13 that?

14 A. Yes.

15 Q. I also see that this bears the date of
16 March 28 of 2005. Do you see that in the very first
17 paragraph?

18 A. Yes.

19 Q. Once again, this is between Coyote Springs
20 and Pardee, correct?

21 A. Yep.

22 Q. All right. What I want to do is to direct
23 your attention to Page 3.

24 A. Yes, ma'am. Okay.

25 Q. Once again, at Page 3, the purchase

1 property price continues to be \$84 million?

2 A. Okay.

3 Q. Do you see where I'm at?

4 A. No.

5 Q. About halfway down the page.

6 A. Oh, there it is, second paragraph. Okay.

7 Q. Do you have any facts or evidence to
8 suggest that the purchased property price that was
9 paid by Pardee to CSI was more than \$84 million?

10 A. No, but I would like to know where our
11 commission is on it. And I don't think I have ever
12 seen this document either.

13 (Exhibit 10 marked.)

14 BY MS. LUNDVALL:

15 Q. Sir, I hand you what's been marked as
16 Exhibit 10 to your deposition.

17 A. Yeah.

18 Q. Mr. Wolfram indicated during his deposition
19 that in fact the handwritten portion of this is in
20 his handwriting.

21 A. Okay.

22 Q. Do you recognize Mr. Wolfram's handwriting?

23 A. Yes.

24 Q. And do you recognize this to be
25 Mr. Wolfram's handwriting?

1 A. Yes.

2 Q. There is a sentence that says -- it's about
3 oh, let's see, five lines down, it starts "Once they
4 explain all of this to us with maps and backup
5 information, we could agree."

6 Do you see where I'm at?

7 A. Five lines down, one, two, three, four,
8 five. Oh, "Once they explain all of this to us with
9 maps and backup information, we could agree. We
10 still need an accounting of how the land is taken
11 down. I think it is additional acreage."

12 Q. So my question to you is kind of a broader
13 question. Once it is explained to you as to the
14 takedowns that have been made by Pardee, are you
15 willing to agree that, in fact, you have received
16 the full commissions under your commission letter?

17 A. No, not until they -- not until they show
18 me, you know, exactly which -- all of the properties
19 are that they took, if they can do all that. And if
20 I think I'm wrong, I think I would admit it. But I
21 don't know that I -- I guess I would agree. I guess
22 I would agree, yes. They have to show it to me.

23 (Exhibit 11 marked.)

24 BY MS. LUNDVALL:

25 Q. Mr. Wilkes, I'm going to hand you what's

1 been marked as Exhibit 11 to your deposition.

2 A. Okay. To my deposition?

3 Q. This is your deposition, sir.

4 A. Okay.

5 Q. I'm going to focus your attention as far as
6 on the handwriting that's on this document. I'm
7 going to read this out loud. Mr. Wolfram indicated
8 this was his handwriting.

9 "We showed the property to Pardee Homes
10 around July or August of 2003. At that time there
11 was about 5,200 acres."

12 A. 52,000?

13 Q. 52,000 acres.

14 "Harvey decided not to sell the whole
15 52,000. He kept acreage for himself. We believe he
16 has decided to sell more to Pardee. Word this as
17 you see fit."

18 Did he see where I'm at?

19 A. Uh-huh.

20 Q. Have you had any conversations with
21 Mr. Whitmore since this litigation has begun
22 regarding what CSI has done in its negotiations or
23 its transactions with Pardee?

24 A. Conversations with Harvey Whitmore?

25 Q. Yes.

1 A. No.

2 Q. What about with any other representatives
3 of CSI?

4 A. No.

5 Q. Are you aware that CSI has now been taken
6 over from Mr. Whitmore?

7 A. Yes, some brothers or something bought it?

8 Q. Have you talked to the brothers?

9 A. No.

10 Q. Albert and Tommy Seeno, you have spoken to
11 them concerning what CSI's transactions have been
12 with Pardee?

13 A. No.

14 Q. You have made no investigation whatsoever
15 from CSI's perspective as to what its transactions
16 or contractual relationships have been with Pardee;
17 is that accurate?

18 A. I looked up on the secretary of state
19 online to see for sure if the sale had transpired.

20 Q. What do you mean by that?

21 A. Well, to see if they had acquired the
22 property.

23 Q. Who?

24 A. The brothers. Okay. And it did show their
25 names on the Coyote Springs Investment. That's all

1 I did.

2 Q. Other than that, no inquiries made of any
3 representative of CSI as to whether or not they had
4 sold any additional properties to Pardee?

5 A. I made no inquiries to them.

6 Q. Have you spoken Frances Butler with Chicago
7 Title Company?

8 A. Recently?

9 Q. At any point in time before bringing this
10 case.

11 A. Before bringing this chase?

12 Q. Yes.

13 A. Not before the lawsuit.

14 Q. What about after?

15 A. No, wait a minute, I take it back. We
16 might have -- it's possible I could have talked to
17 her about it because she was disbursing checks out
18 to us at one point in time.

19 Q. What did you talk to her about?

20 A. I just asked her about -- to my
21 recollection, I think I asked her what the -- if the
22 check was sent out or come out, something like that.
23 That's all.

24 Q. That was the sum total of your conversation
25 with her?

1 A. I don't remember any more than that, I'm
2 sorry.

3 Q. Did you speak with any representative of
4 Chicago Title Company before bringing this
5 litigation?

6 A. Before bringing this litigation. I kept --
7 I don't remember what date we took this over to
8 Chicago Title or they took it over. Pardee
9 transferred it to Chicago Title. Prior to that,
10 prior to our lawsuit, we may have inquired about it
11 to see that they had it. And we would have wanted
12 to know if the escrow number -- we would have wanted
13 to make sure we were getting paid. Outside of that,
14 I have no recollection of that.

15 Q. When you say "we," are you referring to
16 Mr. Wolfram and yourself?

17 A. Mr. Wolfram and myself.

18 Q. Did you personally have any conversations
19 with any representative of Chicago Title before this
20 litigation began?

21 A. Probably Frances Butler and I forget -- no,
22 that's after litigation. No, Frances Butler is the
23 only one.

24 Q. You have given me, to the best of your
25 recollection, your conversations with Ms. Butler?

1 A. Or her assistants. If she wasn't there,
2 I -- if I asked something about maybe what the
3 transaction number was or have they got a check yet.
4 That's all.

5 Q. But nothing else?

6 A. No.

7 Q. Did you ask anybody at either title
8 company, hey, has Pardee instructed you or given you
9 written instructions that we are no longer to be
10 paid on their transactions between Pardee and CSI?

11 A. That's after the lawsuit?

12 Q. Either before or after.

13 A. Either before or after?

14 Q. Make those types of inquiries?

15 A. I don't -- I didn't ask them, but we asked
16 questions and they wouldn't give us answers.

17 Q. I'm talking about you. I'm not talking
18 about "we." I want to know what you did. All
19 right?

20 Did you speak to any representative of
21 either Stewart Title company or Chicago Title
22 Company making an inquiry to the effect of have you
23 been given instructions that I am no longer to be
24 paid commissions on the transactions between Pardee
25 and CSI?

1 A. Not to the best of my knowledge, no.

2 Q. To the best of your knowledge, did
3 Mr. Wolfram make any of those types of inquiries?

4 A. Not to the best -- I think -- not to the
5 best of my knowledge, no.

6 Q. Did you make any inquiry to either the
7 assessor's office, the recorder's office of either
8 Lincoln County or Clark County as to whether or not
9 there were deeds that they were holding that had not
10 yet been recorded concerning transactions between
11 CSI and Pardee?

12 A. No, I didn't. No.

13 Q. Do you know if someone did on your behalf?

14 A. Jim went down to get the information, as I
15 said several times before.

16 Q. Whatever he did, he shared that information
17 with you; is that correct?

18 A. Well, he showed me a map and showed
19 significant more property, and that's why we were
20 suspicious of them taking down more.

21 Q. But you don't have any copies of any deeds
22 that they were holding back that had not been
23 recorded?

24 A. They didn't have any copies of deeds at
25 that time. Jim couldn't find any.

1 Q. Nor did they say that any of those types of
2 deeds existed, did they?

3 A. I couldn't answer that.

4 (Exhibit 12 marked.)

5 BY MS. LUNDVALL:

6 Q. Mr. Wilkes, I'm going to hand you a copy of
7 a document. It's not signed.

8 MS. HANSEN: I need a copy of that one.

9 MS. LUNDVALL: Thank you.

10 MS. HANSEN: Thanks.

11 BY MS. LUNDVALL:

12 Q. My question to you is, this is an unsigned
13 copy of a document that bears the title agreement
14 between Mark Carmen and Las Vegas Realty Center and
15 Walt Wilkes, broker salesman.

16 A. Yeah. Okay.

17 Q. Was this signed?

18 A. Absolutely.

19 Q. Do you have a copy?

20 A. I have got copies in the file of Las Vegas
21 Realty and Rubicon.

22 Q. Then you have access to those particular
23 files, do you not?

24 A. Yes.

25 Q. So if in fact there is a signed copy, you

1 **could get access to it, couldn't you?**

2 A. Yes.

3 MS. LUNDVALL: Counsel, we will make a
4 request for that. And I'm going to object to the
5 authenticity of this particular document because it
6 is unsigned.

7 MS. HANSEN: You are the one that offered
8 it into the record.

9 MS. LUNDVALL: There is no record here
10 other than the deposition transcript.

11 MS. HANSEN: That's what I'm talking about.

12 MS. LUNDVALL: So on the record I'm
13 objecting to the authenticity of this document.

14 MS. HANSEN: You can object to anything you
15 want, but if you want to request the document, you
16 need to do it in a formal manner.

17 (Exhibit 13 marked.)

18 BY MS. LUNDVALL:

19 **Q. Mr. Wilkes, I'm going to hand you what's**
20 **been marked as Exhibit 13 to your deposition. This**
21 **too is an unsigned copy of a document that bears a**
22 **title "Assignment of Real Estate Commission and**
23 **Personal Certification Agreement."**

24 A. From General Realty, yes.

25 **Q. And General Realty was the realty company**

1 that you were with at the time that you entered into
2 the commission agreement with Pardee, correct?

3 A. Correct.

4 Q. Is there a signed version of this
5 particular document somewhere?

6 A. Yes.

7 Q. Have you seen it?

8 A. Of course.

9 Q. Have you provided it to your counsel?

10 A. I did, but apparently he didn't want to
11 provide the signed ones to you.

12 MS. LUNDVALL: Once again, Counsel, we will
13 be making a request for this, and we will do it in a
14 formal thirty-four request for a signed version, and
15 I'm objecting to the authenticity of this particular
16 document as well.

17 BY MS. LUNDVALL:

18 Q. Mr. Wilkes, back to my question to you.

19 Do you have access to the files and records
20 then of General Realty Group?

21 A. Just somewhere I transferred out of there
22 and on this letter. Okay.

23 Q. Okay. And so if, in fact, that there was
24 an original of this document that had been signed by
25 both yourself as well as General Realty Group, you

1 would have had access, then, to that document?

2 A. I have access to it, yes.

3 THE WITNESS: Could we take a break?

4 MS. LUNDVALL: Absolutely.

5 (Off the record.)

6 BY MS. LUNDVALL:

7 Q. Mr. Wilkes, do you contend that your
8 relationship with Pardee is anything other than a
9 contractual relationship?

10 A. Not at this point, no.

11 Q. In other words, you were never an employee
12 of Pardee?

13 A. No. But we -- no, we never were an
14 employee of them, but we met and have the nicest
15 times and all friends, I thought.

16 Q. You were represented by counsel, then,
17 going into the commission letter; is that right?

18 A. Yes.

19 Q. And you entered into the commission letter,
20 then, based upon the advice of counsel; is that
21 correct?

22 A. Yes.

23 Q. Would you consider that to have been an
24 arms-length transaction between your counsel and
25 counsel for Pardee?

1 A. Yes. When you say arms-length, you mean up
2 front, right?

3 Q. That's right.

4 A. My arm is longer than --

5 Q. That it is.

6 How tall are you when you stand?

7 A. Six-four. I can walk but can't walk very
8 far, my back kills me and my knee and everything
9 else, and arthritis.

10 MS. HANSEN: There is no question pending.

11 THE WITNESS: Okay, sorry. Can't help it.
12 I like her.

13 BY MS. LUNDVALL:

14 Q. I asked you this, but I just want to
15 clarify, it's your personal belief that you are owed
16 some additional commissions; is that right?

17 A. Yes.

18 Q. But you don't have a number to give me?

19 A. Well, you got to remember. We got -- I
20 think we should be paid for the 84 million, like I
21 said. Okay. And also the representation was made
22 to Jim by Jon Lash that we had 300 more acres to be
23 taken down. Okay. And also there was 300 more
24 acres per year that were supposed to be taken down.
25 So that goes along with the proof that you keep

1 asking for, you know.

2 Q. But you don't have a number to give me as
3 to how much you believe that you are entitled to?

4 A. Not until -- they won't give us the stuff.
5 We can't give you that number until we determine
6 what they have taken down and with the maps and, of
7 course, the verbal things that he told you.

8 Q. Do you believe that Pardee has acted in bad
9 faith toward you?

10 A. Well, very haven't been paid on that --
11 they were supposed to take down 300 acres. We
12 haven't been paid on it this year. And seems like
13 they should have taken it down by now. And also
14 the -- I hope they act in good faith on the future
15 payments.

16 Q. Other than that?

17 A. Other than that . . .

18 Q. Let me ask you some questions concerning
19 your background.

20 Tell me about your professional experiences
21 here in Las Vegas. Can you describe for me what
22 your educational background is?

23 A. High school. A year at UNLV, or at that
24 time, Southern Nevada University then, and real
25 estate school.

1 Q. Sounds like you were born and raised here
2 in the Las Vegas Valley?

3 A. No, I wasn't. Actually, I was born in
4 California but I came down here in -- I believe it
5 was in 1960. Okay. And I went to high school and
6 then I worked at Hertz rent a car, did some other
7 jobs and eventually got into real estate.

8 Q. Which high school did you go to here in
9 town?

10 A. Las Vegas High.

11 Q. And then you spent a year at UNLV?

12 A. (No audible answer.)

13 Q. What did you study there?

14 A. Real estate, business.

15 Q. Play ball when you were there?

16 A. I did. I went out for the football team
17 and did pretty good, but I racked up my neck and
18 so . . .

19 Q. Then you went and took your Realtor
20 classes; is that right?

21 A. I took my Realtor classes after UNLV
22 because I was working my way through everything. I
23 was working graveyard, trying to play ball and
24 trying to take my classes. And I found out that --
25 I went ahead and finished my high school and then I

1 decided I would just go to the real estate school.
2 And I found out that was a better situation for me
3 timewise.

4 Q. Do you have a high school diploma?

5 A. Yes.

6 Q. Any college diplomas?

7 A. No. One year in college, how are you going
8 to get a diploma.

9 Q. I didn't think so, but sometimes attorneys
10 have to ask stupid questions.

11 A. Okay.

12 Q. The completion, then, of your realty school
13 culminated with you taking the Realtor exam; is that
14 right?

15 A. I believe I took the sales exam first
16 and -- okay, and -- I think I failed it the first
17 time. And I came back next time, which was a very
18 short time. A lot of the stuff was fresh in my
19 head. I failed the math portion and I went and took
20 a math class. Then I breezed through it. And a
21 month after that, I went for my broker-sales license
22 because everything was still fresh in my mind.

23 Q. Did you get your broker's license then?

24 A. Broker-sales. I have never been a broker.
25 I'm a licensed real estate broker, employed as a

1 salesman.

2 Q. So in other words, you have never had a
3 brokerage company whereby you have been responsible
4 for other salesmen underneath you?

5 A. That's correct.

6 Q. And you have always then acted as a
7 salesman working under someone else's broker's
8 license?

9 A. That's correct. Better that way.

10 Q. You tell me that you are going to renew
11 your Realtor license then?

12 A. If I get out of here today, I will do it
13 today. I have my hours and my check down there.

14 Q. I note that you just took out a recent
15 business license.

16 A. I did?

17 Q. Issued June of 2011, City of Las Vegas
18 business license.

19 A. Well, you have to have that for your real
20 estate license now.

21 Q. Okay. So in other words, your City of
22 Las Vegas business license then relates to --

23 A. It's required now.

24 Q. -- your Realtor license?

25 A. Yes.

1 Q. That was the purpose, then, of taking out
2 that business license?

3 A. Yes, absolutely.

4 Q. When you filled out that form, were you
5 honest and accurate in completing the form for the
6 business license?

7 A. Yes, to the best of my knowledge.

8 Q. Can you relate to me what your employment
9 background has been?

10 A. My employment background going all of the
11 way back to high school?

12 Q. Well, you can pick a point forward and move
13 forward or pick a point and move backwards.

14 A. How about we go to when I got my license?

15 Q. I will take that.

16 A. The first place I went to work for was for
17 Betty Chapelle at Chapelle Realty. She is a
18 wonderful woman. She taught me a lot of things.

19 The second place I went to -- I'm not sure
20 between the second and third place, but I do know I
21 went to Chapelle Realty. I went to Jack Matthews
22 realty. I went to General Realty. I went to
23 Las Vegas Realty and now I wound up a Rubicon
24 Realty. I may have forgotten one. That's the best
25 I can do in my recollection.

1 Q. I take it that the jobs that you had before
2 that were things just getting by to try to pay the
3 rent?

4 A. Sell real estate, make money.

5 Q. Pay your tuition?

6 A. Make money.

7 Q. You indicated that you worked at Hertz rent
8 a car, those types of things?

9 A. Yeah. I worked at Hertz rent a car shortly
10 out of high school. I was a rental rep.

11 MS. HANSEN: She has not asked you a
12 question.

13 THE WITNESS: You don't care about that.
14 BY MS. LUNDVALL:

15 Q. Those jobs were incidental, just trying to
16 earn a living; is that right?

17 A. That's correct.

18 Q. During the course of your employment, any
19 complaints lodged against you in a professional
20 capacity?

21 A. Not to the best of my knowledge.

22 Q. What about internally in the workplace, any
23 type of complaints on gender discrimination, racial
24 discrimination, anything of that nature?

25 A. No.

1 Q. Ever been a witness in any type of a
2 proceeding, unemployment compensation hearing, EEOC
3 hearing, a trial, anything of that nature?

4 A. I can't think of -- seems like it was a
5 jury trial. Been so many years ago.

6 Q. Were you a juror or a witness?

7 A. A juror. I was a witness one time for my
8 son many years ago. He was hit, the one that I
9 lost. That's not when I lost him. He decided to
10 walk across the street at Bonanza High School but he
11 didn't use the crosswalk.

12 MS. HANSEN: There is no question pending.

13 BY MS. LUNDVALL:

14 Q. Feel free to go ahead and explain to me the
15 proceeding in which you were a witness.

16 A. I was a witness.

17 MS. HANSEN: Go ahead. Now you can.

18 THE WITNESS: They wanted me to testify.
19 He was a tremendous football player and basketball
20 player and they wanted me to testify how it would
21 affect his scholarship. Okay. How it would affect
22 his scholarship because his leg, he had a piece of
23 steel in there now and it might have -- you know,
24 how it would affect his scholarship in any way. And
25 I testified that, yes, he was being looked at by

1 different schools.

2 BY MS. LUNDVALL:

3 Q. You told me about a case in which you had
4 to bring for purposes of a commission, to cover a
5 commission.

6 A. Yes.

7 Q. Anybody brought any lawsuits against you?

8 A. Divorce litigation, which is all settled
9 and paid. I paid everything. All of the wives.
10 Cost me a fortune.

11 Q. Any others?

12 A. I'm sorry, I can't remember any.

13 Q. Let's see. Do you remember a case dealing
14 with Bank of Las Vegas?

15 A. Who was -- was there somebody else on there
16 with me?

17 Q. Walter and Angela Wilkes Trust and Walter
18 D. Wilkes, that would be you, I take it?

19 A. Okay. And what was that for.

20 Q. A \$50,000 judgment against you in July of
21 this year.

22 A. Oh, okay. You know what, the houses are
23 upside down here. So my attorney advised me to just
24 let them go back, and I did. So they put the
25 judgments on them, but after a certain time, those

1 judgments weren't any good. So all of the judgments
2 are good except for the 50,000 for Las Vegas Bank.
3 We made an agreement. I'm paying them so much a
4 month. I'm sorry, I forgot about all those. I'm
5 thinking back years, you know.

6 Q. My understanding is that you filed for
7 bankruptcy relatively recently?

8 A. I filed for bankruptcy for --

9 Q. Let's look at this. You filed for
10 bankruptcy in 1998, did you not?

11 A. Yeah, that's quite a ways back.

12 Q. Discharged as far as certain debts after
13 the bankruptcy?

14 A. Yes.

15 Q. And certain of the IRS liens then remain
16 pending?

17 A. Those have all been paid.

18 Q. And now they have all been paid?

19 A. For that particular thing, it has been
20 paid.

21 Q. Mr. Wilkes, we began this deposition by at
22 least you and I acknowledging that you look pretty
23 good today. Has any --

24 A. I'm sorry, I'm married.

25 Q. I would imagine you have heard that line

1 before, too.

2 A. Sometimes.

3 Q. But has any physician advised you that
4 somehow, you know, that your health has some type of
5 an eminent issue in it?

6 A. Yeah. You saw the letter, I'm sure. All
7 that stuff in there is correct. Don't make me try
8 to remember it all. You've got every bit of it.

9 Q. Are you scheduled for any future
10 hospitalization?

11 A. No, not unless I get that infection again.
12 I hope not.

13 Q. Are you scheduled for any future treatments
14 other than your regular medications?

15 A. Yeah, I have to go in for -- I have to go
16 in and get shots for my back. As I told you, I
17 can't walk that much, but I get those shots and they
18 last for a while, like four months or something,
19 make it feel better anyway. Other than I get those
20 back spasms caused from discs. And I guess some day
21 I'm going to have to have surgery, but as long as
22 those shots are helping, I'm going to take that.

23 Q. Sounds like a cortisone treatment?

24 A. And I get cortisone in my arm sometimes --
25 and in my brain to make me think for depositions.

1 You don't have to put that down.

2 Q. Are there any questions or topic areas that
3 I haven't asked you upon that you think are relevant
4 to this litigation?

5 A. You asked me, and I know it's down, but you
6 asked me if I had any proof that Pardee did anything
7 wrong and did not pay or we had any money coming.
8 And I want to make sure that you understand that Jon
9 Lash told Jim that we had 300 acres to be taken down
10 this year and we never got paid on that. We should
11 be getting 300 acres. Told Jim to relax, we should
12 be taking 300 acres down every year.

13 Q. You know that Pardee had money on account
14 with CSI?

15 A. They had money on account with them, what
16 do you mean? Explain that.

17 Q. Let's go back to the communication that was
18 given to you. I want to direct your attention to
19 Exhibit 8. Go back to Exhibit 8.

20 THE WITNESS: Got my secretary here.

21 MS. HANSEN: More like a baby-sitter.

22 THE WITNESS: Well, I need one. Okay, got
23 No. 8. Where?

24 BY MS. LUNDVALL:

25 Q. I want to direct your attention, then, to

1 Page 2.

2 A. Okay.

3 Q. All right. About halfway down the page, it
4 makes reference to the attached exhibits reflecting
5 that Pardee still has over \$116,000 on account from
6 the 84 million option agreement deposits.

7 A. What is that, a slush fund?

8 Q. I don't know how people refer to it,
9 Mr. Wilkes. I'm asking you --

10 A. That's what Mr. Stringer said it was.

11 Q. I'm asking you as far as what it says on
12 here and whether or not you were aware, after
13 reading this letter, that there was still money that
14 was on it account with CSI?

15 A. Yes, I am aware of that.

16 Q. Do you have any reason to believe that, in
17 fact, that's not an accurate statement?

18 A. Again I'm going to mention the maps, the
19 parcel numbers and any documentation that we have
20 not seen yet to do that, plus the \$30,000 -- I mean
21 300 acres that Jon Lash told Jim to take down, to
22 relax, and that they were going to take 300 acres
23 down per year so we would be getting paid on it.
24 Okay. That's all I have got.

25 Q. Any other topic area that you don't think I

1 have asked you questions upon that you believe is
2 relevant to this litigation?

3 A. I don't think so, best of my knowledge.
4 Probably think of some when I leave.

5 MS. LUNDVALL: Pass the witness at this
6 time.

7 MS. HANSEN: I have no questions.

8 MS. LUNDVALL: I'm willing to enter into an
9 agreement to allow the original of the deposition
10 transcript to be provided for counsel for Mr. Wilkes
11 to allow him to review it and submit it back within
12 the 30 day period of time.

13 Is that acceptable to you, Counsel?

14 MS. HANSEN: Yes.

15 MS. LUNDVALL: I would like to have a copy,
16 a condensed, and ASCII disc, please.

17 (Deposition concluded at 12:00 p.m.)

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* * * * *

I, Walter Wilkes, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action;
under penalty of perjury; that I have read,
corrected and do hereby affix my signature to said
deposition.

Walter Wilkes, Deponent Date

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

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

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

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

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

Carre Lewis

CARRE LEWIS, CCR NO. 497

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EXHIBIT “3”



EXHIBIT “3”

JA000689 – JA000721

FILED UNDERSEAL

EXHIBIT “4”

EXHIBIT “4”



CERTIFIED
COPY

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Reno
Carson City

DISTRICT COURT
CLARK COUNTY, NEVADA

-oOo-

| | | |
|-------------------------|---|------------------------|
| JAMES WOLFRAM AND WALT |) | |
| WILKES, |) | |
| |) | |
| Plaintiff, |) | Case No. A-10-632338-C |
| |) | Department No. IV |
| vs. |) | |
| |) | |
| PARDEE HOMES OF NEVADA, |) | |
| |) | |
| Defendant. |) | |

DEPOSITION OF
HARVEY WHITEMORE, ESQ.
OCTOBER 19, 2012
RENO, NEVADA

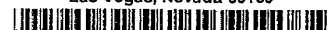
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1 BE IT REMEMBERED that on Friday, the 19th day of
2 October, 2012, at the hour of 1:15 p.m. of said day, at the
3 offices of Law Offices of Bowen & Hall, 555 South Center
4 Street, Reno, Nevada, before me, AMY JO TREVINO, Certified
5 Court Reporter, personally appeared HARVEY WHITTEMORE, ESQ.,
6 who was by me first duly sworn, and was examined as a witness
7 in said cause.

8 -o0o-

9 HARVEY WHITTEMORE, ESQ.,
10 called as a witness, having been duly sworn,
11 testified as follows:
12

13 EXAMINATION
14

15 BY MR. JIMMERSON:

16 Q Mr. Whittemore, have you had your deposition taken
17 before?

18 A Yes, I have.

19 Q When was the last time you had your deposition taken?

20 A Probably less than 30 days ago.

21 Q Just to remind you of ground rules and procedures I'm
22 going to ask you a couple questions. Do you understand that
23 the oath that you just gave requires you to tell the truth and
24 completely and truthfully answer my questions today?

25 A Yes.

1 Q You see the court reporter is taking down our, taking
2 down for the record our deposition today. I would ask that you
3 wait for me to end my question before you begin answering it so
4 that she is able to take down all of the statements by you and
5 I; will you agree to that?

6 A I will.

7 Q You also notice that she is taking down for the record
8 our statements, that also means that you cannot answer with a
9 nod of the head or shrug of the shoulders, all the answers must
10 be oral. Is that fair?

11 A It is.

12 Q Now, this deposition will go longer than 15 or
13 20 minutes, if you do need a break at any time, please let me
14 know and we will take a break as necessary. I do ask, though,
15 that you ask for a break only when you have answered a question
16 and there is no question pending before you. Is that okay?

17 A It is.

18 Q Okay, now because she is taking down the statements
19 here today it's not being video recorded, it is important that
20 you understand the question as I ask it so that you can give
21 the truthful answer. I'm going to assume that if you answer my
22 question that you did understand the question. Is that fair?

23 A It is.

24 Q Okay, I would also say to you that if you don't
25 understand a question, or if you need it to be rephrased, all

1 you need to do is say so and I will rephrase it or reask it in
2 a different way so that you do understand the question.

3 I would also ask that you wait to answer my question
4 until it is completed so that Ms. Lundvall will have the
5 opportunity to object from time to time. Is that fair?

6 A It is.

7 Q Are you on any medications or any other substance that
8 would impair your ability to tell the truth today?

9 A No, I'm not.

10 Q Are you aware of any reason why you cannot truthfully
11 and completely answer my questions today?

12 A There is no reason.

13 Q Wonderful. Mr. Whittemore, how are you currently
14 employed?

15 A I'm a self-employed attorney.

16 Q How long have you been a self-employed attorney?

17 A Since approximately March of 2011.

18 Q Before you were a self-employed attorney how were you
19 employed?

20 A I was employed by two entities, Lionel Sawyer and
21 Collins, a law firm located in Reno and Las Vegas, Carson City
22 and Washington DC; and I was also employed by a company called
23 Wingfield Nevada Group Holding Company through an entity called
24 Wingfield Nevada Group Management Company.

25 Q What did you do as an employee of Lionel Sawyer?

1 A I was a partner in charge of typical administrative
2 cases pending before regulatory agencies, helping clients
3 develop appropriate strategies with respect to a wide variety
4 of legal problems. Sometimes involved in litigation. Most of
5 the time before regulatory agencies, and many times resolving
6 disputes between businesses.

7 Q So to summarize you were practicing law?

8 A I was practicing law.

9 Q Okay. What were you doing as an employee of, is it
10 the Wingfield Group?

11 A Wingfield Nevada Group.

12 Q Nevada Group.

13 A I was an owner of Wingfield Nevada Group Holding
14 Company, and I was the chief officer for the management company
15 and was in effect the managing member of the entities that
16 developed Redhawk and Coyote Springs and a number of other
17 facilities.

18 Q And how much time would you say you spent working for
19 Wingfield versus working for Lionel Sawyer?

20 A After 2003 I was probably 90 percent at the Wingfield
21 entities and 10 percent at Lionel Sawyer and Collins.

22 Q And before 2003?

23 A Probably a hundred percent with Lionel Sawyer and
24 Collins until I got involved with the project known as Coyote
25 Springs and over a period of years still billed anywhere

1 between 1600, 2000 hours a year for Lionel. So on a percentage
2 basis, you know, 80 to 100% depending upon what Sam wanted from
3 me.

4 Q And who was Sam?

5 A Sam Lionel.

6 Q When did you get involved in the Coyote Springs
7 development?

8 A In the 1990s.

9 Q Can you give me a more precise date?

10 A Not really. It was -- my involvement started with
11 conversations with Richard Bunker, who was a consultant for a
12 company called Aerojet-General, and in that conversation he was
13 aware of my involvement with the Redhawk project and indicated
14 the desire to see if there was a way I could become involved in
15 the acquisition of this parcel of land.

16 Q How much -- prior to getting involved in Coyote
17 Springs how much experience did you have in buying, selling,
18 developing real estate?

19 A Between significant, moderate, and none, between
20 moderate and significant.

21 Q Okay. So it goes without saying that you understand
22 the basics of real estate, 640 acres to a section, 36 sections
23 to a township, etcetera, etcetera.

24 A I'm fairly confident that I understand the basics of
25 real estate.

1 Q Now, when you got involved in Coyote Springs, when did
2 it -- and you said after 2003 that you started 90% working for
3 Wingfield, is that when you started spending the bulk of your
4 time working on Coyote Springs?

5 A I think it's fair to say that the majority of my time
6 was spent on Coyote Springs, but I wouldn't characterize it
7 within that block of time as 90 and 10. It might have been 70
8 and 30 for long periods, six months, and then it might be 90%
9 of my time on Coyote. So it varied month to month.

10 Q Now, we spoke on the phone about two or three days ago
11 in advance of this deposition that you requested that we send
12 you some of the documents relating to the transaction. You are
13 in receipt of those documents?

14 A I have received a package of 35 exhibits.

15 Q We spoke yesterday and you confirmed that you received
16 these. You also confirmed that you were in the process of
17 reviewing some of these, is that right?

18 A I have had a chance to as I indicated familiarize
19 myself with at least the context of the documents. I have not
20 read each and every document or reviewed them in depth, but I
21 have a pretty good idea about what they are about.

22 Q I understand. When did you reach out to Pardee to
23 begin developing Coyote Springs?

24 A I prepared a target list of potential development
25 partners during the time that I was getting the development

1 agreement approved in Clark County for the Clark County portion
2 of the Coyote Springs project, so that would have been between
3 2002 and 2004. So the last half of 2002. I think we got our
4 development agreement approved in December 2002, so the last
5 half of 2002 through 2003 until we engaged in significant
6 negotiations.

7 Q When did you first meet our clients Mr. Wolfram and
8 Mr. Wilkes?

9 A I couldn't provide an exact date, but it was
10 contemporaneous with a number of meetings that took place. I
11 know that I had a meeting with Walt and Jim, your clients at
12 the Pardee offices.

13 Q And do you remember approximately when that was?

14 A I had recently received copies of all of my personal
15 and business documents that were in my office and area at
16 Redhawk. I'm in the process of reviewing those documents and
17 I'm confident that if my documents were returned in tact that
18 there will be a document which describes who was in attendance
19 at a meeting and when the meeting was.

20 Q Okay. Would you be able to give us a year in 2003,
21 2004, 2002 date?

22 A My best estimate right now might be 2003, end of 2003.
23 Might be the first part of 2004.

24 Q Okay. How many meetings did you have with Mr. Wolfram
25 or Mr. Wilkes regarding the Coyote Springs project?

1 A I know of one joint meeting. I can recall that.
2 Separate meetings I know I had conversations and I don't recall
3 whether they were telephone conversations or whether they were
4 meetings. I do believe that Walt and Jim proposed to me some
5 idea involving them doing additional work in terms of
6 completing the development of Coyote Springs.

7 **Q Can you elaborate on what you mean by additional work?**

8 A I think that they wanted to be involved in selling or
9 developing parcels of land that would be potentially used for
10 commercial or multi-family purposes.

11 **Q And the reason they that would be considered**
12 **additional work is because they were already involved with the**
13 **transaction regarding the single family homes?**

14 A I was advised and we put into our contracts that
15 Pardee would be responsible for any commission that would have
16 to be paid. I was aware that Jim and Walt had some
17 involvement. I was not specifically aware at that time what
18 the level of the involvement was or what the commission
19 arrangement was or wasn't.

20 **Q But it was for single family homes as opposed to**
21 **multifamily or commercial?**

22 A The original transaction as contemplated by Pardee and
23 Coyote Springs was an Option Agreement that gave Pardee the
24 right to buy the entire developable lands, which we
25 characterized as approximately 30,000 acres. During the

1 process of negotiating that option it became clear that we
2 needed to modify the option and focus on parcels that could be
3 created and parcels for which Pardee wanted immediate access
4 to, and those were single family production homes.

5 Q And that was the agreement that you referred to
6 earlier that Mr. Wolfram and Mr. Wilkes would receive a
7 commission payment?

8 A My understanding from Jon and his agents was that
9 there were in fact other people involved, but that they would
10 take care of those, and my understanding is that there was such
11 an agreement.

12 Q Now, back to the meetings, the phone calls you had
13 with our clients. How many meetings or phone calls would you
14 say that you had regarding the Coyote Springs development?

15 A I would like to break that down into two components if
16 I could.

17 Q Uh-huh.

18 A The first component being the transaction that I have
19 described as the original Pardee acquisition, and the other
20 pieces involving our retained properties that could be used for
21 commercial or multi-family or were in my mind the developable
22 land around the golf course, the custom home lots that we had
23 developed internally as things that we wanted to retain some
24 ownership of and participate with buyers on due premiums, those
25 sorts of things, golf course premiums.

1 So the answer after that long explanation is that we
2 might have had one or two, maybe three conversations regarding
3 the Pardee transaction, and we probably had again two or three
4 on the other part having to do with the commercial or
5 multi-family. I considered those two separate sorts of
6 transactions.

7 **Q Okay. As to the original Pardee acquisition, when was**
8 **the last meeting or phone conversation that you had with our**
9 **clients?**

10 A Again for purposes of the deposition can you refer to
11 the first component or the Pardee component?

12 **Q Yes. The first component.**

13 A The original party, probably sort of a check up call
14 between our first meeting and a question as how were things
15 going between Pardee and us, and it was sort of how are things
16 going, Harvey, are you guys going to be able to do a deal with
17 Pardee, and I expressed a positive sort of response.

18 **Q Do you remember when that was?**

19 A It would have been approximately three to six months
20 after the meeting that I described at Pardee; and again, I can
21 probably give you an exact date when and if I can find a
22 document. I know that there was one there.

23 **Q So it would be fair to say it would be sometime in**
24 **2004?**

25 A Yes, I think that is fair. End of 2003, early 2004.

1 Q That would have been, because you said that was when
2 the first meeting was, so I was just saying that three to six
3 months later would probably be in 2004?

4 A That's likely.

5 Q Okay. Now on the second component of the answer the
6 retained properties, the golf course, custom homes, commercial
7 property, when was the first time you spoke to our clients
8 about that on that topic?

9 A I think that was probably six to 12 months after we
10 had entered into the first Pardee transaction, because I
11 believe Walt and Jim wanted to wait to see whether that,
12 whether the development was going to occur and what the
13 likelihood of this was in terms of putting in hundreds of
14 millions of dollars of resources.

15 Q And when was the last time you spoke to them on the
16 second component of the retained properties, golf courses,
17 commercial lots?

18 A I can't recall a conversation after that period so
19 probably end of 2004, early 2005.

20 Q Okay. Are you aware of any conversations or meetings
21 between people at Pardee and our clients after the
22 conversations the last meeting you had with Mr. Wolfram or
23 Mr. Wilkes?

24 A It was disclosed to me post transaction that Pardee
25 was in fact going to pay a commission to Walt and Jim based

1 upon the, what I call the production residential properties,
2 sort of the first phase, everything having to do with single
3 family homes.

4 Q Did you understand this to be the whole relationship
5 between Pardee and our clients after 2004?

6 A I was advised by the folks from Pardee, either Jon or
7 Cliff or someone at that level that the commission structure
8 only applied to what I call the, again the production single
9 family homes. I haven't had a chance to look at the documents,
10 but I would have to go back and check to see if there is a
11 reference to commissions or brokers in any subsequent contracts
12 that we entered into with Pardee.

13 Q Okay. As we go through the documents that you have
14 reviewed I'm going to ask you if Mr. Wolfram or Mr. Wilkes were
15 involved in certain parts of the transaction. Hopefully
16 looking at the documents you will be able to give us, you know
17 as to this particular manner, this particular change, you know
18 Mr. Wolfram or Mr. Wilkes were involved here or weren't
19 involved there.

20 I guess we will begin with looking at Exhibit 1, the
21 original Option Agreement. Do you want to take that out so
22 that she can mark it? If you like we can use that binder for
23 her.

24 A Whatever is easiest for you.

25 MS. HANSEN: Did you mark that? We will just mark

1 that one, that's fine.

2 MR. JIMMERSON: We will use your binder and she will
3 give it right back to you. So we will mark that as Exhibit 1.

4 (Exhibit No. 1 marked.)

5 MR. JIMMERSON:

6 Q Now, looking at this document this is the Option
7 Agreement for the purchase of real property and joint escrow
8 instructions; is that correct?

9 A I'm going to make sure that it is the signed copy, and
10 assuming that all the pages as provided to me are in fact the
11 ones that were in my records or the company records, this is
12 the document that I signed for the first Option Agreement.

13 Q Wonderful. If you want to flip to that I want to make
14 sure that you did actually sign this. I believe that is going
15 to be on page -- it's going to be, look at the very bottom page
16 number, I believe it's going to be page --

17 A 47.

18 Q Yeah, 47. Is that your signature?

19 A That is my signature. And again, subject to
20 verification that this is a full and correct, complete copy of
21 the documents, this is the first Option Agreement.

22 Q Okay, and it was also signed by William A. Brian and
23 Jon E. Lash on page 46. Subject to that assumption.

24 A Subject to check I recognize both signatures with the
25 same caveat that I gave that this is in fact a true and

1 complete copy.

2 Q Okay. Looking back to page one, the first clause of
3 the first sentence under paragraph A. "Seller is the owner of
4 approximately 30,000 acres more or less of unimproved real
5 property located in the counties of Clark and Lincoln, State of
6 Nevada."

7 Seller is Coyote Springs, correct?

8 A Coyote Springs Investments, LLC.

9 Q For this purpose I'm going to call it Coyote Springs,
10 and if there is variation on the company name for other
11 companies I will make that specific indication.

12 The buyer that desired to buy some or all of these
13 30,000 acres was Pardee Homes; is that right?

14 A Pardee Homes of Nevada.

15 Q Pardee Homes of Nevada. And these 30,000 acres
16 between the counties of Clark and Lincoln were not -- sorry,
17 strike that.

18 The 30,000 acres of the property between Clark and
19 Lincoln were subject to change based on what you have called
20 the donut hole of BLM land; is that correct?

21 A That's correct.

22 Q Can you explain the donut hole where the BLM land is?

23 A The approximate plat site is approximately five miles
24 by 13 miles. That general area would cover approximately
25 43,000 acres. Of the 43,000 acres, the fee land surrounded a

1 large parcel of land, which was subject to a leasehold interest
2 held by Coyote Springs at this time as the purchaser of the
3 Aerojet property.

4 Those assignments were approved by the government,
5 therefore, we controlled approximately 43,000 acres. Pursuant
6 to discussions with federal agencies, the federal agencies
7 wanted us to move what I call the donut hole, the lease land in
8 the center of this entire parcel eastward, shifted eastward so
9 that it should have approximately 30,000 acres of contiguous
10 property in Clark and Lincoln County.

11 Q And as of the date of this agreement, it says sometime
12 in May because it's a blank day in May, but it needed to be
13 signed by June 1, 2004. That transaction, that shift of BLM
14 property hadn't happened yet?

15 A That's correct.

16 Q And to your knowledge did that shift of BLM land, the
17 elimination of the donut hole, did that happen?

18 A Yes, subject to some continuing conversations about
19 where those exact lines were going to be based upon development
20 concerns and environmental concerns from the federal agencies
21 that were promoting this reconfiguration.

22 Q Now, when did this reconfiguration take place?

23 A I would have to go back to the specific federal
24 documents, but sometime post 2007 we got a, I think a fairly
25 firm idea of what the land was going to look like ultimately

1 from a development perspective.

2 Q You are going to want to keep that out.

3 A Okay.

4 Q Now, in the middle of paragraph A on page one, the
5 entire sign up within quotation marks is defined as the real
6 property shown on Exhibit A-1, if the BLM reconfiguration does
7 not occur, or the real property shown on Exhibit A-2, if the
8 BLM reconfiguration is completed.

9 A Yes.

10 Q So that is evidence that they contemplated shifting
11 the BLM land from inside Coyote Springs land to the east
12 outside of Coyote Springs land?

13 A Yes. There were a number of proposed reconfigurations
14 and there were at one time three specific options.

15 Q I can see that you are looking for the exhibit right
16 there.

17 A It's not --

18 Q The exhibit is not there and as we will learn later
19 that the exhibits were not supplied with the original Option
20 Agreement as stated later. So if you want to we can confirm
21 that now.

22 A I was -- that's fine.

23 Q Do you remember that the exhibits were not necessarily
24 included in the original Option Agreement?

25 A Yes, that's why I was checking to see if they were

1 attached because then I would know that it wasn't an accurate
2 representation of what I recall.

3 Q Okay.

4 A I recall that this was done so that Pardee had the
5 option, trusted us, we trusted them so that we could come up
6 with a plan that worked for the development plan. This is a
7 huge parcel and we wanted to make sure that those first maps
8 made sense.

9 Q Okay, now looking down at paragraph B it says here,
10 "The parties desire to enter into this agreement to provide
11 for, 'i', buyer's purchase of the portion of the entire site
12 consisting of parcel one as shown on parcel map 9857. Recorded
13 on July 21, 2000 in book 20000721, as document 01332, official
14 records Clark County, Nevada, containing approximately 3605.22
15 acres as shown on the map and attached hereto as Exhibit B and
16 made a part hereof the purchase property. And 'ii', buyer's
17 option to purchase the remaining portion of the entire site,
18 which is or becomes designated for single family detached
19 production residential use as described below, the option
20 property, and in a number of separate phases referred herein
21 collectively as the option parcels and individually as option
22 parcel."

23 Now, let's talk about the first clause of that, the
24 purchase property. The agreement as described here in this
25 Option Agreement was to purchase initially 3605.22 acres,

1 correct?

2 A It was an option to do so.

3 Q What I'm saying that it shows that it divided the
4 option from the purchase property; designated purchase property
5 is 3600 acres?

6 A It created an initial phasing of what we subsequently
7 agreed would be the phasing, but if there had been no
8 modifications or amendments and the parties had gone forward
9 with this document, then you could refer to this as sort of a
10 baseline document. It really wasn't. It became, it simply
11 said ultimately to the parties this is what we started. We
12 then subsequently renegotiated the terms of this agreement and
13 it was put into a separate agreement, which made this agreement
14 in effect, it's not null and void but just not effective with
15 respect to certain parts of that agreement. Those amendments.

16 Q I understand this was further amended, but as of the
17 execution of this agreement in June of 2000 -- May or June of
18 2004, that it provided for the purchase of 3,600 acres known as
19 the purchase property designated by this parcel map 9857?

20 A It says what it says and if this had gone forward, you
21 bet.

22 Q Okay, so as of --

23 A As of the date that we executed in May, which I think
24 it was the latter part of May when everything was completed, it
25 was the parties contemplation that we were entering into a very

1 long term arrangement that could involve the acquisition by
2 Pardee of my entire site, but they were cautious business
3 People, very, very smart and said Harvey, we want to do this in
4 phases and options.

5 Q And as you describe, the option property is, you know,
6 under this agreement is constituted, constitutes the balance of
7 the entire site; is that correct?

8 A Subject to the reconfiguration issues associated with
9 BLM any time you create a parcel and sell it, the remainder is
10 what is left. At this time what we were doing was giving to
11 Pardee excess security for the original money that they were
12 going to ultimately give to us. Because we had not divided the
13 entire site into parcels and parcel maps that looked like what
14 you would actually develop on, we made the decision that
15 because of this relationship that we had with Pardee that we
16 would give them the in effect over securitize their obligations
17 and our obligations back to them.

18 What I was trying to do was let people know that we
19 are fair and honest business people and you don't have to worry
20 about us running away from any obligation here.

21 Q I understand, but just to limit the question, and I
22 will rephrase it, the purchased property consisting of 3605.22
23 acres, the balance of the entire site constituted option
24 property; is that correct?

25 MS. LUNDVALL: I'm going to object because that

1 representation runs contrary to the provisions set forth within
2 the agreement that you marked as Exhibit 1. The option
3 property has a very specific definition and it makes reference
4 to which is or becomes designated for single family detached
5 production residential use.

6 MR. JIMMERSON: Ms. Lundvall, I appreciate the
7 objection, but a speaking objection is inappropriate at this
8 time.

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

12 A As a lawyer I would tell you that the document speaks
13 for itself. The option property contemplated by this agreement
14 by me, by the person who negotiated this, was to create and
15 make sure that everybody understood that Pardee was only,
16 unless they exercised their option -- let me make it very
17 clear. Unless they exercised their option with respect to the
18 entire parcel, that we would control the development, we being
19 Coyote Springs would control the development of everything
20 other than single family detached production residential
21 property; and therefore, when you say the option property
22 includes everything, it doesn't. It includes the option
23 property which we as the developer designated as single family
24 detached. If Pardee, for example, wasn't developing the
25 property fast enough and simply was taking their time and

1 hurting us, we would have been in a position to come back and
2 say hey listen, we don't believe that you are performing under
3 the contract and try to bring other people in.

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

12 Q Okay. But to clarify that, okay, the option property
13 consisted of as you just stated the property which you
14 designated as single family detached production residential
15 use, okay, which was the balance of the purchase property. So
16 anything outside of the purchase property which you designated
17 for single family detached production residential use was
18 option property; is that correct?

19 A Pursuant to the terms of the agreement I believe that
20 that's accurate. Pursuant to what the practices of the parties
21 turned out to be and what was contemplated by this, no, because
22 the designation even within the purchased property wasn't all
23 going to be single family detached production homes because you
24 were going to carve out certain pieces and it was subject to
25 adjustment. From the very minute we started this, there is no

1 developer in the world unless you have done all the work in
2 advance and done it on your own and decided not to take input
3 from your developers that you would somehow do these maps. So
4 this was contemplated to be a collaborative effort in
5 describing ultimately what land was going to be included in
6 what phases.

7 So I think you are right, I think there is, but I just
8 want to get into the finer points here that the parties
9 contemplated this as being a deliberative phased collaborative
10 process.

11 Q And the parties may have contemplated that, but they
12 were also governed by the statements within the contract?

13 A Absolutely. The contract speaks for itself.

14 Q The purchased property?

15 A Yes, sir.

16 MS. HANSEN: What page now?

17 MR. JIMMERSON: Page three.

18 MS. HANSEN: Thank you.

19 MR. JIMMERSON:

20 Q The purchase property as defined by page one, the map,
21 3605 acres was to be sold for \$66 million; is that correct?

22 A That's correct.

23 Q That was the purchase property price?

24 A That's correct.

25 Q As a defined term in the contract?

1 A Yes, sir.

2 Q And that was the price reflecting what it would cost
3 to buy the entire purchased property; is that right?

4 A Subject to the parties' understanding in these
5 documents that you were going to have to put in roads, you were
6 going to have to decide where your main arteries were going to
7 be, you needed to contemplate what public facilities were going
8 to be included in that, and therefore, there were going to be
9 these adjustments as you go along.

10 There is no developer in the world who would say,
11 unless they became a master developer, which they did not,
12 unless they became a master developer then it had to be in
13 conjunction with what the master developer needed. For
14 example, where was the golf course going to be? You needed to
15 be able to adjust that based upon the capacity to deliver water
16 to each of the holes. You had to have appropriate flow within
17 this area. Subject to a very significant terrain differential.

18 So I'm just trying to say as someone who was involved
19 in this on a day to day basis, I can tell you that the parties
20 contemplated making sure that we over securitized Pardee, gave
21 them more land than they were quote, going to be entitled to
22 because of the purchase price. And you will see in all the
23 subsequent documentation that the parties engaged in this
24 process at least seven or eight times.

25 Q Uh-huh. But the understanding in the contract defined

1 the purchase price to buy the purchased property at
2 \$66 million?

3 A Yes, sir, that's correct.

4 Q Okay. Now, on page four it defines the initial
5 developed parcel, and that is defined as: "The first portion
6 of the purchased property that will be developed by buyer is
7 that area containing approximately 1,500 acres of the
8 production residential property as shown on Exhibit D attached
9 hereto and made a part hereof the initial developed parcel."

10 Did I read that correctly?

11 A Yes.

12 Q And that as of May 2004 that was the initial developed
13 parcel the 1,500 acres described within paragraph C on page
14 four?

15 A Subject to the next three ore four sentences.

16 Q Uh-huh. And the next three or four sentences provide
17 that the initialed developed parcel was not the same as the
18 purchase property; is that right?

19 A Yes. And more importantly it said that the seller was
20 expressly reserving a revisionary right and the buyer agrees to
21 reconvey the purchased property remainder as adjusted pursuant
22 to another section, Section 4-E, because again, the parties had
23 contemplated that they were going to do this massive
24 development in the right order.

25 Q Uh-huh. So there was I guess two sections of purchase

1 property. There was the initial developed parcel and there was
2 as you now described the purchase property remainder; is that
3 right?

4 A Within that category of what Pardee was acquiring the
5 parties again provided for the fact that the first parcel, the
6 very first parcel would be subject to adjustment. And that's
7 provided for in this document. As you developed smaller and
8 smaller maps to get to the right configuration, you would go
9 through a process of saying seller is really buying 46 acres --
10 seller is selling 46 acres and buyer is buying 46 acres, and
11 then there is this reversionary interest with respect to a
12 particular parcel that comes back to seller. If you started
13 with 80 in this example and you gave them 64, you would come
14 back and have 16.

15 So that process was contemplated by that and that's
16 why the maps, as you said this is what the street configuration
17 is going to look like, this is what Coyote Springs Boulevard is
18 going to look like, those sorts of things. That's the way that
19 it would happen.

20 Q I understand what you have just said, but as of again,
21 the May 2004 document it divided the purchased property into
22 the initial developed parcel and the balance being the
23 purchased property remainder which Coyote Springs had a
24 revisionary interest in.

25 A That is correct. I mean, again, what you are reading

1 is absolutely accurate, but I need you to understand that this
2 document worked very, very well and as we got further refined
3 in this process we documented those refinements. And so this
4 was a base sort of document, but if you go back and say what's
5 left in it, you have to go through the again eight or nine
6 amendments and we have seen it.

7 Q And we will be going through those.

8 A Uh-huh.

9 Q I just want to establish that the initial developed
10 parcel was only part of the purchased property and the personal
11 property was the personal property remainder as you just
12 described?

13 A There were two pieces, and we agreed to give title to
14 the whole piece subject to the reversionary right, which is
15 provided for in Subsection D on page four.

16 Q Uh-huh. Now, on page six --

17 A Yes, sir.

18 Q In Section C it defines the buyer's option to buy
19 certain portions of the option property for 40 years after the
20 settlement date; is that right?

21 A Yes, sir, it was 40 years.

22 Q Okay, and above that the buyer had, Pardee had the
23 right to buy within five years of the settlement date the
24 entire site if it so chose.

25 A Yes, sir.

1 Q So Pardee had a number of options before it. It could
2 buy the portion of the initial developed parcel and then do
3 nothing else, and then you -- when I say you, Coyote Springs
4 would have the right to the remainder of the original purchased
5 property, the remainder of the 3605 acres?

6 A Yes, sir.

7 Q Pardee could fully develop the initially developed
8 parcel and say we want to buy everything, and he could buy the
9 balance of, depending on how the BLM reconfiguration happened,
10 he could buy the balance of the entire site and say we are
11 going to develop it however we want to.

12 A That's correct, sir.

13 Q Okay. Or they could do something in between. They
14 could buy the initial developed parcel and then from time to
15 time make purchases for option property consistent with the
16 agreement, aggregate 200 acres per year subject to Coyote
17 Springs providing water rights etcetera, etcetera.

18 A The agreement as amended provided for multiple option
19 periods generally as you described. One, 40 years for the
20 entire property. 40 years with a set schedule of the price for
21 each of the 40 years. And there is an exhibit that reflects
22 that. A five-year option that said you can buy the entire site
23 for a billion two hundred million, and then the phased
24 approach, which reflected in this agreement with respect to
25 single family production homes.

1 Q Now, you want to flip to page 12 on paragraph G.

2 A Yes, sir.

3 Q This is the portion that you referenced earlier that
4 the exhibits had not been fully provided for. I just want to
5 reference that. It says here, "Notwithstanding any provision
6 to the contrary in this paragraph three or elsewhere in this
7 agreement, seller and buyer acknowledge that many of the
8 exhibits referenced herein are not attached and may not be
9 attached at the time this agreement is executed by seller and
10 buyer. Seller and buyer acknowledge and agree that the
11 exhibits shall be finalized during the contingency period and
12 upon approval by seller and buyer. Each such exhibit shall be
13 attached to this agreement and incorporated herein and shall
14 have the same force and effect as if they were attached hereto
15 at the time the agreement was executed by seller and buyer."

16 A That's correct.

17 Q And the contingency period was defined as the 60 days
18 after the opening of escrow?

19 A Yes.

20 Q And that later changed with certain amendments?

21 A Yes, sir, that's what I was going to say.

22 Q Okay. The exhibits that weren't attached here, some
23 of them as you looked at include Exhibit A, Exhibit B, Exhibit
24 C, the maps of the property as defined in the agreement; is
25 that correct?

1 A That was what the parties contemplated and I believe
2 achieved.

3 Q And in later amendments there were the addition of
4 those exhibits.

5 A That's correct.

6 Q Okay. Now, as of the May 2004 Option Agreement, this
7 agreement, option property was located in both Clark County as
8 well as Lincoln County; is that right?

9 A I would have to look at the specific paragraphs, but I
10 believe that's correct.

11 Q If you go to page --

12 A 15 I think.

13 Q If you go to page 14 as well as 15 the top, excuse me,
14 the bottom of the top paragraph it says, "The date on which the
15 option property deed as defined in Subparagraph D below, for
16 the option property or any option parcel is recorded in the
17 official records of Clark County or Lincoln County as
18 applicable shall be referred to herein at the option closing."

19 Did I read that right?

20 A Yes, you did.

21 Q And it does reflect option property was both in Clark
22 County and Lincoln County.

23 A Yes, you couldn't give them an option to buy a parcel
24 of approximately 30,000 acres all within Clark County, there
25 wasn't that much land, and therefore, it had to include

1 Lincoln.

2 Q That's my point, that option property was definitely
3 in Clark County.

4 A The option that was executed contemplated property in
5 both counties, that's correct.

6 Q Okay. Again, as you describe as you referenced
7 earlier on page 15, again in paragraph E it again contemplates
8 the recording of option property in Clark County or Lincoln
9 County as applicable?

10 A That's what it says, that's correct.

11 Q And when you would sell the option property in Clark
12 County, you would record that sale in Clark County; is that
13 right?

14 A That's also correct.

15 Q And that would be the same in Lincoln County, if you
16 were to sell option property in Lincoln County, you would
17 record the property in Lincoln County?

18 A That's correct, sir.

19 Q Okay.

20 (Break taken.)

21 MR. JIMMERSON:

22 Q If you could flip to page 26. As we discussed
23 earlier, not all of the property in the entire site was
24 contemplated to be just single family homes, right?

25 A That's correct.

1 Q It says in the middle of paragraph B, seller
2 entitlements. "Seller agrees to obtain to seller entitlements
3 which provide for at least 8,000 acres of production
4 residential property, although seller shall utilize its
5 commercially reasonable efforts to obtain seller entitlements
6 providing for at least 15,000 acres of production residential
7 property."

8 Did I read that right?

9 A Yes, you did.

10 Q And the provision on page 26 in paragraph B was
11 provided so that Coyote Springs would do whatever necessary to
12 establish zoning and other requirements that Pardee would be
13 able to build at least 8,000 acres of single family homes; is
14 that right?

15 A It was a requirement for Coyote Springs to take the
16 steps necessary to create the entitlement. It did not
17 obviously mandate that Pardee purchase any or all of that.

18 Q Of course, but the idea was that if Pardee were to buy
19 the entire site, Coyote Springs would at least provide for the
20 entitlements guaranteeing 8,000 acres?

21 A That's not correct. If we were going to be the master
22 developer and kept the site and proceeded with a development
23 project where we retained those specific rights, then we would
24 engage in this. If they were to exercise their option before
25 we do that, they would buy the entire site and then be

1 responsible for their own development and allocation of units
2 between specific uses.

3 Q Okay, so when would Coyote Springs have to fulfill its
4 obligations under this definition of seller entitlements?

5 A I don't recall a specific date, but I do know that
6 with respect to the water that we had to stay five years ahead.
7 So I would imagine that, not imagine, I was, my reference point
8 that we would have to get entitlements that would allow them to
9 complete whatever single family residential production they
10 wanted in a year, it was our obligation to get them that much
11 entitled. And what we tried to do with this paragraph is
12 simply guarantee that if we were the master developer, that we
13 would try to get a range of single family production
14 residential available within the community.

15 Q Okay. So it did contemplate that if Pardee wanted to,
16 it could buy more than say 2,000 acres of residential property?

17 A Well, I think the document again speaks for itself,
18 but again, it was my contemplation that these future
19 acquisitions would be subject to a wide variety of different
20 obligations. This is just an obligation on us to make sure
21 that the seller got certain entitlements. I don't think it was
22 a reference point back to what the initial acquisition property
23 was going to be like. I think it was just simply listen if we
24 go forward with this and invest this amount of money, what
25 guarantee do we have that you are going to make land available

1 in the fashion that we need.

2 Q Okay, so this was a protection for Pardee in their
3 development of residential homes as they desired to build them?

4 A I think that's fair to say. Again, that's the way
5 that I read it. That's the way that you know, again, I think
6 the way that we negotiated was to make that clear to Pardee.

7 Q Okay. On page 30 on paragraph K it says that, "Seller
8 shall diligently pursue to completion the BLM reconfiguration
9 and seller entitlements and shall keep buyer reasonably
10 informed of its progress in connection therewith. Similarly
11 seller shall use its best efforts to obtain any necessary water
12 rights and water service to the entire site in a timely fashion
13 to enable buyer to purchase property and option parcels in
14 accordance with the schedule contemplated hereby."

15 Did I read that right?

16 A Yes, you did.

17 Q And that again references the parties contemplation
18 that Coyote Springs would work to get the BLM reconfiguration
19 completed?

20 A Yes, sir.

21 Q And as you stated earlier that reconfiguration
22 happened at some point post 2007?

23 A Yes, I believe that's accurate. Subject to check, as
24 they say.

25 Q Now, on page 38 and 39 this references Section 18

1 broker commissions and finder fees.

2 A Your 38 the agreement --

3 Q I'm sorry -- no, my 40 agreement, page 38.

4 A Thank you. Yep.

5 Q Now this --

6 MS. HANSEN: I didn't understand, what page?

7 MR. JIMMERSON: Two pages later.

8 THE WITNESS: Bottom of 040.

9 MR. JIMMERSON: 040.

10 THE WITNESS: Yeah.

11 MR. JIMMERSON:

12 Q The broker commissions, this provision provided for no
13 other brokers or commissions or finders fees were to be paid to
14 anyone except for General Realty Group, in parentheses Walt
15 Wilkes, and Ward Realty Group, in parentheses Jim Wolfram; is
16 that right?

17 A Yes.

18 Q As you stated earlier it was your understanding that
19 Pardee came to an agreement with Mr. Wilkes and with
20 Mr. Wolfram to pay these commission payments; is that right?

21 A I was aware that there was an agreement between Pardee
22 and Walt and Jim through General Realty Group and Ward Realty
23 Group that I was so advised.

24 Q So the answer is yes you were advised that Pardee and
25 Ward Realty Group and General Realty Group came to an agreement

1 about commission payments regarding this Option Agreement?

2 A Yes.

3 Q Now, on paragraph 28 on page, bottom of page 45, the
4 agreement page 43, the section is titled nondisclosure of
5 transaction. Now it states here that, "Neither party shall
6 disclose to the general public or media any information
7 regarding this agreement and the terms and provisions thereof
8 without the other parties prior written permission except as
9 otherwise legally required. However, nothing in this paragraph
10 shall prohibit or restrict either party from disclosing such
11 information to its attorneys, lenders, engineers, and other
12 consultants as deemed necessary with the performance of this
13 agreement."

14 Did I read that right?

15 A Yes, you did.

16 Q Any idea was that the purpose of this was to keep the
17 agreement between Pardee and Coyote Springs private and not to
18 be disclosed as it says to the general public or the media?

19 A That's correct.

20 Q However, it did provide that there was a section of
21 people that this would not apply to, Coyote Springs and Pardee
22 would have the right to disclose this agreement to others as
23 necessary?

24 A No.

25 Q Okay. What was that exception then?

1 A Well, it was as between the parties. If it had been
2 with respect to third parties or other people, they would have
3 joined in that provision and said paragraph 28 applies to the
4 following individuals. This was designed to require anybody
5 who was working for those two parties to be subject to
6 confidentiality agreements in favor of those parties, and then
7 as between those parties there would be no breach.

8 Q Okay, so it would be -- you could disclose to each
9 parties the exceptions, these accountants, attorneys, lenders
10 engineers and other consultants, but these attorneys,
11 accountants, lenders, engineers and other consultants would
12 also be subject to the nondisclosure, is that what you just
13 said?

14 A That's correct. You said it correctly, part of it,
15 but I made it very clear that I believe this section applies to
16 the parties to the agreement, ie., Pardee and all of its
17 agents, consultants, engineers, and to Coyote Springs and all
18 of their engineers, accountants. Again, the contemplated
19 parties. And then as between those two groups you could share
20 information, but as between those two groups any information
21 shared within that group could not be disclosed to others.

22 Q Okay. That was my understanding. I'm sorry if I was
23 unclear with the question.

24 A No. I hope my answer didn't make it unclear.

25 Q Flipping to -- actually we can move on. Can we mark

1 the flipped tab to two?

2 MS. HANSEN: Don't you want to put that back in before
3 it gets messed up?

4 MR. JIMMERSON: If that's going to be the exhibit.

5 MS. LUNDVALL: I will get it her.

6 MS. HANSEN: We can give her the book and then the
7 exhibits will be in there.

8 MR. JIMMERSON: Okay.

9 THE WITNESS: Off the record for a second.

10 (Exhibit No. 2 marked.)

11 MR. JIMMERSON:

12 Q Now tab two, Exhibit 2 is titled Amendment to Option
13 Agreement for the purchase of real property and joint escrow
14 instructions. Do you see that?

15 A Yes, sir.

16 Q It is entered into on the 28th day of July 2004. Do
17 you see that?

18 A Yes, sir.

19 Q Do you see on page three of this exhibit the signature
20 lines for Jon Lash, and I believe it's you, Harvey Whittemore?

21 A That is me.

22 Q So that is your signature?

23 A It is.

24 Q And that is Jon Lash's signature?

25 A That is as well.

1 Q Okay. The purpose of this agreement was to amend
2 certain portions of the Option Agreement, Exhibit 1; is that
3 correct?

4 A Yes, it extended the time within which Pardee had to
5 perform the contingency period and made other changes.

6 Q Just to clarify that it extended the contingency
7 period to August 15, 2004, which allowed with an additional
8 extension to August 31, 2004; is that correct?

9 A That's correct.

10 Q It also defined the close of escrow. The purchase
11 says August 1, 2007 on page two; is that right?

12 A If you are referring to paragraph six, it provides
13 that the close of escrow for the purchase of any remaining
14 purchase property in the reconveyance shall be scheduled to
15 occur on August 1st, 2007.

16 Q So that's right, that's what it was clarifying, that's
17 what it was amending in the Option Agreement?

18 A Yes, it provided from 2004 that ultimately we thought
19 we would be able to close all of that property by August 1,
20 2007.

21 Q Okay. And in paragraph seven on page two the initial
22 purchase closing was amended for an additional 30 days; is that
23 right?

24 A No, it deleted --

25 Q I'm sorry, you are right. I will just read it.

1 "Paragraph 4C of the agreement is further amended to delete
2 buyer's right to extend the initial purchase closing for an
3 additional 30 days."

4 Did I read that right?

5 A That's correct.

6 Q That's exactly what it did, it deleted that, it
7 deleted Pardee's right to extend the initial purchase closing
8 agreement for 30 days.

9 A Correct, and therefore the initial purchase closing
10 was going to occur on the date which was 30 days following the
11 settlement date.

12 Q The last portions of these tabs are maps which are not
13 part of the amendment, so if we can possibly take those out as
14 the exhibit.

15 A It's your exhibit.

16 MS. LUNDVALL: I have no objection to that.

17 MR. JIMMERSON: So we can remove that in the book.

18 MS. LUNDVALL: In other words, you want the maps that
19 you amended off your Exhibit 2?

20 MR. JIMMERSON: Yes.

21 MS. HANSEN: And the court reporter can make that,
22 thank you very much, ma'am.

23 MR. JIMMERSON:

24 Q Flipping to tab three, I would like to mark this as
25 Exhibit 3.

1 (Exhibit No. 3 marked.)

2 MR. JIMMERSON:

3 Q Amendment No. 2 to Option Agreement for the purchase
4 of real property and joint escrow instructions. Do you see
5 that?

6 A Yes, sir.

7 Q Can you flip to page eight and eight of the agreement?

8 A Yes.

9 Q On the second page eight is your signature -- is that
10 your signature or not?

11 A No, sir, that's Rob Dirk who was my authorized officer
12 general manager of Coyote Springs.

13 Q So he was authorized to execute this amendment?

14 A Yes, sir.

15 Q On the first page eight is the signature of, is that
16 Jon Lash?

17 A It is.

18 Q At that time was the senior vice president?

19 A That's correct.

20 Q Okay, this Amendment No. 2 to the Option Agreement was
21 entered into on August 31, 2004; is that right?

22 A It was entered as of that date.

23 Q As of that date.

24 A I don't know exactly when it was.

25 Q So it was effective August 31, 2004?

1 A That's correct, according to its terms.

2 Q Now, this second amendment added the exhibits that
3 were, some of the exhibits which were not included in the
4 Option Agreement; is that right?

5 A It provided that certain exhibits which were required
6 in previous agreements were deemed satisfied or waived and then
7 attached certain exhibits as contemplated by the underlying
8 agreement and reidentified them and said here's what they are.

9 Q Okay. And if we could flip to that, those exhibits in
10 the back here, I'm going to go by the Bates stamp it's 1560,
11 these documents were provided by Coyote Springs. Exhibit A-1
12 is the map of the entire site prior to the BLM reconfiguration.
13 Do you see that?

14 A That is what it says.

15 Q Okay, now this line at the bottom, the bottom third of
16 the page, that represents the county line between Clark County
17 and Lincoln County?

18 A It's a general depiction of the donut hole, and I
19 would call your attention to the upper left-hand, upper
20 northwest corner of the property was another piece of property
21 that was held out by the BLM and controlled by it.

22 Q Okay, so if there were a legend, it would point as
23 north is up on the page?

24 A Yes, that is correct.

25 Q Do you remember if this was drawn to scale or no?

1 A No, it was a general representation that was drawn
2 from the maps by Rob Dirk.

3 Q Rob Dirk, okay. Flipping to the next page Exhibit
4 A-2, 1561, that would be the map of the entire site after the
5 BLM reconfiguration; is that right?

6 A That is the proposed site after BLM reconfiguration if
7 those subsequent, if this was the adopted reconfiguration by
8 the federal agencies. There had been three or four other
9 proposals, three of which I think had been provided to the BLM.

10 Q Okay. Why did they choose this one?

11 A From my perspective -- I think it was better for the
12 protection of areas of environmental concern which were
13 basically to the north of our property and to the east. All of
14 the property to the west was already identified and therefore,
15 it was my understanding that the BLM wanted this configuration
16 to protect as much of the wash in Clark County as they could
17 and the land to the east. And then going north in Lincoln
18 County the land that abutted the mountain range and really
19 created what they thought was a configuration which helped the
20 ACEC, which is the Areas of Critical Environmental Concern.

21 Q Okay. Did the BLM reconfiguration as executed, was it
22 consistent with this map?

23 A Generally I believe.

24 Q Okay. And again, this map the line through the bottom
25 third of the page divides Clark County from Lincoln County?

1 A That's a fair representation.

2 Q Okay, and what is the line in the Clark County
3 portion, what are the two lines, one jagged and one somewhat
4 kind of angled straight down, what are those lines for?

5 A The jagged line follows the section lines that I have
6 described that reach over the Pahrnagat wash and therefore
7 create an area which as development takes place you could
8 understand that it went exactly to that line. That line
9 wouldn't be developed just like that, because in our
10 negotiations with the BLM we are able to create the ability to
11 take the natural contours and create walkways, do those sorts
12 of things.

13 So that first line represents that, and the second
14 line was simply a division that was necessary to show that the
15 amount of the donut hole had been moved over into an area that
16 was contiguous with our property.

17 Q Okay, so the property in the, I guess the bottom left
18 corner marked by the north of the county line and marked on the
19 east by this, I guess kind of angular line down, was it your
20 understanding that that was the purchase property?

21 A No, I don't think it had, I don't think it was
22 specifically referenced that way. I would have to look at it,
23 but the crosshatch on the next page is an exhibit map which
24 shows what Wilson Miller thought was a fair representation of
25 some piece of the deal. So I don't know what it --

1 Q Okay, if you want to flip the page on to Exhibit B,
2 it's just the map of the purchase property, correct?

3 A Yes, that's what it is entitled.

4 Q Okay. And it was attached as Exhibit B because it was
5 supposed to be the Exhibit B from the Option Agreement which
6 was the map of the option property, or map of the purchase
7 property?

8 A Map of the potential purchase property, that's
9 correct.

10 Q It was the map of the purchase property as defined in
11 the Option Agreement?

12 A Fair statement, as long as you include as defined in
13 the underlying agreement.

14 Q Okay. So as defined in the underlying June 1, 2004,
15 Option Agreement this was the purchase property?

16 A As the agreements were amended, that's correct, sir.

17 Q But this was the amendment that you are referring to?

18 A This is part -- this is necessary to complete what
19 everybody understood was what was intended by the underlying
20 Option Agreement resolution of all these open issues during the
21 contingency period and then development of a general depiction
22 again of what the purchase property was. Because again I need
23 to make this point very, very clear, these representations of
24 what the parties thought and where this development was going
25 to take place, were dependent upon Coyote Springs and Pardee

1 agreeing to where backbone infrastructure was going to be. It
2 depended upon where you were going to be able to put sewer
3 lines. It depended upon where you were going to be able to
4 locate water tanks.

5 So all of these things, and this is critical, because
6 again, I do understand where Walt and Jim are going and I do
7 understand I believe what Pardee is saying, and I am trying to
8 tell you as Coyote Springs I know what this was supposed to be
9 used for. It was supposed to be used for production
10 residential. All of the other areas which were required to
11 deliver water, sewer, necessary infrastructure, put your
12 roadways in, your backbone facilities, and then reserving from
13 that my right to make sure that if it made sense from a
14 development perspective that I wanted to carve out something in
15 the middle for multi-family, that was my right, as long as I
16 met the ability to deliver "X" number of acres for the purchase
17 price.

18 Q Okay. Again, this is a basic question, these squares,
19 okay, in this map, those are the sections, right?

20 A Yeah, those are the six, 40s, and if you count over
21 and this is a good time to do it, Jim, if you count over you
22 see there are five sections in the lower half, one, two, three,
23 four, five. That represents basically the five miles, and then
24 you go up and count 13 sections, and that's about 13 miles.

25 Q That's where you get the 5 by 13?

1 A Yes, and that's about 65 square miles. And in that
2 with all these configurations, everything else, there was about
3 30,000 acres of developable land, okay.

4 Q Okay. The mark in Exhibit A-2, if you want to flip
5 back. The area in the bottom left portion of that drawing, it
6 looks at least somewhat similar to the drawing in the area that
7 is crosshatched in Exhibit B the next page over; is that right?

8 A I believe so.

9 Q Okay. Flipping to the next page, Exhibit C-1 says,
10 "Map of option property prior to the BLM reconfiguration. The
11 actual option property will be production residential property
12 within the designated area determined pursuant to the Option
13 Agreement."

14 Is that what the handwriting says to you?

15 A That's correct.

16 Q And this is, the crosshatched area was supposed to be
17 the option property before the donut hole as you said, the BLM
18 reconfiguration was executed, is that right?

19 A No, the crosshatch property was just the property that
20 was going to be retained and the production residential
21 property was going to be within the designated area as we
22 designated B.

23 Q What I want to understand is the option property is
24 the crosshatched area, right, this is before BLM
25 reconstruction, I just want, reading this map it's the

1 crosshatched area that is the option property prior to BLM
2 reconfiguration; is that right?

3 A I think the best way to characterize it is the
4 crosshatched property plus the little area in the lower left is
5 the entire site.

6 Q Okay. So the little area in the lower left is the
7 purchase property as we saw earlier, right?

8 A That's correct.

9 Q So the rest is the option property, correct?

10 MS. LUNDVALL: I will object to your question. It
11 once again runs contrary to the definitions contained within
12 the agreement.

13 MR. JIMMERSON: I understand that and I was going to
14 allow him to make the correction.

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

1 acquire the entire parcel, which they didn't do.

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

6 Now, drop one step down. After your option expires
7 with respect to your ability to acquire the entire site, you
8 then have other options which were provided for in the
9 agreement to continue to acquire pursuant to the terms of the
10 agreement, additional land. Up to ultimately the total number
11 of acres which the parties agreed to for a purchase price of
12 \$84 million.

13 So we can go from A to A.1, to A.3, to A.4 or A.5; or
14 we can go to A, to B, to C, to D, because ultimately at the end
15 of this transaction in my judgment these documents reflect the
16 sale of \$84 million worth of property if you put it all in
17 together.

18 Q I understand that.

19 A Okay.

20 Q I need you to then tell me --

21 A I will do that.

22 Q -- what the crosshatched area is.

23 A In my judgment plus the little area in the lower
24 left-hand corner, which is not part of the donut hole, that
25 represents the entire site.

1 Q Okay, then why does it say here map of option property
2 prior to BLM reconfiguration?

3 A I'm referring to 1565.

4 Q Yep. It says the top here map of option property
5 prior to BLM reconfiguration, I just want to know why it says
6 it if it is not?

7 A It is probably a carryover from a sentence on the top
8 of another map that was produced for another purpose. So if
9 you take a look at Exhibit D it was handwritten in, map of
10 initial developed property, and a crosshatched area is the
11 initial developed parcel, approximately 1950 acres, and they
12 have crosshatched being crosshatched not just hatched.

13 Q So you are saying here that the maps, that the caption
14 "map of option property prior to BLM reconfiguration" is wrong?

15 A I'm saying that map of option property, again Exhibit
16 C-1 only matches if they are looking at this from its entirety
17 at the time when they had an option to acquire the entire
18 parcel.

19 Q Okay.

20 A As that term is defined in the initial, if you go back
21 to the initial agreement, which Exhibit 1 page one, which all
22 of the land, the 30,000 acres which is commonly known as Coyote
23 Springs. So when we were talking about the entire site, we
24 were talking about you control all 43,000 acres, you can move
25 the reconfiguration, you can do whatever you want. You would

1 have to pay for 30,000 acres times \$40,000 and you buy the
2 entire site.

3 Q Okay.

4 A So let's walk around the entire site which I owned or
5 controlled, I being Coyote Springs, is everything that is in
6 the, that's represented in this map. The donut hole we all
7 understand is the leased land.

8 Q Uh-huh.

9 A And we do understand that the land below the line is
10 Clark County.

11 Q Yes.

12 A And the line above it is Lincoln. And if they were
13 going to exercise an option for 20,000 acres, it would have to
14 include Lincoln County land.

15 Q Yes.

16 A So when you ask that question, again, I just want to
17 make it very clear, the map of the option property prior to BLM
18 reconfiguration is only accurate in my mind when it matches the
19 period of time where the option exists with respect to the
20 acquisition of the entire property.

21 Q So if they were not as you say, if they wanted to buy
22 20,000 acres and not the balance of the 30,000 acres, okay,
23 this map would not reflect the areas where they would be able
24 to buy the land considering there was no BLM reconfiguration?

25 A No, within those hatched areas that would be the land

1 that you could acquire and fee, you are absolutely correct.

2 Q I'm sorry, my question was unclear, I apologize. Yes,
3 that was my question, even if they didn't want to purchase all
4 the 30,000, it would be the crosshatched area that would give,
5 that would be the property that they could have purchased if
6 there were no BLM reconfiguration?

7 A Land which was not subject to lease, that is correct.

8 Q And assuming once again that it's production
9 residential property.

10 A Assuming that the master developer who retained the
11 10,000 designates that as single family production residential
12 property.

13 Q Okay. Flipping to C-2, okay. This is the same map
14 except that it moves the donut hole and all, and certain lands
15 are then excluded and represented by the white on the bottom
16 right going up along Clark County, Lincoln County, then up to
17 the left of the north of Lincoln County; is that right?

18 A Yes.

19 Q And this would be the option property again as defined
20 in the agreement that would be available for purchase to Pardee
21 pursuant to the agreement after BLM reconfiguration?

22 A If BLM reconfiguration had taken place or was in
23 effect at this date, then the area which is hatched, plus the
24 area which is blank in the lower left would be the property
25 where Pardee could, and maybe it's my fault, could potentially

1 acquire single family production residential property, because
2 I would have so designated it as that property and therefore,
3 Pardee would have had the right to acquire it.

4 Q Okay.

5 MS. HANSEN: We have been going an hour and a half,
6 take a five minute break.

7 (Break taken.)

8 MR. JIMMERSON:

9 Q Flipping to the next page Exhibit D, map of the
10 initial developed parcel. It's the, I want to say the "X", the
11 "X" crosshatched portion of the bottom left portion of the map,
12 right?

13 A That's what is, "X" is represented to be the area
14 where the parties contemplated the initial development to take
15 place.

16 Q Okay. And that initial developed parcel was defined
17 in the Option Agreement originally as 1,500 acres; is that
18 right?

19 A Subject to adjustment, that's correct.

20 Q But it wasn't subject to adjustment within the Option
21 Agreement, it was amended later in this Second Amendment,
22 right?

23 A Yes, we expanded the area because to make the
24 development configuration work and allow Pardee to go to the
25 top of the Clark County line, that's how it worked to get the

1 full 1950.

2 Q They wanted to go to the top of the Clark County line?

3 A Yes. I think they wanted to control the western edge
4 and the top edge and what I call to be the southwest corner.
5 And it made sense from a development perspective because the
6 configuration of the golf course was going on right now, right
7 at the same time, and your configuration of your network of
8 roads was taking place, and the engineers were drawing maps as
9 to where the water facilities would be, okay.

10 Q Now, flipping to page two of this exhibit, the same
11 exhibit, it's CSI Wolfram 1551.

12 A Yes, sir.

13 Q Under paragraph 4-B the purchase property price was
14 redefined as \$84 million; is that right?

15 A That's correct.

16 Q And that change came hand and hand with if you want to
17 flip the page to paragraph five, that the initial developed
18 parcel would consist of 1,950 acres and not the original
19 1,500 acres; is that correct?

20 A That's correct, sir.

21 Q So with the increased acreage purchased, or the
22 increased acreage in the initial developed parcel there was an
23 increased price?

24 A Yes.

25 Q And again on paragraph eight on the same page it says,

1 "Paragraph 4-B of the agreement is hereby amended so that the
2 settlement date shall be scheduled to occur on September 8,
3 2004." Is that right?

4 A That's also correct.

5 Q Okay, I want to flip now to tap four, or I'm sorry,
6 not tab four, let me flip to tab 17. I'm going to mark that as
7 Exhibit 4.

8 (Exhibit No. 4 marked.)

9 MR. JIMMERSON:

10 Q This is the commission letter agreement between Pardee
11 and our clients Mr. Wolfram and Mr. Wilkes. Do you see that?

12 A I see it is a letter that is to Walt and Jim and it
13 says it's regarding the Option Agreement and it says to confirm
14 our understanding, yes.

15 Q Okay. You see it is dated September 1, 2004?

16 A Yes, sir.

17 Q That's after the Amendment No. 2 to the Option
18 Agreement?

19 A Remember I qualified my answer --

20 Q But it was effective --

21 A Yes. It was after the effective date.

22 Q So it is after the effective date?

23 A Yes.

24 Q And you can see that it was signed by Jon Lash on page
25 three of the exhibit?

1 A Yes, sir.

2 Q And you see it was signed by Walt Wilkes on the 4th of
3 September 2004?

4 A It's notarized as so.

5 Q And it was notarized on page three -- I'm sorry, Jon
6 Lash signed it on page three, Jon Lash signed it on
7 September 2nd, 2004 as reflected by the notary.

8 A Yeah. And Walt's was September 4th and Jim's was
9 September 6th.

10 Q And that's September 6th is on page four?

11 A On your PLT 0162.

12 Q Okay. Now we can flip back.

13 Exhibit 5 is going to be tab four. This is the
14 Amended and Restated Option Agreement for the Purchase of Real
15 Property and Joint Escrow Instructions.

16 (Exhibit No. 5 marked.)

17 MR. JIMMERSON:

18 Q Do you see that?

19 A Yes, sir.

20 Q This was a further amendment to the original Option
21 Agreement; is that right?

22 A Yes, this is an Amended and Restated Option Agreement,
23 so in effect it takes the place of everything before it.

24 Q So it replaced the original Option Agreement?

25 A Subject to any provision that provides that separate

1 provisions remain in effect.

2 Q Okay. Now this was dated March 28, 2005.

3 A This was dated as March 28th, 2005.

4 Q And this was after September one, two, four, and six,
5 the dates in Exhibit 4 of the commission letter?

6 A That's what a calendar would suggest.

7 Q Okay. Now flip to tab six, please.

8 A Yes, sir.

9 MR. JIMMERSON: Mark that as Exhibit 6.

10 (Exhibit No. 6 marked.)

11 MS. LUNDVALL: What is number six?

12 MR. JIMMERSON: It should be Amendment No. 1 to the
13 Amended and Restated Option Agreement.

14 MS. HANSEN: 28th day of July 2006. Did you find it?

15 MS. LUNDVALL: Yes, thank you.

16 MR. JIMMERSON:

17 Q Do you see the, this Amendment No. 1 to Amended and
18 Restated Option Agreement?

19 A Yes, sir.

20 Q And this is dated July 28th, 2006? Or is that its
21 effective date?

22 A I want to make sure. It says it is entered into as of
23 the 28th day of July, and I don't know the date that it was
24 signed by me, but it's effective as of the date first written
25 above, which is the 28th day of July.

1 Q Again, that would be after the September 1st,
2 September 2nd, September 4th and September 6th dates reflected
3 in the commission letter?

4 A Yes, sir.

5 Q Flip to tab seven. This will be Exhibit 7.
6 (Exhibit No. 7 marked.)

7 MR. JIMMERSON:

8 Q This is Amendment No. 2 to Amended and Restated Option
9 Agreement. Do you see that?

10 A Yes.

11 Q This is effective September 30th, 2006?

12 A Yes, sir.

13 Q And again, this was signed by you on Bates stamp 1112?

14 A Yes, sir.

15 Q And it was signed by Jon Lash on Bates stamp 1111?

16 A Yes, sir.

17 Q Okay. Flip to Exhibit 8 now, which is tab eight.
18 (Exhibit No. 8 marked.)

19 MR. JIMMERSON:

20 Q This is the Amendment No. 3 to the Amended and
21 Restated Option Agreement.

22 A Yes, sir.

23 Q You signed this as reflected on page two?

24 A No, sir.

25 Q I'm sorry, who is that signature then?

1 A Mr. Brad Maumer.

2 Q Who was that?

3 A He was a manager of Coyote Springs. At the time he
4 was manager of Coyote Springs Investment, LLC.

5 Q Was he authorized to sign on behalf of Coyote Springs
6 this amendment?

7 A Yes, he was.

8 Q And it's signed by Jon Lash of Pardee Homes of Nevada?

9 A It is.

10 Q And is it effective November 22nd, 2006?

11 A That's a true statement.

12 Q Flip to tab nine, this is going to be Exhibit No. 9.

13 (Exhibit No. 9 marked.)

14 MR. JIMMERSON:

15 Q This is Amendment No. 4 to the Amended and Restated
16 Option Agreement; is that right?

17 A Yes, sir.

18 Q This was signed by Jon Lash on page three?

19 A Yes, sir.

20 Q And this was signed -- is that your signature on the
21 next page of Bates stamp 1119 also page three?

22 A It is.

23 Q Okay. And this was effective December 20, 2007?

24 A Yes, sir.

25 Q Okay. Flip to tab ten. This will be Exhibit No. 10.

1 (Exhibit No. 10 marked.)

2 MR. JIMMERSON:

3 Q This is Amendment No. 5 to the Amended and Restated
4 Option Agreement; is that right?

5 A Yes, sir.

6 Q And this was signed on page three by you; is that
7 right?

8 A Yes, sir.

9 Q And signed by Jon Lash?

10 A Yes, sir.

11 Q And at this time Jon Lash was the COO of Pardee Homes?

12 A He was.

13 Q And this Amendment No. 5 provided for the purchase of
14 certain property in Coyote Springs; is that right?

15 A Yes, sir.

16 Q Now, when it was copied it was copied in black and
17 white. I would like to use this as 10-A.

18 (Exhibit No. 10-A marked.)

19 MR. JIMMERSON:

20 Q This map, the, I guess the X'd area.

21 A It's not in color there. Can we go off the record?

22 (Discussion off the record.)

23 MR. JIMMERSON:

24 Q The property purchased pursuant to this amendment is
25 the property that is I guess X'd as opposed to just single

1 hatched.

2 A I couldn't tell you without blowing the map up. I'm
3 sorry, so I would have to --

4 Q Okay, mark this as 10-B. This will be page six, the
5 page right before, and it's not color so you should be able to
6 refer to it.

7 (Exhibit 10-B marked.)

8 MR. JIMMERSON:

9 Q This map clarifies exactly which property was
10 purchased in this amendment; is that right?

11 A Subject to check I believe that the land within the
12 bold line was the land that was contemplated to be purchased
13 pursuant to Amendment No. 5.

14 Q Okay, now, the yellow portion of the 10-A at this time
15 it was still property of Coyote Springs; is that right?

16 A Everything that wasn't purchased or subject to option
17 by Pardee was owned by Coyote Springs. Therefore included --
18 well, I just simply have to say it that way. Everything that
19 was not owned by Pardee or subject to option by Pardee was
20 owned by Coyote Springs.

21 Q Okay. Now, as reflected in that map and as reflected
22 by the legend of that map, the yellow portion of that map on
23 10-A indicates that Coyote Springs still owned the yellow
24 portion; is that right?

25 A Again, I would have to have a blow up, I apologize,

1 the map is --

2 Q Too small.

3 A Too small.

4 Q Okay, that's fine.

5 A If I could see it and check it against the records, it
6 would be helpful.

7 MS. HANSEN: Make sure those two go to the court
8 reporter.

9 MR. JIMMERSON: Yes, now if you can flip to tab 11.

10 THE WITNESS: Are we finished with 10-A and 10-B for
11 now?

12 MR. JIMMERSON: Yes.

13 (Exhibit No. 11 marked.)

14 MR. JIMMERSON:

15 Q This is Amendment No. 6 to the Amended and Restated
16 Option Agreement?

17 A Yes, sir.

18 Q And this was effective January 30, 2009; is that
19 right?

20 A That's correct.

21 Q Okay, and it was signed on page six and page seven of
22 the exhibit. Page six being Jon Lash's signature?

23 A I want to make sure you are referring to the 1138 and
24 1139.

25 Q Yes, that's right.

1 A 1138 is Jon Lash's signature, and 1139 is my
2 signature.

3 Q And it says, "WNG reviewed for content." What is that
4 on 1139?

5 A It's a stamp from either legal counsel internal or
6 external that was just simply stamped on that copy.

7 Q Okay, why would they stamp on there?

8 A Simply to affirm that it's been reviewed and approved.

9 Q Okay. If you would like to turn to page ten of the
10 exhibit.

11 MS. HANSEN: 1142?

12 MR. JIMMERSON: Yes, 1142.

13 Q That indicates that there was a purchase of certain
14 parcels of land, AAC three, AAC four and LP 18; is that right?

15 A I would have to check the descriptions and the maps to
16 see.

17 Q Okay. On page two of the exhibit it defines the third
18 additional purchased parcel as parcel LP 18, AA parcel three,
19 and AA parcel four on page two. Is that right?

20 A Under this agreement, this is a brand new agreement.

21 Q But it was part of the Amendment No. 6; is that right?

22 A There was a very specific reason why the agreement was
23 drafted in this fashion, and I would have to go back to my
24 notes to find out why. But it's not -- yeah, the bottom line
25 is that's what the document says.

1 Q So the document as executed provided for the purchase
2 of what is defined as the third additional purchased parcel
3 described as parcel LP 18, AA parcel three, and AA parcel four,
4 which is shown on the map as Exhibit C; is that right?

5 A As Exhibit C that is correct. Again, subject to check
6 for the configuration. I mean I'm not an engineer or someone
7 who has drawn the maps.

8 Q Of course, but Exhibit C is that map that we discussed
9 earlier?

10 A Yes, subject to it being accurate, that is correct.

11 Q If you would like to flip to tab 12, that will be
12 Exhibit No. 12.

13 (Exhibit No. 12 marked.)

14 MR. JIMMERSON:

15 Q And this is Amendment No. 7 to Amended and Restated
16 Option Agreement entered into and effective April 24, 2009.

17 A Yes.

18 Q Is that right?

19 A Yes.

20 Q It is signed on Bates stamp 1148 by Jon Lash and Cliff
21 Andrews of Pardee Homes; is that right?

22 A That's -- I recognize Jon's, it looks like Cliff's.

23 Q And it's your signature on behalf of Coyote Springs
24 Investment, LLC?

25 A Yes, it is.

1 Q And it is provided for the purchase of certain
2 multi-family -- or I'm sorry, strike that question.
3 Please turn to tab 13. This is will be Exhibit 13.
4 (Exhibit No. 13 marked.)
5 MR. JIMMERSON:
6 Q This is Amendment No. 8 to the Amended and Restated
7 Option Agreement; is that right?
8 A Yes.
9 Q It is effective June 18, 2009?
10 A Subject to the terms.
11 Q So is that a yes?
12 A Yes, it is.
13 Q Okay, on page 15 Bates stamp 1178 that is a signature
14 of Jon Lash, correct?
15 A Yes.
16 Q And it purports to be a signature of someone by the
17 name of Anthony Dolin on behalf of Pardee Homes.
18 A I see that.
19 Q On the next page, Bates stamp 1179, that is your
20 signature; is that right?
21 A Twice.
22 Q Twice. One to the over-all agreement and one to
23 agreed as paragraph five; is that right?
24 A On behalf of the development corporation.
25 Q Development corporation, okay. I would like to show

1 you what is now going to be marked as Exhibit 14 and 14-A. The
2 PH 115 is the 14, and the one that is not Bates stamp is the
3 14-A.

4 (Exhibit No. 14 & 14-A marked.)

5 MR. JIMMERSON:

6 Q This document was produced by Pardee Homes and was
7 enhanced as described in 14-A. This purports to describe the
8 purchases of Pardee certain parcels of land from Coyote
9 Springs; is that right?

10 A I have never seen the document.

11 Q Okay. Well then, does it appear to you to describe
12 those purchases?

13 A It looks like it's a pretty accurate depiction of the
14 property that Pardee acquired under the multiple agreements
15 that we had with Pardee and it looks pretty accurate. I would
16 have to check the jog lines on the eastern most edge of the
17 property and just the basic configuration of the individual
18 parcel maps to see if they match up.

19 Q And the large blocks, the squares, it would be fair to
20 assume that those are the sections, correct?

21 A The large blocks, the large blocks within this map are
22 640 acres apiece.

23 Q So those -- and those are sections?

24 A That's correct.

25 Q I would like to designate that as 14-B, transparency

1 of the exhibit.

2 (Exhibit 14-B marked.)

3 MS. LUNDVALL: Ms. Court Reporter, would you mind
4 giving me a sticker so I can put a label on here?

5 MR. JIMMERSON:

6 Q We can put 14 to the side. Please flip to tab 25.
7 And this will be Exhibit 15.

8 MR. JIMMERSON: I believe they got this one right.

9 MS. HANSEN: This one was colored in my book.

10 MR. JIMMERSON:

11 Q You will see on page two a map provided by Pardee
12 Homes. It's Bates stamp labeled 126 with the legend reflecting
13 takedowns, initial takedown and takedown two, three, four, and
14 five. Do you see that?

15 A Yes.

16 Q To your recollection is this map accurately describing
17 the five different takedowns of property as we went over in the
18 amendments as the Option Agreement and the amendments
19 afterwards?

20 A I would need clarification as to your question on one
21 area and that is I don't see the, an orange stamp for the
22 acquisition of the person at the very top of the property.

23 Q What do you mean?

24 A This.

25 Q This? Is it possible -- okay, that it reflects the

1 618 acres --

2 A No. I don't believe --

3 Q Excuse me, it wouldn't be takedown number three?

4 A Well, that's a different color. I'm trying to figure
5 out why the legend doesn't match is all.

6 Q Okay.

7 A If you just have something clearer to tell me.

8 Q I do have an enhancement of it. We can mark this as
9 15-A. I believe that should be a little bit better in showing
10 that the red takedown three is the red that you were
11 describing.

12 A Yes. It went from yellow to red.

13 (Exhibit 15-A marked.)

14 MR. JIMMERSON:

15 Q So I think different printers caused the issue. So
16 back to the earlier question, this does reflect an accurate
17 depiction of the takedowns of property as we've just went over
18 in the original Option Agreement and the amendments after that?

19 A I believe it generally does, yes.

20 Q We can put 15-B will be the transparency.

21 (Exhibit No. 15-B marked.)

22 MS. LUNDVALL: Is this a new transparency?

23 MR. JIMMERSON: 15-B is a new transparency.

24 Q Okay, so if we could, could you flip back to
25 Exhibit 1, which is the original Option Agreement.

1 MS. HANSEN: Particular page?

2 MR. JIMMERSON: Just page one.

3 Q Do you see how it describes and defines the purchase
4 property as consisting of parcel one as shown as parcel map
5 9857 recorded on July 21, 2000, correct?

6 A That's what it says, yes.

7 Q Okay. Have you seen a map of 9857?

8 A I probably did at the time but I haven't seen one
9 recently.

10 Q Okay, well we have one right here. And I believe you
11 have a copy of it right here so we will mark that as 16.

12 A It's a multi page?

13 Q Yes.

14 (Exhibit No. 16 marked.)

15 MS. LUNDVALL: Hold on counsel, I don't have anything
16 like that.

17 MS. HANSEN: There it is.

18 MS. LUNDVALL: Marking this as?

19 THE WITNESS: 16.

20 MR. JIMMERSON:

21 Q This is the parcel map recorded -- I'm sorry, a copy
22 of the parcel map recorded of file 98, page 57 in the Clark
23 County Recorder's Office.

24 Do you see on the first page it has description of
25 what is this map as you clearly indicated which has multiple

1 pages?

2 A Do I see what it is?

3 Q Yes.

4 A It says at the top it's a parcel map being a portion
5 of sections 3, 4, 5, 8, 9, 10, 15, 16, 17, 20, 21, 22, 23, 24,
6 25, and 26 of Township 13, south range 63 east, MDM, Clark
7 County, Nevada.

8 Q And MDM, is Mt. Diablo Meridian, right?

9 A That's correct, that's our reference point.

10 Q Okay. And as you see in the bottom left portion of
11 that parcel map you see the description of parcel one; is that
12 correct?

13 A Yes, sir.

14 Q And you see it marked U.S. Highway 93?

15 A Yes, sir.

16 Q And it marks State Highway 168 on the bottom?

17 A It does.

18 Q Okay. And you see it says, "see sheet two, see sheet
19 three, see sheet four," within that, right?

20 A That's correct.

21 Q Okay. The way that is described is if you were to put
22 sheet two on top above sheet three, above sheet four you would
23 have a one whole picture of what parcel one is, right?

24 A Yes, sir.

25 Q Okay, now, as opposed to having to deal with that I

1 have put together a copy of this. We will mark this as -- mark
2 this as 16-A.

3 (Exhibit No. 16-A marked.)

4 MR. JIMMERSON:

5 Q Does this appear to be an accurate combination of
6 sheets two, three, and four?

7 MS. LUNDVALL: Counsel, I'm going to accept your
8 representation that this is what you have done without
9 alterations, but it would be subject to check.

10 MR. JIMMERSON: Okay. I would like to help with that,
11 if I could.

12 MS. LUNDVALL: I'm not going to do that far checking
13 of the short time of the deposition.

14 MR. JIMMERSON: I understand, I would like to mark an
15 additional exhibit in order to assist in that endeavor. I
16 would like to mark this all three as 16-B. These are
17 transparencies of 16. I guess 16-B(1), B(2), B(3). Is that a
18 fair way to mark each page? B(1) being Plaintiff's 399; B(2)
19 being 7400; and 401 being B(3). Does that make sense?

20 THE WITNESS: Okay, 04 --

21 MR. JIMMERSON: 00 is two or 99.

22 THE WITNESS: Is 16-B(1).

23 (Exhibit No. 16-B(1), 16-B(2), 16-B(3) marked.)

24 MR. JIMMERSON:

25 Q I'm showing you the transparencies on top of 16-A.

1 A Okay.

2 Q Give me a second to line them up.

3 A Okay. You are doing pretty darn good. Get that right
4 there. You are real close.

5 Q Now these transparencies reflect that the 16-A is an
6 accurate combination of sheets two, three, and four of
7 Exhibit 16; is that correct?

8 A It appears so.

9 Q Okay. So now that we can trust 16-A and 16-B, okay, I
10 would like to introduce 16-C, which has been reduced down to
11 one page, a copy of 16-A.

12 (Exhibit No. 16-C marked.)

13 MR. JIMMERSON:

14 Q Does that appear just to be a smaller version of 16-A?

15 A Yes.

16 Q Okay. One more exhibit on 16. These are the
17 transparencies of 16-C. This is going to be 16-D.

18 (Exhibit No. 16-D marked.)

19 MR. JIMMERSON:

20 Q Okay, this is a transparency of 16-C; is that right?
21 You can put it on top of it if you just want to check.

22 A Okay. Yes, sir.

23 Q Okay. Now it is a -- 16-D is a transparency of 16-C,
24 or if you can just put it on top just to confirm.

25 A Yep.

1 Q Okay. So this Exhibit 16, this map reflects parcel
2 one, which is defined as the purchased property under the
3 original Option Agreement of May 2004; is that right?

4 A Yes, sir.

5 Q Okay. I would like to look at 25-A if possible --
6 actually I'm sorry, 15-A, which the legal size, actually hold
7 on. Before -- yeah, we can do that, we can do that.

8 A Okay, I'm on 15-A.

9 Q Okay, yes, 15-A if you take your 16-D and put it over
10 your 15-A.

11 A Is it the same scale?

12 Q Yes. As you can see the line for Clark County matches
13 up to the line for Clark County and Lincoln County at the top.
14 The highway angle at the bottom matches up; is that right? At
15 least it appears to match up?

16 MS. LUNDVALL: You got 15-A, what are you trying to
17 match up to 15-A?

18 MR. JIMMERSON: 16-D.

19 THE WITNESS: The transparency.

20 MR. JIMMERSON: The transparency.

21 Q You would agree that they appear to be at the same
22 scale?

23 A Yes, sir.

24 Q Okay. And you will note that the parcel maps as
25 recorded were recorded to scale?

1 A Yes, to the same scale. Not to scale, to the same
2 scale.

3 Q But a parcel map would have been recorded to scale, it
4 would not just be drawn arbitrarily?

5 A Yes, it would be drawn to scale, yes, sir.

6 Q And the map represented by 15-A was drawn to a scale
7 as defined in the bottom right portion which shows the true
8 north and the scale -- I'm sorry, I'm referring to the
9 enhancement, the color.

10 A I'm looking at both.

11 Q Okay.

12 A True north is on this, true north is not on this.

13 Q It isn't?

14 A No. Well, if you --

15 Q Bottom right?

16 A If you are representing this as an engineer's mark or
17 certificate.

18 Q Uh-huh. I'm not representing it's a marker's
19 certificate, it marks it north; is that right?

20 A Yes it does mark it north as opposed to the
21 transparency. There is an engineer's certificate again a
22 little bit more detail is all.

23 Q Okay. But then there is also a scale on 15-A just
24 below the compass symbol north, right?

25 A Yes, sir.

1 Q Now when you put 16-D on top of 15-A --

2 A Yes, sir.

3 Q -- you are now comparing parcel one as described in
4 the original Option Agreement to the purchases as reflected in
5 the amendment, as reflected by the Option Agreement and the
6 further amendments thereto; is that right?

7 A It compares certain parcel maps to a description of
8 purchase property, yes.

9 Q That certain parcel map is parcel one described on
10 file 98, page 57, correct?

11 A Yes, sir.

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

16 A The line in the center of the -- to the general center
17 of the -- in the transparency that --

18 Q Is the section line?

19 A -- is the section line.

20 Q And the outermost portion of the parcel, of parcel one
21 is just to the right of that section line for everything below
22 about two inches of the transparency; is that correct?

23 A I would like to describe it this way if we could. If
24 you simply refer to the section lines, you could say that the
25 transparency covers the, starting from the top, the lower

1 southwest portion of that section, then the lower south of the
2 section immediately to its east, and you can therefore refer to
3 each and every one of these, if you had section numbers we
4 could refer to each of the parcels; but to your question it
5 represents the following with the exception of your
6 transparency at the bottom of your transparency, the bottom two
7 parcels appear immediately before, immediately north of 168,
8 appear to be sections which may or may not have section lines
9 drawn on them. Because if you look here, I will help you, this
10 area is not to -- you can see that this is a mile, this is
11 longer than a mile. There has to be a section line drawn here.
12 So to describe that as a parcel may or may not be entirely
13 accurate. But I know what you are saying, that is a section,
14 this is a section, but this --

15 Q I'm not --

16 A -- is more than a section.

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

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

24 Q Then what line is it?

25 A That is a -- we would have to get the parcel map --

1 are you talking about this line?

2 Q Referring back to 16-A?

3 A Yes.

4 Q This line right here I believe divides sections,
5 correct, this line right here.

6 A Okay, I will accept your representation, but what I'm
7 trying to suggest is that these parcels cut through with angles
8 within sections and are not coterminous with the actual section
9 lines on the property.

10 Q And I completely agree with you, my question is
11 though, is just I wanted to make sure this outer left-hand
12 portion --

13 A Yes, sir.

14 Q This line right here?

15 A Yes.

16 Q And for the record I'm trying to describe it which is
17 parallel with Highway 93; is that right?

18 A That is Highway 93.

19 Q Okay, and would you agree that Highway 93 is parallel
20 to the outermost line on the, on 16-D?

21 A Yes, sir.

22 Q Okay, and would you agree that that outermost line
23 represents the border, represents the outermost portion of
24 parcel one to the east?

25 A As you describe it I agree with that.

1 Q Okay. And when comparing by using 16-D against 15-A,
2 okay, which when put transparency on top of the paper you would
3 acknowledge that portions of takedown number four, the green
4 are outside parcel one; is that right?

5 A I will say that the green is outside of parcel one.

6 Q Okay, and to the extent that takedown number four is
7 accurately represented as the green within this exhibit that
8 takedown, certain portions of takedown number four were outside
9 parcel one, is that right?

10 A As depicted on these maps subject to check, that's
11 correct.

12 MR. JIMMERSON: Okay, I will tender the witness.

13
14 EXAMINATION

15
16 BY MS. LUNDVALL:

17 Q My name is Pat Lundvall, I represent Pardee Homes of
18 Nevada and I'm going to do a few follow up questions. To the
19 extent that I have to overlap certain of my questions with some
20 of those that have been presented to you by opposing counsel I
21 apologize; I don't intend to waste your time, but I want to be
22 able to follow my line of inquiry if you don't mind.

23 A I do understand.

24 Q One of the things I would like to do is go back and
25 lay a little bit more predicate of your background if we could,

1 please. It's my understanding that you were born and raised in
2 this community and educated in this community; is that right?

3 A That's correct.

4 Q And where did you go to school at?

5 A University of Nevada.

6 Q And after you graduated from the University of Nevada
7 where did you go to school?

8 A Arizona State Law School.

9 Q Graduated from Arizona State Law School?

10 A I did.

11 Q Came back to the State of Nevada to practice?

12 A After clerking for one year at the New Hampshire
13 Supreme Court.

14 Q And you have a license to practice law here in Nevada?

15 A I do.

16 Q And you have held that license continuously up until
17 today's date?

18 A That is correct.

19 Q And is it your expectation at least for the near
20 future to hold that license as well?

21 A I expect so.

22 Q Your professional experience I would like to very
23 briefly go through those. From what I understand of your
24 testimony has predominantly been in the area of the practice of
25 law and in the development of real property; is that correct?

1 A That's a fair statement.

2 Q And legal experiences that you have been principally
3 in administrative law, some transactional law and a little bit
4 of litigation; is that correct?

5 A That's a fair statement as well.

6 Q To members particularly of a jury who may be listening
7 to your testimony at some point, can you kind of very briefly
8 describe what you mean by administrative law compared to
9 transactional law, compared to litigation, please?

10 A Sure. With respect to transactional law that is the
11 area of law where documents are prepared to reflect a
12 particular business arrangement generally between two parties.
13 Sometimes between multiple parties. In circumstances involving
14 real estate they are generally involving two parties, a buyer
15 and a seller. I have been involved in transactions relating
16 from the purchase and sale of hotels and casinos down to very
17 small houses. So it's been a wide range of transactional work
18 done in the real estate area.

19 I do not do securities work which is also in the
20 transaction area. That's a very specialized area. I have been
21 involved in some securities work but nothing on the order of
22 what's reflected in the drafting and implementation of
23 agreements between parties for the purchase and sale of real
24 property.

25 In addition to those experiences, I have been the

1 owner of and developer of various residential developments,
2 including one known as the Resort at Redhawk located at
3 Wingfield Springs. It's centered around two golf courses. The
4 major partner in that transaction was a gentleman by the name
5 of David Loeb, and he and I participated in the development of
6 that parcel.

7 In addition, I developed and sold a parcel called the
8 Foothills at Wingfield Springs, a transaction involving over
9 1,500 units. Had multiple clients who were involved in the
10 development of oil and gas wells, which is more of a
11 traditional transaction basis. It's an area specialized in
12 locations surprisingly throughout Nevada. So I have done that
13 as well as owned and operated those wells.

14 I have been an owner and developer and involved in
15 transactions involving the sales of businesses, ongoing
16 businesses, which include the acquisition of assets to roll
17 into investments, such as ongoing bottling operations, those
18 sorts of things. I was involved in all the transaction there.

19 Litigation is where you represent a party in a dispute
20 that requires the involvement of the judicial system after the
21 filing of what's known generally as a Complaint. Litigation
22 also involves trying to settle those disputes before you get to
23 the Complaint area. So I was involved in a number of cases
24 involving litigation with multiple partners at Lionel Sawyer.

25 With respect to administrative law, which is my real

1 area of expertise, I was the chair of the firm's administrative
2 law practice in terms of those activities which involve
3 legislative advocacy. I was involved in the development and
4 implementation of various regulations in front of State
5 agencies. Did a lot of the work associated with helping
6 clients walk their way through the real negative consequences
7 associated with proposed legislation. Advised them on what it
8 meant to their business parameters and really was concerned
9 about what their franchise was, not in the typical sense of a
10 franchise but making sure that their franchise, ie., the area
11 of business they operated in was protected and within that
12 franchise that they could effectively and completely run their
13 business in a way that was most profitable while complying with
14 all laws and regulations.

15 Q Whether it be within your development activities or
16 your legal activities, it's my understanding that you received
17 a number of awards for your community involvement and your
18 charitable activities. Can you at least identify what the
19 highlights are? I know we can be here a long time if you
20 identified them, but give me the highlights.

21 A I think the highlight of my involvement was the work
22 that my wife Annette is doing with the Whittemore Peterson
23 Institute, which is a great treasure in our life to be able to
24 really build an institute that is looking at a very significant
25 area involving a wide variety of diseases.

1 I have received multiple honors. I'm an AV rated
2 lawyer. I have been recognized as a top lawyer for many, many
3 years. And I guess the real honor is just simply being able to
4 do things that you know help people without them knowing.

5 Q In addition you made mention of your wife Annette, you
6 are married; is that correct?

7 A That's true.

8 Q How long?

9 A Since -- and this is the amazing part, Annette and I
10 have been together since 1970, we were married in 1773.

11 Q Children?

12 A We have five adult children.

13 Q And grandchildren?

14 A Six grandchildren and another one on the way.

15 Q You indicated also that you have development
16 experience. It's my understanding that you developed
17 properties in Washoe County, Clark County, Lincoln County. Any
18 other counties in Nevada?

19 A No, that would be fair.

20 Q Any county, any land development activities outside of
21 the State of Nevada?

22 A Yes. We held and sold some land for entitlement in
23 other jurisdictions, West Virginia and Virginia associated with
24 some oil and gas development projects.

25 Q I would like to turn your attention then to Coyote

1 Springs. Generally it's my understanding that that concept or
2 the project idea was yours, is that accurate?

3 A That's a true statement.

4 Q And can you just kind of generally describe Coyote
5 Springs, and I'm talking about the project or the development,
6 not so much the reference to the individual entities that may
7 have had an ownership or participated in.

8 A Yes. As you know, counsel, the confluence of land and
9 water in the desert southwest is very unusual. When you have
10 the ability to bring water to an area of land in the southwest
11 it's generally a good thing. This parcel was identified by me
12 before my very dear friend and close friend Richard Bunker
13 advised me that he was involved in the project, I was aware of
14 the project as a result of the U.S. Government drilling what
15 was known as the MX5 Missile Project, and in so doing they
16 developed and produced a well called the MX5, which was one of
17 the largest producing wells in the Las Vegas area, over
18 4,500 gallons per minute, pumped it for a long, long time, no
19 significant drawdown, which suggested that there was a very
20 large body of water associated with that particular parcel.

21 As a result of those water exploratory activities and
22 the fact that that parcel was owned by a private entity as a
23 result of legislation which had passed in Congress in 1998, I
24 was involved directly in going to Aerojet and suggesting that
25 we try to prove up the water resources and participate in the

1 development of the site, because it's the largest privately
2 owned site within 60 miles of Las Vegas. It's significantly
3 larger than what was known as Husite, H-U-S-I-T-E, which was a
4 predecessor to what is now known as Summerland. As a result of
5 my development work with the Husite area we became very
6 familiar with what is known as development agreements.

7 Legislation was passed and ordinances were adopted to
8 allow for a very significant zoning. The entitlement process
9 to be more rigorously applied at the front end and allowing the
10 developer flexibility at the back end. As a result of those
11 development activities for Husite and my experience in those
12 areas, I said this looked like a natural, because at the time
13 when this was going on and when I was looking at in the 1990s
14 Las Vegas was going to run out of land very quickly simply
15 because of the limitations of the general patterns of growth
16 and because of the availability of water, and more importantly
17 because their environmental permits, what's known as a 404
18 permit and the multi-species habitat conservation permit were
19 going to be very difficult to acquire, so we thought that
20 Coyote Springs would be a natural.

21 I worked very hard for a period of four or five years
22 to get the development agreement in place and ultimately closed
23 on the transaction and was able to acquire it.

24 **Q You described then that you were the chief officer for**
25 **Coyote Springs Investment, LLC; is that right?**

1 A That's correct.

2 Q And that would have been from basically the inception
3 of the idea up until, was it March of 2011?

4 A That's correct.

5 Q And so during that period of time then as the chief
6 officer were you the person that would be most familiar then
7 with the transactions in which CSI would have sold a land to
8 any third party?

9 A Yes, I think it's fair, counsel, other than with the
10 minor description that as I took in partners there was more
11 involvement on a day to day basis describing what was
12 happening, and from August 2010 until March we were
13 transitioning into another phase where there was more
14 involvement. But until August of 2010 it would be very fair to
15 say that I was the person most involved on a day to day basis.

16 Q And then your departure from that role had nothing to
17 do with this case?

18 A Nothing at all.

19 Q Had nothing to do with Pardee Homes of Nevada?

20 A Not at all.

21 Q And at the time then that you on behalf of CSI began
22 negotiating with Pardee Homes of Nevada for acquisition of
23 certain lands, the lands that were at issue were owned by CSI,
24 LLC?

25 A Yes, and held for investment purposes and then for tax

1 purposes transferred to an entity which was the entity which
2 ultimately sold those properties and transferred the properties
3 to the ultimate purchaser.

4 Q And at the time of your departure then has the chief
5 officer from CSI, to your knowledge had Pardee ever built a
6 home at Coyote Springs?

7 A No.

8 Q Had it ever sold a home at Coyote Springs?

9 A No.

10 Q To your knowledge any investment that Pardee had made
11 in Coyote Springs at the time there had been no sales to third
12 parties for which they could have received a return on that
13 investment, is that accurate?

14 A None that I'm aware of.

15 Q The original purchase price for the residential
16 production property was \$84 million, is that accurate?

17 A Yes, as modified from the original option which was in
18 effect, effective only as to bind the parties that they were
19 going to create a document which was effective to describe
20 specifically certain things and ultimately get to the \$84
21 million, that's correct.

22 Q For those single family production home lots then CSI
23 received \$84 million, is that accurate, from Pardee Homes of
24 Nevada?

25 A That's true. I would have to go to the schedule,

1 counsel, because the question, the question at Pardee's level
2 is whether or not they received the full acreage for the \$84
3 million, because there had to be adjustments, and therefore
4 what I'm saying is Pardee was entitled pursuant to their
5 agreement with Coyote Springs to receive certain other land and
6 to receive the benefit of a lower price on certain other land
7 for like parks and other things. We negotiated those prices.

8 So what I'm trying to say is you just simply can't
9 divide in 1,950 into \$84 million and say that's the price per
10 acre, or the reverse, simply say here is the number on a price
11 per acre and that's how many acres you get. It was a very
12 complex negotiation, which decided the ratios that each party
13 would pay with respect to certain facilities that had to be in
14 effect donated ultimately to either GIDs or road systems or
15 things like that.

16 Q So, in other words, what I understand you to be saying
17 is that you can't take the acreage and divide it by certain
18 numbers to come up with a purchase price or work backwards to
19 determine how many acres?

20 A That's correct, counsel. It's very important that you
21 look at the schedules in the documents that show the various
22 adjustments that were made by the parties with respect to a
23 wide variety of categories. They are in here, I can find them
24 if they are attached; but the bottom line also there was a
25 schedule that talked about percentages.

1 Q Now, you made reference in response to questions to
2 counsel that by about the end of 2003 or maybe early 2004, you
3 had created a list of production home builders that you wanted
4 to interview; is that right?

5 A Yes. Beginning in 2002 I started that process, got
6 real serious about it after we got the development agreement
7 approved. Identified Pardee Homes, Poulty, Meritage, the
8 American Nevada, Del Webb, a wide variety of people on the
9 list, and I narrowed that down to about five and Pardee was
10 really one of my top choices.

11 Q And at some point in time then that you had a meeting
12 then with representatives of Pardee Homes of Nevada; is that
13 right?

14 A I did. I had calls with representatives just to get a
15 sense of who they were and then we set up a meeting. Met Jon
16 for the first time in person, Jon Lash, excuse me, in person in
17 Las Vegas. Met his executive team, and we started to get
18 serious about the prospect of doing a deal together.

19 Q And at that initial meeting then was Mr. Wilkes and
20 Mr. Wolfram in attendance with those party representatives?

21 A At one of those initial meetings, counsel, that's
22 correct. Again, that was at Pardee's office and with your
23 folks' indulgence I will do my best to specifically identify
24 the date again. I know that I had it in notes and on a memo,
25 and so I will be able to put my hands on it once I'm able to

1 acquire all my documents back.

2 Q After that initial meeting at which time that you
3 recall Mr. Wolfram and Mr. Wilkes to be in attendance do you
4 have any recollection that they attended any other meetings at
5 which time you began negotiating with Pardee Homes of Nevada?

6 A Not with respect to specific negotiations but with
7 respect to general concepts. There might have been one meeting
8 that they were in, but it wasn't in terms of negotiating as
9 part of the deal and saying this, what we need to do this, or I
10 recommend that; that was really the effort of Jon and myself
11 with input from our staffs.

12 It was very time consuming, long, multiple, multiple
13 meetings, multiple calls to try to work these details out.
14 This was not an easy transaction.

15 Q And at anywhere in that point in your negotiations
16 with Pardee Homes did they discuss with you the commission that
17 they intended to pay to brokers, did they discuss numbers,
18 anything of that nature?

19 A The answer is yes. I was worried about it only in the
20 sense that I didn't want to on behalf of CSI be exposed to any
21 brokerage commission. I felt if there was any due it would
22 have been as a result of someone approaching Pardee, because
23 again, I didn't think that there was anybody acting on my
24 behalf certainly with respect to that. And Jon made it clear
25 to me that that was something that was going to be not a

1 problem with Jim and Walt and had been discussed and during
2 the, sort of the transition of this first document in 2004
3 through multiple drafts of this my understanding was that this
4 was something that was going to be a function of agreeing on a
5 number and multiplying it by the number which was contemplated
6 by the parties at \$84 million and go from there. I was -- I
7 certainly didn't anticipate that there was going to be any
8 commission that would even be contemplated owed on things that
9 we held, and so I just wanted to avoid that from our
10 perspective.

11 Q What I would like to do is very briefly direct your
12 attention to Exhibit 4, please.

13 A Is that tab four before we renumbered, counsel?

14 MR. JIMMERSON: I believe it is the agreement. It's
15 17. Mostly on track with tabs.

16 MS. LUNDVALL:

17 Q Mr. Whittemore, look at what has been marked in your
18 deposition as Exhibit 4 is a copy of the Commission Agreement
19 between Pardee Homes of Nevada and Mr. Wilkes of General Realty
20 and Mr. Wolfram of Ward Realty. Prior to this litigation and
21 you being contacted as a part of this litigation had you ever
22 seen this Commission Agreement?

23 A No.

24 Q Did you have any input in the negotiations to this
25 Commission Agreement?

1 A No.

2 Q Did you draft or have any input into the drafting of
3 this Commission Agreement?

4 A No, I did not.

5 Q Very briefly, and I only am going to point these out
6 to set the stage then for some follow along questions, but on
7 page one there is probably a few capitalized definitions here,
8 capitalized words that probably may ring a bell to you. I will
9 point a couple of these out. You see under the "re" line where
10 it does make reference to the Option Agreement?

11 A Yes.

12 Q And in the first paragraph it references that the
13 capitalized words in this agreement will have the same meaning
14 as used in the Option Agreement?

15 A Yes, that's correct. That's a typical way to
16 reference earlier definitions without having to restate them in
17 typical documents.

18 Q And that's very typical and standard from a
19 transactional perspective; is that correct?

20 A That's correct, you restated my point much better than
21 I did.

22 Q The Commission Agreement also makes reference to terms
23 like contingency period, purchase property price, it references
24 paragraph one of the Option Agreement, makes reference to
25 paragraph two of the Option Agreement. Do you see where I am

1 making reference to there?

2 A Yes, I do, the small double I and small triple I.

3 Q All right, that will simply set the stage for a few
4 questions that I have then for those documents from the Option
5 Agreement itself, okay?

6 A Okay.

7 Q Since you didn't negotiate or draft the Commission
8 Agreement I intend to ask you no further questions concerning
9 that.

10 May I direct your attention then to Exhibit No. 1.
11 Exhibit No. 1 is captioned the Option Agreement for the
12 Purchase of Real Property and Joint Escrow Instructions. Was
13 this the culmination of your initial negotiations with Pardee?

14 A Yes.

15 Q And as we set forth already during your deposition
16 then this agreement deals with single family detached
17 production residential use lots; is that correct?

18 A Production homes, that's right.

19 Q So if we use a shortened term for this agreement, what
20 shortened term would be comfortable to you?

21 A Oh, single family production homes.

22 Q All right. And this, the recitals in this agreement
23 then, particularly recital A, make reference to the fact that
24 basically the maps and the parcel maps aren't fixed at the
25 time; is that right?

1 A That's correct.

2 Q And the maps were going to be subject to change
3 dependent upon a number of different variables, correct?

4 A That's also true.

5 Q Recital B also generally describes what it was that
6 Pardee was purchasing as a result of these negotiations,
7 correct?

8 A It was the only -- yes, that's correct, it was the
9 only way that I could have effectively described a circumstance
10 that I could give title to Pardee within the Coyote Springs
11 Valley without having additional work done on the development
12 plans and the design plans.

13 It's essential to understand that at the outset of
14 this development, this was called a greenfield development,
15 there are no roads fixed within the area. Therefore, the mere
16 notion that you could put a road at a particular location is
17 foreign to any good developer. You have to bring in all of
18 your engineering and design team to say this is where the road
19 makes sense in terms of lots of this size and flows of this
20 area, and therefore, to give Pardee comfort that we could
21 deliver what we said we were going to deliver, that's why we
22 picked the parcel that we did, which was to make as large a
23 parcel as we could to over securitize, as I answered other
24 counsel's question, Pardee's interest in acquiring the
25 property.

1 Q As a result of this Option Agreement and the two
2 amendments that we have seen already or that were subsequent to
3 this, prior to the Restated Option Agreement, would it be fair
4 to say that Pardee at that point in time had an interest in the
5 development then of a single family production property?

6 A Yes.

7 Q And that any of the other properties, the commercial
8 properties, the multi-family property, the custom lots, the
9 golf course, that development then was being held or being
10 retained then by CSI?

11 A Yes. I was -- yes, I was trying like heck to sell and
12 they were trying like heck not to buy.

13 Q Okay. And so at that point --

14 A I was trying, I was trying to bring money in, and so
15 all of these things were open and I knew that they required
16 under this agreement that I put a ton of money back into the
17 project, and that I was going to need to develop cash flow by
18 selling other pieces of property through whoever it was going
19 to be.

20 Q The first paragraph, and let me back up and see if I
21 can't use your expertise a little bit. There is a few recitals
22 that are found within this agreement. Can you just briefly
23 explain then what a recital is, please?

24 A Sure. A recital is part of an agreement that sets the
25 stage for further definition that is really found by the terms,

1 the actual terms which are used both in a definitional section
2 as well as a paragraph section. Generally while recitals are
3 part of the agreement, there really are a nomenclature for the
4 sort of in an artistic sense for the artist to use the
5 paintbrush to create something on this canvas. So I like to
6 say that that's sort of the canvas against which now you put
7 specific, very specific pieces within that framework.

8 Q Some people might refer to it as an executive summary?

9 A Sure. I think it is fair to say that when people read
10 agreements they like to set the stage for themselves and that's
11 always a good thing that these are sort of memo lines to people
12 that generally say what are we talking about, those sorts of
13 things.

14 Q And then if you turn to page two then, about
15 two-thirds of the way down the page there is a, "Now therefore
16 the parties mutually agree as follows:"

17 A Uh-huh.

18 Q Beyond that there are numbered paragraphs. And that's
19 the specific terms of the parties' agreement, would that be a
20 fair statement?

21 A I think that's a fair statement.

22 Q Paragraph number one makes reference to the purchase
23 and sale of purchased property then. Do you see where I am
24 making reference?

25 A Yes, I do.

1 Q And then if you go to page three there is a reference
2 then to the purchase property price.

3 A That's correct.

4 Q And that's all in caps so as to give a specific
5 definition to that; is that right?

6 A Yes. When we define terms, either we have a
7 definitional section which has a specific list of words that
8 you then define for use throughout the term of the agreement or
9 you define the terms by putting those in caps and quotes, which
10 is the normal nomenclature of a transactional lawyer, to make
11 sure that parties have internal reference points, so that this
12 purchased property meant something and the purchased property
13 remainder meant something and the purchase price meant
14 something. So what we were trying to do was to articulate in a
15 very, very difficult environment, because you don't have
16 specific building blocks that you can use to try to create
17 something that worked for Pardee, while at the same time worked
18 for us.

19 And remember that this document, hundred dollars was
20 what the consideration was.

21 Q Exactly.

22 A So what you are doing is you are saying we are going
23 to set the stage for something bigger and you hope it happens
24 and you want that to happen, but you have to understand this
25 is, this is like taking the first step in a marathon.

1 Q And this first step as you described it ultimately
2 under paragraph number four defined then the property that
3 Pardee was purchasing for the single family production home
4 development, correct?

5 A Well, let me get to paragraph four. Oh, excuse me.

6 Q Just looking under paragraph one.

7 A Excuse me, I looked all the way to four. You are
8 talking about sub four?

9 Q I'm just talking in general.

10 A Oh, yes, in general that's correct.

11 Q And we know that the subsequent amendments this price
12 tag then on the purchase property went up to \$84 million,
13 correct?

14 A Yes.

15 Q And as we have described before, CSI received at least
16 to your knowledge \$84 million from Pardee; is that correct?

17 A That's correct.

18 Q All right. Now, turning your attention then to
19 paragraph number two, and it's found on page five of the
20 agreement.

21 A Yes.

22 Q There is a reference that is made to the grant of the
23 option.

24 A Yes.

25 Q And to your knowledge has Pardee ever exercised this

1 grant of option so as to take down additional single family
2 production homes?

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

14 Q And that was particularly to your knowledge as of
15 through March of 2011?

16 A 2000 -- August of 2010 and pretty darn confident, high
17 level of confidence through March 2011.

18 Q There we go.

19 Now very briefly, Exhibit No. 2 was shown to you as
20 the amendment then to the Option Agreement. In general do you
21 have a recollection of what the purpose was as to this first
22 option?

23 A This was to extend the period in which number one, the
24 contingency period would be extended and that the close of
25 escrow was scheduled to occur on August 1, 2007. So what we

1 did was in effect go through the document to extend the times
2 in which Pardee would have to perform.

3 Q Okay. Turning your attention then to Exhibit No. 3.
4 It's the second amendment to the Option Agreement.

5 A Yes.

6 Q And this is the amendment that particular to this case
7 then increased the purchase property price to \$84 million,
8 correct?

9 A That's a fair statement.

10 Q And there was some discussion as to what the date of
11 this document is. You described it as the effective date was
12 August 31st of -- August of 2004, correct?

13 A Correct.

14 Q Now, sometimes is there a difference between the
15 effective date and when the parties may have signed a document?

16 A Yes, very much so. And the reason why I referenced
17 this was because I believe that the internal reference was so
18 that it complied with the terms of the prior amendment.

19 Q Okay.

20 MS. HANSEN: Are we still on exhibit --

21 MS. LUNDVALL: Exhibit No. 3.

22 Q So to the extent that parties will sign a document and
23 it may be before or after but they designate them then what the
24 effective date of their agreement is?

25 A Happens all the time.

1 Q Turning your attention then to what's been marked as
2 Exhibit 5, I believe to deposition. Exhibit 5 is the Amended
3 and Restated Option Agreement for the purchase of real property
4 and joint escrow instructions. This particular agreement once
5 again memorialized the fact that \$84 million was the purchase
6 property price that Pardee was paying for the purchased
7 property, is that accurate?

8 A That's correct.

9 Q Now, at this point in time do you have any knowledge
10 that the brokers had any involvement in the Amended and
11 Restated agreement between CSI and Pardee?

12 A I don't recall any involvement of the brokers other
13 than as I previously testified to which I believe was that it
14 might have been three to six months post, and I may have to --
15 I may have to correct this answer, but it may have only been
16 three to six months after the first set of meetings and first
17 real down to Earth negotiating sessions that I had with Jon
18 Lash, and it was a sort of check up call, how are things going,
19 what's happening; Harvey, is this going to happen type of
20 thing. And then, you know, just I can't recall the specific
21 occurrence when the commission or the deal structure was ever
22 an issue, it just didn't happen. No one called me.

23 Q Turning your attention, and I'm going to now get into
24 probably a little bit of a tedious portion of your deposition
25 because I will ask you very similar questions regarding each

1 one of these amendments. And just simply trying to make a
2 record here.

3 A Okay.

4 Q Turning your attention to Exhibit No. 6, which is the
5 first amendment to the Amended and Restated Option Agreement.

6 A Yes.

7 Q Once again to your knowledge did any brokers have any
8 involvement in the negotiation or into putting together of this
9 deal between Pardee and CSI?

10 A Not to my knowledge.

11 Q Turning your attention then to what's been marked to
12 your deposition as Exhibit No. 7, which is the Second Amendment
13 to the Amended and Restated Option Agreement. Did the brokers
14 have any involvement in this transaction?

15 A Not to my knowledge.

16 Q Turning your attention then to Exhibit 8, which is
17 Amendment No. 3 to the Amended and Restated Option Agreement.
18 Did the brokers have any involvement in this transaction?

19 A Not to my knowledge.

20 Q Turning your attention to Exhibit 9, which is the
21 Fourth Amendment to the Amended and Restated Option Agreement.
22 Did the brokers have any involvement in this transaction?

23 A Not to my knowledge.

24 Q Turning your attention to Exhibit No. 10, which is
25 Amendment Five to the Amended and Restated agreement. Did the

1 brokers have any involvement with this transaction?

2 A Not to my knowledge.

3 Q Turning your attention then to Exhibit No. 11, which
4 is the Amendment No. 6 to the Amended and Restated Option
5 Agreement. Did the brokers have any involvement in this
6 transaction?

7 A Not to my knowledge.

8 Q In general with each one of these amendments we are
9 talking about a new transaction between CSI and Pardee; is that
10 correct?

11 A On many of them that's absolutely correct, because it
12 was specifically referenced and I negotiated it that way,
13 because I wanted to make it clear that it was -- these were
14 separate contemplated divisions of property after we had
15 specifically located them in terms of a place and a
16 development. They had to be fixed. You had to know where
17 these sorts of things were ultimately going to be, because you
18 couldn't sell a multifamily parcel unless you had access that
19 was consistent with a decision being made with respect to road
20 segments. You would not put a multifamily in the middle of a
21 residential area in the central core unless you were creating a
22 town core.

23 So all of these decisions were made with the idea that
24 we would collaboratively develop a map which would then open up
25 and create a natural progression of development. Either single

1 family, residential, or multifamily, or commercial.

2 Q And as part of that transition CSI is selling new
3 parcels then to Pardee?

4 A Yes, we are identifying areas and then creating new
5 parcels and doing exactly that.

6 Q So Pardee is buying new parcels then from CSI?

7 A Yes.

8 Q To describe from a layman's perspective if I bought
9 more than one house on my block?

10 A I think that is probably fair. You buy one on the
11 corner that might be a three bedroom house, then you go into a
12 semi-custom, and it might be five bedrooms, then ultimately on
13 the edge of that street it might be a custom home. So you
14 would see this natural price progression because of the value
15 of the land, and you would say here is what I am willing to do
16 here, and if you are not willing to do this, I'm going to go to
17 somebody else, because if you don't want it at this price, I'm
18 going to offer it to somebody else.

19 Q Turning your attention then to Exhibit No. 12.
20 Exhibit No. 12 is the Seventh Amendment to the Amended and
21 Restated Option Agreement. Did the brokers have any
22 involvement in this transaction?

23 A No, they did not.

24 Q Turning your attention then to what is marked as
25 Exhibit 13 to your deposition. Amendment Number Eight to the

1 Amended and Restated Option Agreement. Did the brokers have
2 any involvement in this transaction?

3 A No, they did not.

4 Q Now, multiple of these agreements contained
5 confidentiality clauses.

6 A Yes.

7 Q Can you explain the importance of such confidentiality
8 clauses to the over-all development of Coyote Springs?

9 A It was essential because if anybody knew what we were
10 selling the property to Pardee, they would be prejudiced to an
11 extraordinary level in terms of setting their benchmark price
12 for subparcels within the areas that they wanted to have single
13 family guest builders. And so it was essential that other
14 people not know that the price that they were paying was "X",
15 because it may very well have damaged their ability not only to
16 bring guest builders out to Coyote, but may very well damaged
17 transactions where they were the sellers within the valley, or
18 they were sellers to their single family homes to individual
19 purchasers. Consumers are very, very smart, they back out the
20 cost of construction and come up with a number that says this
21 is what the land cost is, and you have got four units to the
22 acre, and that means you are charging us "X" with respect to
23 the price of that land.

24 So it's critical from an absolute business perspective
25 that this information become and stay confidential. From our

1 perspective it was essential because I had negotiated a
2 schedule which had created such huge potential value to myself,
3 to my partners, to everybody else, if you multiply the
4 30,000 acres times \$40,000 an acre, that's \$1.2 billion. But
5 that \$1.2 billion was a fixed number, because the \$1.2 billion
6 had a scheduled interest payment. And if you take a look at
7 what the per acre price was at year 30 or year 40, at year 40
8 it is over \$700,000 an acre. And you needed to protect that,
9 because while it might have been reasonable in the future to
10 expect that, it forced Pardee's hands to cross over on a
11 tipping point to say I want to renegotiate and buy the whole
12 thing because I don't want to continue to pay \$300,000 an acre,
13 can we buy it at \$200,000 an acre, which is still a premium to
14 the \$40,000 an acre price.

15 So these components of these disclosure agreements
16 were essential and you could only bring people in who you
17 absolutely trusted on these deals.

18 Q So from CSI's perspective they, you expect then Pardee
19 to uphold its duties under the confidentiality clauses?

20 A Absolutely.

21 Q And vice versa, Pardee could have expected then Coyote
22 Springs to uphold its duties?

23 A I think it was more than that, yes.

24 Q Now, any of the transactions between CSI and Pardee
25 particularly for the purchase property, did all of those

1 **transactions then go through an escrow company?**

2 A Yes, none were outside escrow. Well, to my knowledge
3 95% of them did. There might have been a holding transaction
4 between the parties that have been outside of the escrow, but
5 the ultimate transfer of title would to my knowledge would have
6 gone through escrow.

7 Q **So the payments of funds and the transfer of title**
8 **would have gone through escrow, correct?**

9 A To my knowledge.

10 Q **Did you have any familiarity then with the escrow**
11 **process by which the brokers were paid when in fact Pardee made**
12 **payments to Coyote Springs?**

13 A My understanding was that we had received at least on
14 one occasion a request from a bank that was concerned about
15 whether or not commissions had been paid, because in reading
16 the documents it was essentially that there not be for the
17 bank's perspective undisclosed obligations, and therefore, they
18 were concerned about making sure that everything was on, was
19 done appropriately. And I believe that I received either a
20 written document or phone call or something indicating that the
21 commissions had been paid through this transaction and I could
22 so report.

23 Q **And that you could so report and that the bank could**
24 **so rely; is that correct?**

25 A Oh, I think so, yeah, I mean I think that we have to,

1 we have to be in a position where if there are questions on a
2 transaction that is the subject of such significant detail,
3 there are literally thousands of questions, and the people want
4 an answer whether they think it is important or not three years
5 after, it was important at the time that you make it. And so
6 these were important questions, you went through them all the
7 time I mean on a daily basis.

8 MS. LUNDVALL: I have no further questions of this
9 witness.

10 MR. JIMMERSON: I just have a couple.

11 THE WITNESS: Sure.

12
13 EXAMINATION

14
15 BY MR. JIMMERSON:

16 Q Still on the confidentiality clause issue, you
17 described it of particular concern was the price being made
18 public; is that right?

19 A The price being made, the price being made public in a
20 context of Pardee's rights to be able to acquire it at a
21 certain price. It's not so much that people couldn't compute
22 or determine what the purchase price might have been by going
23 to the transfer tax provisions or anything else, I'm not
24 talking so much about that, people try to do a good job of
25 protecting those sorts of things; but you know ultimately

1 people sort of get a range of what those prices are. It was
2 about the fact of what the actual numbers might be.

3 Q So it was the specific?

4 A I think so. I mean it's not, the fact that there
5 might have been a range would still be an issue. You know,
6 again, you want to force your competitors and people that you
7 are doing business against that they not sort of have your
8 business plans.

9 Q The confidentiality clauses included at least as it
10 pertains to the first option and the Amendment No. 1 and
11 Amendment No. 2 to the original Option Agreement, they were
12 disclosed to Mr. Wolfram and Mr. Wilkes; is that right?

13 A Those disclosure provisions?

14 Q Those agreements were disclosed to Mr. Wolfram and
15 Mr. Wilkes; is that right?

16 A I don't know how -- I don't know how they were made
17 aware of the specifics of the transactions. I don't think that
18 I had any involvement in that.

19 Q So you don't know how they were made aware of the
20 specifics of the Option Agreement?

21 A As I sit here today I don't have any independent
22 recollection of that.

23 Q As you stated earlier the definitions in, or the
24 terms, the capitalized terms in the commission letter are the
25 same definitions as the terms in the Option Agreement; is that

1 right?

2 A I think -- no, I think counsel said that's what the
3 general gist of it was, and I would agree with that, I still
4 do. I think that the parties were trying to avoid having to go
5 through all the rigamarole of trying to restate all the
6 definitional terms in that letter and therefore used an
7 internal reference.

8 Q And so in order to come to that agreement you would
9 need of course to have those definitions; is that right?

10 A You would have -- you could have an excised version
11 and somebody say these are the agreements contained within the
12 letter. It won't be necessarily that you have the entire
13 agreement, but someone would have to tell you these are the
14 internal references.

15 Q So at a minimum you would have to have, as you say an
16 excised version, some redacted version of the agreements so
17 that the parties would be able, both parties would be able to
18 understand the meaning of the terms as they were defined in
19 their own agreement?

20 A To the extent that the individuals negotiating that
21 that kind of definition I would have expected it as the lawyer
22 or pursuing on the other side of the deal, I would have simply
23 said hey, this is what we are doing, this is what we got. I
24 might have given, as you know based on your own experience,
25 that there are many things called memorandum of option, so that

1 you put on the record a memorandum that describes things that
2 are necessary without necessarily having to describe the entire
3 substance of the deal. Those memorandums are prepared
4 documents that, you know, get people comfortable with the terms
5 that you are going to use in subsequent material.

6 Q Okay. Do you have any reason to believe that
7 Mr. Wolfram or Mr. Wilkes were not provided with those base
8 definitions or at least redacted or excised version to come to
9 the agreement?

10 A I have no reason one way or the other.

11 Q Okay. On the recital side just a couple questions.
12 You said that recital set the stage for the agreement and that
13 they define certain nomenclature; is that right?

14 A Yeah, I think it's the broad strokes.

15 Q But they are part of the meeting of the minds between
16 the parties, right?

17 A I think, yeah, again, you can find a hundred decisions
18 I believe on both sides, but I think that they are given, they
19 are part of the agreement because they are on the printed page
20 and they have significant importance. The question is, is
21 there something more specific within the agreement that covers
22 one of those defined terms, or excuse me, one of those
23 recitals, then the more specific provisions of the agreement
24 are going to control. I mean you are going to go back to what
25 is specifically within the agreement.

1 Q And within the recitals of Exhibit 1, the original
2 Option Agreement, they do contain specific definitions for
3 certain terms; is that right?

4 A I let the document speak for itself, but I think it
5 would be fair to say that throughout the agreement the parties
6 were defining a structured transaction which was difficult at
7 the outset but that both parties wanted to look across the
8 table and say I've got a deal with you.

9 Q I understand that, but my question was the recitals in
10 Exhibit 1 do contain defined terms that are used throughout the
11 rest of the agreement.

12 A Again, the document speaks for itself, but I think it
13 is fair. The question is, is --

14 Q So is that a yes?

15 A Yes.

16 Q Okay. We are almost done. And those definitions were
17 agreed upon by both sides Pardee and Coyote Springs; is that
18 right?

19 A The parties signed the agreement and therefore, yes,
20 there was agreement.

21 MR. JIMMERSON: Thank you, I think we are finished.

22 MS. LUNDVALL: For purposes of the record there are
23 various exhibits that have been marked to this deposition.
24 Those exhibits have been designated as confidential and their
25 treatment should be afforded that same, that confidentiality

1 requirement then that is set forth in the parties' protective
2 order.

3 And you can, for the court reporter's perspective you
4 can append these exhibits to Mr. Whittemore's deposition, but
5 they are not to be made available to the public or distributed
6 to anyone other than the parties in this case.

7 MS. HANSEN: Do you want to read and sign your
8 deposition?

9 THE WITNESS: Yes. I want to make corrections to the
10 extent necessary, absolutely.

11 MS. LUNDVALL: I am going to enter into an agreement
12 that would allow the court reporter to send the original to
13 Mr. Whittemore for his review and his execution so that he
14 doesn't have to go down to the court reporter's office.

15 MS. HANSEN: I totally agree with that.

16 MS. LUNDVALL: I would like to have a certified copy.
17 I would like to have a condensed, and I would like to have an
18 ASCII, please, thank you.

19 MS. HANSEN: We will take an E-tran with the exhibits.

20 (The proceedings concluded at 4:45 p.m.)

21 -o0o-

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23
24
25

1 STATE OF NEVADA)
2) ss.
3 WASHOE COUNTY)

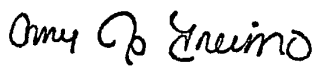
4 I, AMY JO TREVINO, a Certified Court Reporter in and
5 for Washoe County, State of Nevada, do hereby certify;

6 That on Friday, October 19, 2012, at the hour of 1:15
7 p.m. of said day, at 555 South Center Street, Reno, Nevada,
8 personally appeared HARVEY WHITTEMORE, ESQ., who was duly sworn
9 by me to testify the truth, the whole truth and nothing but the
10 truth, and thereupon was deposed in the matter entitled herein;

11 That said deposition was taken in verbatim stenotype
12 notes by me and thereafter transcribed into typewriting as
13 herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 117, is a full, true and correct transcription of my
16 stenotype notes of said deposition.

17 DATED: At Reno, Nevada, this 24th day of October,
18 2012.

19 
20 AMY JO TREVINO, CCR #825,
21 CSR #5296, RPR
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I, HARVEY WHITTEMORE, ESQ., deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

HARVEY WHITTEMORE, ESQ. DATE

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