

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-  
22  
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                               *Amy Jo Trevino*

20                               AMY JO TREVINO, CCR #825,  
21                               CSR #5296, RPR  
22  
23  
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CERTIFICATE OF DEPONENT			
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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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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 1973.

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 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 pages 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 BIM  
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

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No.: 72371**

Electronically Filed  
~~Feb 28 2018~~ 11:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

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**JOINT APPENDIX – VOLUME 11 OF 88**

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Dated this 28<sup>th</sup> day of February, 2018.

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## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28<sup>th</sup> 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



CERTIFIED  
COPY

Las Vegas  
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

REPORTED BY: AMY JO TREVINO, CCR #825, CSR #5296, RPR  
JOB NO. 167740

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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 -oOo-

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 or 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