

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

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Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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

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10/23/2013	Trial Exhibit G	23	JA003638
10/23/2013	Trial Exhibit H	23	JA003639- JA003640
10/23/2013	Trial Exhibit I	23	JA003641- JA003643
10/23/2013	Trial Exhibit J – filed under seal	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
10/23/2013	Trial Exhibit L	24	JA003675- JA003678
10/23/2013	Trial Exhibit M	24	JA003679- JA003680
10/23/2013	Trial Exhibit N	24	JA003681- JA003683
10/23/2013	Trial Exhibit O – filed under seal	25-26	JA003684- JA004083
10/23/2013	Trial Exhibit P	27	JA004084
10/23/2013	Trial Exhibit Q	27	JA004085
10/23/2013	Trial Exhibit R	27	JA004086- JA004089
10/23/2013	Trial Exhibit S	27	JA004090

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit T	27	JA004091- JA004092
10/23/2013	Trial Exhibit U	27	JA004093
10/23/2013	Trial Exhibit V	27	JA004094
10/23/2013	Trial Exhibit W	27	JA004095- JA004096
10/23/2013	Trial Exhibit X	27	JA004097
10/23/2013	Trial Exhibit Y	27	JA004098
10/23/2013	Trial Exhibit Z	27	JA004099- JA004100
10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 10 – filed under seal	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – filed under seal	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

Date	Document Description	Volume	Labeled
10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/23/2013	Trial Exhibit 21	28	JA004454
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
12/12/2013	Trial Exhibit 39	46	JA006936- JA006948

Date	Document Description	Volume	Labeled
12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – filed under seal	27	JA004313- JA004319
10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
10/23/2013	Trial Exhibit BB	27	JA004103
10/23/2013	Trial Exhibit CC	27	JA004104
10/23/2013	Trial Exhibit DD	27	JA004105
10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
10/23/2013	Trial Exhibit FF	27	JA004114- JA004118
10/23/2013	Trial Exhibit GG	27	JA004119- JA004122
10/23/2013	Trial Exhibit HH	27	JA004123

Date	Document Description	Volume	Labeled
10/23/2013	Trial Exhibit II	27	JA004124
10/23/2013	Trial Exhibit JJ	27	JA004125
10/23/2013	Trial Exhibit KK	27	JA004126- JA004167
10/23/2013	Trial Exhibit LL	27	JA004168
10/23/2013	Trial Exhibit MM	27	JA004169
10/23/2013	Trial Exhibit NN	27	JA004170- JA004174
10/23/2013	Trial Exhibit OO	27	JA004175- JA004183
10/23/2013	Trial Exhibit PP	27	JA004184- JA004240
10/23/2013	Trial Exhibit QQ	27	JA004241- JA004243
10/23/2013	Trial Exhibit RR	27	JA004244- JA004248
10/23/2013	Trial Exhibit SS	27	JA004249- JA004255
10/23/2013	Trial Exhibit TT	27	JA004256- JA004262
10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
10/24/2013	Trial Exhibit VV	31	JA004791

Date	Document Description	Volume	Labeled
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935

Dated this 28th day of February, 2018.

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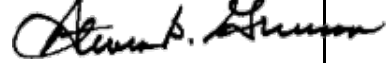
Attorneys for Appellant

CERTIFICATE OF SERVICE

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

/s/ Beau Nelson

An Employee of McDonald Carano LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM, et al.,)
)
Plaintiffs,)
)
vs.) CASE NO. A-10-632338-C
) DEPT. NO. IV
PARDEE HOMES OF NEVADA,)
)
Defendant.) **ORIGINAL**

REPORTER'S TRANSCRIPT OF BENCH TRIAL
BEFORE THE HON. KERRY L. EARLEY, DISTRICT COURT JUDGE

On Wednesday, October 23, 2013

At 8:30 a.m.

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.
LYNN M. HANSEN, ESQ.

For the Defendant: PATRICIA K. LUNDVALL, ESQ.
AARON D. SHIPLEY, ESQ.

Reported by: Jennifer D. Church, RPR, CCR No. 568

Jennifer D. Church, CCR No. 568
District Court, Dept. IV

I N D E X

WITNESSES FOR THE PLAINTIFFS: PAGE

JAMES WOLFRAM

Direct Examination by Mr. J.M. Jimmerson 73

E X H I B I T S

PLAINTIFFS' EXHIBITS IDENTIFIED RECEIVED

1 through 14, 17, 21 -- 6
 (Received via stipulation as
 identified in Plaintiffs' Trial
 Exhibit Binders)

25 Parcel Map, File 98, Page 57 124 127

DEFENDANT'S EXHIBITS IDENTIFIED RECEIVED

A through UU -- 6
 (Received via stipulation as
 identified in Defendant's Trial
 Exhibit Binders)

* * * * *

1 WEDNESDAY, OCTOBER 23, 2013, 8:30 A.M.

2 LAS VEGAS, NEVADA

3 -oOo-

4 THE COURT: Good morning, Counsel. Welcome.

5 MS. LUNDVALL: Good morning, Your Honor.

6 MR. J.J. JIMMERSON: Good morning, Judge.

7 THE COURT: We're ready to go. It's here,
8 finally.

9 MR. J.J. JIMMERSON: It is.

10 THE COURT: Did you make your appearances for
11 the record?

12 MR. J.J. JIMMERSON: I believe we have. I'll
13 do it again. Jim Jimmerson and Jim M. Jimmerson on
14 behalf of the plaintiffs, also Lynn Hansen on behalf of
15 the plaintiffs are present. And we have both James
16 Wolfram and Walter Wilkes, plaintiffs, who are both
17 present.

18 MS. LUNDVALL: Good morning, Your Honor. Pat
19 Lundvall and Aaron Shipley here from McDonald, Carano,
20 Wilson, on behalf of Pardee Homes of Nevada. Brian
21 Grubb is the gentleman who is my paralegal, and he will
22 be running --

23 THE COURT: He's the technical person.

24 MS. LUNDVALL: He's the technical person.

25 I also have two client representatives in the

1 courtroom today. We have Chris Hallman, the gentleman
2 in the blue blazer, and Jon Lash is in the gray blazer.

3 THE COURT: He's had his deposition taken.

4 MS. LUNDVALL: That, he has.

5 THE COURT: Welcome.

6 Ready to start?

7 MR. J.J. JIMMERSON: We are, Your Honor.

8 THE COURT: I was told you have some stipulated
9 exhibits. Do you want to admit those now before we get
10 started to make sure you can refer to them?

11 MR. J.M. JIMMERSON: Yes, Your Honor. Prior to
12 that we just needed to confirm one more set of
13 stipulated. It's the Amendments 1 through 8 of the
14 Amended and Restated Option Agreement.

15 Pursuant to this Court's advice, I met with
16 defense counsel and they provided the clean copies. We
17 have submitted those clean copies as our exhibits, I
18 believe, 6 through 13.

19 THE COURT: Okay. And I have -- am I correct?
20 I have that both parties have stipulated to Plaintiffs'
21 Exhibits 1 to 14, which would include those. Is that
22 correct? And 17 and 21?

23 MR. J.M. JIMMERSON: Yes, Your Honor, that's
24 right.

25 THE COURT: And then Defendant's Exhibits A

1 through UU?

2 MR. J.J. JIMMERSON: That's right.

3 MS. LUNDVALL: Let me clarify then, as far as
4 on concerning Plaintiffs' exhibits, we have stipulations
5 concerning 1 through 5, stipulation concerning 17,
6 stipulation concerning 21.

7 As to the exhibits, Exhibits 6 through 14,
8 those are the various agreements that we have given the
9 complete copies to plaintiffs. They have not shown us
10 what is contained within the exhibit books yet, but I'm
11 assuming that what they have included is the same
12 exhibits that we have given to them and, therefore, we
13 would stipulate to those exhibits. I would say, though,
14 it was subject to check across the course of the trial
15 if we find any pages that may be missing or may be
16 upside down or something of that nature.

17 THE COURT: Okay. That would be fine. So if
18 we find something, we can deal with it at the time.

19 But I assume, Mr. Jimmerson, you are telling me
20 6 through 14 was what was produced by Ms. Lundvall.
21 Correct?

22 MS. LUNDVALL: Yes. 6 through 13. 14 was a
23 letter.

24 THE COURT: What's 14?

25 MR. J.J. JIMMERSON: 14 is a piece of

1 correspondence that had been agreed upon.

2 THE COURT: Do you have any issue with that? I
3 just want to make sure we get it on the record. So
4 right now we have 1 through 13, 17 and 21 of
5 Plaintiffs'. I just want to make sure 14 is stipulated
6 to.

7 MS. LUNDVALL: We have no objection to 14,
8 Your Honor.

9 THE COURT: All right. So those all stipulated
10 will all be admitted into evidence.

11 MS. LUNDVALL: As to Defendant's exhibits, they
12 can begin A through UU, and it's my understanding
13 there's no objection to any of our exhibits.

14 THE COURT: That was my understanding. It was
15 a stipulation. So those will be admitted also. All
16 right. We've got that handled. I just want to make
17 sure I mark it so I don't have to keep going back.

18 What else do we have?

19 MR. J.M. JIMMERSON: We've got two orders
20 concerning the motion to compel and motion for partial
21 summary judgment. May I approach?

22 THE COURT: Yes. These are from the other
23 hearings?

24 MR. J.M. JIMMERSON: Yes.

25 THE COURT: Have they been agreed to for form

1 and content?

2 MS. LUNDVALL: We have, Your Honor.

3 THE COURT: No problem. I'll sign those.

4 MR. J.M. JIMMERSON: And the final issue that
5 we have, we would like to use certain demonstratives,
6 which are representations of certain parcel maps, which
7 had not been stipulated to, but the authenticity was
8 stipulated to. The only question was establishing
9 relevance.

10 I would like to use them for the purposes of
11 the opening statement, not as evidence, but just to show
12 the Court what we're looking at when those exhibits are
13 presented for offering into evidence.

14 THE COURT: Objection?

15 MS. LUNDVALL: Yes, Your Honor. I have
16 objection to the use of any demonstrative that has not
17 been admitted into evidence, and I shared that objection
18 with Mr. Jimmerson.

19 It has been my practice and every time that
20 I've ever done an opening statement, is that the Court
21 has allowed me to use a demonstrative of an exhibit
22 that's been admitted, but not a demonstrative of an
23 exhibit that has not been admitted. And what he is
24 suggesting is he wants to use a blowup, basically, of
25 something that has not yet been admitted into evidence.

1 THE COURT: Okay. And I'm kind of confused.
2 Because when I think of demonstrative, I think of
3 something you make up like, "Here's my time line," like
4 if I would do an opening, just to help on my opening,
5 "This happened on this date," that sort of thing.

6 If something is getting into evidence, that's
7 an actual separate document, not something that would
8 have been recreated or created for trial as a
9 demonstrative. So now I'm confused on what we're doing
10 here.

11 MR. J.M. JIMMERSON: The demonstratives are not
12 the evidence. The evidence are the certified copies,
13 the sheets, which they are very specific match lines for
14 the sheets. They are recorded in the Clark County
15 Recorder's Office. This is a construction of those
16 sheets put together.

17 THE COURT: So if you got up there, you could
18 draw on your own, like I would have done, a time line,
19 or you might have done a time line, just so the opening
20 will flow. It's not actually --

21 MR. J.M. JIMMERSON: It's not being offered as
22 evidence. It's being offered as the evidence will show
23 when we enter it into evidence later.

24 MS. LUNDVALL: Your Honor, from this
25 perspective, they've made a photocopy of a proposed

1 exhibit. That proposed exhibit has not been entered
2 into evidence.

3 THE COURT: Is that the chart you are using?

4 MS. LUNDVALL: That's the -- they've made a
5 photocopy and they've tried to blow it up then, and
6 that's what they want to use. So it's not, as the Court
7 properly described, a demonstrative aid. It is a blowup
8 of an inadmissible piece of evidence.

9 MR. J.M. JIMMERSON: Your Honor, It's not
10 inadmissible. It's going to be admitted. The moment
11 we're able to put someone on the stand to testify as to
12 relevance, it will come in. The authenticity has not
13 been questioned.

14 And, more importantly, you don't need to
15 have -- you don't need to admit evidence prior to
16 referencing it or showing it in your opening statement.
17 Under that logic, you could never say "evidence will
18 show" if the evidence hasn't been admitted yet.

19 So, here, the Court -- it's not being offered
20 to say "The evidence is this." The evidence will be
21 presented in front of the witness. The evidence will be
22 submitted to you to review through the sheets using your
23 own faculties, not my reconstruction of it. It is
24 merely for the use of showing you how we're doing our
25 measurements and how it's going to be applied in this

1 Court. If there's any prejudice here, I don't know what
2 it is.

3 THE COURT: Since it's a bench trial, I am more
4 inclined to allow it. Because if it would help me
5 understand your flow -- and if it doesn't get into
6 evidence, then, you know what, then I discount it and
7 I'm not going to use it. But since it's a bench trial,
8 there is a distinction, but if you are going to use it
9 for demonstrative purposes to follow your argument, not
10 "This is evidence," and I understand it's a hybrid, I
11 understand that completely.

12 But since it's a bench trial and it will help
13 me understand where you are going when the evidence
14 comes in, then it would be helpful to me. So under
15 that, since it's a bench trial, I am going to allow them
16 to do it. And I will understand that is not the
17 specific evidence that's going to come in, but hopefully
18 you are going to use it to explain how when that
19 evidence does come in, it is applicable to your theory
20 of the case.

21 MR. J.M. JIMMERSON: Exactly, and how -- it's
22 actually really being used how we constructed -- how we
23 made these determinations, really, is more of a process
24 than it is of "Here's the evidence."

25 THE COURT: Okay. Well, then I can understand

1 your theory of the case. So under that, I'm going to go
2 ahead, since it's a bench trial, I will let it in.

3 MS. LUNDVALL: Understood, Your Honor. The
4 point, though, that I would like to raise, though, is
5 the Court is not making a predetermination as to the
6 admissibility.

7 THE COURT: No. Absolutely not. I couldn't do
8 that because I wouldn't have any evidence or any
9 foundation. So, once again, if the foundation and it
10 doesn't come in, then, you know, I will judge the case
11 on the evidence.

12 And if your opening statement doesn't flow what
13 the evidence does, then it doesn't flow. And sometimes
14 that happens. The evidence doesn't always come in the
15 way we may want. Hopefully, both of you feel it will.
16 But, no, I'm not making a predetermination at all.

17 MR. J.J. JIMMERSON: We will invoke the
18 exclusionary rule. It's my understanding Mr. Hallman is
19 not a possible witness. So he is certainly invited to
20 be here. Normally a party is only allowed to have one
21 representative. There's two. I have no issue. I know
22 Mr. Lash will be a witness.

23 But I just need to make it clear that if
24 Mr. Hallman sits in, he will not be called as a witness
25 by the defense.

1 MS. LUNDVALL: Mr. Hallman is not anticipated
2 to be called as a witness by the defense. And we
3 understand and we will respect the exclusionary rule.
4 The exclusionary rule, though, does not apply to opening
5 statements. It only applies to the taking of testimony
6 then from the witnesses.

7 THE COURT: I mean, if it turns out for some
8 reason you need to, we'll work it out, if you need to
9 call him. All right? How about that? All right?

10 Okay. Counsel?

11 MR. J.J. JIMMERSON: Your Honor, may I get one
12 minute to --

13 THE COURT: Can I give you your orders back,
14 too, so I don't get them in the middle of my exhibits?

15 MR. J.J. JIMMERSON: Don't give them to us.
16 We're sure to lose them.

17 THE COURT: Give them to Ms. Hansen.

18 While you are doing that, I'll do my exhibits
19 so I can keep it straight. So, basically, the entire
20 Defendants' have all been admitted.

21 MR. J.J. JIMMERSON: Correct.

22 THE COURT: I don't have any issue. Okay.

23 (Pause in proceedings.)

24 MR. J.M. JIMMERSON: May it please the Court,
25 this case is about fairness. This case is about

1 plaintiffs James Wolfram and Walt Wilkes and their
2 commitment to being fair with their clients and being
3 forthright in their 70 years of combined experience in
4 the land sales field.

5 This case is about their skill and talent and
6 how those skills and talents resulted in being the
7 procuring cause for, at the time, the largest land
8 transaction involving brokers in the history of the
9 state of Nevada; that is, Coyote Springs Investment,
10 LLC, with Pardee Homes of Nevada.

11 This case is also about the defendant, Pardee
12 Homes of Nevada, and defendant's failure to treat
13 plaintiffs fairly, their failure to abide by their
14 duties under the law as well as under the Commission
15 Letter Agreement of September 1, 2004.

16 Plaintiffs have come to you, have come to this
17 Court, seeking relief that no one else can give them,
18 seeking you to compel Pardee Homes of Nevada to produce
19 the information that the plaintiffs were entitled to
20 under the September 1, 2004 Commission Letter Agreement,
21 to account for their actions in the land transactions
22 and for the commission payments and for how they were
23 calculated and to do what was necessary under that
24 agreement and inside that relationship.

25 The evidence will show that that relief could

1 not come from anyone else. Plaintiffs had tried to
2 receive it from Pardee. Plaintiffs had gone to
3 Coyote Springs. Plaintiffs had gone to Chicago Title.
4 Plaintiffs had gone to the Clark County Recorder's
5 Office, to zoning and planning, to the other public
6 offices to find what was happening in the development of
7 Coyote Springs as it pertained to their commissions.

8 This case will largely hinge on was the
9 property purchased Purchase Property or was it Option
10 Property? This is because the Commission Letter
11 Agreement establishes two separate formulas, two
12 separate mechanisms for calculating how the
13 commission -- how much the plaintiffs are entitled to
14 for commission.

15 Under the Purchase Property formula, they are
16 entitled to a percentage of the Purchase Property Price.
17 There is no benefit or additional commission for
18 additional acreage being purchased if there is no
19 corresponding increase in price.

20 Conversely, the Commission Letter Agreement
21 specifies that the formula for commissions for Option
22 Property is dictated by acreage. It is a set flat rate
23 per acre, and you find out the number of acres and that
24 is the commission.

25 The evidence will show in this case that Pardee

1 purchased both Purchase Property and Option Property.
2 We know this by referring to the Option Agreement which
3 defines those critical terms. For Purchase Property,
4 the portion of the entire site consisting of Parcel 1 as
5 shown on Parcel Map 98-57 recorded July 21, 2000 in
6 Book 20000721, as Document 01332, Official Records,
7 Clark County, Nevada.

8 Option Property, the remaining portion of the
9 entire site which is or becomes designated for
10 single-family detached production residential use as
11 described below, the Option Property. And as the Option
12 Agreement further describes, that as described below
13 refers to production residential property, which is
14 defined -- which includes, quote, without limitation,
15 all single-family detached production residential lots,
16 which shall include lots on which custom homes are
17 constructed by buyer, all land for roadways, utilities,
18 government facilities, including schools and parks,
19 which school and park sites are subject to the
20 provisions of 7(c) below, open space required or
21 designated for the benefit of the residential
22 development pursuant to the master plan, a habitat
23 conservation plan, or development agreement, drainage
24 ways or other use associated with or resulting from the
25 development of Purchase Property and each option parcel

1 of the Option Property.

2 Those three definitions will guide this Court.
3 The evidence will use those definitions to determine
4 whether or not Purchase Property -- whether or not
5 Option Property was purchased here.

6 As this is defined, Purchase Property is
7 defined by Parcel 1 on Parcel Map 98-57. This
8 demonstrative shows what Parcel 1 looks like. You see
9 it has fixed boundaries, that there are lines for inside
10 and outside the property.

11 As Option Property is defined, it's the
12 remaining property. The evidence will show that that
13 means anything inside the entire site that is
14 Coyote Springs that is not part of the Parcel 1.

15 Now, how does the Court determine whether or
16 not they purchased Option Property or Purchase Property?
17 Simply, the evidence will show that the recorded maps,
18 which are found in the amendments to the Amended and
19 Restated Option Agreement, have property outside this
20 Parcel 1. Specifically Parcels 2, 3 and 4 of Parcel
21 Map 113-55 all have land outside of this Parcel 1.

22 As the evidence will demonstrate to this Court,
23 Parcel 1's width is consistent throughout. It is
24 similar to a parallelogram were you not to consider the
25 bottom shift. The Court will learn by examining the

1 maps that the distance from the westernmost portion of
2 Parcel 1, which is U.S. Highway 93 to the easternmost
3 portion of Parcel 1 is 7996.92 feet. The map tells the
4 Court this. You don't need to apply a scale. It has
5 the numbers right on it.

6 Now, looking at Parcel Map Book 113, page 55,
7 and examining Parcel 2 and Parcel 3 and Parcel 4, the
8 evidence will show that the easternmost portion of
9 Parcel 2, away from U.S. Highway 93 exceeds 9,100 feet,
10 well in excess of the 8,000 feet which is the width of
11 Parcel 1.

12 The same process the Court will apply to
13 determine the location for Parcels 3 and 4. And the
14 evidence will show that Parcel 3, at its easternmost
15 point is over 10,800 feet from U.S. Highway 93, again,
16 exceeding the 8,000 foot width of Parcel 1.

17 Parcel 4 is a little bit longer, 11,000 feet
18 plus or minus 50 feet. Again, the evidence will show
19 that Parcel 4 exceeds the bounds of Purchase Property,
20 of Parcel 1, by approximately 3,000 feet.

21 But the evidence does not end there, however.
22 There's one additional parcel, a parcel on Book 116,
23 page 35, Lot 3 on that parcel. This is located 8,000
24 feet, not from the western portion of Parcel 1, but from
25 its eastern boundary. The evidence will show that this

1 parcel was over a mile and a half away from the most --
2 the most eastern point of Parcel 1.

3 The Court will hear evidence in this case not
4 just about the location of these parcels, but of the
5 designation. As the evidence here guides us, Option
6 Property is the remaining portion of the entire site
7 which is or becomes designated for single-family
8 detached production residential use or production
9 residential property. If it is not so designated, the
10 Option Agreement will tell this Court that it cannot be
11 Option Property.

12 Well, the evidence will show that Amendment
13 No. 7, April of 2009, to the Amended and Restated Option
14 Agreement, provided the specific designations for
15 Parcels 2, 3 and 4, and the evidence will show that that
16 designation was residential, was active adult, was
17 washes. It was production residential property.

18 The evidence will show that Parcels 2, 3 and 4,
19 by being located outside of Parcel 1 and by being
20 designated as production residential property
21 constitutes Option Property.

22 As for this fourth parcel that is miles apart
23 from Parcel 1, it too is designated it as production
24 residential property. It is a wastewater treatment
25 parcel. Utilities are part of production residential

1 property as described in this Option Agreement as has
2 been recently entered into evidence.

3 You also will see evidence from the amendments
4 to the Amended and Restated Option Agreement confirming
5 that this is that designation.

6 So the evidence in this case will conclusively
7 demonstrate that Pardee repeatedly purchased Option
8 Property, and yet Pardee never treated it as such for
9 the purposes of plaintiffs' commissions.

10 Pardee -- representatives of Pardee will
11 testify and you will see e-mails and you will hear a
12 number of witnesses tell you that Pardee insisted that
13 it never purchased Option Property. If the Court finds
14 that not to be true, the Court must then apply to the
15 rest of the agreement to determine if there is a breach.
16 It must evaluate the rest of the facts to determine what
17 the damages are, et cetera, et cetera.

18 But the importance of the location of these
19 parcels cannot go understated, if only because the
20 definitions of Purchase Property and of Option Property
21 are in reference to these locations, to these geographic
22 facts.

23 Now, in addition to demonstrating to this Court
24 that Pardee purchased Option Property, plaintiffs will
25 demonstrate, the evidence will show, that Pardee

1 breached its duties under the September 1, 2004
2 Commission Letter Agreement.

3 The evidence will show that the commission
4 payments were inaccurate, were not properly calculated.
5 The evidence will show that in addition to improperly
6 calculating these commissions, Pardee -- and this is the
7 most important part of the case -- failed to keep
8 plaintiffs reasonably informed as to all matters related
9 to the amount and due date of their commissions.

10 You will hear evidence that in order to be
11 reasonably informed as to these pieces of information,
12 that Pardee had to provide evidence, had to provide
13 information, had to provide records allowing plaintiffs
14 to check, to verify that they had received the
15 appropriate commission payment at the appropriate time.

16 You will hear evidence that without that
17 information, the information that did not allow them to
18 do that, was no information at all. You will hear that
19 effectively plaintiffs were forced to trust Pardee and
20 could not check and make sure that they had received the
21 appropriate commission payments.

22 Now, these breaches are important not simply
23 because it's on a piece of paper between two parties.
24 It's important because of the magnitude of this
25 transaction. You will hear evidence that the Option

1 Agreement between Pardee and Coyote Springs Investment,
2 LLC, provided Pardee the option to purchase 30,000 acres
3 of land in Clark and Lincoln Counties, Nevada. That at
4 an original price of \$40,000 per acre, Pardee could
5 theoretically spend \$1.2 billion for land, and
6 plaintiffs had a commission for those purchases, for
7 those options.

8 For plaintiffs this was everything. You will
9 hear evidence that as 60-year-old men signing this
10 agreement, seeing it get executed, watching the
11 transaction take place, a 40-year option for them may
12 pass them by. For them -- and you will hear it from
13 Mr. Wolfram and you will hear it from Mr. Wilkes -- they
14 will tell you that a lot of this was for their family,
15 that the reason that we're here today is not simply
16 because there could have been an inaccurate calculation
17 of commissions, but because for the next 40 years, 35
18 years, this option may still be in place.

19 And they will tell you that without the
20 information to verify that they were receiving the
21 appropriate commissions, the magnitude and the size and
22 the value of the transaction is lost.

23 You will hear evidence that without this
24 information, without the ability to know that they are
25 being paid appropriately, without the ability to ask a

1 question and get a candid answer, materially impacts the
2 value of this agreement. You will hear evidence that it
3 hurts them not just because they can't trust them, but
4 because if they pass on -- and they are experienced land
5 brokers -- how do their children determine whether or
6 not they are receiving the appropriate commissions? You
7 will hear that concern expressed to you from both
8 Mr. Wolfram and Mr. Wilkes.

9 And the breach of contract goes beyond the
10 commission payments. It goes beyond the amorphous, "We
11 didn't receive enough information." You have the
12 evidence now. It's in evidence. Amendments 1 through 8
13 of the Amended and Restated Option Agreement were never
14 given to plaintiffs by Pardee.

15 Starting in 2006, you will see that the
16 Amendment No. 1 to the Amended and Restated Option
17 Agreement started the process and ended in 2009 with
18 Amendment No. 8 of that Amended and Restated Option
19 Agreement. These amendments, you will see, are the
20 evidence, are the proof of the transactions, of the land
21 takedowns, of activity that plaintiffs are receiving a
22 commission on.

23 You will see in Amendment No. 7 the
24 designations for the land for all the parcels that have
25 been taken down to date. You will see that that

1 evidence, confirming exactly which property is
2 designated for what, was denied to our clients. You
3 will see that each and every amendment does something
4 new, something significant for the Option Agreement.

5 As the Court will see when considering
6 Exhibit 2, the Option Agreement for the Purchase of Real
7 Property and Joint Escrow Instructions, this is the
8 agreement that Mr. Wolfram and Mr. Wilkes relied upon
9 when signing the Commission Letter Agreement.

10 The evidence will show the Commission Letter
11 Agreement adopts the terms in that Option Agreement.
12 You will see that it relies upon and incorporates the
13 principles in that Option Agreement. And beyond the
14 physical -- beyond the technical exact terms of the
15 Option Agreement -- of the Commission Letter Agreement,
16 the Option Agreement references Mr. Wolfram and
17 Mr. Wilkes.

18 Specifically, the Option Agreement states
19 notwithstanding the foregoing, upon and subject to the
20 close of escrow for the purchase of property or any
21 option parcel, buyer shall pay any finder fee owed to
22 General Realty Group, Walt Wilkes, and Award Realty, Jim
23 Wolfram, pursuant to a separate agreement. Said fee
24 shall be split equally.

25 The Court will know that the Option Agreement

1 provides for the payment, provides for the establishment
2 of another agreement to pay plaintiffs for the
3 transactions resulting in the takedowns of Purchase
4 Property and Option Property.

5 The amendments to the Amended and Restated
6 Option Agreement executed in March of 2005, well after
7 September 1, 2004, were denied the plaintiffs, were not
8 provided. And without that information, they will tell
9 you they did not have the ability to confirm that they
10 were receiving the appropriate commission amounts. The
11 evidence will show that there's no acceptable
12 explanation or excuse for this denial of information.

13 The Option Agreement contained a nondisclosure
14 clause. Plaintiffs received a copy of the Option
15 Agreement. Amendments 1 and 2 to that Option Agreement
16 reaffirmed that nondisclosure agreement. Plaintiffs
17 were afforded a copy of those documents. Even the
18 Amended and Restated Option Agreement contained a
19 restatement of the nondisclosure clause, the
20 confidentiality clause. And plaintiffs were given a
21 copy of that document.

22 But from March 2005, there wasn't another
23 agreement executed by Pardee concerning land
24 transactions for which plaintiffs would be entitled to a
25 commission that Pardee provided to our clients, not one.

1 You will hear about the importance of
2 Amendments 1 through 8. You will hear about what they
3 do, parcels they purchase, the locations. You will see
4 for yourself this is where that property is. This is
5 how it's designated. And I know, based on the location
6 and the designation, that it is this type of property,
7 Purchase Property or Option Property.

8 Plaintiffs never had that chance. You will
9 hear evidence that for three years, beginning in
10 approximately 2007, plaintiffs had been curious as to
11 what had been happening in the development of
12 Coyote Springs as it pertained to their commissions.

13 You will hear that these inquiries ranged from
14 phone calls to letters to representatives of Pardee, to
15 multiple representatives of Pardee. You will hear they
16 involve phone calls, meetings with title company
17 members, phone calls with Coyote Springs.

18 You will hear that their requests for
19 information were not appropriately responded to. You
20 will hear that despite plaintiffs' pleas for the
21 information, for some sort of explanation for what was
22 happening so that they knew that they were receiving the
23 appropriate commission payment, they didn't receive that
24 information.

25 You will learn that there are only two letters

1 sent to Mr. Wolfram and Mr. Wilkes concerning these
2 issues. You will read them for yourself. You will see
3 and they will show that you cannot confirm the value of
4 the commissions with those letters.

5 In fact, one of the letters you will see tells
6 Mr. Wolfram and Mr. Wilkes that Pardee is executing a
7 custom lot agreement to acquire land for custom lots,
8 and not only were they not going to receive a copy of
9 that agreement, they were not going to receive
10 commissions under that agreement. The evidence will
11 show that that is improper and that is a circumvention
12 of the heart, of the spirit, of the purpose of the
13 Commission Letter Agreement. That is, when Pardee
14 wishes to take down production residential property,
15 whether it be Purchase Property or Option Property,
16 plaintiffs are entitled to a commission once the
17 transaction has closed.

18 You will hear that in addition to this letter,
19 the first letter in 2007, one other letter in March of
20 2008 was addressed to Mr. Wolfram and Mr. Wilkes. In
21 that letter Jon Lash told them, Your requests for the
22 production of the parcel maps do not arrive at a mutual
23 benefit and, thus, they will not be provided to you.
24 Yes. You will learn that Pardee, Mr. Lash, told
25 plaintiffs that because it did not afford mutual

1 benefit, they weren't going to receive it.

2 You will learn that there wasn't another
3 document sent to both of them together responding to
4 these inquiries. The evidence will show that many
5 documents were sent to Mr. Wolfram, and you will be
6 shown a stack of deeds and a map and a couple of other
7 letters and three closing statements.

8 But underneath the surface, the evidence will
9 show that that map did not accurately reflect the land
10 transactions, did not demonstrate the designations of
11 the property in order to show whether or not the
12 commissions were accurate. The evidence will show that
13 those deeds were not complete.

14 You will hear evidence that a request for a
15 deed of Pardee Coyote holdings was denied to plaintiffs.
16 You will hear evidence that the deeds did not include
17 information for all of the purchases. You will hear
18 evidence that the closing statements did not include
19 specific references to property that was known to
20 Mr. Wolfram and Mr. Wilkes because they used the
21 definitions in the amendments to the Amended and
22 Restated Option Agreement. Without those amendments,
23 Mr. Wolfram will tell you he could not know what the
24 closing statements referred to.

25 The evidence will show Mr. Wolfram and

1 Mr. Wilkes spent years trying to get the information
2 informally. They didn't want to involve lawyers. You
3 will hear that it was only in 2009 that Mr. Wolfram
4 hired an attorney hoping that that would open up the
5 information from Pardee. You will hear that despite
6 these efforts, they were unsuccessful.

7 You will hear that in 2010 they had to file
8 suit in order to get the documents, in order to find out
9 what was happening as it related to their commissions.
10 You will hear that after all the effort they went to,
11 after seeing everyone under the sun, they could not know
12 whether they were receiving the appropriate commission
13 payments or not.

14 And the evidence will show that despite having
15 access to public records where you can get parcel
16 numbers or acreage or parcel maps, despite that ability,
17 the one thing they were lacking was Amendment No. 7.

18 The evidence will show that Amendment No. 7 not
19 only provided those six color maps showing the
20 designation of the property, you will hear that pursuant
21 to that the paragraph referencing those maps served to
22 supersede all prior reconciliations of the property.
23 Amendment No. 7 was a lot of new information. It
24 provided a lot of critical documentation for plaintiffs,
25 and Pardee didn't give it to them.

1 In addition to the breach contract claim, the
2 plaintiffs also have a breach of the claim for the
3 covenant of good faith and fair dealing. Without
4 retreading what the evidence will show as it pertains to
5 the breaches, the Court should take particular notice of
6 the statements in the Option Agreement.

7 The evidence will show the Option Agreement
8 succinctly describes the purpose of the Commission
9 Letter Agreement; that is, to pay a fee to plaintiffs
10 when certain Option Property or Purchase Property was
11 taken down. We know and the evidence will conclusively
12 show that that wasn't followed.

13 We also know that the agreement to purchase
14 custom lots, which is an area of land, that is a
15 description of land that is included in production
16 residential property, is not an action in good faith if
17 it wasn't given to our clients and if it didn't provide
18 for commissions for them.

19 The evidence will show that even after the
20 discovery process, Pardee has not provided to plaintiffs
21 any maps or any information which references Parcel 1 or
22 Purchase Property and Parcels 2, 3 and 4 of Book 113,
23 page 55, which the evidence will show is outside of
24 Parcel 1.

25 Evidence will show that plaintiffs are not in

1 possession of any documents which would allow them to
2 calculate the number of acres outside Parcel 1. The
3 evidence will show that without additional information
4 concerning those parcels and concerning the custom lot
5 agreement, plaintiffs just don't know whether or not --
6 not whether or not, excuse me -- how much they would be
7 owed under the Commission Letter Agreement if properly
8 applied to the facts.

9 You will hear Mr. Wolfram tell you that this is
10 why he brings his accounting claim. Without the
11 information, he doesn't know whether or not he's
12 receiving the appropriate amounts -- excuse me, not
13 whether or not he's receiving -- how much is off in the
14 commissions.

15 You will also hear, in terms of the covenant of
16 good faith and fair dealing, that Lot 3, the wastewater
17 treatment parcel, way on the east of this township, over
18 a mile and a half away from the outermost boundary of
19 Parcel 1, was purchased for a price of \$21,800 and
20 change per acre.

21 The evidence will show that Pardee paid
22 plaintiffs a commission based on the percentage of that
23 price, the \$21,000 per acre price. The evidence will
24 show that if properly applied as Option Property
25 pursuant to subparagraph 3 of their Commission Letter

1 Agreement, that they would be entitled to a commission
2 equal to 40,000 per acre and a percentage of that.

3 Beyond describing the need for the information,
4 beyond demonstrating that there was an inaccurate
5 calculation, you will hear evidence as to the
6 relationship between Pardee and plaintiffs. You will
7 hear evidence that Pardee trusted -- excuse me, that
8 plaintiffs had to trust Pardee. You will hear evidence
9 that they didn't have access to the information, to the
10 material facts demonstrating what was happening in the
11 transaction between CSI and Pardee.

12 You will hear that Pardee instructed
13 representatives of Chicago Title not to produce
14 information. Pardee acted to ensure that plaintiffs
15 only could receive the information from them.

16 The evidence will show that this not only
17 establishes the relationship of trust necessary to
18 establish the duty to account, that also when you have
19 such imbalance of information, the evidence will show
20 that because -- and not only were all the material facts
21 in the hands of Pardee, they were peculiar to Pardee as
22 evidenced by the instruction to Chicago Title to not
23 produce these documents.

24 And the evidence will show that plaintiffs had
25 no fair or reasonable access to the same. You will hear

1 about how long Mr. Wolfram spent trying to get that
2 information. You will hear how many hours he spent. He
3 spent well over 80 hours trying to get this information
4 to no avail.

5 Because plaintiffs had this relationship, and
6 the evidence will confirm that that relationship
7 existed, the evidence will also show that they had a
8 duty to account. They had a duty to provide the
9 information that would otherwise -- that otherwise
10 plaintiffs would otherwise have access to.

11 Finally, you will also hear evidence about a
12 counterclaim. Defendant has brought a counterclaim
13 alleging that plaintiffs violated the covenant of good
14 faith and fair dealing, specifically that the act of
15 requesting information was in violation of this implied
16 covenant.

17 They claim that plaintiffs, Mr. Wolfram and
18 Mr. Wilkes, had a duty to stay silent. They will tell
19 you or they claim through their pleadings that this
20 failure to stay silent was a violation of this implied
21 covenant and that defendant needed to respond and spent
22 a substantial amount of time and amount of resources
23 responding to these inquiries.

24 The facts will establish and confirm that
25 plaintiffs had no such duty to stay silent or refrain

1 from inquiring. But more importantly, the Court will
2 ask itself, why, if plaintiffs didn't have a right and,
3 in fact, had a duty not to ask questions, why did
4 defendant respond if it was going to damage them? If it
5 was going to harm them, why did Pardee participate in
6 that harm?

7 The evidence will show that the counterclaim
8 holds no merit. The evidence will show that not only
9 was there no violation of the covenant of good faith and
10 fair dealing, but that these alleged damages were not --
11 if they existed at all -- were not caused by plaintiffs,
12 and surely plaintiffs are not liable for them.

13 The evidence will show, though, that this
14 damage claim, the defendant's damage claim, highlights
15 the distinction between plaintiffs' claim for time and
16 effort damages and defendant's. The evidence will show
17 that unlike defendant's claim for time and damages,
18 plaintiffs did not have a luxury of sitting still.

19 Plaintiffs, as the evidence will demonstrate,
20 could have lost commissions, may have lost the
21 information necessary to confirm --

22 MS. LUNDVALL: Your Honor, Counsel sounds like
23 this is now closing argument, rather than opening
24 statement, not highlighting what the evidence is going
25 to be.

1 THE COURT: Well, he's pretty much -- he's now
2 addressing the time and effort damages and what the
3 evidence will show. So I'm going to overrule it.

4 MR. J.M. JIMMERSON: The evidence will show
5 that the time and effort damages endured by plaintiffs
6 were not only foreseeable, but they were directly caused
7 by plaintiffs.

8 THE COURT: That is more argument, but I know
9 where you are going, but that is more argument. Tell me
10 what it's going to be.

11 MR. J.M. JIMMERSON: I'll move on, Your Honor.

12 THE COURT: I know they asked for information.
13 We've kind of gone a little bit through time and effort,
14 as both parties know, before.

15 MR. J.M. JIMMERSON: Your Honor, the evidence
16 will show that plaintiffs are entitled to not only their
17 time and effort damages, but their attorneys' fees as
18 damages.

19 You will hear that they had no other ability to
20 get the information. You will hear that the prosecution
21 for claim for accounting was necessary in order to
22 receive all the information to confirm that they had
23 received it.

24 And at the end of this trial, my father, Jim
25 Jimmerson, will stand up and ask you to find in favor of

1 plaintiffs, will ask you for the fairness that
2 plaintiffs have always been entitled to. He'll ask you
3 for a judgment in their favor. Thank you.

4 THE COURT: Thank you, Mr. Jimmerson.

5 MS. LUNDVALL: Your Honor, let me begin by
6 thanking you for the opportunity to be able to present
7 opening statement. I know that sometimes in bench
8 trials that the courts suggest that simply go to the
9 evidence.

10 THE COURT: No. I appreciate -- the Court
11 appreciates it, because this is a complicated case.
12 I've appreciated it from all the motions and you've been
13 in here. I understand. I appreciate that you will do
14 it for me to help me.

15 MS. LUNDVALL: One of the things, though, that
16 I'm hoping that the Court will find at the conclusion,
17 though, of hearing the evidence, is that, in fact, that
18 this case is actually quite simple.

19 You've got two contractual documents that are
20 going to be at issue in this case. You've got a
21 contractual document that serves as the foundation for
22 the breach of contract action between Mr. Wolfram and
23 Mr. Wilkes, on one hand, and Pardee Homes of Nevada, on
24 the other hand.

25 Now, both those plaintiffs acknowledge that

1 this case is principally about a breach of contract, and
2 they acknowledge that that breach of contract then
3 underlies all three of their causes of action, both the
4 breach of the covenant of good faith and fair dealing,
5 as well as their claim for an accounting.

6 To interpret their Commission Agreement, the
7 Court is going to be required to take a look at a couple
8 of other contractual documents, and those contractual
9 documents are between Pardee Homes of Nevada and
10 Coyote Springs Investment, LLC. We refer to
11 Coyote Springs Investment as CSI. And with the Court's
12 permission or I guess the Court's indulgence, to try to
13 speed things along --

14 THE COURT: I already refer to them as CSI,
15 Counsel, in my notes. So that's perfect. I know what
16 you mean.

17 MS. LUNDVALL: Thank you.

18 One of the things that the Court will see with
19 the contractual arrangement then between Pardee and CSI,
20 it reminds me a little bit of an exercise as a child
21 when you used to play connect-the-dots to figure out
22 what the picture is. And one of the things that we are
23 going to do is to allow the Court then and to point out
24 then the different guideposts that are contained within
25 those contractual documents so that you can connect the

1 dots and to be able to get an accurate picture of the
2 transactions between Coyote Springs and Pardee.

3 To the extent that those contractual documents
4 needs further clarification, we're going to bring you
5 both sides of that transaction, not just simply to rely
6 upon what Pardee's stated intent was in entering into
7 its agreements with CSI, but we're going to bring you
8 the other side of that transaction and that being CSI.

9 And so to allow the Court then to interpret the
10 Commission Agreement that's at issue in this case, we're
11 going to give you the guideposts then from the
12 contractual documents between Pardee and CSI, allow you
13 to follow the dots, and to see an accurate picture of
14 what the parties' transaction was, and in addition to be
15 able to listen to the parties' intent when they entered
16 into that contractual arrangement.

17 Let me describe a little bit of the
18 relationship then between these different parties to
19 each other. The Court then is going to learn that it
20 was in the 1990s that Harvey Whittemore began to develop
21 the Coyote Springs project. He began developing that
22 project through his company that he refers to as CSI and
23 that we're now referring to as CSI. That project was a
24 43,000-acre project, and it was unimproved real property
25 that straddled both Clark as well as Lincoln County. It

1 was a huge parcel of property.

2 And if you can imagine that Summerlin doesn't
3 exist. I came to this community in 1982. Summerlin
4 didn't exist. But imagine completely undeveloped
5 property in Summerlin, no roadways, no commercial
6 centers, no parking lots, no residential homes, no
7 custom homesites, no power plants, no utility corridors,
8 nothing. That's what Coyote Springs was when the
9 parties began to negotiate then their relationship with
10 each other. And by that I mean Pardee and
11 Coyote Springs.

12 By 2002, the plaintiffs will tell you -- and
13 I'm going to make the assumption that on certain points
14 that their testimony that they gave us in deposition is
15 the testimony that they will give to you from the
16 witness stand. But they will tell you that by 2002,
17 that they had become aware of and acquainted with Harvey
18 Whittemore. They will also tell you that they began
19 tracking his project.

20 One of the things that, in addition, from an
21 evidentiary standpoint as we told you, is that we're
22 going to bring you the other side of the transaction,
23 and that is Pardee Homes of Nevada. You are going to
24 learn a little bit about Pardee Homes through various
25 representatives that will take the witness stand. They

1 are principally a production home builder.

2 Now, what does that mean? That means that they
3 do not design custom homes and then make every home
4 different. They are what they refer to, and some
5 people, maybe in more of a slang term, refer to as tract
6 homes or production homes, where they design and develop
7 then different floor models, and they develop then
8 housing developments based upon giving options to
9 potential customers as to what may go into the interior.
10 But by and large, most of the stuff on the exterior, not
11 all of it, looks very similar. That is the nature of
12 their business.

13 They have been in business through their parent
14 company since 1921. They have a slogan, and some people
15 have snickered at this slogan a little bit because some
16 people suggest that maybe it's kind of corny, but their
17 slogan is "Do the right thing." But they take that to
18 heart, and they practice doing the right thing. They
19 practice doing the right thing, and the Court is going
20 to see examples of their practice of doing the right
21 thing with the plaintiffs, Mr. Wolfram and Mr. Wilkes,
22 in this action. It is a guidepost by which the
23 representatives of Pardee make their business decisions.

24 You are going to hear from Jon Lash, who is the
25 CEO of the parent company located in California. You

1 are also going to hear from Cliff Andrews, who is the
2 president of Pardee Homes of Nevada. In addition, you
3 are going to hear from other individuals associated with
4 Pardee. And this is somewhat going to be dependent upon
5 the evidence that the plaintiff puts on. As the Court
6 knows, we're going to be responsive to their evidence.

7 But you may hear from Chuck Curtis. You may
8 hear from Jim Stringer, and you also may hear from Steve
9 Levy. Steve Levy is an outside attorney. He's the
10 attorney that was responsible, from Pardee's
11 perspective, of drafting the various contractual
12 arrangements between Pardee and CSI.

13 By 2002, you are going to learn that
14 Mr. Wolfram and Mr. Wilkes had also become acquainted
15 with Jon Lash. They had brought some development deals
16 to Mr. Lash. And according, as I indicated, to the
17 plaintiffs, they had been tracking Coyote Springs. And
18 after learning that Mr. Whittemore had obtained water
19 rights for the Coyote Springs project, the plaintiffs
20 contacted Mr. Lash and asked him, if they could
21 facilitate a meeting with Mr. Whittemore, would he
22 attend such a meeting. Mr. Lash indicated that he
23 would.

24 Unbeknownst to Mr. Lash, though, at that time,
25 Mr. Whittemore and Cliff Andrews, the president of

1 Pardee Homes of Nevada, had already begun working
2 together concerning the Coyote Springs project. The two
3 of them had already met. Mr. Whittemore had already
4 presented his project to Mr. Andrews, and Mr. Andrews
5 and his staff had already began developing information
6 concerning the Coyote Springs project.

7 And what you are going to learn is that Pardee,
8 before the meeting between Mr. Lash and Mr. Whittemore,
9 had already developed an interest in participating in
10 the Coyote Springs project. You will also learn from
11 Mr. Whittemore that Coyote Springs, CSI, had developed
12 an interest in working with Pardee.

13 As I indicated, though, Mr. Lash said that he
14 would attend a meeting. And this information about
15 Mr. Whittemore and Mr. Andrews then working together
16 already, that was unknown to Mr. Lash at the time. But
17 there was an initial meeting that was scheduled here in
18 Las Vegas, and it was scheduled at Pardee's offices.
19 And you'll learn who was in attendance at that meeting.
20 And principally that meeting entailed Mr. Whittemore
21 presenting his project to Mr. Lash.

22 Mr. Wolfram and Mr. Wilkes were there, and from
23 the different accounts that I have learned of, it
24 doesn't appear that they contributed much of anything to
25 that particular meeting. They were there. They had

1 facilitated the introduction between Mr. Lash and
2 Mr. Whittemore. During that meeting, Mr. Whittemore had
3 expressed his desire to sell certain portions of his
4 Coyote Springs project.

5 And when you think about a project,
6 particularly of that magnitude, I think the best way
7 here in our community to compare and contrast it is to
8 look at the Summerlin project, because Mr. Whittemore
9 had, as an interest for the development of his project,
10 very similar to Summerlin. He knew there was going to
11 be commercial development there. He knew that there was
12 going to be custom lot development there. He knew that
13 there was going to be industrial development. He knew
14 that there was going to be what is referred to and zoned
15 as single-family production detached homes.

16 That's the property then that Mr. Whittemore
17 had expressed an interest in and that property falls
18 square then within Pardee's principal form of its
19 business. It had an interest in acquiring certain
20 portions of this project.

21 And what the parties had originally negotiated
22 then was that CSI was going to sell portions of that,
23 what you are going to hear the witnesses primarily refer
24 to it as single-family residential. It has a very long
25 and specific definition contained within the parties'

1 agreement, and it includes the single-family detached
2 production residential, but typically the witnesses will
3 refer to it as single-family residential.

4 And Coyote Springs was going to maintain
5 control then of all of the commercial land, all of the
6 land that was going to be golf courses, all of the
7 custom lots, all of the multi-family land. And what do
8 I mean by multi-family land? The multi-family land is
9 typically then what condominiums or apartment complexes
10 are built upon. He was going to retain the industrial
11 lands and all other development deals in Coyote Springs.

12 And as a result of that meeting, and as a
13 result of the meeting that had already occurred between
14 Mr. Andrews and Mr. Whittemore, Pardee and CSI began a
15 very long and very protracted negotiation. The
16 plaintiffs, Mr. Wolfram and Mr. Wilkes, they were not
17 needed with these negotiations. It simply wasn't within
18 their skill set. And they, like most Realtors, were
19 happy to stay out of these continuing negotiations.

20 And between the builders, Pardee, and the
21 developer then, Mr. Whittemore through Coyote Springs,
22 they were not needed then, and principally what you were
23 seeing is negotiations that went on between different
24 segments of Pardee and different segments of CSI.

25 And by that I mean this: There were some

1 negotiations that went on directly between Mr. Lash and
2 Mr. Whittemore. And you are going to learn that they
3 had a record of 18 calls in one day, and that these
4 negotiations were very protracted, very long, very
5 tedious. But ultimately you will learn that these were
6 an arm's length transaction between these two parties.

7 In addition to the other segment, there were
8 design people that were talking to each other. There
9 were also the attorneys that were talking to each other.
10 Mr. Whittemore, while he's an attorney himself, he
11 brought in Carl Savely, who was doing much of the
12 negotiation as it related to water rights.

13 Steve Levy was the person on behalf of Pardee
14 who was the attorney that began negotiating and that
15 began the drafting process along with Mr. Savely and
16 along with Mr. Whittemore and also, I believe, with
17 David Whittemore, who was an attorney with Lionel Sawyer
18 and Collins at the time, that Mr. Whittemore had brought
19 in then, and he was also doing some of the drafting on
20 these contractual arrangements.

21 Now, this single meeting that I earlier
22 described, at which time that Mr. Wilkes and Mr. Wolfram
23 were in attendance, that was the sole participation that
24 they did concerning those negotiations.

25 I asked during deposition and I would assume

1 then that Mr. Wilkes will confirm this as to the sum
2 total of the time investment that he had into this
3 project tracking the Coyote Springs project, trying to
4 determine then if Mr. Whittemore had obtained his water
5 rights, and he approximated it was about a week's worth
6 of time that he had put into tracking that project
7 collectively, assuming a 40-hour workweek, working eight
8 hours then on a daily basis.

9 Now, as Coyote Springs and Pardee were doing
10 their negotiations that ultimately led to the Option
11 Agreement that we're going to bring to the Court's
12 attention, Pardee was also negotiating then with the
13 plaintiffs concerning their Commission Agreement. After
14 several months and, in fact, almost a year's worth of
15 negotiations, Pardee had entered into a written
16 agreement and that written agreement we will bring to
17 your attention is found at Exhibit B in the Defendant's
18 binders, and it's titled Option Agreement for the
19 Purchase of Real Property and Joint Escrow Instructions.
20 Everyone refers to it in shorthand then as the Option
21 Agreement.

22 It sets forth the terms of the deal, and
23 specifically it set forth the fact that this deal only
24 dealt with the single-family detached production
25 residential land. That was the only thing that was at

1 issue.

2 And so now for the first time when I learn that
3 there's a contention that a wastewater treatment plant,
4 land upon which a wastewater treatment plant was
5 constructed somehow falls within this scope of this
6 Option Agreement or the scope of their Commission
7 Agreement and for which they are entitled to commissions
8 on that, when the Court takes a look at the Option
9 Agreement, you are going to see that it was only the
10 single-family detached production residential lands that
11 were at issue under the Option Agreement.

12 Now, prior to the Commission Agreement between
13 Pardee and the plaintiffs being entered into, there were
14 two amendments that were made to the Option Agreement,
15 which is fairly typical in long and protracted
16 negotiations. You reach a deal, and then as you start
17 through your due diligence period, what you realize is
18 that there were certain deal points that need to be
19 amended. And the parties agreed upon those amendments.
20 They memorialized those amendments. And they executed
21 those amendments, and those were done before the
22 Commission Agreement was ever executed.

23 Now, notably, and contrary to their testimony,
24 they received those amendments, and we will show the
25 Court the documentary evidence transmitting those

1 amendments to the plaintiffs.

2 You are going to see the first amendment that
3 is found at Exhibit E, and you are going to see the
4 second amendment that is found at Exhibit J. And the
5 principal thing that is important in these amendments --
6 there are two principal things, actually.

7 The original Option Agreement made reference to
8 an acquisition by Pardee for a Purchase Property Price
9 of \$66 million. And it also identified when the initial
10 closing was going to be on the initial parcel that they
11 were going to take down. The amendments, though,
12 increased the price and then made a change as to when
13 the first closing was going to be.

14 And as I indicated, contrary to the deposition
15 testimony, which I would assume is going to be the same
16 thing from the witness stand and the same thing that
17 we've now heard during opening statement, is that the
18 plaintiffs were given copies of those amendments.

19 At the time -- and I think it's important for
20 the Court to have this understanding, and we will
21 present witnesses then to afford the Court this
22 understanding, is at the time this land was in the
23 rawest form of its development. There was no zoning.
24 There was no parceling. There was no mapping. There
25 was no permitting. There was no entitlements. There

1 was no design that had been accomplished at that point
2 in time. All of that was work to be done in the future,
3 and all of that work was going to be done jointly
4 between Pardee and CSI.

5 In addition, which I think is very important
6 for the Court to understand, is that there were multiple
7 issues that were going to impact the boundaries of the
8 lands that were going to be acquired by Pardee.

9 When we point out in the Option Agreement, you
10 are going to see multiple places in the Option Agreement
11 where the parties identified that the boundaries are
12 going to change and that the boundaries that were at
13 issue in the Option Agreement were not fixed.

14 I'm going to use the map that I think the
15 plaintiffs referred to in their opening statement just
16 to make one reference and that being this: This is what
17 the plaintiffs contend is the parcel of property that
18 was being acquired by Pardee under the Option Agreement.
19 That is not accurate, absolutely not accurate.

20 You are going to be able to see the Option
21 Agreement. You are going to be able to listen to the
22 witnesses' testimony, both from Pardee's perspective as
23 well as CSI's perspective. The easiest way to have an
24 understanding that this is not what was at issue is
25 looking at what the size of this is.

1 This property, and as was written into the very
2 first Option Agreement, is 3,605 acres, and I think it's
3 point 22. At another place in the Option Agreement, it
4 identified that Pardee was going to be acquiring land
5 from CSI at a price of \$44,800 an acre. Simple math,
6 you take that 3,605 acres and multiply it by 44,800, and
7 what do you get? 160 million and a whole bunch of
8 change.

9 But the Option Agreement was abundantly clear
10 that the Purchase Property Price was \$66 million. So to
11 suggest that this is what Pardee was purchasing is
12 inaccurate, and we will point out multiple places in the
13 Option Agreement then so the Court can have an
14 understanding as to why that was inaccurate.

15 Now let me identify some of the issues for
16 which the parties knew at the time were going to change
17 the boundaries of what was being acquired by Pardee.
18 Those issues included --

19 THE COURT: When you say "parties," you mean
20 CSI and Pardee?

21 MS. LUNDVALL: Absolutely, Your Honor.

22 THE COURT: Okay. I just wanted to make sure
23 I'm following you.

24 MR. J.J. JIMMERSON: She's not talking about
25 the plaintiffs.

1 THE COURT: Yes. And I think of parties as
2 plaintiff and defendant. I've been a lawyer too long.
3 So I'm following. I just wanted to make sure.

4 MS. LUNDVALL: Thank you, Your Honor.

5 THE COURT: So this is between CSI and Pardee.

6 MS. LUNDVALL: One of the things that you are
7 going to hear from both the Pardee representatives, as
8 well as the CSI representatives, is that there were
9 multiple issues that were going to impact then the
10 boundaries of the lands that were going to be acquired.

11 The first one was the BLM configuration. When
12 you take a look at the entire 43,000-acre site, at the
13 time that the parties began negotiating, there was a big
14 piece that was in the middle of it that belonged to the
15 BLM. The parties wanted to move that outside or move
16 that then to one of the outer boundaries. And there
17 were at least three separate forms and ideas and
18 suggestions for moving that BLM piece to a different
19 location. That still had to be done yet, and they knew
20 that at the time of the Option Agreement, and that's
21 written into the Option Agreement.

22 In addition, there were wildlife issues out at
23 that parcel. There's what they referred to as the Moapa
24 dace, which is a small fish, and its wildlife and its
25 habitat had to be accounted for. There was also

1 wildlife issues dealing with the desert tortoises that
2 had to be accounted for.

3 In addition, there was utility corridor, and
4 that utility corridor was an easement that ran against
5 the very southern portion of the boundary, and the
6 parties wanted to be able to move that utility corridor
7 to federal lands so that that portion of the property,
8 which was very prime developable land, could be used as
9 developable land rather than a utility corridor.

10 They knew that there was going to be golf
11 courses on this entire 43 acres, and that there was
12 going to be a signature course designed by Jack
13 Nicklaus. Jack Nicklaus, you will learn, is a very
14 creative individual, but also a very demanding
15 individual. And he would say, You know, I want Hole
16 No. 3 to go up over against this ridge. And so the
17 boundaries and the contours then of the golf course
18 lands that were being held by CSI, those were being
19 moved to accommodate the designs that Jack Nicklaus was
20 bringing to the golf courses.

21 Also there were subdivision, permitting,
22 entitlement processes, all of which would require
23 boundary changes. In addition, there were design
24 changes. The parties were still working through what
25 was the proper design by which to bring to the

1 Coyote Springs project and how to map that design that
2 they were negotiating.

3 Now, as I indicated, at the same time that
4 Pardee was negotiating with Coyote Springs, they were
5 also negotiating with the plaintiffs concerning their
6 finder's fee or their commission. And what you are
7 going to learn is that Commission Agreement was
8 extensively negotiated.

9 What you are also going to learn is that the
10 plaintiffs were represented by very competent counsel in
11 those negotiations, none other than Jim Jimmerson, as
12 part of this case, and that there were significant
13 negotiations back and forth between those parties.

14 You are also going to learn, and I think the
15 plaintiffs themselves will acknowledge, that they were
16 seasoned real estate professionals. So it wasn't as if
17 this was their first rodeo. It wasn't as if this was
18 their first commission agreement they ever negotiated.

19 All of the obligations they do acknowledge,
20 though, are found within the four corners of that
21 Commission Agreement, and they acknowledge that whatever
22 duties that Pardee had to them are found within the four
23 corners of that Commission Agreement. And equally, the
24 duties that they owed to Pardee are found within the
25 four corners of that Commission Agreement, in addition

1 to the covenant of good faith and fair dealing that's
2 implied within every contract.

3 Pardee had elected to negotiate and to move
4 forward with its Commission Agreement, notwithstanding
5 the very first meeting that Cliff Andrews and Harvey
6 Whittemore had already had before the plaintiffs had
7 introduced Mr. Whittemore to Mr. Lash. It is an example
8 of Pardee doing the right thing by these individuals.
9 Rather than taking the position that, Hey, we've already
10 developed an interest and you guys weren't the people
11 that furthered that interest, they negotiated a
12 Commission Agreement. They did the right thing.

13 Now, this Commission Agreement is going to be
14 found at Exhibit L, and you are going to see that it
15 governs the payment of commissions and also the
16 provision of certain information that Pardee agreed to
17 provide to the plaintiffs.

18 And it's this Commission Agreement that the
19 plaintiffs accuse Pardee of breaching, and they
20 acknowledge that it's the breach of that contract that
21 serves as the common denominator between their claim for
22 breach of contract, breach of the covenant of good faith
23 and fair dealing, as well as their claim for accounting.
24 But you are going to learn from the plaintiffs
25 themselves that they acknowledge that this case is

1 principally about breach of contract.

2 Now, the Commission Agreement expressly states
3 in the very first paragraph that, in fact, all of the
4 capitalized terms in the Commission Agreement have the
5 same meanings that are set forth within the Option
6 Agreement. And that's what requires the Court then to
7 go back and forth between these documents.

8 The copies of the Option Agreement and the
9 amendment, as we had indicated, were given to the
10 plaintiffs by Stewart Title Company, and we will show
11 you the documents transmitting those. Exhibit M is
12 simply one example of those transmissions.

13 What I'm going to do is use the same poster
14 boards that I used during the motion for summary
15 judgment argument in pointing out because it guides what
16 the evidence is going to be within this case. These are
17 excerpts from the Commission Agreement. We've offered
18 the Commission Agreement as Exhibit L.

19 And what you are going to see is that there
20 were three provisions concerning payment. Those three
21 provisions, the first two, dealt with what the Purchase
22 Property Price was that was being paid by Pardee to CSI.
23 And as the Court will see, paragraph 1 and paragraph 2,
24 for those Purchase Property Price, and the commissions
25 that were going to be paid on there have nothing to do

1 with acreage, location, parcels. They had everything to
2 do with what the price was that Pardee was paying to
3 CSI. And this "Purchase Property Price" is capitalized
4 here. So we know that we have to go then to the Option
5 Agreement to determine what that was.

6 Subsection (iii) is going to be important to
7 look at in its entirety, because the commission that
8 they got was not just simply based upon Option Property
9 generically. It was Option Property purchased by Pardee
10 pursuant to paragraph 2 of the Option Agreement. So
11 what we're going to have to do is to obviously go to
12 paragraph 2 of the Option Agreement and to figure out
13 what these purchases might entail if Pardee ever did
14 purchase Option Property.

15 As we're going to demonstrate to the Court, the
16 original Option Agreement provided for \$66 million for a
17 Purchase Property Price, but the amendments took it up
18 to \$84 million. And, therefore, what the Court will see
19 then, through particularly the second amendment, is that
20 these Purchase Property prices then were -- the
21 commissions that were based upon this Purchase Property
22 Price paid to the plaintiffs was based upon \$84 million.

23 Now, there is an argument that could have been
24 made, based upon the language and the way that this was
25 written, is that once you take the 50 and once you take

1 the 16 and they got to the original 66 million, that
2 that's where their commissions could have stopped. But
3 Pardee didn't take that position. It also recognized
4 that they had entered into an agreement based upon
5 Purchase Property Price, and they paid them commissions
6 on the full \$84 million.

7 Now, one of the things that I would also think
8 is important, because of the allegation that we did not
9 give them proper information about the amount and the
10 due dates concerning their commissions, is to take a
11 look at the balance of the Commission Agreement.

12 And let me point out where I'm making reference
13 to. In the Commission Agreement there is this
14 paragraph, and it's been pointed out to the Court many
15 times. It has two provisions to it. The first sentence
16 obligates Pardee to give them a copy of the written
17 option exercise notice given pursuant to, once again
18 we've got reference to paragraph 2 of the Option
19 Agreement, together with information about the acreage
20 that was being acquired. "In addition, Pardee shall
21 keep each of you reasonably informed as to all matters
22 relating to the amounts and the due dates of your
23 commission payments."

24 So what does that mean? We've got to take a
25 look then when the first commission payment was due, and

1 that is set forth within with the Commission Agreement
2 as well. And it informs the Court as to what our
3 commission payments were going to be to the plaintiffs.

4 The first commission payment was going to be
5 made on the initial purchase closing. That, once again,
6 is capitalized and, therefore, we've got to go to the
7 Option Agreement and its amendment to see when that
8 happens. And that was based upon, with respect to the
9 aggregated deposits made prior to that time.

10 The Court is going to learn that that initial
11 purchase closing was in the March, April time frame of
12 2005. They got their first commission payment in accord
13 with that initial purchase closing. The aggregated
14 deposits that had been made at that point in time were
15 \$10 million, and their initial commission then was based
16 upon that \$10 million aggregated payment.

17 And then it says, Pardee shall make each
18 additional commission payment pursuant to Clauses 1 and
19 2 concurrently with the applicable Purchase Property
20 payment to Coyote. It makes no reference to closings.
21 It makes no reference to acreage. It makes no reference
22 to location. It makes no reference to boundaries. The
23 commission payments under paragraphs 1 and 2 were going
24 to be made dependent upon the payments that were made by
25 Pardee to CSI.

1 And one of the things that you are going to
2 learn then is that these purchase -- these payments then
3 began to accrue on a monthly basis. Principally, as
4 part of the Option Agreement, you are going to see a
5 schedule of what the due dates of those payments were.
6 And after the initial aggregated deposits, you are going
7 to see a schedule that obligated Pardee to pay
8 \$1.5 million a month to CSI. And so what happened? The
9 plaintiffs received a commission payment based upon that
10 \$1.5 million payment a month that was being made by
11 Pardee to CSI.

12 The Court is very familiar with the allegation
13 concerning the Option Property payment or the Option
14 Property. In the original motion for summary judgment
15 they had argued that somehow we had changed the
16 definition. As part of our proof that we will bring to
17 the Court's attention, there were no changes to the
18 definition of Option Property across any of the
19 amendments.

20 What we're also going to demonstrate to the
21 Court is that we fully performed under this Commission
22 Agreement. We are going to bring you, under Exhibit A,
23 and it's going to be somewhat tedious, you are going to
24 learn that the escrow companies were responsible then
25 for developing the procedure and they did develop the

1 procedure by which then the plaintiffs were paid.

2 And you are going to see then on a regular
3 basis that there was an order to pay broker commission.
4 That order to pay broker commission, each and every one
5 of them, you are going to see under Exhibit A. And you
6 are going to see that order to pay broker's commission
7 was prepared by the escrow company. It began with
8 Stewart Title and then it moved to Chicago Title.

9 And what you are going to see also then is that
10 those orders to pay broker's commission identify each
11 and every time that there was an aggregate deposit that
12 had been accumulated that was paid at the purchase
13 closing. It identified escrow numbers. It identified
14 dates. It identified amounts of payments, how those
15 were going to be split, which escrow company it was.
16 And those orders to pay commissions were sent then to
17 the plaintiffs.

18 And in addition, when they received their
19 check, there was also a memo as part of their check that
20 identified what the escrow number was concerning this
21 particular transaction as the title company then began
22 to accumulate these monies and then began to pay out on
23 those monies.

24 And you are going to see one by one by one each
25 and every month that they receive those payments, the

1 amount of those payments, and the information that was
2 contained on those payments that was sent to the
3 plaintiffs. And it identified to a T compliance then
4 with this schedule and, therefore, identified to a T
5 that they were reasonably informed as to the amounts and
6 the due dates of their commissions.

7 And I will get into the additional information
8 that they were given as well in support of this after
9 they began advancing questions. But before there was
10 ever any dispute, Pardee took reasonable efforts and
11 exercised those reasonable efforts to ensure that they
12 were informed as to the amounts and the due dates of
13 their commission payments. And all of that then came
14 through the escrow company.

15 Now, the second portion of this case then deals
16 with whether or not Pardee has purchased any Option
17 Property pursuant to paragraph 2 of the Option
18 Agreement. And what the Court is going to learn is that
19 there was a very established process with a great number
20 of documents that would have been generated if Pardee
21 had purchased Option Property pursuant to paragraph 2 in
22 the Option Agreement And let me explain just a little
23 generally how this works because it makes sense, I
24 think, when you have the big picture.

25 There were certain properties that were going

1 to be acquired as these deposits accumulated, as the
2 mapping was done, as some of the boundaries then became
3 to be fixed, and, therefore, the parcels themselves
4 Pardee would know where they were. But what happened,
5 though, after those initial parcels were developed,
6 Pardee had an option to purchase other lands at Coyote
7 that may be designated for single-family residential
8 development.

9 And what happens is that you want to give
10 notice to the world that Pardee had that option. In
11 other words, CSI had to first sell it to Pardee. If CSI
12 was going to designate it, if they were going to sell
13 it, they first had to give Pardee that option. And that
14 was memorialized then in an Option Agreement that was
15 recorded.

16 So what had to happen then is, through the
17 process, when you go through paragraph 2 of the Option
18 Agreement and you put it in conjunction with also
19 paragraph 9, which deals with the escrow instructions
20 that concern Option Property, what you learn is this:
21 That there had to be a designation by CSI of additional
22 single-family properties. There had to be a written
23 notice of exercising that option that was required by
24 Pardee.

25 There had to be a written agreement drawn for

1 the acquisition of that additional Option Property
2 pursuant to paragraph 2, and there would have to be
3 escrow instructions given to the escrow company
4 pursuant -- if Option Property, pursuant to paragraph 2
5 would be acquired. They would have to open an escrow,
6 and all the standard things that go along with
7 purchasing a parcel of property. Classic one, title
8 insurance.

9 Also the parties had a very specific Option
10 Property deed that was going to be required. And in
11 addition, if Pardee was buying portions of what had been
12 designated, there had to be modifications made to the
13 Option Property memo that had been recorded against the
14 other property.

15 In other words, as they -- if they had actually
16 bought Option Property, the Option Property memo would
17 have to get smaller in its description because it would
18 be less. There would be documentary transfer tax
19 documents, and there would be new quitclaim deeds. The
20 quitclaim deeds then were required because there were
21 certain remainder interests that Pardee would be
22 obligated to give back then to CSI as part of such a
23 transaction.

24 So all of those things would have had to have
25 been done if Pardee had purchased Option Property. And

1 when you think about that, when you total all of those
2 things up, and you are going to learn from the
3 witnesses, not only would Pardee have those documents,
4 but CSI would also have those documents, as well as the
5 escrow companies.

6 There were subpoenas, Your Honor, that went to
7 CSI and to the escrow companies, and there were no
8 documents dealing with Option Property that I just
9 described. In addition, there would be public records
10 as to the changes to the Option Property memorandum.
11 The Option Property deeds, transfer taxes, all of that
12 would have been public records. None of those documents
13 exist.

14 When we told the plaintiffs that we had not
15 exercised any Option Property, we were telling them the
16 truth. And part of what you will learn from the
17 witnesses and the documentary evidence in this case is
18 that we have not purchased any Option Property pursuant
19 to paragraph 2 of the Option Agreement.

20 Without that purchase, number one, there would
21 be no written information to give to them. And, in
22 addition, there would be no additional commissions that
23 would be owed to them.

24 Now, one of the things I wanted to begin to
25 highlight a little bit, because it has come up during

1 the opening argument then by plaintiffs' counsel, is
2 that he seems to focus on that we did not give
3 information to which the plaintiffs were entitled to to
4 the plaintiffs when they began their questioning about
5 what information they were entitled to.

6 First and foremost, I think you have to take a
7 look at what did the contractual obligation -- what was
8 Pardee contractually obligated to give to them? We were
9 obligated to give them a notice if we were taking down
10 Option Property pursuant to paragraph 2. If that didn't
11 exist, quite obviously, there would be nothing that we
12 could give to them.

13 You go down then to the last paragraph. We
14 were supposed to keep them reasonably informed as to the
15 amounts and the due dates then of their commissions. So
16 let's talk about then what evidence exists as to what
17 information that they received on that. As I told you,
18 at Exhibit A, the Court is going to find then all of the
19 notices, all of the information that came from the
20 escrow companies, each and every one of the orders to
21 pay commission, the escrow numbers, the information that
22 was on that, how much in payments then that Pardee was
23 making to CSI, how much has been aggregated, how much on
24 a monthly basis they were paying. Each and every one of
25 those pieces of information are contained in there.

1 First it came from Stewart Title and then later
2 it became Chicago Title. It had escrow numbers. It had
3 name of the title company. It had percentage of the
4 commission to be paid, to whom, and how it was going to
5 be split then between the plaintiffs. All of that is
6 found within each Exhibit A.

7 You are also going to find each commission
8 check that was received by the plaintiffs. That too
9 contained the amount of their commission, the escrow
10 number, the payee, the payor, along with a memo
11 explaining how that amount was determined.

12 There came a circumstance across the course
13 then of when Pardee was paying these monthly payments to
14 the plaintiffs that they were overpaid. We learned of
15 that and we sent them a letter telling them that, in
16 fact, that they had been overpaid and how that
17 overpayment was going to be taken into account, in other
18 words, how we were going to catch up that overpayment
19 that was given to them.

20 As part of that letter, we also told them --
21 and we're now like into 2007, into the 2007 time frame.
22 The relationship between Pardee and the relationship
23 between CSI moved on, and the parties had additional
24 negotiations, and they had additional negotiations for
25 other properties. And we told them that we had

1 additional negotiations for these other properties, for
2 example, with the golf course.

3 But we also told them that they weren't
4 entitled to commissions on these other properties, and I
5 think that throughout the course of discovery, that
6 they've finally acknowledged that they are not entitled
7 to commissions on anything other than the single-family
8 residential land.

9 We sent them -- but we told them of these
10 additional negotiations. This was another example of us
11 doing the right thing then by the plaintiffs. We also
12 told them when, in fact, we had made our very last
13 payment that totaled \$84 million to CSI. We sent them a
14 letter telling them, This is when we're making this
15 payment. It will be the last payment, and it will be a
16 total of \$84 million.

17 They began questioning then what land we had
18 taken down in exchange for that \$84 million. Now, from
19 our perspective, we didn't think that we had a duty to
20 give them that, but we thought that it would help them
21 understand what properties that we had received in
22 exchange for the \$84 million.

23 And so we created a parcel map. We identified
24 with specificity then when those were taken down, what
25 amounts were used to pay for those, how that some of

1 those lands that were taken down were purchased at
2 50-percent of value. Why? Because that's what the
3 Option Agreement provided.

4 As we told the Court, we also informed them of
5 the additional negotiations that had been between Pardee
6 and CSI and gave them that information. We informed
7 them that they were not entitled to commissions on those
8 additional transactions.

9 And then when they had questions concerning the
10 takedowns, after they had been paid in full,
11 Mr. Wolfram, on behalf of both himself and Mr. Wilkes,
12 began questioning the title company. And we authorized
13 the title company to give them all information dealing
14 with the single-family production homes, which was the
15 subject of the commission agreement, all information.
16 And the title company did.

17 What you are going to see is exchanges then
18 where Mr. Wolfram was asking for deeds that made up the
19 \$84 million acquisitions, and he received each and every
20 one of them. There were a couple that were missing in
21 the original provision to him. He asked for them and he
22 got those as well. Pardee told the escrow company, Give
23 them all of the information concerning the single-family
24 homes, and they did.

25 At this point in time I could get into arguing

1 my case. I do not think it appropriate to do so during
2 opening statement.

3 THE COURT: There's a time for that.

4 MS. LUNDVALL: I agree with you.

5 But the one thing that I would ask the Court to
6 do -- if this were a jury trial -- and I put this
7 admonition into every single jury trial that I have.

8 THE COURT: Keep an open mind until all the
9 evidence is in. I certainly appreciate that. I told it
10 to every jury. And I will do the same thing.

11 MS. LUNDVALL: Thank you, Your Honor.

12 THE COURT: And I told you that during summary
13 judgment. I only made factual determinations that I
14 needed for that. I said many times when we did it,
15 Counsel, if you remember, I'm not judging the -- until
16 we get to the bench trial, I'm not judging any evidence,
17 and that's what this is for.

18 So I assure both parties, I have not prejudged
19 anything. I have a little more information just from
20 the argument, but as you and I both know, mostly legal.
21 I don't know whether the facts will show that or not.

22 Hopefully, I was clear to both parties at the
23 time of the different motions as we've gone through.
24 I've not made any evidentiary -- that's -- I'm taking
25 very tedious notes for the opening because this is, in

1 all honesty, a lot of a new information that the Court
2 was not aware of.

3 So I will keep an open mind until the end. I
4 understand that obligation, and I promise both parties I
5 will do that.

6 MS. LUNDVALL: Thank you, Your Honor.

7 Because I know that -- I think it's a little
8 bit doubly hard during a bench trial, because the
9 parties have brought certain pieces of information, but
10 it's always been cast into what the obligations were,
11 particularly on a motion for summary judgment.

12 THE COURT: I agree with you completely.
13 That's why I tried to tell you. I learned pieces. I
14 understand I am obligated to make my decision on the
15 full, full facts of the case and in that respect and on
16 the evidence that comes in front of me.

17 And I used to tell juries, you know, we're
18 putting together a puzzle. You don't really know what
19 the puzzle is until all the pieces are there, and I
20 firmly believe that as judge just as I firmly said it to
21 every jury I had, "Please promise me that."

22 And I promise both parties that. I know that's
23 my ethical obligation, and I promise you that is
24 paramount to me that I will do that. I have not
25 prejudged anything.

1 MS. LUNDVALL: Thank you.

2 THE COURT: Just the facts that I needed to try
3 to determine -- you know -- I tried to be very up-front
4 with both counsel when I was analyzing the legal issues
5 that have been, you know, complex and tough. But I
6 analyzed it for those purposes, Counsel, not what will
7 happen at trial.

8 MS. LUNDVALL: Thank you, Your Honor.

9 THE COURT: I promise you that.

10 MS. LUNDVALL: You used the analogy as far as
11 pieces of a puzzle. I use that same one. I also use
12 the analogy of connecting the dots.

13 THE COURT: Yes. I actually thought that was
14 interesting.

15 MS. LUNDVALL: And let me go back and reassure
16 you that we will connect the dots so that you get an
17 accurate picture both from Pardee's perspective as well
18 as CSI's perspective as to what purchases were at issue.

19 THE COURT: And I do understand there's almost
20 three parties here. There's two parties here, but
21 there's this silent third party of CSI that is also here
22 in some respects. I appreciate that's what makes it a
23 more difficult case.

24 MS. LUNDVALL: Thank you, Your Honor.

25 I guess the one last thing that I wanted as far

1 as to underscore with the Court, there was a suggestion
2 during opening statement that the reason that the
3 plaintiffs had received -- or that they filed this case
4 is because they couldn't get information.

5 One of the things that the Court will have to
6 decide is whether or not certain letters are going to be
7 admissible. But if you assume that those letters are
8 going to be admissible, what you are going to learn is
9 that, in fact, the plaintiffs were asking for and they
10 were claiming at the time that their Commission
11 Agreement took them beyond the single-family lands and
12 that they wanted information concerning the commercial
13 transactions, the golf course transactions, other
14 transactions that were not the subject of their
15 Commission Agreement.

16 One of the things that the Court is going to
17 learn from both Pardee, as well as CSI, is that those
18 development details, those development issues that they
19 had negotiated were very important to them and very
20 important to them to be maintained as confidential and
21 not to get out into the community. That's why certain
22 exhibits have been designated as confidential pursuant
23 to the parties' stipulated protective order.

24 If there are specific references made to those
25 issues, we are going to ask the Court to enforce then

1 the protective order, and it may require then certain,
2 you know, folks within the courtroom, that they may not
3 be able to be permitted to be here.

4 THE COURT: Whatever you feel is important, I
5 will certainly enforce it. When I read the
6 confidentiality, I understood that and agreed with that.
7 I think both parties agreed.

8 MS. LUNDVALL: Thank you, Your Honor. With
9 that, we'll look forward to the first witness.

10 THE COURT: I will work with both counsel on
11 the confidentiality so the case can still move forward,
12 but we keep it confidential.

13 I thank both of you.

14 MR. J.M. JIMMERSON: Your Honor, before we call
15 our first witness, do you mind if we take a break?

16 THE COURT: I think that's a great idea. Why
17 don't we take about a 15-minute break.

18 (Whereupon, a recess was taken.)

19 THE COURT: Welcome. Thank you. I had to do a
20 quick order so it was a few more minutes. Sorry.

21 Mr. Jimmerson, call your first witness.

22 MR. J.M. JIMMERSON: We would like to call
23 James Wolfram to the stand, Your Honor.

24 (Whereupon, JAMES WOLFRAM was duly sworn.)

25 THE CLERK: For the record, please state and

1 spell your first and last name.

2 THE WITNESS: James, J-a-m-e-s, F, Wolfram,
3 W-o-l-f-r-a-m.

4 Whereupon,

5 JAMES WOLFRAM,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. J.M. JIMMERSON:

9 Q. Mr. Wolfram --

10 A. Yes.

11 THE COURT: Would you like some water?

12 Marshal, can we get the witness some water?

13 THE WITNESS: There's actually a pitcher.

14 THE COURT: Okay. Perfect. Thank you.

15 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, how old
16 are you?

17 A. I'll be 76 in January.

18 Q. Where do you live?

19 A. 212 Canyon Drive, Las Vegas, Nevada 89107.

20 Q. How long have you lived in Las Vegas?

21 A. 1973.

22 Q. How are you currently employed?

23 A. I'm retired right now.

24 Q. Before you had retired, how were you employed?

25 A. I was a real estate -- well, actually in the

1 beginning, I owned a clothing store. I didn't know what
2 I was going to do when I came out here. But my real
3 estate practice got much bigger than my clothing store.
4 So I had to do away with the clothing store.

5 Q. And what did you -- what does it mean when you
6 tell us that you are a real estate agent?

7 A. That means that I would find properties for
8 other people, through a commission agreement, what have
9 you, and put the two properties together, ready, able,
10 and willing people, and be the procuring cause of a
11 sale.

12 Q. Did you receive any formal education to prepare
13 you for your employment as a real estate agent?

14 A. Certainly. You had to take courses for real
15 estate. Before you can become a real estate agent, you
16 had to take several classes.

17 Q. Did you go to college?

18 A. Yes, I did.

19 Q. Did you graduate college?

20 A. Yes, I did.

21 Q. Where did you go?

22 A. West Virginia University. I graduated in 1964.

23 Q. And what degree did you graduate with?

24 A. I had a degree in industrial forestry.

25 Q. When did you begin working as a real estate

1 agent?

2 A. 1974.

3 Q. And where were you in 1974?

4 A. Here in Las Vegas.

5 Q. How long were you employed as a real estate
6 agent?

7 A. Until -- until I retired. I mean, I retired
8 probably seven or eight years ago.

9 Q. As a real estate agent, how did you earn money?

10 A. I earned money by bringing people together on
11 different purchases, and I got paid a commission for
12 doing that work.

13 Q. And how would you receive this commission?

14 A. Well, you have to be the procuring cause, and
15 you have to have ready, willing, and able people to be
16 buyers. And then you draw up a commission agreement.
17 And if the real estate closes, then you get a
18 commission.

19 Q. When, if ever, would you receive a commission
20 if the land transaction did not close?

21 A. Wow. I don't think that's ever happened to me.
22 That would be rare.

23 Q. Why wouldn't you receive a commission if the
24 land didn't close?

25 A. I didn't earn it.

1 Q. In your experience, is it normal that a real
2 estate agent only receives a commission when a land
3 transaction closes?

4 A. When a transaction closes, that's when you get
5 a commission.

6 Q. What would a normal commission be in your line
7 of work?

8 A. Well, in land, which is mostly what I worked
9 in, it's usually one to ten percent. Ten percent is
10 usually the highest. I'm not saying it can't go above
11 that. There are people that go -- there's usury above
12 there and all that, but normally it's one to ten
13 percent, and you sort of negotiate out what the
14 commission is going to be.

15 Q. And how would that negotiation proceed?

16 A. Well, you'd have to sit down with the seller or
17 the buyer, the one that's paying the commission. You
18 have to sit down and come to some kind of a fair
19 agreement, what both parties thought was a fair
20 agreement.

21 Q. After you had negotiated the commission and
22 entered into a commission agreement, what would you do
23 to ensure that you received the proper commission
24 payment?

25 A. Do you mean -- restate that.

1 Q. Well, after you have a commission agreement and
2 after a land sale has closed and you receive a
3 commission, what do you do to make sure that that
4 commission was the proper amount?

5 A. There are several things. You could check with
6 the recorder's office. You can see that the price was
7 right, those type of things.

8 Q. Have you ever -- do you have any experience
9 where you didn't know if the commission -- where you
10 didn't know initially if your commission was proper and
11 didn't get documents concerning that commission?

12 A. Well, most of the time I had documents. Most
13 of the time you didn't have to worry about getting paid
14 the fair commission. In my business, though, it's very
15 easy in all the different land transactions for people
16 to find ways to go around you so you don't know what's
17 happening. That's when you start going to the
18 recorder's office and looking at parcel maps and what
19 have you, because it does happen.

20 Q. Now, outside of this case, Pardee and
21 Coyote Springs, what experience have you had when your
22 commission would be contingent upon future purchases,
23 like options?

24 A. That rarely happened to me. I mean, usually a
25 commission is paid. It's just paid at the time of

1 closing.

2 Q. Mr. Wolfram, how do you know Walt Wilkes?

3 A. I met Walt. I was one of the people that
4 started Award Realty here in Las Vegas, and Walt came to
5 work for Award Realty. I had a desk in the back part of
6 the real estate office. And Walt came to work, and he
7 sat on the chair right in front of me, and that's when I
8 first met Walt. I had heard Walt's name before and he'd
9 probably heard mine too, because we worked in that same
10 area.

11 Q. Did you ever work with Walt and split
12 commissions?

13 A. Yes. We split a lot of commissions.

14 Q. And how did you begin splitting commissions
15 with Mr. Wilkes?

16 A. Well, we both decided that we both knew a lot
17 about land and real estate, and we felt that joining
18 efforts, we could make more money by joining efforts.
19 So we would both look for land, different land, and put
20 them together and negotiate down what we thought would
21 work, what wouldn't work, and we got a sale. We got
22 paid a commission.

23 Q. How long have you worked with Mr. Wilkes in
24 splitting some of these commissions?

25 A. Wow. The exact number of years, I can't -- I

1 don't know exactly. Maybe ten, somewhere in that
2 neighborhood, I guess. I'm not really certain on the
3 exact date that we had our first commission.

4 Q. Before you had entered into the Commission
5 Letter Agreement of September 1, 2004 with Pardee, did
6 you know a man by the name of Jon Lash?

7 A. Yes, I did.

8 Q. How did you know Mr. Lash?

9 A. I knew Mr. Lash through Walt. Walt had done
10 some land transactions with another gentleman at Pardee
11 Homes. That gentleman left and I guess Jon Lash took
12 his place, as I understand it. And Walt mentioned that
13 Jon Lash was a really nice guy and maybe we should start
14 working with him. I had never met Jon at the time, but
15 I met him through Walt because of his acquaintance.

16 Q. Did you ever work to find land for Mr. Lash
17 before the transaction in Coyote Springs?

18 A. We worked a lot with Jon Lash. We showed
19 Jon Lash a lot of properties. I mean, you have to
20 understand in land real estate, you might show someone
21 ten properties, and you might only -- they might only
22 find one, if they do. You have to show a lot of
23 properties to get a sale because it doesn't -- one
24 property doesn't work for everybody.

25 And we had shown Jon a lot of property. In

1 fact, we showed Jon so many properties that we made an
2 aerial photo and a parcel map to go with it, and we sent
3 the aerial photo and parcel map over to Jon and marked
4 out all the properties we were showing him so when we
5 talked on the telephone, we wouldn't get confused.

6 Q. Did there ever come a time that you met a man
7 by the name of Harvey Whittemore?

8 A. Yes, I met Harvey.

9 Q. When did you meet Harvey?

10 A. Well, I met Harvey personally. I knew Harvey
11 before. Because what was happening, I knew about the
12 land at Coyote Springs, and I'd check on that land every
13 year for several years. I knew that until Harvey got --
14 and he explained that until Harvey got the water at that
15 land, you know, it was going to be very, very tough to
16 have a project.

17 And I'd call a couple times a year, maybe, and
18 ask Harvey if he got the water. And that's how I knew
19 him and until we got into the Pardee transaction, where
20 we explained everything to him and I actually had a
21 meeting and I actually did meet him.

22 Q. Why did you track the land at Coyote Springs
23 before it had the water?

24 A. I knew that project, the way land was going in
25 Las Vegas, the residential land was getting really low.

1 I mean, it's gone from buying big parcels to small
2 parcels for the developers to find something, unless the
3 government would let loose of property. And I knew that
4 up there, it was going to some day be a big project. It
5 will be a nice city in Nevada.

6 Q. Do you remember when Mr. Whittemore got his
7 water?

8 A. Yeah. I had called up there. Here's what
9 happened here. We had shown to Mr. Lash. He was
10 wanting to do a large project and he's done large
11 projects in California. So it was a good buyer. And he
12 asked us to find him some large land.

13 Well, to make a long story short, we did find
14 him some land. We had White Hills over across
15 Boulder Dam or Hoover Dam, and escrow instructions --
16 that came pretty close to becoming a reality, but the
17 water over there, some of the wells they dug was not
18 good water. Some water was fresh water. And there were
19 problems so they finally let the escrow go down.

20 So then we knew Jon wanted the land. We talked
21 to Jon. So we went up to Sandy Valley. And Walt and I
22 made a complete aerial photo of Sandy Valley and a
23 complete parcel map, put them all together so we could
24 see if we could find areas big enough for Jon to do a
25 big project. And we put together up there several,

1 several large acreages.

2 But then again, once we got into it, Mr. Lash
3 went up to Sandy Valley, and he found out that the
4 Petersons had bought up a lot of the water rights, and
5 water was the problem again because the Petersons were
6 taking the water rights up to State Line, and that one
7 fell through.

8 And that's when I called Harvey and I asked
9 Harvey, I said, Harvey, how is the water doing?

10 He said, We've got it. And he said --

11 I said, Well, we've got somebody we'd like to
12 talk to you about, you know, a client.

13 And he said, That would be wonderful except, he
14 says, I've got two offers on the property already.

15 And I said, Hold off. I said, We've got a
16 buyer that's really done this before. This is a buyer
17 that you would really like to have.

18 And he said, Jim, I can't hold off forever, but
19 you go to your client, you talk to your client, and
20 let's see where we go.

21 And that's what I did. I went. And Jon was
22 interested, Mr. Whittemore was interested, and that's
23 how it started.

24 Q. There was a -- you stated that -- once this
25 initial interest had formed, did you ever have a meeting

1 with representatives of Coyote Springs and
2 representatives of Pardee?

3 A. Yes.

4 Q. Do you remember when that meeting was?

5 A. It was after Harvey and Jon had talked and they
6 set up a meeting at their office here close to
7 Warm Springs and the Beltway out there, their office
8 here, to discuss -- they had already decided they were
9 both interested in this project, and that was the
10 initial meeting out there at the time.

11 Q. What did you do during that meeting?

12 A. Basically during that meeting Walt and I would
13 listen. I mean, Harvey knew what he wanted to do with
14 the property. Jon knew he wanted to buy a large
15 property. And we sat and we listened to see, you know,
16 where it was going, whether we were going to get a
17 contract or not.

18 Q. During this meeting was there any indication
19 that Pardee was going to engage in a transaction
20 before -- engage in a transaction with Coyote Springs
21 before you had this meeting?

22 A. Yeah. They were both interested in each other.
23 I mean, they were both interested or we wouldn't have
24 had the meeting. They were both --

25 Q. Was there any specific mention of the dialogue

1 between Mr. Andrews and Mr. Whittemore?

2 A. No, not at all. When I talked -- when Walt or
3 I had talked to Harvey, Harvey told us -- we told him we
4 had a very, very, very strong candidate, I mean, really
5 strong. That interested him.

6 And when we had talked to Harvey, I don't know
7 where this came with Cliff Andrews, because he had told
8 us he had not dealt with Pardee at all, and I heard a
9 minute ago that Cliff Andrews had already talked to him.

10 But I also remember one time Jon coming out of
11 a meeting we had, and he had said -- and Cliff was
12 present -- How does this go when two guys come in with a
13 large property like this, and you are my guy here in
14 Las Vegas and you didn't even know about it?

15 And I know that, from my talking with Harvey
16 when I talked to him, that he did not have any
17 transactions with Pardee. If he did, he certainly
18 didn't say it.

19 Q. Did there ever come a time when Pardee
20 expressed to you that they wanted to engage you and
21 agree to a proper commission for being the procuring
22 cause of the land transaction at Coyote Springs?

23 A. Yes. We discussed drawing up a commission
24 agreement.

25 Q. Did you negotiate that commission agreement

1 yourself?

2 A. No. I didn't negotiate it myself. I felt on
3 something this large, I better get legal help to
4 negotiate the commission. So that was when I went to
5 Mr. Jimmerson, attorney, and had him negotiate the
6 commission. And we asked questions and talked, but he
7 negotiated it.

8 Q. Did there come a time when you finalized and
9 executed this agreement?

10 A. Yes.

11 Q. Can you please open the binder, the Binder 1
12 through 5?

13 THE COURT: If you look on the front, it should
14 say Plaintiffs' 1 through 5.

15 THE WITNESS: Okay. 1 through 5. All right.
16 All right. Ask me again, please.

17 Q. (BY MR. J.M. JIMMERSON) Flip open to Tab 1.

18 A. Let me get my glasses. All right.

19 Q. Mr. Wolfram, what is this document?

20 A. This is the Commission Agreement for
21 Coyote Springs.

22 Q. What is the subject line of this Commission
23 Agreement?

24 A. Option Agreement for the Purchase of Real
25 Property and Joint Escrow Instructions dated as of

1 June 1st, 2004, as amended, the Option Agreement between
2 Coyote Springs, Investment, LLC, (Coyote), and Pardee
3 home of Nevada, (Pardee.)

4 Q. When it says here Option Agreement for the
5 Purchase of Real Property and Joint Escrow Instructions
6 dated as of June 1, 2004, as amended, did you know what
7 agreement that was referring to?

8 A. It was referring to the Option Agreement of the
9 contract that they had signed together, the Option
10 Agreement.

11 Q. Can you flip to Tab 2? Is this that Option
12 Agreement?

13 A. Yes. That's that Option Agreement.

14 Q. Can you please flip to page 39?

15 A. All right.

16 Q. Does the top paragraph on page 39 make any
17 reference --

18 MS. LUNDVALL: Counsel, you are making
19 reference to 39 of the agreement or 39 of the trial
20 exhibit?

21 MR. J.M. JIMMERSON: Page 39 of the agreement.

22 THE WITNESS: When you say top paragraph, are
23 you talking 19 or up above?

24 Q. (BY MR. J.M. JIMMERSON) Above. Does this
25 paragraph make any reference to a Commission Agreement

1 with you and Mr. Wilkes?

2 THE COURT: It's Plaintiffs' 39 -- page 39.

3 MR. J.M. JIMMERSON: I apologize, Your Honor.
4 It's Plaintiffs' 41, is the Bates.

5 THE COURT: I look at the Bates stamp. I'm
6 kind of a Bates stamp person, if you don't mind. Thank
7 you. Makes sense now.

8 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram --

9 THE COURT: I'm sorry, could you --

10 THE WITNESS: Give me just a second to read
11 this and make sure I understand.

12 Okay. I've read it.

13 Q. (BY MR. J.M. JIMMERSON) Does this paragraph
14 make reference to a Commission Agreement with you and
15 Mr. Wilkes?

16 A. Yes, it does.

17 Q. What does it say about that Commission
18 Agreement?

19 A. It says, Notwithstanding the foregoing, upon
20 and subject to the close of escrow for the Purchase
21 Property or any Option Property, buyer shall pay any
22 finder's fee owed to General Realty Group, Walt Wilkes,
23 and Award Realty Group, Jim Wolfram, pursuant to a
24 separate agreement. Said fee shall be split equally.

25 Q. Was the Commission Letter Agreement that's been

1 entered into evidence as Plaintiffs' 1, is that the
2 agreement contemplated by this sentence?

3 A. Yes.

4 Q. Now, it says here --

5 MS. LUNDVALL: Your Honor, I'm going to object
6 to that question and that answer and ask for it to be
7 stricken. This gentleman was not a party to this
8 agreement and, therefore, he doesn't know what was
9 contemplated.

10 THE COURT: Why don't you just rephrase the
11 question? Ask is it his understanding, if you would ask
12 it that way.

13 MS. LUNDVALL: Thank you, Your Honor.

14 THE COURT: You're welcome. Sustained, but
15 just ask it a different way.

16 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, what is
17 your understanding as to the relationship between your
18 Commission Agreement and this sentence in the Option
19 Agreement?

20 A. My understanding is just what it says here,
21 they would pay a finder's fee to General Realty Group,
22 Walt Wilkes, and Award Realty Group, Jim Wolfram,
23 pursuant to a separate agreement, that they would pay me
24 a commission and they would pay Walt a commission.

25 Q. Was there a separate agreement executed?

1 A. Yes. There was a separate agreement executed.

2 Q. Was that the Commission Letter Agreement of
3 September 1, 2004?

4 A. Yes, that was.

5 Q. Now, it says here that there was a finder fee
6 owed to General Realty Group, in parentheses Walt
7 Wilkes, and Award Realty Group, in parentheses Jim
8 Wolfram. What are those two realty groups?

9 A. That was where we were working at the time when
10 this Commission Agreement was drawn up.

11 Q. At the time when you had the Commission
12 Agreement drawn up, who was to be paid the commissions
13 under that agreement?

14 A. Mr. Walt Wilkes and myself split equally.

15 Q. Did General Realty Group and Award Realty Group
16 have any interest in the monies that were being paid as
17 commissions?

18 MS. LUNDVALL: Your Honor, I think --

19 THE COURT: We already addressed this.

20 MS. LUNDVALL: Exactly.

21 THE COURT: We already know it was assigned,
22 and I think that's been decided. So there's not an
23 issue to me that it was owed directly to Mr. Wolfram and
24 Mr. Wilkes, and the realty companies -- we've already
25 decided that; correct?

1 MS. LUNDVALL: Thank you, Your Honor.

2 THE COURT: So I understand that foundation.
3 It goes directly to them.

4 MR. J.M. JIMMERSON: Thank you, Your Honor.

5 THE COURT: The realty companies are out. They
6 assigned their rights and interests. You're welcome.

7 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, please
8 flip back to Tab 1, the Commission Letter Agreement.

9 THE COURT: Is that the same as a Defendant's
10 exhibit.

11 MS. LUNDVALL: It's the same as Defendant's
12 Exhibit L.

13 THE COURT: Okay. I like to keep it.

14 THE WITNESS: Okay.

15 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, in the
16 first paragraph after the greeting, Gentlemen, what does
17 the second sentence say about that paragraph?

18 A. In the event --

19 Q. No. Except --

20 THE COURT: Are you asking him to read it?

21 MR. J.M. JIMMERSON: Yes.

22 THE WITNESS: Are you asking me to read what's
23 after "Gentlemen"?

24 Q. (BY MR. J.M. JIMMERSON) No. The sentence
25 between, "This letter is intended" to and "In the

1 event."

2 A. Except as otherwise defined here, the
3 capitalized words used in his agreement shall have the
4 meanings as set forth in the Option Agreement.

5 Q. What does that sentence mean to you?

6 A. It means to me that anything that's capitalized
7 in this agreement that I have refers back to the capital
8 letters in the Option Agreement. They are tied
9 together.

10 Q. Is the term "Option Property" a capitalized
11 term in this agreement?

12 A. Yes, it is.

13 Q. Is the term "Purchase Property Price" a
14 capitalized term?

15 A. Yes, it is.

16 Q. Please look back to Tab 2 at Plaintiffs' 3,
17 page 3.

18 A. Okay.

19 Q. What is the definition of "Purchase Property
20 Price" in the Option Agreement?

21 A. The purchase price of the Purchase Property,
22 the Purchase Property Price, shall be \$66 million, which
23 shall be payable as follows.

24 Q. Did there come a time that this Purchase
25 Property Price was increased?

1 A. It was, but I -- this is where I really had a
2 little bit of problem. That was what I was calling
3 over. I was calling Jon and calling other people trying
4 to find out. I wanted an explanation as to what was
5 going on. There was -- the amendment came one day
6 before I signed the Commission Agreement. I didn't know
7 anything about an amendment. I was just a little bit in
8 the dark and I wanted an explanation.

9 Q. Please flip to Tab 4.

10 THE COURT: Can you give me a reference what he
11 was just talking about? He kind of --

12 MR. J.M. JIMMERSON: I'm going right there.

13 THE COURT: Thank you.

14 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, are you
15 at Tab 4?

16 A. Not yet. Okay.

17 Q. When you are referring to the amendment, are
18 you referring to this amendment, Amendment No. 2 to
19 Option Agreement for the Purchase of Real Property and
20 Joint Escrow Instructions?

21 A. Yes.

22 Q. What is the date of this amendment?

23 A. It's the 31st day of August, 2004.

24 Q. What is the day after the 31st day of August,
25 2004?

1 A. September 1st, and that's when I signed my
2 Commission Agreement.

3 Q. Well, did you sign on September 1st or did you
4 sign on September 6th?

5 A. Well, that was the date. I'm sorry, Your
6 Honor. That was the date of the Commission Agreement.
7 I signed on the 6th of September.

8 Q. Looking at page 2 of this tab, this exhibit, at
9 paragraph 4(b), do you see what it says there near the
10 top?

11 A. It says, The purchase price of the Purchase
12 Property, the Purchase Property Price, shall be
13 \$84 million, which shall be payable as follows.

14 Q. So when we were discussing the increase in the
15 Purchase Property Price and you said the amendment, you
16 were referring to Amendment No. 2; is that right?

17 A. Yes.

18 Q. You said there was some confusion as to the
19 contents of this amendment. Did you ever write to
20 Mr. Lash concerning your concerns and questions about
21 this amendment?

22 A. I was really -- I was really somewhat confused
23 here. I called -- I called, mostly. And I didn't
24 understand what was going on. All I wanted was a simple
25 explanation at first to tell me what was happening.

1 Because I knew what my Commission Agreement said, and
2 all of a sudden my Commission Agreement had changed. It
3 had gone up \$18 million and I have no clue. Nobody told
4 me what it was and nobody would tell me what it was.

5 Q. Mr. Wolfram, did you ever question or were you
6 ever concerned with the change in the date of the
7 closing date?

8 A. You mean changing the date from 66 to 84? Is
9 that what you are --

10 Q. No. The date of when the transaction would
11 close?

12 A. I'm sorry. I'm still confused what you are
13 after here.

14 Q. I'll show you Defendant's Exhibit N.

15 THE COURT: That's in a different notebook.

16 Q. (BY MR. J.M. JIMMERSON) That's in the big
17 notebook.

18 A. 6 through 33?

19 Q. No. The Defendant's notebook. Can you open it
20 to Tab N, please.

21 THE COURT: Take your time. You have a lot of
22 notebooks. We're fine.

23 THE WITNESS: Okay.

24 Q. (BY MR. J.M. JIMMERSON) Have you seen this
25 document before?

1 A. Yes, I have.

2 Q. What is it?

3 A. Okay. Let me read it here. It was a letter --
4 Walt and I weren't sure how the commission was going
5 down. We were supposed to get paid, I think it was 30
6 days after the settlement agreement or something to that
7 degree. And this -- our commission payment wasn't
8 coming exactly like it had been stated. And we were
9 calling over and we were trying to find out actually why
10 things have changed.

11 Q. You say here in paragraph 2, It's not fair to
12 think amendments with Pardee Homes and the seller affect
13 our Commission Agreement. Why did you say that?

14 A. Because we had an original Commission Agreement
15 and, to us, that was our Commission Agreement. If they
16 amended it, you know, I can't understand how you can
17 amend a contract without going through Walt and myself.

18 Q. Mr. Wolfram, do you believe -- do you still
19 have that same sentiment today?

20 A. Yes.

21 Q. Why do you have that same sentiment?

22 A. Because like any other real estate transaction
23 I ever did, I signed a contract. And when I signed a
24 contract, that was the contract. And then all of a
25 sudden this contract had been changed without even

1 telling me. I mean, I don't understand that. That was
2 hard for me to understand.

3 Q. Did you ever execute any further agreements
4 with Pardee after the September 1, 2004 Commission
5 Letter Agreement concerning the transaction at
6 Coyote Springs?

7 A. I didn't execute a new agreement, no.

8 Q. Did you ever send a letter or send an e-mail to
9 representatives of Pardee whereby you would adopt or
10 conform with later amendments even after Amendment No. 2
11 to the Option Agreement?

12 A. Not that I recall.

13 Q. Mr. Wolfram, back to Tab 2.

14 A. In the defendant or back to the other?

15 Q. Tab 2 is in the Plaintiffs'.

16 A. Let me get this out of the way here. Okay.

17 Q. Mr. Wolfram, you just got done discussing and
18 stating the definition of Purchase Property Price was
19 the purchase price of the Purchase Property. Can you
20 tell us what the definition of "Purchase Property" is
21 under the Option Agreement for the Purchase of Real
22 Property and Joint Escrow Instructions?

23 A. Is that -- you want me to read the top? Is
24 that what -- the agreement?

25 Q. It would begin in paragraph B on page 1.

1 MS. LUNDVALL: What exhibit are you on,
2 Counsel?

3 MR. J.M. JIMMERSON: Tab 2.

4 THE WITNESS: Are you ready?

5 THE COURT: I'm ready. I'm there.

6 THE WITNESS: All right. The parties desire to
7 enter into this agreement to provide for (i) buyer's
8 purchase of the portion of the entire site consisting of
9 Parcel 1 and shown on Parcel Map 98-57 recorded July 21,
10 2000, in Book 20000721, as Document No. 01332, Official
11 Records, Clark County, Nevada, containing approximately
12 3,605.22 acres as shown on the map attached hereto as
13 Exhibit B and made a part hereof, the Purchase Property,
14 and (ii) buyer's options to purchase the remaining
15 portion of the entire site which is or becomes
16 designated for single-family detached production
17 residential use, as described below, the Option
18 Property, in a number of separate phases referred to
19 herein collectively as the option parcels and
20 individually as an option parcel, upon the terms and
21 conditions hereinafter set forth.

22 Q. (BY MR. J.M. JIMMERSON) You just read a lot.

23 A. You bet.

24 Q. When you were reading the terms referring to
25 Parcel 1 as shown as Parcel Map 98-57, what did you read

1 that Parcel 1 on that parcel map to mean?

2 A. That that was -- Parcel 1, I read as the
3 original Purchase Property.

4 Q. You read also the definition for Option
5 Property. What is your understanding, reading that
6 definition, of what the meaning of "Option Property" is?

7 A. To me, that meaning means that anything after
8 Parcel 1 will be handled on an acreage, Option Property
9 handled as acreage, and we were to be paid on 40,000 per
10 acre one and a half percent for the remainder of the
11 property.

12 Q. I understand that you are discussing the
13 Commission Letter Agreement. I'm just asking
14 specifically what's your understanding of the meaning of
15 the Option Property as it relates to Purchase Property?

16 MS. LUNDVALL: Your Honor, on this one I'm
17 going to suggest that this is not an appropriate witness
18 to talk about the understanding of these agreements
19 because he wasn't a party to it.

20 THE COURT: Do you want to lay a little
21 foundation? I assume when he did his Commission
22 Agreement, he was shown this because --

23 MR. J.M. JIMMERSON: Yes.

24 THE COURT: -- the Commission Agreement
25 incorporated it. So just lay a little foundation how

1 he's aware of this and his understanding why it would be
2 relevant to his Commission Agreement.

3 Q. (BY MR. J.M. JIMMERSON) Prior to signing the
4 September 1, 2004 Commission Letter Agreement, had you
5 read and had you seen the Option Agreement for the
6 Purchase of Real Property and Joint Escrow Instructions?

7 A. Yes.

8 Q. Did you feel it necessary to understand the
9 capitalized terms in the Commission Letter Agreement as
10 defined in this agreement?

11 A. Yes.

12 Q. So as you read the definition for Option
13 Property, what was your understanding upon reading that
14 definition?

15 A. My understanding was that anything after the
16 Purchase Property Price was Option Property for the rest
17 of the entire site and it was done on acreage.

18 Q. Did you understand that it needed to have a
19 particular designation?

20 A. Yeah. Option Property has a designation. To
21 be fair to Pardee, we only have -- you get that long
22 name -- single-family detached production residential
23 property. That's all we bought. And if they took down
24 property and it had condos or it had apartments in it,
25 we're not entitled to that. So there had to be a

1 designation so it would be fair to Pardee.

2 Q. It says, Designated for single-family detached
3 production residential use as described below. Do you
4 understand that description to include the term
5 "production residential property"?

6 A. Yes.

7 Q. Can you please flip the page to page 2 now. In
8 the middle of the page can you tell us --

9 A. You are on 2 on 2; right?

10 Q. Yes. It's in the middle of the big paragraph.
11 Can you tell us the definition of "production
12 residential property"?

13 A. Yeah. Let me find it here. The Purchase
14 Property and the Option Property are sometimes referred
15 to herein collectively as the production residential
16 property.

17 Q. Can you continue reading concerning the
18 description?

19 A. Okay. Means that portion of the net usable
20 acreage as defined below that encompasses all of the
21 Purchase Property and the Option Property which
22 includes, without limitations, all single-family
23 detached production residential lots, which shall
24 include lots on which custom homes are constructed by
25 buyer, all land for roadways, utilities, government

1 facilities, including schools and parks, which school
2 and park sites are subject to the provisions of
3 paragraph 7(c) below, open space required or designated
4 for the benefit of the residential development pursuant
5 to the master plan, a habitat conservation plan, or a
6 development agreement, drainage ways or any other use
7 associated with or resulting from the development of the
8 Purchase Property and each option parcel of the Option
9 Property.

10 Continue?

11 Q. That works. Reading this description of what's
12 included in production residential property, do you
13 believe that it's limited to just single-family homes?

14 A. No. In any real estate transaction, if you
15 sell 80 acres to a home builder, there's always
16 easements. There could be roads. There can be
17 defaults. There are all kinds of things in there where
18 you are paid for because they put them within the
19 boundaries of where they are building homes.

20 Q. Is this description of production residential
21 property consistent with your experience as you just
22 described it?

23 A. Not exactly, from what I've been told a time or
24 two.

25 Q. What does that mean?

1 A. Well, whenever I called over -- I don't know if
2 this is the area that you are getting to or maybe I'm
3 misunderstanding what you are saying, but we had found
4 out that there were some separate agreements done with
5 Pardee and Harvey Whittemore on other property. And we
6 had thought that since we were the procuring cause on
7 the whole parcel in the beginning, that we should be
8 included in that because we were the ones that brought
9 the property to them, ready, able, and willing, and we
10 were the procuring cause.

11 MS. LUNDVALL: Your Honor, I think that this is
12 a nonresponsive answer and I would move to strike.

13 THE COURT: I think he misunderstood what --
14 Your counsel was asking you about whether, in
15 your experience, this description of this residential
16 property included what's stated here. I think that's
17 what you are asking.

18 Q. (BY MR. J.M. JIMMERSON) Was this description
19 of single-family homes, government facilities, schools,
20 parks, is that consistent with your experience --

21 A. Yes.

22 THE COURT: Let him finish his question because
23 we want a good record.

24 Q. (BY MR. J.M. JIMMERSON) -- your experience in
25 brokering land transactions?

1 A. Yes.

2 Q. Would that experience also include custom lots?

3 A. Yes.

4 MS. LUNDVALL: Your Honor, I'm going to object
5 as to what his experience has been regarding custom
6 lots, because we haven't heard any testimony that he had
7 any experience in that regard.

8 THE COURT: Well, I think the foundation was
9 laid that he's done -- he's known for ten years. He's
10 actually been in the real estate business since '74 and
11 done land transactions. So I think that's enough
12 foundation.

13 I can ask. As part of your career in
14 residential -- in real estate, did you include custom
15 lots in some of your land transactions?

16 THE WITNESS: Yes.

17 THE COURT: Did you have experience with custom
18 lots?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 MS. LUNDVALL: The reason I continued with the
22 objection is because the agreement makes no reference to
23 custom lots.

24 THE COURT: I'm sorry. I thought I read that.

25 MS. LUNDVALL: Homes. There's a difference

1 between custom homes and custom lots.

2 THE COURT: Well, why don't you lay the
3 foundation. In his experience, is there a difference
4 between custom homes and custom lots, and fill it in
5 then. In your experience, are custom homes --

6 MR. J.J. JIMMERSON: Your Honor, let me -- I
7 want to correct opposing counsel. She misstates. The
8 language, as the Court has read, says, quote, includes
9 lots on which custom homes -- so lots are specifically
10 referenced in this provision as being included in the
11 definition, the wide definition, residential production.

12 THE COURT: For the record, it does say --

13 MS. LUNDVALL: Well, I'm not either mistaken.
14 I'm objecting to the question, and as the Court will
15 hear from the testimony of the folks that negotiated
16 this agreement, that there is a difference with a
17 distinction, Your Honor.

18 THE COURT: I understand that, but let's
19 take -- because you are referring specifically to the
20 document, page 2 of Exhibit 2.

21 MR. J.J. JIMMERSON: That's right.

22 THE COURT: So that's what our questions are
23 based on right now. Correct?

24 MR. J.M. JIMMERSON: Yes.

25 THE COURT: And for our purposes, it does say,

1 which shall include lots on which custom homes are
2 constructed by buyer. Okay.

3 Just for -- in your experience, when a builder
4 such as Pardee buys lands for production of
5 single-family residences, has it included the
6 description that is here of lots on which custom homes
7 are constructed by buyer? Has that been included in
8 single-family residential property, in your experience?

9 THE WITNESS: To me, when I go out and look for
10 custom lots for a builder, he's going to build a custom
11 home on it. I mean, I don't know what other way to say
12 that. You may have five or six -- sometimes, like Toll
13 Brothers did, five or six, they call them custom homes,
14 but they -- you know, they --

15 THE COURT: They really weren't.

16 THE WITNESS: They really had big homes on
17 them. If someone asked me to find custom lot homes, I'm
18 out looking for lots normally half acre to build a
19 really nice custom home.

20 MR. J.M. JIMMERSON: Thank you, Mr. Wolfram.

21 THE COURT: I appreciate your honesty.

22 MR. J.M. JIMMERSON: I don't think Toll
23 Brothers does.

24 Q. Can you please flip back to the Commission
25 Letter Agreement in Tab 1?

1 A. Okay.

2 Q. Mr. Wolfram, explain to us how you are to be
3 paid under the Commission Letter Agreement.

4 A. Well, the original Commission Letter Agreement
5 is 66 million and Pardee shall pay four percent of the
6 Purchase Property Price payments made by Pardee pursuant
7 to paragraph 1 of the Option Agreement up to a maximum
8 of \$50 million.

9 And the second portion of that says, (ii), Then
10 Pardee shall pay one and one-half percent of the
11 remaining Purchase Property Price payments made by
12 Pardee pursuant to paragraph 1 of the Option Agreement
13 in the aggregate amount of \$16 million.

14 And do you want me to go on with the rest of
15 the Option Property on the bottom?

16 Q. We can talk about this section.

17 Did you understand that Purchase Property Price
18 included the definition of Purchase Property Price --
19 the purchase price for Purchase Property from the Option
20 Agreement?

21 A. Yeah. I know what -- I know how I was paid on
22 it. I know what Purchase Property is.

23 Q. Reading this document, does it -- in your
24 experience and reading this document, does it make a
25 difference under the Purchase Property formula here how

1 many acres were sold?

2 A. No.

3 Q. What would make a difference in your
4 commissions?

5 A. If it was sold by acreage, it would have to
6 be -- if that's what you are after, I'm at 40,000 an
7 acre, one and a half percent for the -- that's how I got
8 paid. Under the Purchase Property, I get paid as they
9 make payments. It's just straight. There is no --
10 there is no distinction on the acreage and Purchase
11 Property.

12 Q. Okay. Well, you said that as they make
13 payments. Are you referring to what they call Purchase
14 Property Price payments here?

15 A. Yes.

16 Q. Now, it says here Purchase Property Price
17 payments made by Pardee pursuant to paragraph 1 of the
18 Option Agreement. Flip back to Tab 2, please, on
19 page 3.

20 A. Hold on a second. Where are you?

21 Q. Tab 2, the Option Agreement.

22 A. All right. I've got it.

23 Q. When the Commission Letter Agreement says,
24 Pursuant to paragraph 1 of the Option Agreement, is this
25 what they are referring to, this -- these price

1 payments -- these Purchase Property Price payments?

2 A. Yes.

3 Q. Now, these payments, it appears, proceed
4 through one, two, three, four different phases. Do you
5 see that?

6 A. Yes.

7 Q. Did you receive payment for -- did you receive
8 commission payments consistent with these types -- with
9 these four phases?

10 A. I think I did.

11 Q. Early on you received a large lump-sum payment?

12 A. Right.

13 Q. And the next phase you received --

14 A. Then we received so much per month up to a
15 point, and then it was reduced down to half of that per
16 month until paid -- until it was paid.

17 Q. I'm sorry. Again, back to Exhibit 1.

18 A. Okay.

19 Q. The very bottom of the page,
20 subparagraph (iii), it states, pursuant to
21 paragraph 2 -- Option Property purchased by Pardee
22 pursuant to paragraph 2 of the Option Agreement. Do you
23 see that?

24 A. Yes.

25 Q. Now let's flip back to Exhibit 2 on page 5,

1 please.

2 A. All right.

3 Q. Do you see the paragraph titled Grant of
4 Option?

5 A. Titled what?

6 Q. Grant of Option.

7 A. Oh, yeah. Okay, yes.

8 Q. Looking at this paragraph, what procedure did
9 Pardee have to follow in order to purchase Option
10 Property?

11 MS. LUNDVALL: You are asking him for what his
12 understanding is?

13 MR. J.M. JIMMERSON: Uh-huh.

14 THE WITNESS: Let me read just a second.

15 THE COURT: Absolutely. Please take your time
16 because your answers are important. We're not in any
17 rush.

18 THE WITNESS: All right. Thanks.

19 Well, without reading the whole thing, I start
20 out there's -- they can purchase within five years.
21 They can purchase the full property. And if they don't
22 purchase the full property, then we get down and they
23 can purchase portions of it. They have to send a
24 letter, you know, to Harvey letting him know before what
25 they want to do. Basically, that's what it's all about.

1 Q. (BY MR. J.M. JIMMERSON) You say this letter.
2 Are you referring to the option exercise notice?

3 A. I hadn't read that far. I just knew that for
4 them to take down Option Property, that they had to
5 inform Harvey that they were going to take down a
6 certain amount of acres. I didn't read down there to
7 see what you were saying.

8 If you've get a point in it you want me to
9 read, let me know where it is and I'll --

10 Q. It says here, Buyer may exercise its option --

11 MS. LUNDVALL: Your Honor, is this a question
12 or is this an answer?

13 MR. J.M. JIMMERSON: No. This is a question.

14 THE COURT: I think you are trying to point him
15 where in the document, but could you give us a page and
16 line?

17 Q. (BY MR. J.M. JIMMERSON) Page 5, second
18 paragraph from the bottom.

19 A. Second paragraph from the bottom, okay.

20 Q. I'm reading from the fourth line up from the
21 bottom starting with "Buyer may exercise."

22 A. All right.

23 Q. Buyer may exercise its option during the option
24 period described in subparagraph (c) below by giving
25 written notice of such exercise to seller in the manner

1 set forth in paragraph 17 below.

2 And when you talked about a letter --

3 A. That's what I'm talking about.

4 Q. Do you know or does paragraph 2 here describe
5 what needs to be included or what the process is of
6 issuing a written notice of such exercise?

7 A. Let me see here. It says you can go -- if all
8 the other obligations have been performed, then they can
9 go ahead and give the written notice.

10 Q. Does it tell you exactly what needs to be
11 included in the written notice other than what it says
12 in the manner set forth in paragraph 17 below?

13 A. I don't see that.

14 Q. Can you flip to paragraph 17? I believe it's
15 on page 37.

16 I'll get you the Bates stamp, Your Honor. 39.
17 Bates stamp 39, page 37 in the middle.

18 A. Okay, okay. I've got page 39.

19 Q. Page 37, PLTF 39.

20 THE COURT: He's referring to the page numbers
21 in the middle, which are the original for the document.
22 If you look on the side, there's also PLTF. That's the
23 Bates stamp numbers. So if he says Bates stamp, he
24 means the PLTF number.

25 THE WITNESS: I got it now.

1 THE COURT: It's confusing even for attorneys.
2 So I understand.

3 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, do you
4 see the paragraph numbered 17 entitled Notices?

5 A. Yes.

6 Q. Where in this paragraph does it describe or
7 state specifically a written option exercise notice?

8 A. Let me read it. It says they have -- it shall
9 be in writing and personally delivered or sent by
10 overnight courier or mailed by registered or certified
11 mail by depositing the same in the United States mail
12 depository in a sealed envelope, postage prepaid, and
13 addressed as follows.

14 Q. Does this paragraph 17 describe what
15 information -- other than this notice of these
16 particular people -- what information is required for a
17 written option exercise notice?

18 A. No, it doesn't.

19 Q. Can you please flip to page 46?

20 PLTF 48 is the Bates stamp, Your Honor.

21 A. Okay.

22 Q. Do you see it's a list of exhibits?

23 A. I do.

24 Q. Looking at this list of exhibits --

25 MS. LUNDVALL: Where are you, Counsel?

1 MR. J.M. JIMMERSON: PLTF 48, page 46.

2 MS. LUNDVALL: Thank you.

3 Q. (BY MR. J.M. JIMMERSON) Looking at this list
4 of exhibits, do you see an exhibit for a form written
5 option exercise notice?

6 A. No.

7 Q. Okay. So besides following the notice
8 procedures of personal service, certified mail, as
9 described in paragraph 17, what can you tell us is
10 required or the procedure in order to properly exercise
11 an option notice?

12 THE COURT: Based on this agreement?

13 MR. J.M. JIMMERSON: Yes.

14 THE WITNESS: I don't really see it.

15 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, back to
16 Exhibit 1, our Commission Letter Agreement.

17 A. I'm there.

18 Q. Okay. So on page 2, please look to paragraph 2
19 beginning with, "Pardee shall provide to each of you" --
20 do you see that?

21 A. Yes, I do.

22 Q. Reading the first sentence, what is your
23 understanding of what needed to be provided to you in
24 the event Option Property was purchased?

25 A. Pardee shall provide to each of you a copy of

1 each written option exercise notice given pursuant to
2 paragraph 2 of the Option Agreement, together with
3 information as to the number of acres involved and the
4 schedule.

5 They want to -- they have to inform me,
6 according to paragraph 2 of the -- the number of acres
7 and give me the information of the sale.

8 Q. Why would it be important to know the number of
9 acres?

10 A. That's how I get paid. If I don't know the
11 number of acres --

12 THE COURT: For Option Property?

13 THE WITNESS: Yeah. If it's Option Property, I
14 have to know the number of acres so I know if I'm paid
15 right.

16 Q. (BY MR. J.M. JIMMERSON) And it says you will
17 receive a copy of the written option exercise notices,
18 and then it says together with information as to the
19 number of acres involved -- I'm sorry -- and the closing
20 date.

21 Why is it important to know the closing date of
22 the option purchase or the purchase of Option Property?

23 A. That's when it's consummated and that's -- if
24 it doesn't close, you don't get paid.

25 Q. The second sentence says, In addition, Pardee

1 shall keep each of you reasonably informed as to all
2 matters relating to the amount and due dates of your
3 commission payments.

4 What does that sentence mean to you?

5 A. Well, it means to me that -- I tell you, it
6 means to me that I need the information. If I'm going
7 to track what's going on on this transaction, I need
8 information that tells me what's going on on this
9 transaction.

10 If I don't receive certain things, parcel
11 numbers, maps, especially maps and parcel numbers, I
12 don't have a clear view of what's being taken down or
13 what they are doing. I need information.

14 I mean, it's easy for someone maybe like Pardee
15 to sit over there and not send me anything. But do you
16 know what it's like for me sitting over here wondering
17 what's going on and not being able to figure it out? I
18 mean, I need somebody to at least discuss a little bit
19 with me.

20 MS. LUNDVALL: Your Honor, at this point in
21 time I think that he's gone beyond the scope of the
22 question.

23 THE COURT: I think he was doing a comment. He
24 felt he needs information to know what was taken down.
25 So I understand the gist of his answer.

1 MS. LUNDVALL: Thank you.

2 THE COURT: I'm not going to base it on
3 frustration.

4 MS. LUNDVALL: Thank you.

5 THE COURT: You're welcome. I understand it,
6 but I'm not basing anything on it.

7 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, if you
8 did not receive information that would allow you to
9 confirm or to check or to verify that you had received
10 the proper amount of commissions, would you consider
11 yourself to be reasonably informed as to all matters
12 relating to the amount and due dates of your commission?

13 A. If I don't receive that information, I really
14 don't know what's going on. I need the information or
15 I'm out in the dark.

16 Q. Why is it important to have information that
17 allows you to verify the accuracy of the calculation of
18 your commission payments?

19 A. I'll give you a good example. I mean -- well,
20 I don't know if this will be a good example. But when I
21 have that information, I can track what's going on to
22 see if there's any mistakes made or no mistakes made.

23 And it's just like under the original payment,
24 we were paid 30,000 apiece per month. When it got down
25 to the point where it was cut in half, 11,250, I'm the

1 one that caught that mistake. Walt and I caught that
2 mistake. I called over. See, I had information. I was
3 looking at it. And I called over and I let them know,
4 You are paying us too much. We don't want too much.
5 We're just being fair.

6 And I talked to Jon, and Jon said he would have
7 his accountants call me and we worked out this payment
8 schedule to make it up. But I was just trying to be
9 honest. You know, I caught it. It takes information to
10 find something like that.

11 Q. Mr. Wolfram, this line here says that you
12 should be reasonably informed as to all the matters
13 related to the amount and due dates of commission. You
14 discussed earlier maps, parcel numbers --

15 A. Right.

16 Q. When it says here "all matters relating to the
17 amount and due dates of your commission payments," what
18 does that mean to you?

19 A. Anything that pertains to my Commission
20 Agreement.

21 Your Honor, I can care less about what houses
22 they're building, all the thick stacks of paper and
23 attorney language and all that. I don't even care about
24 that. But once in a while there's a few lines in there
25 about the Commission Agreement. That's what I'm

1 interested in because that's how I get paid. I'm not
2 after trying to change all the stuff that they've agreed
3 to, just what pertains to me.

4 Q. What pertains to you?

5 A. Anything that gets me paid my commission.

6 Q. What would get you paid your commission?

7 A. Well, the land has to close. And after
8 closing, if someone would let me know what it is, then I
9 know I get paid a commission.

10 Q. Reading this and applying it to the transaction
11 at hand between CSI and Pardee, would you need to know
12 the location of the parcel or the parcels that were
13 being --

14 THE COURT: Are you talking about Option
15 Property or the purchase --

16 MR. J.M. JIMMERSON: Just the geographic
17 location.

18 THE COURT: No, no. Which type of property?

19 MR. J.M. JIMMERSON: Well, I'm asking if it's
20 important, no matter whether it's Option Property or
21 Purchase Property.

22 THE COURT: If you would preface that.

23 MR. J.M. JIMMERSON: I'm sorry if I was
24 unclear.

25 THE COURT: Maybe I'm not following. I just

1 want to make sure I'm following. Because we were under
2 a section on the Option Property. So then if we
3 switched -- I'm interested in the distinction between
4 what he needs when he's looking at his commission under
5 the first (i) and (ii), which is, as we know, the
6 Purchase Property Price. What does he need to make sure
7 he's getting a correct commission there? Do you mind if
8 you ask that or if I ask that?

9 THE WITNESS: May I say something?

10 THE COURT: Absolutely. You are the witness.
11 I need your testimony.

12 THE WITNESS: It doesn't make any difference to
13 me whether it's -- this is really a stinger for me. It
14 doesn't make any difference to me whether it's Purchase
15 Property or whether it's Option Property. I need to
16 know. I need maps. I need to know where it lays within
17 the boundaries of the whole scope of things. If I don't
18 have that, I've got nothing.

19 I can't -- I spent so much time trying to
20 figure out what was going on down there with acreage
21 because I didn't have anything. I mean, I worked long
22 and hard at it to put my own map up. I need maps. I
23 need, on option and purchase, where is it and, you know,
24 how much, parcel numbers, what have you.

25 Q. (BY MR. J.M. JIMMERSON) Now, you say you need

1 maps, whether it's Purchase Property or Option Property.
2 Why do you need to know the location? Why do you need
3 to have the map?

4 A. Well, that puts down where they are developing.
5 It shows me where they are developing. And if something
6 closes, then I know that I'm getting paid for it. And
7 it shows where it closes and I can make a trail. It's
8 like just tracking what's going on. Like Pardee's
9 counsel saying you follow the dots, you know, you kind
10 of trail it.

11 Q. Mr. Wolfram, in this particular case you
12 receive different commissions based on whether it's
13 Purchase Property or Option Property; right?

14 A. Yes.

15 Q. And the location of the parcels can determine
16 whether it's Purchase Property or Option Property?

17 A. Well, anything --

18 MS. LUNDVALL: Your Honor, I'm going to object.
19 This is now leading.

20 THE WITNESS: Okay. I'll tell you --

21 MS. LUNDVALL: Your Honor, from this
22 perspective I have an objection as far as --

23 THE COURT: I know. Because it's mostly
24 foundation, we're having a little struggle here.

25 MS. LUNDVALL: All we're doing is going back

1 and forth now.

2 THE WITNESS: I'm probably the struggle.

3 MS. LUNDVALL: Mr. Wolfram, there is no --

4 THE COURT: You are not the struggle. What
5 we're trying to do and your counsel is trying to ask
6 you, why do you need maps, parcels, location, and
7 everything for Purchase Property as well as Option
8 Property? Can you tell us specifically for the Purchase
9 Property, when it's not done by acreage, it's done by a
10 map?

11 THE WITNESS: Everything outside of Parcel 1,
12 which is the Purchase Property, in my opinion, is Option
13 Property. That's what I originally signed my commission
14 on. Anything outside of Parcel 1 was Option Property.

15 THE COURT: Okay. That was your understanding
16 when you signed the September 1, 2004 Commission
17 Agreement? I just want to make sure I understand your
18 testimony.

19 THE WITNESS: That is absolutely 100 percent
20 true, right.

21 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, as we
22 discussed earlier, the land, in your experience in this
23 case with Pardee and CSI, the land is designated
24 sometimes, for example, production residential property
25 or multi-family or commercial. How important is it to

1 know how the land is designated?

2 MS. LUNDVALL: Your Honor, from this
3 perspective I need to object once again based on
4 leading.

5 MR. J.M. JIMMERSON: It doesn't suggest the
6 answer.

7 THE COURT: Not really.

8 MS. LUNDVALL: It has a big long preface to it.

9 THE COURT: I was going to ask you to rephrase
10 it because I got a little lost.

11 So I'm not sure if you understood.

12 THE WITNESS: I think I understand it.

13 THE COURT: Well, tell us what you think he was
14 asking you and we can answer that.

15 THE WITNESS: I think he was saying that I need
16 to know, to be fair with Pardee and fair with me, what
17 it's designated. If it's condos or apartments, I don't
18 get paid on it. I don't get paid on any of that. And
19 if I don't know the designations, I have no clue as to
20 whether I've been paid right or paid wrong. Because
21 some of those parcels are going to have condos and
22 apartments and things like that. That I don't deserve
23 any money on.

24 THE COURT: So the designation you are looking
25 for is single-family production --

1 THE WITNESS: -- production residential
2 whatever.

3 THE COURT: So that's why you would like to
4 know the designation for your commission?

5 THE WITNESS: Yes.

6 Q. (BY MR. J.M. JIMMERSON) In paragraph 4 on
7 line 4 --

8 THE COURT: We're still on Exhibit 1?

9 Q. (BY MR. J.M. JIMMERSON) Same page, page 2.

10 A. I gotcha.

11 Q. Paragraph 4, line 4 begins with, the first
12 part, Pardee, its successors and assigns -- Mr. Wolfram,
13 Pardee, its successors and assigns, shall take no action
14 to circumvent or avoid its obligations to you as set
15 forth in the agreement.

16 What did this statement mean to you?

17 A. Well, I'll be gone by the time this is all
18 over, and there will be assigns, and my wife will be
19 gone. That's what really worries me, because of my
20 family. That's the reason I'm here.

21 It means that they have to be provided the same
22 thing as what I'm provided, I guess, the information, so
23 they can track what's going on and be reasonably sure
24 they are getting paid right.

25 Q. Well, I'm asking you, understanding your

1 reading of this agreement.

2 A. Well, their successor and assigns have to pay
3 my assigns and things as the thing goes on even after
4 I'm gone or, you know, to make it fair. I mean, I'm
5 obligated and they are obligated.

6 MR. J.M. JIMMERSON: Your Honor, at this point
7 I would ask that the witness be handed what's been
8 premarked as Plaintiffs' Exhibit 25. It is the parcel
9 map.

10 THE CLERK: They should be behind him. There
11 should be a sticker that says Plaintiffs' Exhibit 25.

12 MR. J.M. JIMMERSON: Your Honor, at this time I
13 would ask that the Court take notice that the original
14 version of this document, which is over here, has the
15 seal of the Clark County Recorder's Office.

16 THE COURT: These are public documents, is what
17 you are saying?

18 MS. LUNDVALL: Your Honor, we would like the
19 opportunity then at the first break to be able to look
20 at that.

21 THE COURT: Absolutely. Have you not seen it?

22 MS. LUNDVALL: None of the originals that have
23 the certificate on there, no.

24 THE COURT: Do you want to look at it right now
25 while we're --

1 MS. LUNDVALL: We will do that at the first
2 break. I see that we're pretty close.

3 THE COURT: We'll go ahead forward assuming
4 what Mr. Jimmerson is saying is true, but you can
5 certainly look at it.

6 MR. J.M. JIMMERSON: I certainly hope so.

7 THE COURT: I do too.

8 MR. J.M. JIMMERSON: I'll wait for Your Honor.

9 THE COURT: I'll unroll mine. I really do want
10 to follow. Okay. I got it.

11 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, what is
12 this a parcel map of?

13 A. To me, this is the parcel map of my original
14 Commission Agreement. This is the -- Parcel 1 is the
15 Purchase Property.

16 Q. And what is the parcel map number there on the
17 bottom left-hand -- bottom right-hand portion?

18 A. File 98, page 57.

19 Q. Is the same file and page referenced in the
20 Option Agreement --

21 A. Yes.

22 Q. -- as Purchase Property?

23 A. Yes.

24 MR. J.M. JIMMERSON: Your Honor, I'd now like
25 to move for the admission of this evidence as

1 Plaintiffs' Exhibit 25.

2 THE COURT: Any objection?

3 MS. LUNDVALL: Your Honor, number one, based on
4 his testimony, he's already testified that the Purchase
5 Property Price was the calculation upon which his
6 commission was based upon and acreage wasn't important
7 to him. So it's hard for me to understand what
8 relevance this particular map has.

9 THE COURT: Because he said for him to
10 determine whether he was getting the actual commission
11 for outside, he wanted to -- he wanted to know what was
12 in Parcel 1. That's what his understanding was of what
13 the Purchase Property was.

14 So it's very relevant because for him it was
15 his understanding of the Commission Letter. And I
16 think that Parcel 1, as in Exhibit 25 he's identified,
17 is what his understanding was is what was covered by
18 Purchase Property. Everything else was option.

19 THE WITNESS: Option.

20 THE COURT: So I do find the relevance of his
21 understanding of what this is, because that's what he
22 was making his determination of as to his understanding.
23 So --

24 MS. LUNDVALL: I understand the Court's --

25 THE COURT: Truth or not, I do feel it is

1 relevant.

2 MS. LUNDVALL: I understand the Court's ruling
3 on this, recognizing that, in fact, there is going to be
4 testimony from the actual parties to the agreement as to
5 what this was supposed to constitute.

6 THE COURT: I absolutely understand that. I
7 understand this is his understanding, and I know we're
8 all here because there was different understandings. I
9 fully appreciate that. That's why we're all here.

10 But I'm going to go ahead and admit Plaintiffs'
11 Exhibit 25. There's several pages. Are they marked?

12 MR. J.M. JIMMERSON: They do have sheet
13 numbers.

14 THE COURT: For your record, we'll do -- the
15 sheet numbers are Plaintiffs' 10463 through 10468, so we
16 make sure we have the complete exhibit. All right.

17 MS. LUNDVALL: 10463?

18 THE COURT: I'm using the PLTF Bates stamp
19 number on the bottom.

20 MS. LUNDVALL: Thank you, Your Honor. My
21 apologies.

22 THE COURT: I'll tell you, I do more by Bates
23 stamp. So if I refer to exhibits, I use the Bates
24 stamps. When it's Plaintiffs' 25, I use the Bates
25 stamps so we know we have the complete. That's easier

1 for me to follow.

2 MR. J.M. JIMMERSON: I will endeavor to use
3 those Bates stamps.

4 THE COURT: I'm sorry. It's years of doing it.
5 I want you to have a clear record.

6 MR. J.M. JIMMERSON: Actually, I'm going to put
7 this demonstrative so I'm following along with
8 Mr. Wolfram.

9 Q. Mr. Wolfram, please flip to Sheet 2, which is
10 the Bates stamp PLTF 10464. Are you there?

11 A. Where it shows Parcel 1, 3605.22 acres?

12 Q. Are you seeing the Lincoln-Clark County line?

13 A. Yes, I am.

14 Q. Okay. Looking at Sheets 2, 3 and 4, the 464,
15 465 and 466, if you were to put them on top of each
16 other, would you get a map that looks something like
17 this?

18 A. Yes.

19 Q. If you were to look at the first page of this
20 exhibit, PLTF 10463, does that indicate how the sheets
21 are supposed to be constructed to reveal what the shape
22 of the parcel is?

23 A. Yes.

24 Q. Is the shape of the parcel similar to this
25 parallelogram-like structure?

1 A. It's similar to it, yeah. I've gotta use my
2 other glasses.

3 THE COURT: That's fine. Whatever glasses you
4 need.

5 THE WITNESS: That's a long way over.

6 MR. J.M. JIMMERSON: I'll move it up.

7 Q. Mr. Wolfram, looking at your sheet, it's going
8 to be closer in front of you, are you able to read this
9 map and determine the width from the westernmost portion
10 of the Parcel 1 to the easternmost portion of Parcel 1
11 along the Lincoln-Clark County line?

12 A. Yeah. If I added up the numbers at the top, it
13 tells you from dot to dot how many feet it is. If those
14 are all added up, it would give you the distance.

15 MR. J.M. JIMMERSON: Okay. Your Honor, I have
16 it calculated. I would like to add it up, unless we can
17 stipulate to the math.

18 THE COURT: I can't do it in my head. I don't
19 know about you, Counsel.

20 MR. J.M. JIMMERSON: I've already calculated
21 it.

22 THE COURT: We can verify your calculation.
23 Tell us which figures you are giving him. I'd like to
24 follow.

25 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, we'll

1 start from the western portion of this sheet here. See
2 this square here?

3 MS. LUNDVALL: Maybe the question would be from
4 Mr. Wolfram's perspective, if he is going to be the
5 proponent of this exhibit, to find out which numbers
6 that he would add up.

7 THE COURT: I thought that was what you were
8 asking.

9 MS. LUNDVALL: That's not the question that's
10 being posed.

11 THE COURT: Why don't we do this: Tell us how,
12 looking at this is exhibit -- we're looking at 10464?

13 MR. J.M. JIMMERSON: Yes.

14 THE COURT: I see. They are on top of each
15 other. Okay.

16 Looking at 10464, do you see that represented
17 in the demonstrative exhibit?

18 THE WITNESS: It's up at the top.

19 THE COURT: How would you -- what figures would
20 you -- tell us where the most westerly point is on the
21 Lincoln County line to the most easterly portion.

22 THE WITNESS: I can do it off here or I can do
23 it up there.

24 THE COURT: Just so we can follow.

25 MR. J.M. JIMMERSON: I think she wants you to

1 point here.

2 THE WITNESS: Coming across here.

3 THE COURT: So you are starting on where the
4 first dark circle is?

5 THE WITNESS: Yes. And it gives you footages.
6 From here to here is 1398.35. From here to here is
7 1796.84. From this dot to this dot is 861.24. From
8 here to the next dot is 2662.52. And then we go to the
9 next one, which is 1277.97. If you add those all up,
10 you got your distance.

11 THE COURT: So you are going from the black --
12 from where I circled to where I circled?

13 THE WITNESS: Right.

14 THE COURT: I just want to make sure I'm
15 following you.

16 Q. (BY MR. J.M. JIMMERSON) So to add that up,
17 since you just named these distance, the 1398.35 number,
18 using your calculator --

19 A. You want me to --

20 Q. Yes, please. I would ask just simply to
21 confirm the number.

22 A. Okay, okay.

23 THE COURT: Are you good with calculators or do
24 you want someone to help you?

25 THE WITNESS: I understand.

1 Q. (BY MR. J.M. JIMMERSON) So the 1398.35 plus,
2 you said, this 1796.84.

3 A. Okay. I'm adding them. You told me to add
4 them.

5 Q. Plus the bottom number, 861.24.

6 MS. LUNDVALL: Why aren't you adding in the
7 2858 that's at the top?

8 THE WITNESS: Above 17, right to the right
9 of --

10 THE COURT: There's some numbers on the top and
11 some on the bottom.

12 MR. J.M. JIMMERSON: Because that's the same as
13 the 1796 plus the 861. It's the same distance. They
14 just are divided.

15 MS. LUNDVALL: Do you think that maybe the
16 witness might be able to provide the testimony?

17 MR. J.M. JIMMERSON: I thought you were asking
18 me. I didn't realize it was cross-examination.

19 THE WITNESS: It's logic to me. If I add those
20 up, I know --

21 THE COURT: Let's do this. You add the numbers
22 you think are appropriate. If we need to cross-examine,
23 we can do that. But I'll take this based on your
24 experience --

25 THE WITNESS: I'm sorry.

1 THE COURT: You don't need to apologize. We're
2 all trying to get the truth.

3 Your experience reading these kind of maps, all
4 your years, you tell us what numbers you are adding up,
5 Mr. Jimmerson will follow along here, so we get a total.

6 So far we have -- am I right -- we started out
7 with what, 1796.84?

8 MR. J.M. JIMMERSON: I thought we started with
9 1398 and then we went to 1796.

10 THE COURT: I'm confused too.

11 MR. J.M. JIMMERSON: The last thing I have in
12 my phone is that number.

13 THE COURT: That's the new one. Let's start
14 from scratch.

15 MS. LUNDVALL: Mr. Wolfram --

16 THE COURT: There's numbers above the solid
17 black line and numbers below it. Do you see that?

18 THE WITNESS: I see that.

19 THE COURT: Do you add all of them together or
20 do you add the ones below or --

21 THE WITNESS: Well, to me --

22 THE COURT: How would you read it?

23 THE WITNESS: To me, I add the numbers like
24 between the -- you start out with the first dot. It
25 comes over to it looks like a balloon, to a dot, and I

1 can see that that's 1398.35 feet. Then I go from that
2 dot to the next dot, I can see that that is 1796.84. I
3 go from that dot to the next dot, 861.24. Then we got a
4 long one right here, 2662.52. And then from there to
5 the end, it's 1277.97. It came out to almost 8,000.

6 MS. LUNDVALL: Is all this going on the record?

7 THE COURT: Start again. I'm just trying to
8 follow. And we'll get it all on the record so you are
9 not left out.

10 THE WITNESS: You want me to say it again?

11 THE COURT: Are you starting with the -- which
12 number are you starting with? I can find the location.

13 THE WITNESS: I'm starting with 1398.35.
14 That's the number I'm starting with.

15 THE COURT: Okay. So you are starting with
16 1398.35. Then what number are you doing next?

17 THE WITNESS: Then the next number, I'm going
18 1796.84.

19 THE COURT: All right.

20 THE WITNESS: Then the next number I'm going is
21 861.24.

22 THE COURT: Okay.

23 THE WITNESS: And then we've got a long one,
24 2662.52 and then the last number, 1277.97.

25 THE COURT: Okay.

1 THE WITNESS: You want me to add all those up?

2 THE COURT: If you could.

3 THE WITNESS: He can go faster than I can.

4 MR. J.M. JIMMERSON: You are the witness,
5 Mr. Wolfram.

6 THE WITNESS: Okay. I got 11,000 -- 11,654.

7 MR. J.M. JIMMERSON: Do you want to try it
8 again?

9 THE COURT: Mr. Shipley, did you do it? What
10 did you get? The Court is wanting to know.

11 MR. SHIPLEY: 7996.

12 THE WITNESS: That's what I got the first time
13 when we were talking, close to 8,000. This time I put
14 another number in there.

15 THE COURT: So Mr. Shipley got 7996 point
16 something.

17 THE WITNESS: That's what I got when we did it
18 again.

19 THE COURT: So you are going to testify to me,
20 before you started redoing it, you also got 7996.92?

21 THE WITNESS: Yeah, point 92, right.

22 THE COURT: Okay. I'll accept that.

23 THE WITNESS: I know what I did.

24 THE COURT: That's the westerly to the easterly
25 quarter on the Lincoln-Clark County line. All right.

1 THE WITNESS: It's nearly 8,000 feet.

2 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, you see
3 these lines right here in the middle of the page of
4 Sheet 2?

5 A. I do.

6 THE COURT: When you say Sheet 2 --

7 MR. J.M. JIMMERSON: I apologize. 10464, it's
8 on the same sheet.

9 THE COURT: Perfect. Keep the Bates number.
10 Okay. Perfect. I see it.

11 Q. (BY MR. J.M. JIMMERSON) Do you see it says
12 2640 and then it goes 5280?

13 A. Yes.

14 Q. If you flip the sheet, the next sheet, which is
15 10465?

16 A. Same number.

17 Q. And if you were to look at the third sheet,
18 which is 10466 --

19 A. Same numbers.

20 Q. Are you -- what are you able to conclude as to
21 whether or not the boundaries, the eastern-western
22 boundaries, as to whether or not they are parallel?

23 A. They're parallel because the distance is the
24 same all the way down.

25 Q. So to understand you correctly, when you say

1 the distance is the same all the way down, the 7996.92
2 number would be the same at the same angle here and here
3 and here?

4 A. Yes.

5 MR. J.M. JIMMERSON: Excuse me, Your Honor.

6 Mr. Wolfram --

7 THE WITNESS: Am I done with this one?

8 MR. J.M. JIMMERSON: Almost. I have a couple
9 more questions, and then we can break, Your Honor, if
10 that would be convenient.

11 THE COURT: That's fine.

12 Q. (BY MR. J.M. JIMMERSON) Looking at your
13 sheets, what is the western border of this Parcel 1?

14 A. That's the highway that goes, Highway 93.

15 Q. Does the Highway 93 run the length of Parcel 1?

16 A. Yes.

17 MR. J.M. JIMMERSON: Your Honor, I think we can
18 take a break. We'll be moving into another document.

19 THE COURT: Okay. We'll go ahead and take our
20 luncheon recess. It's up to your preference, Counsel.
21 I know you are the ones preparing for stuff. Do you
22 want to come back at 1:30, an hour?

23 MS. LUNDVALL: Your Honor, an hour, 1:45?

24 THE COURT: Okay. That's fine. We'll take a
25 recess then until 1:45.

1 (Whereupon, the lunch recess was taken
2 from 12:44 p.m to 1:45 p.m.)

3 THE COURT: Good afternoon, Counsel.

4 MR. J.J. JIMMERSON: Good afternoon,
5 Your Honor.

6 THE COURT: We're going to continue with
7 Mr. Wolfram?

8 MR. J.J. JIMMERSON: Yes, Your Honor.

9 THE COURT: You are still under oath.

10 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, please
11 flip to Tab 2, the Option Agreement.

12 A. Okay.

13 Q. Again, referencing paragraph B, (i), Buyer's
14 purchase of the portion of the entire site consisting of
15 Parcel 1 as shown on Parcel Map 98-57 recorded July 21,
16 2000, in Book 20000721, as Document No. 01332, Official
17 Records, Clark County, Nevada, containing approximately
18 3605.22 acres as shown on the map attached hereto and as
19 Exhibit B and made a part hereof, the Purchase Property.

20 In this Option Agreement, did it include a map
21 of this Parcel 1 of Parcel Map 98-57 at Exhibit B?

22 A. I don't know. Yeah, I guess it did.

23 Q. Well, can you flip to Exhibit B?

24 A. Okay. I have to think about that.

25 THE COURT: 050, that little number on the

1 right side.

2 THE WITNESS: Okay.

3 Q. (BY MR. J.M. JIMMERSON) Do you see a map here
4 of Purchase Property?

5 A. No. And that's what I was telling you earlier.
6 Yeah. Okay. Go ahead.

7 Q. It appears, and correct me if I'm wrong,
8 Exhibit A, the map of the entire site, B, C, the map of
9 Option Property, D, the map of initial developed parcel,
10 basically these maps were not included in the Option
11 Agreement. Is that right?

12 A. No, they were not.

13 MS. LUNDVALL: Your Honor, I'd like to, as far
14 as have a continuing caution that the witness is
15 supposed to testify, not the attorney. And what I would
16 like to do is to make sure that we get the testimony of
17 Mr. Wolfram and not of the attorney.

18 THE COURT: Okay. So what she's saying, your
19 question was the other ones don't say it and he agreed.
20 It's really more a leading question. It may take a
21 little longer, but say, Look at Exhibit A, look at
22 Exhibit C. Okay?

23 MR. J.M. JIMMERSON: Yes, Your Honor.

24 THE COURT: So I'm going to sustain the
25 objection. And you want a clear record too.

1 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, does
2 it include -- do the exhibits include a map of the
3 entire site?

4 A. No.

5 Q. Do they include a map of the Option Property?

6 A. No.

7 Q. Do they include a map of the initial developed
8 parcel and phasing plan?

9 A. No.

10 Q. Did it include a map of the Purchase Property?

11 A. No.

12 Q. Did you ever have any communications, after
13 receiving this document, the Option Agreement, with a
14 representative of Pardee concerning Parcel 1 on Parcel
15 Map 98-57 on the boundaries of Purchase Property?

16 A. Yeah. I've had a conversation.

17 Q. Who did you speak with?

18 A. Jon Lash.

19 Q. What did Mr. Lash say?

20 A. Well, the Purchase Property, to me, had
21 specific boundaries. Is that the direction that I'm
22 headed right here?

23 Q. I was just asking what he said.

24 A. I talked to Jon a lot of times on properties.
25 And to be very, very honest with you, when I'd call over

1 there, the answer I got most is, You'll just have to
2 trust us.

3 I asked for certain individual things. And
4 they'd say, No, no, no. You know, we're doing what we
5 gotta do. You have to place your trust on us and
6 everything will be right.

7 And I'd explain the fact that I can't go on
8 trust. I need some maps. You've got to show me. You
9 have to show me something where I have something
10 concrete, but I never really -- I never really got
11 anything concrete.

12 Q. Were those conversations where you were
13 requesting maps, were they around the time of summer of
14 2004?

15 A. Yes.

16 MS. LUNDVALL: Once again, leading question,
17 Your Honor.

18 THE COURT: I'm going to go ahead. I agree
19 it's leading, but it's foundation.

20 See if you can get -- ask him if he knows the
21 time frame. If not, you can try to refresh his
22 recollection from now.

23 Since it's out, we'll go ahead and go forward,
24 but I understand your objection.

25 THE WITNESS: Okay.

1 THE COURT: Now we have summer of 2004.

2 THE WITNESS: Okay. What you are asking me on
3 the Option Agreement, Option Agreement for the Purchase
4 of Real Property and Joint Escrow Instructions, ask me
5 that again, what you are talking about.

6 Q. (BY MR. J.M. JIMMERSON) Well, you said that
7 you had conversations with Pardee about Parcel
8 Map 98-57, Parcel 1, and the boundaries of Purchase
9 Property. I just want to know what was said in the
10 conversations.

11 A. We had boundaries on the Purchase Property.
12 There were definite boundaries on what we were going to
13 do with Purchase Property.

14 Q. Did you later receive copies of these maps at
15 Exhibit B and Exhibit A to Exhibit C, later?

16 A. Well, I heard about -- later on. But before I
17 ever signed the contract, my commission contract on, I
18 guess it was August 31st, there was an amendment, a
19 second amendment, which definitely defined the
20 boundaries of the Purchase Property. I mean, in no
21 uncertain terms, it defined them. Even though I hadn't
22 seen it at that particular point, I knew about it.

23 Q. Have you seen a copy of a map of Parcel 1 on
24 Parcel Map 98-57?

25 A. Yes.

1 Q. Can you please flip to Exhibit 4?

2 A. Okay.

3 Q. Page 1.

4 It's going to be the first page, Your Honor.

5 A. Okay.

6 Q. At the very bottom of the page, paragraph 3, it
7 says, Upon execution of this amendment --

8 MS. LUNDVALL: Your Honor, maybe a question
9 might be appropriate.

10 MR. J.M. JIMMERSON: Your Honor, I'm about to
11 get there.

12 THE COURT: You are just --

13 MR. J.M. JIMMERSON: If he wants to read it
14 silently, it's fine.

15 THE COURT: Why don't you point him to -- do
16 you see where he's pointing to, the last paragraph?

17 Q. (BY MR. J.M. JIMMERSON) Do you see
18 paragraph 3?

19 THE COURT: The bottom.

20 THE WITNESS: Yeah, 3.

21 THE COURT: Can you read that to yourself? And
22 then counsel is going to ask you a question.

23 THE WITNESS: Okay.

24 Q. (BY MR. J.M. JIMMERSON) Did those Exhibits A,
25 B, C, D, G, I, J, K, P, L, and Q -- I'm sorry. Strike

1 that.

2 Is Exhibit A attached hereto?

3 A. No.

4 Q. Can you please check, Mr. Wolfram?

5 A. Okay. Let me check. I had some questions
6 about that one. Oh, oh, oh, okay. Which exhibit was it
7 you said?

8 Q. Are there maps reflecting on --

9 A. Yes, there are.

10 Q. -- Exhibit A?

11 A. Yes. I'm sorry.

12 THE COURT: That's okay. Just take your time.

13 Q. (BY MR. J.M. JIMMERSON) Please look to
14 CSI-Wolfram 1563. It's Exhibit B.

15 A. All right.

16 Q. What is this a map of?

17 A. That's the Parcel 1, the Purchase Property.
18 Parcel 1.

19 Q. What exhibit, looking back to Exhibit 2, was
20 supposed to be the map of Purchase Property, Parcel 1,
21 as show in Parcel Map 98-57?

22 A. When you look at the maps in the back, it shows
23 Purchase Property. The Purchase Property is in all
24 those maps, really.

25 Q. But this map -- I just want to talk

1 specifically about Exhibit B. Is this the map -- what
2 exhibit was the map attaching the map of Purchase
3 Property or Parcel 1, 98-57, on the original Option
4 Agreement on Exhibit 2?

5 A. I'm not understanding what you are doing here.

6 Q. Mr. Wolfram, you've testified that this is a
7 map of Purchase Property at Exhibit B?

8 A. Absolutely.

9 Q. Okay. This is part of Exhibit 4, Amendment
10 No. 2 to Option Agreement for the Purchase of Real
11 Property and Joint Escrow Instructions. Is this the
12 agreement that you were referring to when you talked
13 about the August 31st document?

14 A. Yes.

15 Q. Did you receive the attached exhibits of the
16 maps of A-1, A-2, B, as contained herein?

17 A. Yeah. I knew exactly -- I knew where they
18 were, but I didn't -- but I didn't really know the --
19 how do I put that? You've got me confused on what you
20 are asking me, and I don't want to answer wrong. It's
21 very important.

22 Q. I just want to know, is this the same exhibit
23 that was supposed to be attached --

24 A. Yes, it was.

25 Q. -- reference to --

1 A. Right.

2 Q. -- Exhibit 2 to the original Option Agreement?

3 A. Right. That is exactly right. Now I
4 understand.

5 Q. I just wanted to confirm.

6 Mr. Wolfram, this Amendment No. 2 also included
7 other exhibits as we discussed; is that right?

8 A. Right.

9 Q. Please look at Exhibit A-1, CSI-Wolfram 1560.

10 A. Okay. Got it.

11 Q. What is this a map of?

12 A. That's before the realignment. That's -- the
13 property had an open space in the middle, and they were
14 going to do a realignment to get that to the outside so
15 that the property was whole.

16 THE COURT: This is Parcel 1 with the BLM land
17 in the middle of it?

18 THE WITNESS: No.

19 THE COURT: Please do it again.

20 MR. J.M. JIMMERSON: I'm about to.

21 THE COURT: I'm sorry. You were going to
22 clarify.

23 Q. (BY MR. J.M. JIMMERSON) When it says at the
24 top here "map of the entire site," what is that
25 referring to?

1 A. That refers to Clark County, Lincoln County,
2 all the way, the whole site.

3 Q. Are you able to look at this map and see where
4 Parcel 1 is, if it's indicated here?

5 A. Yes.

6 Q. Where is that?

7 A. Lower left-hand corner.

8 THE COURT: Lower left-hand.

9 THE WITNESS: Right here.

10 MR. J.M. JIMMERSON: Your Honor --

11 THE COURT: For the record, there's a black
12 line at the bottom, the second black line towards the
13 lower. And it's anything below that on the left side of
14 the BLM land?

15 THE WITNESS: Right below this line.

16 THE COURT: Why don't you, for the record --
17 can you show Counsel?

18 MS. LUNDVALL: There's no labels on this
19 document. He's just --

20 THE COURT: I know, but that's where he thinks
21 it is. So I want it clear of what he is interpreting
22 this map he thinks it is.

23 So we need you to hold it up for us and
24 describe it and point to it --

25 MR. J.M. JIMMERSON: Yes.

1 THE COURT: -- so we have a record.

2 MR. J.J. JIMMERSON: Jim, take it out of the
3 book, please.

4 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, can you
5 point --

6 A. This is what we're referring to right here.

7 THE COURT: Okay. And does it go all the way
8 from the black line there all the way down?

9 THE WITNESS: Right here.

10 THE COURT: For the record, he's pointing --
11 you can do it. I'm sorry.

12 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, can you
13 tell the Judge what that bottom line is, that dashed
14 line, that big black going horizontal one-third up from
15 the bottom of the page?

16 A. That's the top of Parcel 1.

17 Q. Is that the county line? Do you know?

18 A. Yeah. That's Lincoln County line, right.

19 Q. Again, for the record, can you please point to
20 where Parcel 1 is on this map?

21 Let the record reflect that he's pointing to
22 the bottom left-hand corner rectangular section --

23 THE COURT: The striped section.

24 MR. J.M. JIMMERSON: -- the striped section of
25 Exhibit A-1 on CSI-Wolfram 1560, below the county line.

1 Q. Mr. Wolfram, please flip the page to
2 Exhibit A-2.

3 A. Okay.

4 Q. What is this a map of?

5 A. That's a map after the configuration, Judge.

6 MS. LUNDVALL: Is that his understanding of
7 what this map is?

8 THE COURT: Yes. You are testifying to your
9 understanding of what the map is?

10 THE WITNESS: Yeah. It's after the -- they
11 took the donut out, took the hole out of the middle and
12 made a whole property.

13 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, does this
14 map identify the boundaries of Purchase Property or
15 Parcel 1?

16 A. Yes.

17 Q. Where is it?

18 A. Lower left-hand corner.

19 Q. Can you point to it?

20 A. Same place.

21 Q. Mr. Wolfram, comparing Exhibit A-1 to
22 Exhibit A-2, is there any difference that you can tell
23 of the location of Purchase Property or Parcel 98-57?

24 A. One and the same.

25 Q. Mr. Wolfram, please flip to Exhibit C-1,

1 CSI-Wolfram 1565.

2 A. Okay.

3 MS. LUNDVALL: Where are you at?

4 MR. J.M. JIMMERSON: 1565, Exhibit C-1.

5 THE WITNESS: C-1 is -- okay.

6 Q. (BY MR. J.M. JIMMERSON) Do you have it in
7 front of you? Can you tell the Court what this is a map
8 of?

9 MS. LUNDVALL: What he understands this to be a
10 map of.

11 THE COURT: Yes. Everything you are testifying
12 to regarding these maps is your understanding. Correct?

13 THE WITNESS: Yes.

14 THE COURT: I'm clear on that.

15 THE WITNESS: It's the map of the entire site
16 before the configuration, and I do see the Purchase
17 Property down in the lower left-hand corner.

18 Q. (BY MR. J.M. JIMMERSON) Is it shaded in?

19 A. No. It's not shaded in.

20 Q. Do you know why?

21 A. Well, it wasn't really a part --

22 Q. Mr. Wolfram, I'm confused. Because I'm reading
23 here, it says, "Map of Option Property prior to BLM
24 reconfiguration" at the top here. I want to know -- are
25 you looking at --

1 A. Okay. I see. I was looking at the
2 handwriting. Map of Option Property prior to BLM
3 reconfiguration. Right.

4 Q. Do you understand this --

5 A. I understand what your question is now. I do
6 understand.

7 What he wants me to see, and I do see it, is
8 that the Parcel 1 in the lower left corner, that was not
9 Option Property. That was Purchase Property. And so it
10 wasn't shaded in like the rest of the property.

11 Q. Okay. Can you please flip the page to C-2,
12 CSI-Wolfram 1566?

13 A. All right.

14 Q. What is this a map of?

15 A. That's the reconfiguration with the Purchase
16 Property down in the lower left-hand corner. The
17 stripes are still the Option Property.

18 Q. Mr. Wolfram, did you receive a copy of
19 Amendment No. 2 to Option Agreement for the Purchase of
20 Real Property and Joint Escrow Instructions?

21 A. Eventually. Let me explain how I think this
22 happened. I signed my Commission Agreement. I actually
23 signed it on September 6th. The Commission Agreement is
24 dated September 1st.

25 THE COURT: I saw your signature was

1 September 6th. The record speaks for that.

2 THE WITNESS: And on August 31st, there was the
3 second amendment. And the second amendment defined
4 exact boundaries, like my contract, exact boundaries on
5 that Purchase Property, the portion in the lower
6 left-hand corner, distinct boundaries of what it was.

7 Q. (BY MR. J.M. JIMMERSON) Did you receive a
8 prior amendment to Option Agreement for the Purchase of
9 Real Property and Joint Escrow Instructions?

10 A. No.

11 Q. Can you please flip to Exhibit 3?

12 A. Bear with me. I don't do as good as you guys.
13 Did you say 3 or 2?

14 Q. Exhibit 3.

15 A. Give me a number at the bottom. I don't see
16 it.

17 Q. It's the Court's Exhibit 3, the Plaintiffs'
18 Exhibit 3.

19 MR. J.J. JIMMERSON: Bates stamp 91, 2 and 3.

20 THE COURT: It's in the Plaintiffs' book.

21 THE WITNESS: The plaintiff, okay.

22 THE COURT: It's okay. Take a deep breath.
23 You are fine.

24 THE WITNESS: All right.

25 Q. (BY MR. J.M. JIMMERSON) Did you receive this

1 document in or around the summer of 2004?

2 A. Okay. This --

3 THE COURT: Do you remember receiving this in
4 around --

5 THE WITNESS: Okay. That's what I'm getting
6 at. It has Amendment at the top. It doesn't have like
7 Amendment 1, 2, 3. Is there a number on that amendment?

8 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, I'm
9 asking if you received this document?

10 A. Yeah. I guess I did.

11 Q. Do you remember receiving it?

12 A. No, not really.

13 THE COURT: Take your time. It's okay.

14 THE WITNESS: Oh, oh, oh. Yeah.

15 Q. (BY MR. J.M. JIMMERSON) Did you receive this
16 document in and around the 28th day of July, 2004?

17 A. Yes.

18 Q. Was that before you received the Exhibit 4, the
19 Amendment No. 2?

20 A. Yes. I'm sorry. Yeah.

21 THE COURT: That's okay. Just take your time,
22 because it's confusing for all of us, not just you.
23 Okay?

24 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, can you
25 please flip to Exhibit 5. It's going to be the big fat

1 document at the end of the binder.

2 A. Okay.

3 Q. What is this document?

4 A. Amended and Restated Option Agreement for the
5 Purchase of Real Property and Joint Escrow Instructions.

6 Q. What is the date on this document?

7 A. 28th day of March, 2005.

8 Q. Did you receive this document in or around the
9 28th day of March, 2005?

10 A. What the document is, I guess -- I guess I saw
11 it.

12 Q. Okay. Looking at paragraph C at the bottom of
13 page 1, what does this document say about the definition
14 of Purchase Property?

15 A. Let me read this because -- well, they've taken
16 a portion of the entire site, 511.82 acres.

17 Q. I'm sorry. I just want to understand your
18 answer to my question is the definition of Purchase
19 Property is this 511.82 acres? Is that what you are
20 saying?

21 A. The Purchase Property to me is everything
22 inside that Parcel 1 right there.

23 Q. But I'm talking about the definition of
24 Purchase Property in this agreement.

25 A. This says 511 -- if I'm reading this right --

1 and I'm not real good at reading attorney language, but
2 if I'm reading this right, it's talking about 511 acres.
3 That's just a portion of the total purchase price.
4 Right?

5 Q. Mr. Wolfram, do you understand or do you know
6 if there's a difference between this parcel of land
7 described as 511.82 acres, as you discussed it, and the
8 definition of Purchase Property in the original Option
9 Agreement?

10 A. Is this 511.82 acres, are you saying that
11 that's inside Parcel 1 or outside Parcel 1?

12 MS. LUNDVALL: Your Honor --

13 THE COURT: What he's asking for is just your
14 understanding. Have you received the document? Do you
15 think --

16 THE WITNESS: I'll give you my understanding if
17 I know --

18 THE COURT: That's all we need.

19 THE WITNESS: But I need to know where I'm
20 looking at this 511 acres.

21 THE COURT: And if you don't understand it,
22 just tell us you don't understand it. That's fine too,
23 because that's the truth.

24 THE WITNESS: But I would understand it if I
25 know where we're looking at.

1 THE COURT: Do you need to read something else
2 to put it in context?

3 THE WITNESS: No. In the map over there, what
4 are we talking about?

5 THE COURT: If it doesn't have a reference in
6 this, your counsel and I, we can't supplement what's in
7 the document.

8 MR. J.M. JIMMERSON: Mr. Wolfram --

9 THE COURT: I apologize. I'm trying to --

10 MR. J.M. JIMMERSON: I appreciate your efforts,
11 Your Honor.

12 THE COURT: The objection by defense counsel is
13 the questions are limited to this agreement. If you
14 read it and understand it, that's your testimony.
15 That's the truth. Okay. But take your time. I don't
16 want you to feel like you are rushed.

17 THE WITNESS: What is the date of this?

18 THE COURT: March 28, 2005.

19 THE WITNESS: This came probably six months
20 after the original Amendment 2 property for that Parcel
21 No. 1 over there. Isn't that what -- that's what this
22 is; right? That's what it is. It came six months --

23 Q. (BY MR. J.M. JIMMERSON) I apologize. I'm
24 asking you the questions.

25 A. Okay. It came six months after. And as I

1 remember this, there were changes in it, a lot of
2 changes in this agreement right here, over and above
3 what it was in my -- if I have it right -- over and
4 above what it was in my original Commission Agreement.

5 It was all spelled out in my original
6 agreement, the boundaries of Parcel 1 and what have you.
7 It appears to me that this is the document -- maybe if
8 I'm not wrong -- that changes a lot of that.

9 Q. What changes are you referring to? You say
10 this is the document that you believe changes a lot of
11 that. What changes are you talking about?

12 A. Well, I didn't read the whole thing right here,
13 but when it got into this, how I remember that is they
14 went to -- they got outside of what I consider the
15 original boundaries of Parcel 1 and they added
16 \$18 million worth of more Purchase Property, which
17 violated, as far as I'm concerned, my contract. My
18 contract stated very clearly what the boundaries of the
19 first Purchase Property was. And am I wrong in what I'm
20 saying there?

21 Q. I'm asking your recollection and your
22 understanding, Mr. Wolfram.

23 A. Well, I think in this document right here, they
24 put in some extra Purchase Property that did not belong
25 in this agreement, in my agreement. And they handled it

1 as Purchase Property, and it shouldn't have been handled
2 as Purchase Property.

3 Q. Mr. Wolfram, let's move on. We may come back
4 if you remember more.

5 Can you please open the next binder to
6 Exhibit 6, Plaintiffs' Exhibit 6?

7 A. Okay.

8 Q. Have you seen this document before?

9 MS. LUNDVALL: Your Honor, I would note that
10 Exhibit 6 has been designated as confidential. I don't
11 see anyone in the courtroom that needs to be cleared,
12 but I do note that each person within this courtroom
13 would have a duty to maintain the confidentiality of the
14 contents of this document.

15 THE COURT: Okay. So I'm going to mark it on
16 here. Exhibit 6 is confidential.

17 MS. LUNDVALL: These are designated in the
18 lower left-hand corner.

19 THE COURT: I see.

20 MS. LUNDVALL: There you go.

21 THE COURT: Okay. I will make sure.

22 MS. LUNDVALL: Thank you, Your Honor.

23 THE COURT: And we'll be careful after the
24 trial what's done with things. I'll give it back to
25 you, any exhibits, and you can dispose of it. I don't

1 know if you did that in your confidential agreement, but
2 I'm sure you have a mechanism.

3 MS. LUNDVALL: That, we do.

4 And just for purposes of the court reporter, if
5 there is any specific testimony as to the content, we
6 will let her know so that the portion of the record then
7 can be designated as confidential. Thank you, Your
8 Honor.

9 THE COURT: All right. Now we're looking at
10 Exhibit 6, Amendment No. 1.

11 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, have you
12 seen this document before?

13 A. This is the document I was talking about. This
14 is where they add the additional acreage to Purchase
15 Property outside of Parcel 1.

16 Q. Mr. Wolfram, did you receive this document from
17 Pardee in and around July 28, 2006?

18 A. No. I don't recall that I did.

19 Q. Who did you receive this document from?

20 A. I saw it when I talked to you and talked to
21 Mr. Jimmerson. I was aware what was going on right
22 here.

23 Q. Mr. Wolfram, can you please, looking at this
24 document, find for me a clause or a provision in this
25 agreement that is a confidentiality clause or a

1 nondisclosure clause?

2 A. I didn't read the whole thing down, but it
3 doesn't seem like it's confidential to me.

4 Q. Mr. Wolfram, please refer -- I'd refer you to
5 page 6, the CSI-Wolfram 1100.

6 A. Okay. All right.

7 Q. Paragraph 18 states that in all other respects,
8 the terms and conditions of the agreement shall remain
9 in full force and effect and are hereby reaffirmed. In
10 the event of any conflict between the provisions of this
11 amendment and the terms of the agreement, the provisions
12 of this amendment shall control.

13 Do you know whether or not this includes
14 adoption of the nondisclosure clause in the Amended and
15 Restated Option Agreement?

16 A. I don't know.

17 Q. Mr. Wolfram, please flip to Exhibit No. 7,
18 please.

19 A. What is it? Hold on a second. Well,
20 everything is in force and reaffirmed. Okay.

21 Q. Mr. Wolfram, let's go back to Exhibit 5.

22 A. Let me read something before you go back. I
23 just want to read something here to myself.

24 Okay. Go ahead.

25 Q. Can you please flip to Exhibit 5? Do you have

1 it in front of you? It's in the other binder. I'd
2 refer you to page 45, PLTF 0125.

3 THE COURT: I got it, or page 45.

4 Q. (BY MR. J.M. JIMMERSON) Mr. Wolfram, do you
5 see paragraph 27, Nondisclosure of Transaction?

6 A. Yes.

7 Q. What is your understanding of this provision?

8 A. Let me start reading. It says that neither
9 party shall disclose to the general public or media any
10 information regarding this agreement and the terms and
11 provisions thereof without the other party's prior
12 written permission except as otherwise legally required.

13 Q. Mr. Wolfram, are you a party to this agreement?

14 A. Yes, I am.

15 Q. Mr. Wolfram, can you please flip to the next
16 page, 46, PLTF 126?

17 A. Okay.

18 Q. Are you listed on this page?

19 A. No.

20 Q. Are you sure that you are a party to this
21 agreement?

22 A. I am a party to the agreement.

23 Q. Do you know what agreement we're referring to?

24 A. Maybe. Maybe not. Oh, no. I'm not a party to
25 this agreement, no.

1 Q. What agreement are we talking about?

2 A. You are talking about -- let me get it here.
3 The last option -- the last Option Agreement, that the
4 agreement had changed.

5 Q. Can you give us the title of that agreement?

6 A. I'm not going to -- Amended and Restated Option
7 Agreement for the Purchase of Real Property and Joint
8 Escrow Instructions.

9 Q. Did you receive a copy of this agreement
10 despite not being a party to it?

11 A. No. You know, I am so confused right now. I
12 really --

13 THE COURT: Do you need to take a break?

14 THE WITNESS: No. I don't need to take a
15 break. I'm just really confused about what he's trying
16 to ask me. It's not that I wouldn't have an answer if I
17 knew.

18 THE COURT: If you don't understand the
19 question, it's hard to give a correct answer.

20 MR. J.M. JIMMERSON: Your Honor, can we take a
21 break, please?

22 THE COURT: We certainly understand. Why don't
23 you take a break and maybe your counsel can orient you.
24 Believe me, we all understand. We have to flip back and
25 forth. Counsel knows this is not an easy process, and

1 no one is criticizing you in any way. Please understand
2 that. Okay?

3 THE WITNESS: Yes.

4 THE COURT: Take your time. Just take a break.
5 I know you are trying to answer honestly.

6 THE WITNESS: I am, but I'm getting confused
7 when I'm reading some of the attorney language right
8 there. That's what's happening to me.

9 THE COURT: I can fully appreciate that
10 sometimes, but let's just take like a ten-minute break.

11 MS. LUNDVALL: One of the things, Your Honor,
12 from my perspective, what I intend to do, is to speak
13 with Counsel to find out a little bit the relevance of
14 this. What he's trying to do is to ask someone who is
15 not a party to these contracts to interpret them to you
16 and his understanding.

17 What I'm going to try to do is figure out what
18 relevance and to see if there's any opportunity for a
19 stipulation that we can have on any of this stuff.
20 Because I will tell you, I think it's unfair to a
21 witness who wasn't a party to an agreement to get him to
22 try to explain it and try to understand it to you.

23 THE COURT: Well, and I think it's a little
24 beyond that. He's trying to understand his
25 understanding. And the whole key to the case, I

1 understand, is what is Purchase Property. So it is
2 intertwined and it makes it difficult. It's a difficult
3 situation. That's all I can say. Because his agreement
4 is impacted by other parties' agreements, and I
5 understand where you are all going.

6 And it would be great -- I was kind of hoping
7 we could have a few stipulated facts. It's not my case
8 so we didn't. But if you could work on something, that
9 would be fine. However you all want to go forward, I
10 understand the issue. I truly do. And I know what you
11 are trying to prove in your case too.

12 Just take -- whatever you can work out is fine
13 with the Court. If not, if you can work through and
14 kind of orient him.

15 THE WITNESS: Are we allowed to go out
16 together?

17 THE COURT: You are allowed to talk to your
18 counsel.

19 We'll take a 15-minute break. Just tell my
20 marshal when you are ready. I have other things I can
21 work on.

22 THE WITNESS: Judge, so she doesn't think
23 they've coached me --

24 MS. LUNDVALL: Hold, hold, hold.

25 THE COURT: You know what, I understand. You

1 go talk to your counsel. I'm not going to infer
2 anything because you are talking to your counsel.

3 THE WITNESS: Well, I know the answer to what
4 he's talking about.

5 MS. LUNDVALL: Hold on.

6 THE COURT: There's not a question pending. So
7 we're okay. You are okay. We're all on the same page,
8 I promise. Okay?

9 (Whereupon, a recess was taken.)

10 MR. J.J. JIMMERSON: Judge, good afternoon. We
11 have a request to continue this trial until tomorrow
12 morning at 8:30. Our client is confused and
13 disoriented. He's becoming, as a result, frustrated.
14 He's telling me, Listen, Jim, we have a winning case and
15 I'm hurting our case. I'd like to ask you for an
16 indulgence to allow him to have a couple hours and
17 resume tomorrow morning.

18 THE COURT: I'm fine with that.

19 MR. J.J. JIMMERSON: He has worked so hard on
20 this case. It has been his life, as it has Mr. Wilkes.
21 You know, he's not doing as well as I know he would do
22 and as well as he did in his depositions with the
23 defense counsel.

24 THE COURT: It is 3:00 o'clock. I know it's
25 been hard. Ms. Lundvall --

1 I know you are upset and I know it's not
2 helping us, the more we're pressing, I understand. It
3 was getting worse. I don't -- do you want to put
4 another witness on or do you -- I'm fine. I have all
5 the days in the world. It's up to you. Do you have an
6 objection?

7 MS. LUNDVALL: Your Honor, from our
8 perspective, Mr. Wilkes is here, and I know that they
9 intend to put Mr. Wilkes on the witness stand after
10 Mr. Wolfram. And so if Mr. Wolfram is unable to go
11 forward, I think trial time is valuable time and --

12 THE COURT: Well, my concern is --

13 MR. J.J. JIMMERSON: That's not true. We're
14 not calling Mr. Wilkes. He's our last witness, not our
15 second witness.

16 THE COURT: My thought would be you are
17 probably trying to lay a certain foundation. Am I
18 correct?

19 MR. J.J. JIMMERSON: Yes. Mr. Whittemore is
20 tomorrow in the morning.

21 THE COURT: That would be my thoughts.

22 Will there be any trouble with your witnesses?
23 I will give you whatever days you need. I will not cut
24 anybody short. Ms. Lundvall, your client will not be
25 cut short, which is always a concern of a defendant. I

1 will not cut you short, I promise you that. Whatever
2 days -- I can move stuff around, because I know this
3 case is important to both of you, and I will not cut
4 anybody short. I promise you that.

5 MS. LUNDVALL: From this perspective, we
6 appreciate that. And I think that you obviously
7 understand what our concern is in that regard.

8 THE COURT: I do.

9 MS. LUNDVALL: We do have an agreement as to a
10 witness being called out of line tomorrow morning based
11 upon his limited availability.

12 And may I make inquiry as to when we might be
13 able to begin then tomorrow?

14 THE COURT: I just went through my calendar and
15 we can start --

16 THE CLERK: 9:30.

17 THE COURT: I was going to say earlier, but in
18 reality -- I took things off 10:00 and moved them up.

19 MR. J.J. JIMMERSON: We will call
20 Mr. Whittemore and get rid of him by morning, and
21 Mr. Wolfram will return to the stand.

22 THE COURT: I will be here at 9:30, ready to
23 go.

24 MS. LUNDVALL: Thank you, Your Honor.

25 Hold on one second.

1 THE COURT: You're very welcome.

2 MS. LUNDVALL: What I'm trying to do then is to
3 get a little bit of an idea from a future calendaring
4 standpoint. On the 25th, it's my understanding that the
5 courtroom is dark. Is that correct?

6 THE COURT: It's a holiday. It's Nevada Day.

7 MS. LUNDVALL: We understood that and I bet
8 your staff is saying --

9 MR. J.J. JIMMERSON: Neither one of us can
10 afford double time.

11 THE COURT: I can't -- I love them dearly, but
12 I don't control their hours and wages. So it's an
13 actual holiday for the courts, and I'm told it's Nevada
14 Day. Usually it's Halloween, as we know, but I did not
15 realize that. But I will give you whatever you need
16 next week.

17 MS. LUNDVALL: What we had anticipated was
18 Monday, Tuesday, and Wednesday were going to be trial
19 days for us. And to be quite candid, I don't think that
20 we're going to be finished by Wednesday.

21 My Thursday -- and this is where I just wanted
22 to make the Court aware, we have one witness that in the
23 event that we don't finish on Wednesday, it would be
24 preferable for us to be able to bring that witness at a
25 later point in time.

1 THE COURT: Like Friday?

2 MS. LUNDVALL: On Thursday, I have a State
3 Athletic Commission hearing for which the -- I need to
4 attend.

5 THE COURT: I understand there's conflicts.

6 MS. LUNDVALL: And I guess my inquiry was if
7 we're not going to be here on Thursday and Friday of
8 next week, what the Court's calendar may look like the
9 following week or if you would want to discuss that at a
10 later point in time.

11 THE COURT: Well, we can look.

12 MR. J.J. JIMMERSON: May we know what witness
13 it is?

14 MS. LUNDVALL: Mr. Lash. The agreement that I
15 had with --

16 MR. J.J. JIMMERSON: That's Monday morning.

17 MS. LUNDVALL: That's what I'm saying, is that
18 if, in fact, we are not going to finish on Wednesday, it
19 would be preferable, because we're trying to shoe horn
20 him into a busy schedule on Wednesday to make sure --

21 MR. J.M. JIMMERSON: I misunderstood. Okay.

22 MR. J.J. JIMMERSON: He's not available Monday
23 morning?

24 (Remarks between counsel off the record.)

25 THE COURT: Counsel, I don't have anything

1 until a bench trial on the 7th. I can move everything
2 else around. That's not until November 7th. So that is
3 the only thing I don't want to move just because pro per
4 people don't understand when the Judge has to move
5 calendars, or they are not as gracious. So that is --
6 everything else we can move around. I will do whatever
7 you need.

8 So if that reassures you, I'll work around your
9 schedule. And you are not inconveniencing a jury or
10 anything, so I'm fine. I will make myself available.

11 (Remarks between counsel off the record.)

12 THE COURT: If that would work for you, that
13 will work for me.

14 MS. LUNDVALL: Thank you, Your Honor.

15 THE COURT: You're welcome. I promise I'll
16 give you whatever time you need.

17 MR. J.M. JIMMERSON: Thank you very much,
18 Your Honor.

19 -oOo-

20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
21 PROCEEDINGS.

22
23 */s/ Jennifer D. Church*

24 JENNIFER D. CHURCH, CCR. No. 568, RPR
25

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