

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
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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
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10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
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10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
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10/23/2013	Trial Exhibit II	27	JA004124
10/23/2013	Trial Exhibit JJ	27	JA004125
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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.

McDONALD CARANO LLP

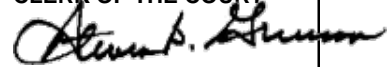
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CERTIFICATE OF SERVICE

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

/s/ Beau Nelson
An Employee of McDonald Carano LLP



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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)
)
PLAINTIFF,)
)
vs.) CASE NO. A-10-632338-C
)
PARDEE HOMES OF NEVADA,)
)
) **ORIGINAL**
)
DEFENDANT.)
_____)

TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON THURSDAY, OCTOBER 24, 2013
AT 8:30 A.M.

APPEARANCES:

For the Plaintiff: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.
For the Defendant: PATRICIA K. LUNDVALL, ESQ.
AARON D. SHIPLEY, ESQ.

Reported by: Loree Murray, CCR No. 426

Loree Murray, CCR #426
District Court IV

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1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 24, 2013

2 9:30 A.M.

3 * * * * *

4 THE COURT: Okay. Mr. Jimmerson, you have a
5 witnesses to call?

6 MR. J. J. JIMMERSON: I do.

7 Harvey Whittemore, your Honor.

8 THE COURT: Okay.

9 THE CLERK: Please remain standing and raise
10 your right hand.

11 FREDERICK HARVEY WHITTEMORE,
12 having been duly sworn to tell the truth, the whole
13 truth, and nothing but the truth, was examined and
14 testified as follows:

15 THE CLERK: For the record, please state and
16 spell your first and last name.

17 THE WITNESS: My name is Frederick Harvey
18 Whittemore, last name W-h-i-t-t-e-m-o-r-e. I go by
19 Harvey, and Frederick is F-r-e-d-e-r-i-c-k.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. J. J. JIMMERSON:

23 Q. Good morning, Mr. Whittemore. How are you?

24 A. Good morning Mr. Jimmerson.

25 Q. First of all, I thank you for your

1 willingness to come here and be here before us, and I
2 know that it was a terrible inconvenience, so that's
3 why we've set you out of order so you get in and out of
4 here by the break, and --

5 A. Well, I appreciate your willingness to
6 accommodate busy schedules. Thank you.

7 Q. Let's get the 800 pound gorilla out of the
8 way, you recently suffered an adverse setback legally;
9 is that right?

10 A. Criminally, yes. Civilly, no.

11 Q. Convicted of one false statement and alleged
12 improper activity regarding the election process?

13 A. The false statement count really is a
14 consequence of the other two counts. It is not a false
15 statement I made or perjurious statement made but is,
16 in fact, a felony that flows from a report which was
17 filed by the Senator Harry Reid campaign.

18 Q. Okay. We got that done, okay.

19 I'm here to talk to you about my clients'
20 entitlement to information and whether or not that
21 translates to dollars.

22 MS. LUNDVALL: Your Honor, from my
23 perspective, I appreciate as far as counsel or I would
24 appreciate if counsel didn't make comments --

25 THE COURT: The preparatory remarks? I think

1 that's, he's trying to orient him.

2 MR. J. J. JIMMERSON: That's what I'm trying
3 do.

4 THE COURT: Start with a question.

5 BY MR. J. J. JIMMERSON:

6 Q. You have an involvement with Coyote Springs?

7 A. Yes.

8 Q. And what's that?

9 A. I was the founder of Coyote Springs by an
10 entity called Coyote Springs Investment.

11 Q. CSI?

12 A. Yes, that was the nomenclature.

13 Q. Who were the Seeno brothers?

14 A. Seeno brothers were Tom Seeno and his brother
15 Albert Seeno, Jr. They became members of CSI.

16 Q. And when did that occur?

17 A. Mr. Tom Seeno became a member in and around
18 the period of 2004/2005, and then the Albert Seeno
19 transaction was completed in the June period of 2007.

20 Q. The Commission Agreement that's the subject
21 of this litigation was dated December 1, 2004 signed by
22 our clients on September 6 of 2004, were either of the
23 Seenos involved in CSI at that time?

24 A. No.

25 Q. Okay. Let me take you back to your

1 communications with Jim Wolfram and or Walt Wilkes
2 relative to their introduction to you of Pardee Homes,
3 okay? So here's my question: Did you have, was there
4 a time when Mr. Wolfram or Mr. Wilkes spoke to you
5 about having a client, I believe at that time they were
6 unnamed, interested in purchasing a large section of
7 Coyote Springs Investment?

8 A. I had received a call from Mr. Wolfram
9 involving a transaction involving CSI.

10 Q. What did Mr. Wolfram say to you and what did
11 you say to him?

12 A. I told him that CSI was for sale, that I'd be
13 interested in talking to him about any potential
14 matters he brought to my attention.

15 Q. And when did that conversation occur,
16 approximately? I know it's been some years.

17 A. It was after 2002 and before the transaction
18 that I completed with Pardee Homes.

19 Q. And the transaction you completed with Pardee
20 Homes was May of 2004?

21 A. That's correct.

22 Q. Thank you.

23 So prior to this telephone call where
24 Mr. Wolfram advised you that he had a client interested
25 in purchasing some portions of CSI in roughly 2002, had

1 you had any relations, had you known Mr. Wolfram maybe
2 from prior experience or work?

3 A. No, I did not.

4 Q. Okay. So what happened next after the first
5 initial telephone call where Mr. Wolfram is calling
6 you, saying he has a client that would be interested.
7 What proceeded next, please?

8 A. What happened next with respect to
9 Mr. Wolfram or --

10 Q. Yes, Wolfram and Pardee, Wolfram and -- who
11 introduced you to Pardee?

12 A. Mr. Wolfram did not introduce me exclusively
13 to Pardee. I had completed a list of potential
14 purchasers after December of 2002 during the process of
15 leading up to a potential sale to a third party.

16 Q. Okay. Great.

17 Now, you and I spoke yesterday afternoon for
18 a few minutes?

19 A. Yes, we did.

20 Q. Between 5:00 and 6:00 p.m.?

21 A. Yes.

22 Q. Maybe a bit earlier, and have you had any
23 communications with Pardee or Pardee's lawyers?

24 A. I met for breakfast with counsel for Pardee.

25 Q. Who did you meet with?

1 A. Ms. Lundvall.

2 Q. And so the two of you --

3 A. Yes. There were --

4 Q. And when was the breakfast meeting, please?

5 A. At 8:15.

6 Q. Was it this morning?

7 A. Yes.

8 Q. Okay. I didn't know.

9 And what was discussed between the two of you
10 this morning at 8:15?

11 A. We talked for the first 15 minutes about
12 family things, and she was asking about my wife,
13 Annette, and she basically advised me of the nature of
14 what she was going to propose to do as a witness on her
15 side and advanced her hypothesis as to what she thought
16 you might do on Mr. Wolfram and Mr. Wilkes' side.

17 Q. What did she hypothesize she might do this
18 morning?

19 A. She indicated that the case seems to be
20 coming down to issues associated with the orientation
21 of the parties' views with respect to what the
22 single-family residential property was versus what was,
23 in her term, called the Option Property.

24 Q. Okay. And did she show you any exhibits or
25 any documents this morning?

1 A. No.

2 Q. Now, when I spoke to you last night, you
3 seemed to be surprised to know that I was not, on
4 behalf of our client, seeking compensation from
5 broker's commissions.

6 Do you recall that?

7 A. Yes.

8 Q. Okay. Who had given you --

9 MS. LUNDVALL: Your Honor, is that a
10 stipulation?

11 THE COURT: I thought the question was: You
12 seemed surprised, correct?

13 MR. J. J. JIMMERSON: Yes, that's exactly.

14 MS. LUNDVALL: Well, and this is what my --

15 THE COURT: What's the objection? I'm sorry.

16 MS. LUNDVALL: My objection is, what I'm
17 trying to do is figure out then what the scope is of
18 what is at issue.

19 During the opening statement,
20 Mr. Jim M. Jimmerson indicated the commissions were at
21 issue in this case, and now we have an indication
22 they're not. If the commissions are not at issue, we
23 would like to know that.

24 MR. J. J. JIMMERSON: Respectfully, your
25 Honor, that's not a proper objection, that's an oral

1 argument.

2 THE COURT: I understand. I think what she
3 is trying to say is not relevant is what you're trying
4 to -- I'm gonna overrule that. I don't know the
5 relevance yet.

6 I assume Mr. Jimmerson is going to ask the
7 question and get an answer, and then we can see whether
8 it is or is not relevant, so I'm going to overrule it.

9 MS. LUNDVALL: Thank you, your Honor.

10 THE COURT: Start again.

11 BY MR. J. J. JIMMERSON:

12 Q. Who gave you the idea that the focus of this
13 case was undue -- past due brokerage commissions?

14 A. It was my impression that I took from my
15 deposition.

16 Q. And did you, did I advise you we were looking
17 at obtaining information regarding purchases by Pardee
18 Homes during the course of their work with you?

19 A. You did.

20 Q. Let's focus upon that.

21 Did there come a time then following December
22 of 2002 when there was a meeting that Mr. Wolfram
23 brought a Pardee representative?

24 A. I can't say whether Mr. Wolfram brought a
25 Pardee representative. I can say that Mr. Wolfram and

1 Mr. Wilkes were present at a meeting when there were
2 multiple Pardee representatives in the same room as I
3 was.

4 Q. And the meeting took place in Pardee's
5 offices?

6 A. Yes, they did.

7 Q. Okay. Who was present, please?

8 A. My recollection was Cliff Andrews, John Lash,
9 myself, I believe one of my lawyers, Carl Savely,
10 Brad Mommer, and Mr. Wilkes and Mr. Wolfram, and I do
11 not recall by name now who else was in the room.

12 Q. Okay.

13 A. There might have been one or two other
14 people.

15 Q. Who arranged the meeting?

16 A. Well, I arranged my portion of the meeting
17 with Cliff Andrews at Pardee Homes.

18 Q. And how did the Wilkes and Wolfram parties
19 know to be there?

20 A. I don't recall if there was specific
21 discussions about setting up a meeting, telephone
22 conversation, I don't recall how.

23 Q. Wasn't it, in fact, Mr. Wolfram's request to
24 have a meeting so he could bring to you Pardee
25 representatives?

1 A. I don't remember that was the nature of how
2 the meeting actually took place. I don't.

3 Q. So then do you know how the meeting
4 ultimately took place?

5 A. No. As I indicated, the only part that I can
6 recall, again, this is a long time ago, is that
7 Mr. Andrews and I had conversations

8 I had not yet met Mr. Lash, nor had I spoken
9 to him on the phone.

10 Q. Do you recall at that meeting expressing to
11 Mr. Andrews, Why is it you, Mr. Andrews, didn't tell me
12 about Pardee's interest in this land and I had to learn
13 it from Mr. Wolfram, or words of like effect?

14 A. No.

15 Q. Now, had you had a -- had you talked to
16 Mr. Andrews before December of 2002 when Mr. Wolfram,
17 when Mr. Wolfram called you?

18 A. I believe that I had had conversations with,
19 I don't recall who in addition to Mr. Andrews at Pardee
20 Homes, but I had called sort of a cold call to Pardee
21 Homes as well as other potential builders in the
22 Las Vegas area.

23 Q. Okay. So when did you call, by cold call,
24 Mr. Andrews and others?

25 A. As I indicated, it was sometime post 2002,

1 prior to the first face-to-face meeting.

2 Q. Did Mr. Andrews at that time evidence
3 Pardee's interest in buying any portion of CSI?

4 A. He wanted to hear about the Coyote Springs
5 project. It had just received multiple news stories
6 regarding the fact that we had had our development
7 agreement approved.

8 Q. How many months passed after that telephone
9 call before you received a telephone call from
10 Mr. Wolfram? More than a year, correct?

11 MS. LUNDVALL: Your Honor, maybe we can have
12 a nonleading question, since this is direct
13 examination.

14 MR. J. J. JIMMERSON: The question was: How
15 many months after that call.

16 THE COURT: I'm gonna overrule it.

17 MR. J. J. JIMMERSON: Thank you, your Honor.

18 THE COURT: I don't know if there is a
19 foundation for months, just whatever -- I know you're
20 trying to set up the time frame as best you can,
21 Mr. Whittemore. I know it's a long --

22 BY MR. J. J. JIMMERSON:

23 Q. You made a telephone call with a number of
24 financial buyers that had financial strength to take on
25 something as large as this, and you are letting them

1 know of your interest, you indicated water rights and
2 development plans, it hit the news, I'm with you.

3 What happens after you call?

4 MS. LUNDVALL: Once again, I'm gonna ask for
5 a nonleading question to be posed to this witness, your
6 Honor.

7 MR. J. J. JIMMERSON: Your Honor, I'm trying
8 to establish --

9 THE COURT: You're trying to do foundation,
10 but I think we're just, you know, just trying to get a
11 time frame, and what I have here is it's sometime after
12 December 2002 and prior to 2004. It's kind of long
13 language there.

14 MR. J. J. JIMMERSON: That's exactly right.

15 THE COURT: I think what he's trying to do,
16 do you have any recollection other than 2002 and before
17 of this meeting in -- can you pin it down a little as
18 to when you did the cold call as opposed to
19 Mr. Wolfram.

20 BY MR. J. J. JIMMERSON:

21 Q. My understanding is there was no
22 communication after that initial telephone call that
23 you placed with Pardee until Mr. Wolfram called you in
24 2003 or 2004?

25 A. What I can recall and I will try to represent

1 to you is the time frame --

2 Q. Thanks.

3 A. -- is in 2003, and prior to July of 2003, I
4 had advised my partner, Mr. David Loeb, before his
5 death in June of 2003 and before July 14th, 2003,
6 because it was my wife's and my 30th anniversary, that
7 we had a real possibility with multiple potential
8 purchasers to come into the Coyote Springs project, so
9 if you want a specific idea, it would probably be
10 between February and June of 2003 that we had put
11 together our complete list and made calls, had
12 conversations.

13 I can recall specifically of what I was doing
14 in March and April of 2003, and that is recovering from
15 surgery on my right shoulder, had gone to New Orleans
16 to watch the final four, and I visited my partner on
17 his deathbed.

18 Q. Got it.

19 So if that is the time period, and I
20 appreciate that very much, if that's the time period
21 that you believe you called Pardee, speaking to
22 Andrews, and called other homebuilders, speaking to
23 whatever representatives you did, what happens next
24 relative to Pardee eventually entering into the Option
25 Agreement in May of 2004?

1 A. Between July of 2003 and the end of the year,
2 my focus was on figuring out how we were going to keep
3 the company solvent, what we were going to do with the
4 estate, and I had to immediately negotiate a loan to
5 take out the, his widow's interest, so until the end of
6 the year, I was really working on financing.

7 Q. Okay.

8 A. So now --

9 Q. Just to follow up then, so then, with that in
10 mind, when did Mr. Wolfram call you?

11 A. I don't have a specific recollection as to
12 the date or period when he called me. What I do recall
13 is that I spoke with him about an unnamed potential
14 buyer, and therefore, I can't say with any certainty
15 that Mr. Wolfram, at the time that I spoke with him,
16 that he was or was not representing Pardee.

17 Q. I understand, but he's testified, and so
18 we've heard his testimony.

19 MS. LUNDVALL: Your Honor, from his
20 perspective, this is the type of stuff that is not
21 permitted.

22 MR. J. J. JIMMERSON: I didn't say anything.
23 I said he's already testified.

24 THE COURT: I'll sustain that, what she's
25 saying is just do the questions. You are referring to

1 what Mr. Wolfram has testified to, but if he doesn't
2 recall, obviously I know the testimony from
3 Mr. Wolfram, what has testified to, and I'm aware of
4 it.

5 MR. J. J. JIMMERSON: Which is precisely why
6 I told him I had an unnamed person.

7 THE COURT: I understand.

8 BY MR. J. J. JIMMERSON:

9 Q. You just validated what Mr. Wolfram said.

10 A. Excuse me, I would like to clarify. I'll
11 repeat exactly what I said earlier, which was I don't
12 recall.

13 THE COURT: You don't recall. I have the
14 testimony.

15 BY MR. J. J. JIMMERSON:

16 Q. So when is the meeting at Pardee's office,
17 the all-hands meeting?

18 THE COURT: I'm sorry? Do it again.

19 BY MR. J. J. JIMMERSON:

20 Q. When was the all-hands meeting with the
21 people mentioned, Andrews, yourself, Savely, Wolfram,
22 Wilkes, Lash?

23 A. I apologize, without my business notes which
24 were taken from me, as I've indicated, I can't tell you
25 specifics.

1 Q. Not a problem, and I'm not asking for the
2 specific time. Since we know the agreement is inked by
3 you in May of 2004 how much earlier from that was the
4 all-hands meeting?

5 A. I would say that it had to have been at least
6 90 days, somewhere between that period, 90, 60 days,
7 because I recall almost daily interaction between the
8 Pardee officials negotiating that, this contract, as
9 well as Mr. Levy post discussions from a phone call
10 from Mr. Lash that he was interested in doing a deal.

11 Q. Okay. So if we can just work together and
12 say roughly March of 2004, understanding it could be
13 February, it could have been April, but that time
14 period, so 90 days pre May, let's work with that, okay?

15 A. Sure. As general rule, that's pretty close.

16 Q. And how much time took place between
17 Mr. Wolfram's call to you and the meeting of roughly
18 March of 2004?

19 A. It might have been right after the beginning
20 of the new year.

21 Q. Okay. So call it the January time period?

22 A. Yeah.

23 Q. Fair enough, okay.

24 So by virtue of the telephone call, the, the
25 meeting is arranged and occurs in March. In March

1 there are words exchanged in the meeting, and is it
2 true that as a result of the words exchanged in the
3 meeting, Pardee evidenced an interest in the property?

4 A. They did, in fact, indicate an interest --

5 Q. Okay.

6 A. -- in the property.

7 Q. And as it turns out, as you've testified to
8 it resulted in almost daily communication between March
9 and May to discuss it, write a document, and sign it?

10 A. Yes, I think that's fair.

11 Q. Okay. Now, when you are preparing and having
12 drafts, who are your representatives legally to help
13 prepare the draft on your side?

14 A. It was a gentleman by the name of
15 Carl Savely, and my CEO, Brad Mommer, and myself and
16 there may have been other help from members of the firm
17 Lionel Sawyer & Collins.

18 Q. And who did you understand was your point of
19 contact representing Pardee?

20 A. I knew it to be Mr. Steve Levy.

21 Q. Thank you.

22 And that's lawyer?

23 A. He is.

24 Q. And he's an outside lawyer, he's not
25 in-house?

1 A. Yes, sir.

2 Q. Thank you, okay.

3 So now, as the documents are being negotiated
4 and they resulted in the May 2004 document, what is
5 being discussed in terms of how much of CSI development
6 or project is Pardee going buy?

7 A. May we go off the record for one second,
8 please, as a matter of a personal accommodation?

9 THE COURT: Nothing to do with the evidence?

10 THE WITNESS: Nothing to do with this.

11 THE COURT: Off the record.

12 (Off-the-record discussion.)

13 THE COURT: Okay. Do the question again.

14 BY MR. J. J. JIMMERSON:

15 Q. As you're talking now in March, April, May of
16 2004, what is being said with regard to how much
17 property Pardee wants to buy?

18 A. Pardee expressed an interest to buy what they
19 indicated to me was a large parcel of land for
20 single-family residential homes.

21 Q. And, in fact, as it turns out, did they ask
22 you to agree to a five year option to buy all the
23 property, 30,000 acres plus?

24 A. They, as the negotiations took place, we
25 negotiated a term, a five year term, for Pardee to be

1 able to acquire the entire parcel that Coyote Springs
2 owned within a five year period, yes, sir.

3 Q. And the entire parcel was how many acres,
4 please?

5 A. The entire parcel was 43,000 acres, less
6 13,000 acres that were not in fee. We called it the
7 donut hole. It was the piece of land in the interior
8 of Coyote Springs which was leased from the BLM.

9 Q. Thank you.

10 So the 30,000 was subject to the five year
11 option?

12 A. In rough terms, that's correct.

13 Q. And under this claim today, how did the donut
14 hole resolve itself?

15 A. Well, it's, it's relevant for my testimony
16 today, because the process of removing the donut hole
17 in the Clark County portion of the project was moved
18 due east, creating a very specific delineation of fee
19 land, which was rest of the Pahrnagat Wash, east of
20 Highway 93, north of Highway 168, and bounded at the
21 north by the Lincoln County line.

22 Q. And was that like an exchange with the
23 federal government, is that how that worked?

24 A. No, sir.

25 Q. How did it work?

1 A. We simply restated the lease portion versus
2 the fee portion by virtue of the fact that the federal
3 government wanted the easternmost land, because it was
4 most important from an environmental perspective, to
5 create connectivity between two ACEC's, Areas of
6 Critical Environment Concern.

7 Q. So from a mapping perspective then, when that
8 exchange or swap occurs, the donut hole is now fee
9 deeded to Coyote Springs, and the lease agreement is to
10 the more eastern portion of that space; is that
11 correct?

12 A. Again, what we did was just simply move the
13 deed line to a specific spot, and everything to the
14 east of that represented the same amount of acres
15 coming in to the area to the west.

16 Q. Right.

17 A. As we're going out to the west.

18 Q. Fair enough. Thank you.

19 All right. So now, let me help you. Would
20 you take that book at the top left there?

21 A. This right here?

22 Q. Yes.

23 A. Uh-huh, sure.

24 Q. And would you look at Exhibit Number 2,
25 please?

1 Do you recognize Exhibit 2?

2 A. It appears to be the agreement between Coyote
3 Springs Investment, LLC, and Pardee Homes of Nevada.

4 Q. All right. And it is in evidence, so we can
5 discuss its contents.

6 And it bears a date -- doesn't actually show
7 a day, date, it says the blank day. It doesn't have a
8 date, day of May 2004.

9 Do you see that, third line?

10 A. Yes.

11 Q. Okay. And do you have a recollection, maybe
12 by referring to the document, when this document was
13 signed by yourself?

14 A. I would have to see if I put a date by my
15 signature line.

16 Q. Okay.

17 A. No, I don't see a date.

18 Q. That's Page 44, Bates Stamped 46, do you see
19 that? That's Pardee Homes's signature, and the next
20 page, Page 45, Bates Stamp 47, is your signature?

21 A. Yes, those are. That is my signature on
22 Bates Stamp 47.

23 Q. And for our purposes, it doesn't matter the
24 date.

25 A day in May this document is signed by you,

1 a day in May 2004 this document is signed by Pardee?

2 A. You can compute that, Mr. Jimmerson, simply
3 by referencing the document itself, computing the 30
4 day periods which expire, if it was necessary.

5 Q. All right. Now, calling your attention to, I
6 believe it's paragraph --

7 A. Can I -- I need to clarify an answer, your
8 Honor first, with respect to the question he just
9 asked.

10 THE COURT: Okay, go ahead.

11 THE WITNESS: Please.

12 Paragraph 30 indicates that the seller needs
13 to sign this document and return it to me by 10:00 a.m.
14 on June 1st, which means it had to be sometime prior,
15 and I recall that it was contemporaneous with that
16 period.

17 MR. J. J. JIMMERSON:

18 Q. So we're talking the last day or two of May
19 2004?

20 A. Think it was within the last three or four
21 days, Mr. Jimmerson.

22 Q. I appreciate that.

23 In the Expiration of Offer, Paragraph 30,
24 Page 44, it talks about in terms of the 10:00 a.m.
25 June 1, 2004, fair enough. I appreciate that. Thank

1 you

2 Now, by May of 2004, you knew Mr. Lash, on
3 behalf of Pardee, agreed to pay a broker's commission
4 of some sort; isn't that correct?

5 A. I would have to look, but I believe contained
6 in the agreement is a specific provision which says
7 that Coyote Springs is not gonna be responsible for any
8 brokerage commission.

9 Q. And we'll look at that.

10 I don't mean to cut you off.

11 MS. LUNDVALL: And I would ask for him not to
12 cut him off.

13 THE COURT: I know you're trying.

14 THE WITNESS: Sorry.

15 MR. J. J. JIMMERSON: I've just never got a
16 perfect opposing counsel, your Honor, such snide
17 remarks.

18 MS. LUNDVALL: Your Honor, from that
19 perspective, if Mr. Jimmerson perceives I'm being
20 snide, I have no intent, but I'm going to preserve my
21 client's interests, and I do not think it's appropriate
22 for him to testify.

23 MR. J. J. JIMMERSON: I called it on myself
24 for interrupting him, and I apologize.

25 THE COURT: Right.

1 BY MR. J. J. JIMMERSON:

2 Q. I'm not talking about that agreement, I will
3 show you Paragraph 18 in a minute.

4 What did Mr. Lash say to you about the broker
5 agreement so you knew you wanted to protect CSI for not
6 being responsible for it?

7 A. Mr. Lash indicated, during the course of
8 negotiations, that there was going to be a brokerage
9 commission due. He did not indicate to me to whom, as
10 I recall during that specific period of time, but I do
11 recall specifically saying whatever the relationship
12 is, I don't want to be responsible for it.

13 Q. Now, focusing your attention on Paragraph 18,
14 Page 38, Bates Stamp 40, does that state to you the
15 brokers commission and finder's fees and, as you
16 indicated, the protection of your company to not be
17 responsible for said obligation?

18 A. Yes. This provision specifically, now that I
19 look at it, because it specifically mentions Jim and
20 Walt.

21 Q. This was negotiated between Pardee and Coyote
22 Springs?

23 A. Yes, sir.

24 Q. And if you turn to the second page of that
25 provision, Page 39, Bates Stamp 41, Paragraph 18, the

1 language that begins with, Notwithstanding the
2 foregoing, do you see that?

3 A. Yes, sir.

4 Q. Read it out loud.

5 A. Notwithstanding the foregoing, upon and
6 subject to the close of escrow for the Purchase
7 Property or any other Option Parcel, buyer shall pay
8 any finder fee owed to General Realty Group,
9 (Walt Wilkes), and Award Realty Group (Jim Wolfram)
10 pursuant to a separate agreement. Said fee shall be
11 split equally.

12 Q. And the first part of it made a
13 representation by each of the parties to the Option
14 Agreement that there wasn't a broker fee involved and
15 no obligation to pay a broker, correct?

16 A. That's correct.

17 Q. And then you have the carving out the
18 exception with Pardee having an obligation to
19 acknowledge in writing to Mr. Wolfram and Mr. Wilkes
20 right?

21 A. Yes.

22 Q. And you, Coyote, will not be responsible for
23 that obligation.

24 A. Right.

25 Q. Did you know at any time prior to May 31 of

1 2004 what that obligation was?

2 A. No, sir.

3 Q. And did Mr. Lash tell you what Pardee's
4 obligation was?

5 A. No, sir.

6 Q. Did Mr. Wolfram or Mr. Wilkes tell you what
7 that obligation was?

8 A. No, sir.

9 Q. As you sit here today, October of 2013, do
10 you know what that obligation is?

11 A. I think provided -- someone, excuse me, I
12 think counsel provided me a copy of the Letter
13 Agreement in my earlier deposition.

14 Q. October 2012, right?

15 A. If that's the date of my deposition, thank
16 you.

17 Q. Specifically, yes.

18 A. Okay, thank you.

19 Q. So just to establish you were not aware of
20 the Letter Agreement or its terms at any time prior to
21 October of 2012 when your deposition was taken --

22 A. I don't recall a specific circumstance where
23 I was provided a copy of that letter, other than in
24 October.

25 Q. Okay, thank you. I appreciate that.

1 A. I'm trying to be as accurate as I can.

2 Q. I know you are. That's just the nature of
3 who you are, all right.

4 Now, then you signed this document, the
5 Option Agreement. Let's talk about this Option
6 Agreement a bit.

7 Turn to Page 1, please.

8 A. Okay.

9 Q. Tell me the structure of this agreement
10 overall.

11 A. Okay. This agreement serves as both a, an
12 agreement in and of itself as well as escrow
13 instructions to the title company which was selected by
14 the parties to effectuate a transaction which would
15 allow Coyote Springs Investment to sell a substantial
16 portion of land to Pardee at their election.

17 Q. What was the name of the title company?

18 A. It was Linda Jones, and I believe at the time
19 it might have been Stewart Title. I could check and
20 see in the agreement what it says.

21 Q. All right. And did you know a woman named
22 Francis Dunlap, otherwise known as Francis Butler?

23 A. Yes.

24 Q. And what relationship, if any, did she have
25 to Coyote Springs' sale to Pardee?

1 A. Well, she was an individual involved in the
2 transaction.

3 Q. Okay. So she worked for a title company that
4 was selling parcels or used to transfer title from
5 Coyote Springs to Pardee?

6 A. My understanding was she was involved in the,
7 with the escrow company or one of the title companies
8 to help us complete the transaction.

9 Q. Did you know Francis before you used her in
10 this transaction?

11 A. No, sir.

12 Q. Okay. I've known her for 30 years is why I
13 mentioned.

14 MS. LUNDVALL: Your Honor, this is the
15 classic type of thing that is not permissible.

16 THE COURT: It's okay.

17 BY MR. J. J. JIMMERSON:

18 Q. Now, focus your attention on the first page,
19 Paragraph B. It begins with: The parties desire to
20 enter into this agreement.

21 Do you see that?

22 A. Yes, sir.

23 Q. Let me read the first sentence to you: The
24 parties desire to enter into this agreement to provide
25 for the buyer's purchase of the portion of the entire

1 site existing of Parcel 1 as shown on Parcel Map 98-57
2 recorded July 21, 2000 in Book 20000721, as Document
3 Number 01332, official records Clark County Nevada,
4 containing approximately 3,605.22 acres as shown on the
5 map attached hereto as Exhibit B and made part hereof
6 the Purchase Property and, two, buyer's option to
7 purchase the remaining portion of the entire site which
8 is or becomes designated for single-family detached
9 production residential use, as described below, parens,
10 the Option Property, in a number of separate phases
11 referred to herein collectively as the Option Parcels
12 and individually as Option Parcel, upon the terms and
13 conditions hereinafter set forth.

14 For purposes of this agreement, the Option
15 Property shall be the real property shown on Exhibit
16 C-1 attached hereto and made a part hereof if the BLM
17 configuration does not occur or the real property shown
18 on Exhibit C-2 attached hereto and made part hereof if
19 the BLM reconfiguration is completed, provided the
20 actual boundaries of the Option Property are subject to
21 change, dependent upon the status of the BLM
22 reconfiguration, the processing of the seller
23 entitlements for the entire site as described in
24 Paragraph 13 (b) below, and --

25 MS. LUNDVALL: 10 (b).

1 BY MR. J. J. JIMMERSON:

2 Q. 10 (b) below and market conditions.

3 Have I read that accurately.

4 A. Yes, sir.

5 Q. All right. Now, at this time, under these
6 terms, and I know it changed later on, we'll speak
7 about that, but these terms, what is being purchased in
8 the first portion of Paragraph B, is the entire site of
9 3,600 acres, correct?

10 A. No, sir.

11 Q. Okay. Well, when it says, The parties desire
12 to enter into this agreement to provide for buyer's
13 purchase of the portion of entire site consisting of
14 Parcel 1 as shown on this parcel map, okay, the entire
15 site is 43,000 acres less 13,000 acres, correct?

16 A. Yes.

17 Q. All right.

18 A. That's the entire piece of property which is
19 owned by Coyote Springs.

20 Q. And the words which were precise here,
21 capital E, Entire, and capital S, Site, refer to all
22 the property, correct?

23 A. That's correct.

24 Q. Right.

25 A. That's not what I'm, that's not the

1 correction I want to bring to your attention.

2 Q. I understand.

3 A. Okay.

4 Q. But if you're gonna make a correction, you're
5 going to be going against the words of this document.

6 MS. LUNDVALL: Your Honor?

7 THE COURT: I'm gonna strike that.

8 Please, why don't you, what correction do you
9 want to make of all of these things we read.

10 THE WITNESS: He indicated that it was for
11 3,605.22 acres. That is the correct, you read that
12 number correctly.

13 BY MR. J. J. JIMMERSON:

14 Q. Okay.

15 A. If you look at the map of the Purchase
16 Property, it's land.

17 Q. Right, it sure is.

18 A. Okay. The 3,600 was the number which was
19 necessary to give to Pardee a level of assurance that
20 if Coyote Springs defaulted, that they would be able
21 to, that they would be able to gain title to a
22 significant chunk of our property.

23 Q. Very good, okay.

24 That language, as you just gave, is nowhere
25 set forth in this contract, is it?

1 MS. LUNDVALL: Your Honor, I'm going to
2 object to that, because it is, and that is
3 misrepresentation of the contents of the document.

4 MR. J. J. JIMMERSON: Then he can answer the
5 question, "No," Mr. Jimmerson, you're wrong and it's
6 here somewhere.

7 THE COURT: I am going to overrule it. Let
8 him answer the question. You're gonna have to explain
9 this a little further, do you get that, Mr. Whittemore?

10 THE WITNESS: Yes, I do.

11 THE COURT: He's just asking a question.

12 Okay. You do your question. He realizes we
13 need more clarification.

14 MS. LUNDVALL: And if he would ask a proper
15 question rather than to try to put words in his mouth
16 through leading questions, we would have a little bit
17 of an easier time with this.

18 MR. J. J. JIMMERSON: Okay.

19 THE COURT: We're all doing the best we can.

20 THE WITNESS: Am I being difficult?

21 THE COURT: No, not at all. You can only
22 answer the questions, and we'll get there one way or
23 the other Mr. Whittemore.

24 BY MR. J. J. JIMMERSON:

25 Q. I'm showing you Exhibit 25.

1 THE COURT: What are we looking at?

2 MR. J. J. JIMMERSON: Exhibit 25, Plaintiff's
3 25.

4 THE COURT: Hold on.

5 THE CLERK: That's your map, Judge.

6 THE COURT: What did we do with it? I
7 apologize.

8 THE CLERK: I think you, did you roll it back
9 up?

10 THE COURT: I am so sorry. I had it out.
11 Sorry, it would have been too easy if I kept it out.

12 Thank you.

13 BY MR. J. J. JIMMERSON:

14 Q. What is, please tell this Court what is the
15 3,605.22 acres that was recorded in the 2000 Parcel Map
16 Number 9857, and you have in front of you, just do you
17 recall what it is?

18 A. Well, I'm gonna check the numbers, if I can
19 compare them.

20 Q. I understand.

21 A. It appears to be what's been designated as
22 Exhibit 25, plaintiff's proposed Exhibit, which looks
23 like, to me, the portion of the parcel map that I was
24 contemplating when we described the 3,605 acres.

25 Q. Okay. So the parcel, Exhibit 25, is a

1 depiction by map of what was being sold as Purchase
2 Property referred to in the first sentence of
3 paragraph B, correct?

4 A. As you combine these documents together, the
5 answer is correct.

6 Q. Okay. Thank you.

7 MR. J. J. JIMMERSON: And I have it and you
8 have it in front of yourself, your Honor, and it's also
9 right here on the easel.

10 THE COURT: I understand Mr. Wolfram's
11 testimony yesterday, it's all these pieces. I
12 understand that.

13 BY MR. J. J. JIMMERSON:

14 Q. It's this parcel here, correct?

15 A. Yes, sir.

16 Q. All right. And this is the county line at
17 the top, correct?

18 A. That is correct.

19 Q. All right. And so at this point in May of
20 2004, there's gonna be a donut hole right at --

21 A. No, sir.

22 Q. There's not?

23 A. No, sir.

24 Q. It's over here? Where is the donut hole?

25 A. The whole reason why there's straight lines

1 there, Mr. Jimmerson --

2 Q. Right.

3 A. -- is to ensure that Pardee and Coyote are
4 avoiding any overlap into the leased portion of the
5 land, because again, we cannot give fee title to that
6 which is subject to a lease.

7 Q. So the donut hole is to the east?

8 A. Yes, sir, right in that general area,
9 pointing to the right of that exhibit.

10 Q. Right here.

11 So what is being sold to Pardee under this
12 description is 3,600 acres depicted by this rectangle?

13 A. When you use the term, "sold" -- I'll explain
14 this. What's being described in this document --

15 Q. Right.

16 A. -- is the intent of the parties, that we can
17 only give title to that which is specific, defined by
18 specific parcel map, and at this point, there have been
19 no discussions as to where single-family residential
20 are going to be or where commercial property is going
21 to be or where the golf course is going to be, but
22 everybody knows, and this is why I wanted to say with
23 respect to this agreement, it must be clear that
24 neither Pardee nor Coyote Springs could have
25 anticipated the exact configuration of the parcels they

1 were ultimately going to acquire pursuant to this
2 agreement until that mapping and entitlements and
3 development process had taken place.

4 Q. And I accept that.

5 A. Thank you.

6 Q. You're not gonna have any quarrels from me,
7 that's my understanding as well. Fair enough.

8 But what is being purchased here,
9 understanding that you believe it was subject to change
10 as you define entitlements, as you work with the BLM
11 and the like, was selling them purchase property
12 described as 3,600 acres, Exhibit 25, correct?

13 A. I'll try to do this again.

14 Q. Yes or no?

15 THE COURT: No, honestly, please answer,
16 because I'm a little confused too. Could can you
17 answer that yes or no?

18 THE WITNESS: No.

19 THE COURT: Okay. Then please --

20 THE WITNESS: No, your Honor, I cannot.

21 THE COURT: Okay. Could you please --

22 THE WITNESS: Yes.

23 THE COURT: -- try to clarify for all of us.

24 BY MR. J. J. JIMMERSON:

25 Q. Please tell me under that contract what the

1 definition of Purchase Property is?

2 A. I would like to --

3 THE COURT: I would like further --

4 THE WITNESS: We --

5 THE COURT: Could you please give us, I would
6 like to hear --

7 THE WITNESS: Mr. Jimmerson and Judge, the
8 property which is described on that exhibit,
9 Exhibit 25, what's in front of me, what's in front of
10 the Judge, is a delineation of a portion of the Coyote
11 Springs property which served as a guarantee that
12 Pardee would be able to acquire their portion of the
13 single-family residential property which the parties
14 would subsequently describe on a map after the planning
15 process and entitlement process, and, quite frankly,
16 the development process associated with the golf course
17 had taken place, because until that took place, this
18 was my way of guaranteeing to them X number of acres,
19 because what they wanted was X number of acres.

20 And you will see in this agreement,
21 Mr. Jimmerson, that we had a right to reacquire this
22 from Pardee if the thing blew up, because we didn't
23 want to have a situation where there was a party out
24 there who had this piece and had a blocking strategy,
25 as opposed to what the intent of the parties was, which

1 was to combine their joint planning efforts and come up
2 with the right plan for Coyote Springs.

3 BY MR. J. J. JIMMERSON:

4 Q. No problem about that.

5 A. Thank you.

6 Q. To establish the events beforehand, in the
7 meeting you had, the all-hands meeting at Pardee's
8 offices roughly January/February 2004, after that,
9 after Pardee evidenced their interest to acquire the
10 land, and daily communication occurred between March
11 and May of 2004, is Mr. Wolfram or Mr. Wilkes present?

12 A. At any meeting?

13 Q. Yes, at any meeting.

14 A. No, sir. No.

15 Q. Okay. Were they, to your knowledge, privy
16 to the communication going on between you and
17 John Lash, you on behalf of Coyote Springs, John Lash
18 on behalf of Pardee?

19 A. No, sir. I was not aware of them.

20 Q. As far as you know, the answer is --

21 A. No, that's correct, sir.

22 Q. All right. So you know when or if they ever
23 received this Option Agreement, Exhibit 2?

24 A. No, I'm not aware.

25 Q. Did you deliver them, prior to this

1 litigation, this document, and by "you" I mean Coyote
2 Springs?

3 A. Not that I recall.

4 Q. Okay. All right.

5 All right. Now, understanding what you say
6 was the idea, that you're going to now do entitlements
7 and refine things and the like, at least for purposes
8 of this document, would you agree with me that the term
9 "Purchase Property" refers to Exhibit 25 for purposes
10 of this contract?

11 I understand you're gonna tell me, Jim, it's
12 gonna change, but for a moment in time, was the
13 Purchase Property Exhibit 25?

14 A. Jim, I'm gonna say you have to take into
15 account what the property was gonna look like with the
16 BLM configuration and reconfiguration, so you cannot, I
17 cannot sit here and tell you or the Judge that Exhibit,
18 Exhibit 2 was complete until the reconfiguration
19 determination was made, because as a part and parcel of
20 this agreement, it had maps which, quote, required, and
21 I don't recall the numbers, but my recollection is that
22 there was, there were exhibits that were required to
23 say this is what the property is gonna look like, the
24 pre-configuration versus post configuration.

25 Q. Mr. Whittemore, you're not gonna concede to

1 me that you defined in this contract Purchase Property
2 as Exhibit 25, yes or no? I know you're gonna tell me
3 it was subject to change, and I'm willing to accept
4 that. Will you not accept the fact in one moment in
5 time, May of 2004, Purchase Property is defined as
6 Exhibit 25.

7 MS. LUNDVALL: I'm gonna now object. This
8 has been asked and answered.

9 THE COURT: I'm not sure he did answer. He's
10 explaining. I think he's trying to just do a very --
11 he's just trying to say for purposes of just looking at
12 Exhibit 2, is Purchase Property, at least why, your
13 understanding, defined according to Plaintiff's
14 Exhibit 25, I think that's what you're asking?

15 MR. J. J. JIMMERSON: Precisely, yes.

16 THE COURT: Just for purposes of this?

17 THE WITNESS: Mr. Jimmerson, your Honor,
18 Purchase Property is defined within Paragraph B as the
19 3,605 --

20 BY MR. J. J. JIMMERSON:

21 Q. Thank you.

22 A -- 22 acres within Paragraph B.

23 Q. And is Option Property, at that moment in
24 time, defined as everything else outside of Parcel 1,
25 the 3,600 acres?

1 A. No, sir.

2 Q. What is Option Property defined as?

3 A. Option Property is specifically defined.
4 That is portion of the entire site which is or becomes
5 designated for single-family detached production
6 residential use.

7 Q. Okay.

8 THE COURT: Hold on, let him finish.

9 BY MR. J. J. JIMMERSON:

10 Q. Did I interrupt you?

11 A. Yes.

12 Q. Okay.

13 A. And therefore, and therefore, depending upon
14 what happened with respect to any portion of any
15 subsequent agreements, entitlement, mapping, the Option
16 Property could be zero, because I was going to
17 designate it as multi-family, I was going to designate
18 it as commercial, I was going to designate it as golf
19 course, I was gonna designate it as any of a huge
20 number of potential uses pursuant to the entitlements,
21 which I received from Clark County.

22 Q. Fair enough.

23 A. That's the complete answer.

24 Q. Would you then agree from your last answer
25 that Option Property is outside of Parcel 1? I don't

1 care where it was, it's just not part of Parcel 1?

2 A. Within the constraints of Paragraph B, yes.

3 Q. Thank you. That's all I need to know.

4 A. Okay.

5 Q. Thank you.

6 I'm gonna fill in the blanks with you. Work
7 with me. Trust me, okay?

8 A. Okay.

9 Q. All right. So June 1, when they sign this,
10 this is Purchase Property, a defined term, and
11 somewhere within the other 43,000 acres, less the
12 13,000 approximately, you're gonna retain for yourself,
13 and Option Property is defined as property outside of
14 Parcel 1 for single-family residential use, correct?

15 A. Within the context of Paragraph B, the answer
16 is yes.

17 Q. Great, okay.

18 Now, as you noted, there are no schedules or
19 maps attached to that document?

20 A. To Exhibit 2?

21 Q. To Exhibit 2.

22 A. Correct.

23 Q. You first, in fact, learned that in your
24 deposition last year, correct? Do you recall thinking
25 that they had been attached to the document but then

1 later on weren't?

2 A. Well --

3 Q. On October 19th of 2012?

4 A. I don't recall what my --

5 Q. Fair enough.

6 MS. LUNDVALL: Your Honor --

7 THE COURT: Just let him finish. I know
8 you're trying to be real, Mr. Jimmerson, I know where
9 you need to go. Slow down, I know what you're trying
10 to -- he doesn't recall in his deposition, and you're
11 gonna show him, okay.

12 BY MR. J. J. JIMMERSON:

13 Q. Look at now, look at the schedules attached
14 as of June 1 of 2004.

15 THE COURT: Pursuant to Paragraph B?

16 MR. J. J. JIMMERSON: Correct, as of June 1
17 of 2004.

18 BY MR. J. J. JIMMERSON:

19 Q. Now, have you noticed attached to this
20 document are blanks for the schedules?.

21 THE COURT: We're still on Exhibit 2?

22 MR. J. J. JIMMERSON: Exhibit 2.

23 THE WITNESS: Yes.

24 BY MR. J. J. JIMMERSON:

25 Q. In other words, when you look at this,

1 beginning with -- let me find it here. Page 46.

2 A. Bates stamped 48, list of exhibits, do you
3 see that, Mr. Whittemore?

4 A. Yes, 46 and 48, yes, sir.

5 Q. And you listed the anticipated exhibits, and
6 they're all referenced in the course and agreements,
7 but when you go looking for them, you see that they're
8 not attached?

9 A. Right. What the parties did was prepare a
10 complete list of what was going to be subsequently
11 attached to Exhibit 2 to make it a complete agreement.

12 Q. Fair enough. Good.

13 Just turn to the next page, Exhibit 3, the
14 tab right below --

15 A. Exhibit 3, yes, sir.

16 Q. It's Bates Stamp Number 91?

17 A. Yes, sir.

18 Q. Pardee Homes 91, and it's called Amendment To
19 Option Agreement For The Purchase Of Real Property And
20 Joint Escrow Instructions.

21 Do you see that?

22 A. Yes, I do.

23 Q. Now, this is not central to this case, but
24 just tell us what was occurring here in July of 2004,
25 approximately six or seven weeks after the signed

1 document of June 1, 2004?

2 A. We were in the process of finalizing the
3 exhibits, and because we had not yet been able to
4 finalize what those exhibits were, the parties felt it
5 appropriate that we extend time under which part of the
6 money was supposed to go hard, and therefore, in
7 fairness to Pardee, we said we'll extend the
8 contingency periods, and we'll continue to work,
9 honoring what needs to be done to make this agreement
10 work for you.

11 Q. And there was some release of funds, \$125,000
12 from Pardee through escrow, released out of escrow to
13 Coyote Springs?

14 A. Yes. I made them pay a little bit to dance.

15 Q. I got it. Fair enough.

16 And the date of this is roughly July 28th of
17 2004?

18 A. That is correct.

19 Q. About seven weeks after the signing of the
20 original agreement?

21 A. Close enough.

22 Q. Fair enough.

23 Now, would you look at Exhibit 4 --

24 A. Yes, sir.

25 Q. -- in evidence, all right.

1 Do you know what Amendment Number 2 Option,
2 I think this answers a lot of questions you were
3 talking about earlier?

4 A. Yes, sir.

5 Q. All right. So let's work together now
6 talking about this.

7 What is going on now, it's dated August 31,
8 and I don't know if that's the exact date it was
9 signed, but it bears the date August 31, 2004.

10 We're going on to Amendment Number 2 Option
11 Agreement For The Purchase Of Real Property And Joint
12 Escrow Instructions, Exhibit 4.

13 A. Okay. Thank you.

14 The parties have finally determined that it's
15 time to bring greater specificity to what is your
16 Exhibit 2, which is the Baseline Agreement to me, and
17 it says that the parties hereby agree that upon
18 execution of this amendment, all of those exhibits
19 attached, A, B, C, D, G, I, J, K, L, P, and Q, are
20 gonna be made part of the agreement.

21 The Exhibit H reference was deleted. We had
22 an Exhibit H reference in the underlying agreement, but
23 we deleted it in its entirety, and the most important
24 piece of this, from my perspective and John's
25 perspective, was that Exhibit E, the price that they

1 were going to pay for this land purchase in the future
2 would remain in affect.

3 Q. All right. And why, what's the most
4 important feature of this in your and Mr. Lash's minds?

5 A. Because Exhibit E was the amendment which we
6 got done most quickly to attach to the underlying
7 agreement, because he wanted to know, Harvey, I trust
8 you, but I want to make sure if I want to buy the
9 entire property that you designate as single-family
10 residential, that over a period of 40 years this is
11 what I'm gonna have to pay for the property.

12 I wanted to make sure that I had a deal that
13 I was, I was going to have a partner who was gonna be
14 in it with me for the long haul.

15 Q. Okay. Now, I don't see Exhibit E here. Is
16 it here?

17 A. No. It's back on Exhibit -- if you turn to
18 your Exhibit 2?

19 Q. Please do that. I want the Court to do that.
20 I want everybody in the room to follow along.

21 A. Okay. And you'll see Exhibit E on Bates
22 Stamp 54.

23 Q. Okay. So now looking at Exhibit 2, Bates
24 Stamp 54.

25 A. Yes, sir.

1 Q. Which is --

2 A. 54, Exhibit E.

3 THE COURT: It don't have a page number. It
4 just says Exhibit E.

5 MR. J. J. JIMMERSON: Thank you.

6 THE WITNESS: Right.

7 BY MR. J. J. JIMMERSON:

8 Q. And so that schedule, that had been agreed to
9 June 1, 2004?

10 A. Yes.

11 Q. It was an attached exhibit?

12 A. Yes, sir.

13 Q. All right. And so that is being reaffirmed,
14 if you will, through Exhibit 4?

15 A. It's just not addressed.

16 Q. But it remains in force?

17 A. Yes, it remains in force.

18 Q. And that's why you say that was the most
19 important part to him, to make sure he was able to buy
20 out the entire property you designate single-family
21 residential at the price established June 1, 2004?

22 A. And for me to be able to guarantee I was
23 gonna send a bill in the Year 40 for \$74,923 for any
24 piece of property designated as single-family
25 residential they want to exercise the option on,

1 because you will see Year 0 to 5 is the five year
2 period you asked me about. It's \$40,000 an acre.

3 Q. And then it escalates pursuant to the terms
4 of the agreement?

5 MS. LUNDVALL: Your Honor, from his
6 perspective, once again, we get a witness.

7 THE COURT: I'm trying, and Mr. Jimmerson,
8 you probably understand it better than I do, and I know
9 you've worked the case, but I'm trying to understand.

10 MR. J. J. JIMMERSON: I will be more careful.

11 THE COURT: This is really critical to me.

12 MR. J. J. JIMMERSON: I will be more careful.

13 THE COURT: And I'm not chastising, I'm just
14 trying very hard to follow, because I know this is
15 important.

16 THE WITNESS: I'm trying to make it clear.

17 THE COURT: You are, and I truly appreciate
18 it.

19 BY MR. J. J. JIMMERSON:

20 Q. On Exhibit E --

21 THE COURT: Once again, this is after the
22 five years, if they do exercise the option, Pardee,
23 this is the price they're gonna pay per acre?

24 THE WITNESS: Yes.

25 THE COURT: Thank you.

1 BY MR. J. J. JIMMERSON:

2 Q. And as you've indicated, anytime they buy,
3 including the entire site of 30,000 acres, 43 minus the
4 13, it's 40,000 an acre Years 0 to 5?

5 A. If I designated it, if they say, I want to
6 buy the entire property without regard to any
7 designation, commercial or anything else, their strike
8 price is \$40,000 per acre for the full 30,000 acres,
9 which would be 1.2 billion.

10 Q. B, as in billion?

11 A. Not an M, B.

12 Q. So that's the magnitude of this potentially,
13 is a \$1.2 billion purchase by Pardee if they --

14 MS. LUNDVALL: Your Honor, once again, we've
15 got -- the witness is supposed to provide the
16 testimony, the examiner asks the questions.

17 THE COURT: I think he's trying to clarify it
18 to make sure I understand it, but that's if the whole
19 site was designated as single-family residential,
20 nothing else.

21 THE WITNESS: Or they simply said we want to
22 take down the entire site.

23 THE COURT: And do what we want?

24 THE WITNESS: Yeah, and we'll do the
25 planning.

1 BY MR. J. J. JIMMERSON:

2 Q. And there was an agreement in Exhibit E on
3 June 1 of 2004, part of Exhibit 2, as to the escalation
4 so you wouldn't have any quarrels about what does the
5 escalation compute to?

6 A. That's why it's the most important part of
7 the deal.

8 Q. Price sometimes is, all right.

9 Now --

10 THE COURT: I think we would all stipulate to
11 that. It can be a deal breaker.

12 THE WITNESS: Uh-huh.

13 BY MR. J. J. JIMMERSON:

14 Q. Now, for purposes of Amendment 2, that's the
15 exhibit you're filling in the blanks that had been left
16 on June 1?

17 A. Absolutely, fair characterization.

18 Q. Okay. So now let's fill in the blanks
19 together.

20 A. Okay.

21 Q. Let's take a look at the attachments, please,
22 and you'll walk us through what it is now that we are
23 doing.

24 A. Right.

25 Q. What is Exhibit A-1, CSI Wolfram 1560?

1 A. Got it.

2 Q. What is that?

3 A. Got it, thank you.

4 Okay. Exhibit A-1 was prepared by my general
5 manager, Rob Dirk, to show what the site looked like
6 before any BLM reconfiguration

7 You can see the area which is white, your
8 Honor.

9 THE COURT: It's the BLM land?

10 THE WITNESS: It's the BLM land, and you'll
11 see a little area on the upper left-hand corner which
12 is also BLM land.

13 THE COURT: BLM land also.

14 BY MR. J. J. JIMMERSON:

15 Q. Looking at Exhibit 25, the BLM property is
16 right along the eastern border of the purchased
17 property?

18 A. Yes, sir.

19 Q. And here's the county line, and we find other
20 parts up in here?

21 A. Way off the chart but up to the northwest,
22 that's correct.

23 Q. All right. And just hold it up so, hold it
24 up, show me this. Tell me what this is, please.

25 A. Okay.

1 Q. The bottom left corner below the county
2 line --

3 THE COURT: And on the left.

4 THE WITNESS: This area which is designated,
5 which is shown to be crosshatched on Exhibit A-1 is
6 identical to what's been referenced as Exhibit 25.

7 BY MR. J. J. JIMMERSON:

8 Q. Purchase Property as originally defined in
9 the May agreement?

10 A. I'm gonna keep qualifying that, in
11 Paragraph B.

12 Q. Okay, no problem.

13 A. Yes, sir.

14 Q. Now, Purchase Property in Amendment Number 2
15 remains the same, the same definition, correct?

16 A. I don't think we changed anything. In fact,
17 if I drafted this right or my people did, it will say
18 that all the definitions remain the same.

19 Q. Thank you.

20 A. Let me look, please.

21 Q. Please confirm it.

22 A. Yes. Paragraph 23 basically said that the
23 provisions of this amendment control over the prior
24 terms of the agreement, so technically, you would have
25 to look at Amendment Number 2 as compared to the prior

1 agreement, your Honor.

2 Q. I understand. And would you agree that
3 Amendment 2, Exhibit 4, does not change the definition
4 of Purchase Property found on the first page of
5 Exhibit 2, the June 1, 2004 Baseline Agreements?

6 A. I'm gonna look to see.

7 THE COURT: Is there anything in this
8 amendment that even talks about Purchase Property?

9 THE WITNESS: That's what I want to find out.

10 THE COURT: Right, perfect, on the same page.

11 THE WITNESS: I would like it if somebody
12 could do a word search real quickly. It would help a
13 lot.

14 BY MR. J. J. JIMMERSON:

15 Q. You're years ahead of me. What is a word
16 search?

17 THE COURT: I wish we had it on a computer.
18 Come on, you've got to have OCR on the computer.

19 MS. LUNDVALL: We don't, your Honor. We
20 don't have it.

21 THE WITNESS: We don't have OCR.

22 MS. LUNDVALL: Not for these documents.

23 THE COURT: We'll have to use an eyeball
24 search.

25 THE WITNESS: Okay. So now I can tell you

1 this, that the parties at the time that this document
2 is executed clearly anticipate that the Purchase
3 Property, the purchase price of the Purchase Property
4 is gonna be \$84 million.

5 BY MR. J. J. JIMMERSON:

6 Q. Right.

7 A. And that's contained in Paragraph 4 (b).

8 THE COURT: That's how you get to the
9 \$84 million?

10 THE WITNESS: That's how we get to the 84,
11 because I negotiated with Mr. Lash an increase in the
12 prior number to this, based upon my obligation to put
13 in certain improvements that Pardee wanted to guarantee
14 that we were gonna put the money in the land rather
15 than just pocket it and go home.

16 BY MR. J. J. JIMMERSON:

17 Q. Got it.

18 A. But it's critical that you look at
19 Paragraph 4 (b), because it describes throughout the
20 rest of this document all of the commercial
21 improvements, clearly contemplating commercial
22 property. It talks about all the different things
23 which are required from recreation facilities, so I
24 impose upon the buyer an obligation to commit to build
25 a recreation facility, which means you need parks and

1 recreation land, and so again, now we have the
2 integration of this agreement with this amendment to
3 contemplate or to reach the contemplation of the
4 parties.

5 Q. Very good.

6 And would you agree that during the course of
7 this document, there is a specification that the first
8 purchase that Pardee is going to make is purchase
9 property of roughly 1,950 acres?

10 A. Yeah. That's, I think that's --

11 Q. And the 1,950 acres is a portion of the
12 overall 3,600 acres Purchase Property, correct?

13 A. Well, this is where you get, this is where
14 you need to allow me to explain, if I could.

15 If you please look at 1568, the map of the
16 Initial Developed Parcel.

17 Q. Okay.

18 THE COURT: 1568 Bates Stamp?

19 THE WITNESS: Yes, Bates Stamp 1568.

20 THE COURT: Got it.

21 THE WITNESS: You can see the double
22 crosshatched area, the Initial Developed Parcel, the
23 1,950, and Phase 1 is located in the southern portion
24 of the parcel, and the parties will mutually agree upon
25 the phasing of the additional purchases, your Honor,

1 the remaining 1,700 acres.

2 BY MR. J. J. JIMMERSON:

3 Q. Now, can we agree that the 1,950 acres is
4 just what I just said, it's part of, part of the
5 Purchase Property, it's part of Exhibit 25?

6 A. Yes.

7 Q. That's all I asked. I appreciate it.

8 THE COURT: Do you need to explain something
9 else?

10 THE WITNESS: No.

11 BY MR. J. J. JIMMERSON:

12 Q. It's, it relates to the commission
13 agreements, not anything to do with your being
14 accurate, it's just how we're paid differs whether it's
15 Purchase Property or Option Property, that's why I'm
16 being so emphatic to describe where the 1,950 acres is.

17 A. Okay.

18 MS. LUNDVALL: Your Honor, again, I would ask
19 to have the speech stricken by Mr. Jimmerson.

20 MR. J. J. JIMMERSON: I agree to have it
21 stricken, that's just fine.

22 MS. LUNDVALL: And I would ask for him to
23 exercise restraint, as the Court has repeatedly
24 admonished him not to do that.

25 MR. J. J. JIMMERSON: I didn't have breakfast

1 with the witness. I didn't have the opportunity to
2 talk to him.

3 THE COURT: You both had an opportunity. I
4 don't infer anything from you talking to him. I know
5 not to infer any -- I certainly would be disappointed
6 if both of you didn't talk to a witness if you had the
7 chance, so I'm not inferring anything by that.

8 Honestly, it's easier if I get as much
9 testimony as I can out of Mr. Whittemore, to be honest,
10 so --

11 MR. J. J. JIMMERSON: I understand, I'm gonna
12 go through all of it.

13 THE COURT: I know you know where you're
14 going.

15 MR. J. J. JIMMERSON: I'm gonna go through
16 all of it, Judge, so we have a clear understanding.

17 BY MR. J. J. JIMMERSON:

18 Q. So let's start at Exhibit A-1. We're gonna
19 go through the exhibits that are now locked in.

20 This is what the provision of Amendment 2
21 says: Subparagraph 3, Upon execution of this agreement
22 by both parties, Exhibits A, B, C, D, G, I, J, K, L, P
23 and Q to the agreement shall be the exhibits which are
24 included in Exhibit 1 attached hereto and made a part
25 hereof. Exhibit H to the agreement is hereby deleted.

1 A. Right.

2 Q. So now you're confirming what you had thought
3 you had in May, but now you've got the attachments,
4 right?

5 A. No.

6 Q. What's wrong with that?

7 A. That's not what we thought we had in May,
8 it's what we were going to do because we were going to
9 use a deliberative collegial process to ultimately
10 reach resolution.

11 Q. And you, you got by this amendment --

12 A. We got here, okay, we got here.

13 Q. And it's dated roughly August 31 of 2004, two
14 months later?

15 A. Yes, sir.

16 Q. So let's start at A-1.

17 A. Yes, sir.

18 Q. You already answered the question, but to
19 summarize, this is as it was with the donut hole?

20 A. That's correct.

21 Q. BLM leaves the property?

22 A. That's true.

23 Q. And the purchase property is the bottom
24 left-hand corner of --

25 A. As defined in Exhibit B on Page 1.

1 Q. Right, okay.

2 So now, if any portion above the county line
3 or to the east of the county line, not including BLM
4 property here and here --

5 A. Okay.

6 Q. -- was acquired by Pardee under the terms of
7 the agreement of May or of June 1, 2004, would that be
8 called Option Property?

9 THE COURT: I didn't see what you -- I'm
10 sorry, Mr. Jimmerson, I couldn't see what he was
11 pointing at.

12 THE WITNESS: Mr. Jimmerson was referring to
13 everything that is not --

14 THE COURT: Hash marked, the cross marks
15 hatched that are not BLM land, correct?

16 THE WITNESS: Yes.

17 THE COURT: Everything that we had marked
18 Parcel 1, that's not BLM land.

19 BY MR. J. J. JIMMERSON:

20 Q. Is that Option Property defined under the
21 agreement of June 1, 2004, if you designated it as
22 residential?

23 A. Correct.

24 Q. Thank you.

25 Now, let's go to A-2. What is A-2?

1 A. A-2 is --

2 Q. Referring to Bates Stamp 1561?

3 A. 1561 represents my best estimate at the time
4 that we were doing this as to what I had hoped would be
5 the map of the entire site post BLM reconfiguration.

6 Q. Okay. Now, looking at that map, A-2, I'll
7 show the Judge, this is Parcel 1, Purchase Property,
8 and it's immediately, and immediately to the east and
9 north would be Option Property, if it's designated as
10 residential as of August 31 of 2004?

11 A. If it's designated as single-family
12 residential for purposes, I am presuming we're talking
13 about for purposes of this trial, correct?

14 Q. Yes.

15 A. Yes.

16 Q. Thank you.

17 That's all I'm trying too establish, what's
18 Purchase Property and what's Option.

19 Next exhibit, please.

20 A. Uh-huh.

21 Q. What's Exhibit 1563, what we call Exhibit B
22 to this document?

23 A. It is a planning designation from
24 Wilson Miller, which is one of our consultants, that
25 shows what it look like in aliquot portions, again,

1 26 July, 2004.

2 Q. Okay. And it was the Exhibit B description
3 of it, Page 1 of the original Baseline Agreement,
4 June 1, 2004, it's the Exhibit B that wasn't attached
5 on June 1 and that is now attached?

6 A. That's fair.

7 Q. Thank you.

8 So what's shown herein is the Purchase
9 Property as that is a defined term in the Baseline
10 Agreement?

11 A. In Paragraph B.

12 Q. All right. Thank you.

13 Let's turn to the next page, 1565, and it
14 does skip one, 1563 to 1565.

15 What's C-1?

16 A. C-1 is the map of the, what's described as
17 Option Property prior to BLM reconfiguration, and then
18 it says, The actual Option Property will be the
19 production residential property within the designated
20 area determined pursuant to the Option Agreement.

21 Q. Okay. So again, it shows the Purchase
22 Property bottom left-hand corner, right?

23 A. By definition -- no. By the fact it's
24 excluded, it must be referring to prior documents,
25 which therefore would be --

1 Q. Purchase Property?

2 A. Purchase Property.

3 Q. Okay. Now, the difference between C-1 and
4 A-1 is what, if there's any difference?

5 A. Well, there's a lot. Exhibit A-1, the
6 crosshatched marks cover what you call the Purchase
7 Property, and Exhibit C-1, it's blank.

8 Q. Is that the only difference between the two?

9 A. Yes.

10 Q. All right. Did you make the notation on the
11 right, the actual Option Property will be, quote,
12 production residential property within the designated
13 area pursuant to the Option Agreement?

14 A. That was done by our drafters when we were
15 getting to sign the final documents.

16 Q. Okay.

17 A. Both Pardee and CSI wanted that on -- all of
18 these written notes were done prior to my execution of
19 the agreement.

20 Q. That's what I want to know. Here's my
21 questions: Was it done prior to June 1? Was it done
22 prior to the Amendment Number 2 of roughly August 31 of
23 '04?

24 A. I don't know when the map was created.

25 Q. Okay. But we know it was attached at least

1 as of August 31, Amendment Number 2, the document in
2 front of you, Exhibit 4?

3 A. Yeah. The effective date of the agreement is
4 when all of these exhibits were gonna be attached.

5 Q. I just want the court to know you did it,
6 it's not something Ms. Lundvall or I did during
7 discovery?

8 A. Absolutely not.

9 THE COURT: He's testified to have that, you
10 said they were actually there before you signed the
11 agreement?

12 THE WITNESS: Yes, your Honor.

13 BY MR. J. J. JIMMERSON:

14 Q. All right. Thank you.

15 THE COURT: I understand that, that would be
16 true of C-2 and any --

17 BY MR. J. J. JIMMERSON:

18 Q. It's true for all of them?

19 A. Any of the notations, your Honor.

20 Q. Now, continue to the next page.

21 A. 1566 is, again, the actual Option Property
22 has the exact same quote, okay?

23 Q. All right. And this is with the swap or the
24 removal of the donut hole, the readjustment of BLM land
25 to the east?

1 A. After BLM reconfiguration, that's correct.

2 Q. All right. And with this C-2 then, the
3 Purchase Property is the blank bottom left corner?

4 A. That's as defined in.

5 Q. The first agreement, the first agreements
6 within that paragraph.

7 Q. And then the Option Agreement is everything
8 hatched?

9 A. That's correct.

10 Q. Thank you.

11 And would you go to the next one, 1568,
12 Exhibit D?

13 A. Yes, sir.

14 Q. What's that, please?

15 A. Exhibit D is the crosshatched, and in this, I
16 think my people, I would rather them have said on here
17 documents hatched and this is crosshatched, but the X
18 crosshatched area represents the first 1,950 acres
19 which I was referring to.

20 THE COURT: Earlier.

21 THE WITNESS: Earlier.

22 BY MR. J. J. JIMMERSON:

23 Q. And to save further questions on this point,
24 would you endorse the handwritten description of your
25 staff as being accurate?

1 A. Yes.

2 Q. That's all I want to know.

3 So when I say, "your staff" said this, you're
4 gonna say, Yes, that's true, my understanding at the
5 time?

6 A. Yes.

7 Q. All right. And to read that then, the
8 crosshatched area to the Initial Developed Parcel,
9 1,950 acres, Phase 1 is that 250 acres?

10 A. Yes, sir.

11 Q. I'm sorry, I do have bad eyes.

12 It's located in the southern portion of the
13 parcel, and the parties will mutually agree upon the
14 phasing of the additional purchases with an arrow to
15 the 1,950 acres outlined within the 3,600 acres that we
16 have described as purchased property?

17 A. We had determined by this date that we could,
18 with certainty, start the planning process by saying if
19 you take 250 acres in the lower corner of this piece
20 of, this piece of land, knowing all of the geotechnical
21 and wash considerations taken into account, that this
22 would be an area where you'd have, for example, your
23 signs, and then at some point single-family homes.

24 Q. Got it. Thank you.

25 Would you now look at Exhibit G-1, Grant,

1 Bargain and Sale Deed.

2 A. G-1, yes, sir.

3 Q. What's going on with -- it's called Grant,
4 Bargain and Sale Deed, parentheses, Purchase Property,
5 close parenthesis.

6 A. This is a document prepared for my general
7 manager's signature giving to Pardee certain land as
8 described on Exhibit A, excluding water rights, and our
9 right to put in and over the designated property the
10 construction of fiber optic and telephone lines and
11 those sorts of things, because we were retaining those,
12 as it was our business plan to engage in that activity.

13 Q. Okay. Looking at the Exhibit A, what is the
14 legal description? Can you tell me the legal
15 description so we can look at the map and see what's
16 being conveyed from Coyote Springs to Pardee by this
17 Grant, Bargain and Sale Deed, G-1?

18 A. I would have to look at the Parcel 1 of the
19 parcel map which was recorded, and if you're telling me
20 that it's Number 25 --

21 Q. It is.

22 A. And those are the appropriate file
23 designations, and then it would be all of that
24 property.

25 Q. Thank you.

1 Now look at the next exhibit, Form Of Grant,
2 Bargain and Sale Deed, Option Property, Exhibit G-2,
3 Bates stamped 1573.

4 What property is being conveyed there from
5 Coyote to Pardee?

6 A. Okay. I don't want to be hypertechnical, but
7 I have to be. No property is being conveyed by either
8 of these documents. These are forms of exhibits.

9 Q. Right.

10 A. That's --

11 THE COURT: I understand nothing has been
12 signed, they're just deeds.

13 THE WITNESS: They're just proposed deeds,
14 your Honor, and therefore, okay --

15 THE COURT: I understand that.

16 THE WITNESS: Okay. And the attachment is
17 blank.

18 BY MR. J. J. JIMMERSON:

19 Q. All right. Now, as of September 1, August 31
20 of 2004, looking at maps that have been now discussed,
21 have been agreed to, and have been attached to the
22 agreement by Amendment Number 2, where was the Option
23 Property located?

24 A. The parties had not finalized what it would
25 be. It would clearly be included within the fee

1 portion of any property which Pardee had not yet
2 purchased and for which a single-family residential
3 designation had taken place after Year 5.

4 Q. And not including the Purchase Property?

5 A. And not including the prior Purchase
6 Property, because Purchased Property was designated
7 within a prior exhibit.

8 Q. Thank you.

9 Now, continuing on the set of exhibits,
10 please, would you look at the next exhibit, which I
11 think is, is it I? I'm sorry, my eyes are poor,
12 Exhibit I, Wolfram 1577?

13 A. 1577 is Exhibit 11.

14 Q. 11?

15 A. Uh-huh.

16 Q. The actual commercial property will be
17 portion of the Designated Area which is not --

18 A. Deemed --

19 Q. -- deemed Option Property pursuant to the
20 Option Agreement?

21 Q. So we're not talking Purchase Property, we're
22 not talking about Option Property for residential use,
23 we're talking a third category, right?

24 A. Yes.

25 THE COURT: Slow down, let him explain.

1 THE WITNESS: So what we had done is we had
2 completed an overlay, a crosshatched portion, that said
3 this can be the Option Property, and we had said that
4 that identical land could be commercial property,
5 because in effect what we were saying was Coyote
6 Springs was retaining the right to do what it wanted to
7 do with respect to that property.

8 BY MR. J. J. JIMMERSON:

9 Q. And had we looked at the previous D-1 --

10 A. If we go here from Exhibit 11 and if you go
11 to Exhibit D-1.

12 Q. I think it was D-1.

13 THE COURT: Let's find it, is it D-1 or D --

14 THE WITNESS: I'm going to say it's
15 Exhibit D.

16 THE COURT: I have that.

17 BY MR. J. J. JIMMERSON:

18 Q. Now, looking at, comparing D with 11, tell us
19 what we're looking at?

20 A. Right. So what we had done is to ensure that
21 there could be no confusion between the parties, we had
22 said clearly that the blank portion which is included
23 on Exhibit 11, that area was designated single-family
24 residential at this point in time, and what we had said
25 was that all the remaining map was going to be, if you

1 just hold them up here, because all they did when they
2 drew the maps was simply erase the crosshatch that,
3 those are identical, so both maps depict an area which
4 can be, quote, called the Option Property or commercial
5 property.

6 THE COURT: So you were just keeping your
7 options.

8 THE WITNESS: Our options.

9 THE COURT: And if you decided CSI to
10 designate it as single-family dwellings, that's what
11 Pardee would have the first option on?

12 THE WITNESS: Unless, your Honor, and I want
13 to make this very clear, that between Years 0 and 5, if
14 they had said, We want to take the whole property, they
15 would simply pay 40,000 times the --

16 THE COURT: And they get everything.

17 THE WITNESS: And Harvey is a lot heavier
18 than he is today.

19 THE COURT: I got you, it would have been
20 Pardee's problem.

21 THE WITNESS: So, and you guys would have
22 been -- okay, nevermind.

23 THE COURT: I understand the contingency, but
24 it didn't happen.

25 MR. J. J. JIMMERSON: I should add that to

1 the amended complaint.

2 THE COURT: At least we're laughing, all
3 right.

4 BY MR. J. J. JIMMERSON:

5 Q. And then I'll continue on the next page,
6 Mr. Whittemore.

7 A. Okay.

8 Q. Close that up, and we'll turn the next page.

9 THE COURT: Now we're at Exhibit 12?

10 THE WITNESS: I did not see a 1576. Did I
11 miss something?

12 MR. J. J. JIMMERSON: No.

13 THE COURT: No.

14 THE WITNESS: While I was putting this back
15 in.

16 THE COURT: You're right.

17 BY MR. J. J. JIMMERSON:

18 Q. It's the way you guys produced it.

19 THE COURT: It's okay, we skip them
20 sometimes. No inference there.

21 BY MR. J. J. JIMMERSON:

22 Q. Okay, 1578, Exhibit 12.

23 A. Okay.

24 Q. What's Exhibit 12, Wolfram 1578?

25 A. 1578 is the corresponding map of the

1 commercial property, i.e., the, it's the mirror image
2 post BLM reconfiguration to maintain the same
3 contingency and ability to designate all the property
4 commercial.

5 Q. Got it.

6 THE COURT: You just moved it, got ya.

7 THE WITNESS: We moved it over and retained
8 the flexibility.

9 THE COURT: Same rights, just changed if you
10 could move over BLM, same thing?

11 THE WITNESS: Yes, ma'am.

12 BY MR. J. J. JIMMERSON:

13 Q. The next document, Exhibit J, is Description
14 Of Commercial Improvements.

15 What does Exhibit J?

16 A. Exhibit J is the obligations for the seller
17 to produce certain improvements on the property with
18 the money and additional resources that the seller has
19 to improve the property adjacent to the property which
20 it was selling to Pardee.

21 Q. Fair enough.

22 THE COURT: Was that why there was the
23 increase from 66 to 83?

24 THE WITNESS Yes, your Honor. That was part
25 of the reason, was because --

1 THE COURT: You were committing to do things.

2 THE WITNESS: We were committing to do more,
3 Pardee was asking us to do more, and therefore, I was
4 going to say to Pardee, You're gonna have to step up to
5 the plate.

6 THE COURT: And help.

7 THE WITNESS: To give us a little more money,
8 your Honor.

9 THE COURT: Okay.

10 BY MR. J. J. JIMMERSON:

11 Q. And that's one of the reasons. There may
12 have been others, but that's one of the reasons why the
13 price went up to \$84 million?

14 A. Yes. And with that, the corresponding
15 increase in the, quote, actual per acre price
16 associated with the first sale. It didn't magically go
17 from 40,000 it's a construct, a resulting sum by
18 determining 1,950 into the 88 million.

19 Q. 84 million?

20 A. That's the number you get per acre.

21 Q. Thank you.

22 And did you, within Exhibit J or maybe
23 somewhere else at this point now, I'm talking now
24 September 1, August 31 of 2004, designate where outside
25 of the 1,950 acre takedown of Pardee that commercial

1 improvements are going to be located that are
2 referenced here?

3 A. Yes.

4 Q. And how did you do that and where is that
5 shown?

6 A. That was done internally by CSI on literally
7 thousands upon thousands of design pages which were
8 done by firms called Wilson Miller, Jack Nicklaus.
9 Everybody who was associated with the project literally
10 had reams and reams of -- VTN Consulting.

11 Q. Got it.

12 A. All of our engineers.

13 Q. But for purposes of this question though,
14 they were not gonna be constructed within the first
15 1,950 acres, within the 1,950 acre area shown on the
16 previous exhibits?

17 A. That's not true.

18 Q. Tell me, that's why I'm asking.

19 A. Yes. The agreement between the parties was
20 that if it was necessary for the parties to put in a
21 particular type of street, a major infrastructure,
22 street, that the parties would agree to endure that
23 burden on a 50/50 basis.

24 Q. All right.

25 A. That meant in effect, what we were doing was

1 forcing Coyote Springs to, in effect, give them
2 additional land a little bit outside the 1,950, because
3 on a 50/50 basis, if you, if CSI was paying for it, you
4 got to adjust it up.

5 Q. Got it, okay.

6 A. And, and this is more important, if it made
7 better sense for the golf course because of the wash
8 considerations to develop a hole along the washes
9 within that particular area.

10 THE COURT: The 1,950?

11 THE WITNESS: Within the 1,950 acres, your
12 Honor, that the parties would compensate each other on
13 a one for one basis, that if I took land that was gonna
14 be associated with these golf courses, put it there,
15 that you will then subsequently see, your Honor, the
16 normalcy of a business transaction which the purchaser
17 says that you're gonna put a golf course on my
18 property, and we say yes, and in return --

19 THE COURT: What are you giving me?.

20 THE WITNESS: Exactly. You're gonna give us
21 a golf course premium.

22 BY MR. J. J. JIMMERSON:

23 Q. Got it.

24 A. So of course they were gonna be adjustments
25 as contemplated by the parties with respect to the

1 1,950.

2 Q. All right. Is there any language in the base
3 agreement or in Amendment Number 2 that gives the right
4 to put the golf course on the 1,950 acres being
5 purchased by Pardee within those two documents as of
6 September 1 of 2004?

7 A. Well, I would have to see if it was in this
8 or later.

9 Okay, for example, if you take a look at
10 1554, Item Number 17.

11 Q. I have it in front of me, go right ahead?

12 A. Uh-huh. It talks about the fact that buyer
13 is going to construct a recreation center.

14 Q. And the buyer is Pardee?

15 A. Buyer is Pardee.

16 Q. Go ahead.

17 A. And as a result of that, we're agreeing to
18 sell up to 15 acres of land within the, what is termed
19 here the entire site to buyer without cost for such
20 purpose.

21 Q. Okay.

22 A. So that's an example where you contemplated
23 the construction and use by Pardee of property outside
24 the Purchase Property, and there was a corresponding
25 understanding that if we went into, as a result of the

1 planning process, if the government, of course, went in
2 there, that we would negotiate what those terms would
3 be, so in a subsequent document, I'm sure you're going
4 to find --

5 Q. Right.

6 A. -- an agreement that talks about view
7 premiums or golf course premiums.

8 Q. We're talking about September 1, I want to
9 find out if the 15 acres is still gonna be within the
10 Purchase Property --

11 A. No, sir.

12 Q. -- contemplated in paragraph?

13 A. No, sir. That's what I'm saying.

14 Q. Why is --

15 A. It said 15 acres within the entire site.

16 Q. So where was the retail -- excuse me, the,
17 the recreation center was going to be within the 15
18 acres?

19 A. No, sir.

20 Could I show you?

21 Q. Please.

22 THE COURT: Please.

23 THE WITNESS: So if we went to ask what
24 ultimately happened, if you went to take a tour of the
25 site, which I don't suggest you do, but you will see,

1 you will see a great big lake that was dug for purposes
2 of creating a recreation center, because Pardee's
3 appetite at the time was with the understanding that
4 they thought they were going to build a, an amenity
5 that involved the construction of a beautiful lake,
6 because that was where we were going to be able to
7 store water and do all those sorts of things.

8 BY MR. J. J. JIMMERSON:

9 Q. And that would be outside the Purchase
10 Property, outside of Parcel 1 in this area if I were to
11 point?

12 A. Probably a little bit lower.

13 Q. No problem if you want to write a circle
14 yourself?

15 A. I will say about there.

16 THE COURT: You're doing an approximation.

17 THE WITNESS: Yes.

18 THE COURT: Your point is it's outside, for
19 the question. It doesn't --

20 THE WITNESS: Wait, wait, let me finish.

21 THE COURT: Please.

22 THE WITNESS: You were talking about the
23 initial, the initial property, the 1,950?

24 BY MR. J. J. JIMMERSON:

25 Q. Right.

1 A. The reason why it was specifically saying
2 this, notwithstanding Paragraph 17 of the agreement,
3 Seller hereby agrees to transfer legal title to up to
4 15 acres of land within the entire site to buyer
5 without cost for such purpose. Such land shall be at a
6 location which is mutually agreeable and, what was,
7 ultimately it was to the west of the 1,950 acres.

8 Q. To the west would be on the street?

9 A. Excuse me, east of the 1,950 acres.

10 Q. Okay.

11 A. Okay. And then ultimately moved in its
12 entirety of being the lake and the recreation building
13 which was starting to be constructed and move it onto
14 property which was down more. The recreation
15 facilities were ultimately going to be built in town
16 center somewhere in here.

17 Q. Okay. Also outside of Parcel 1?

18 A. Without getting a snapshot physically, I'm
19 giving you the concept.

20 THE COURT: Your best estimate?

21 THE WITNESS: Yes. I'm giving you the
22 concept that the parties had contemplated the transfer
23 and the swapping of land on a post agreement basis
24 simply because that was smart planning.

25 / / / /

1 BY MR. J. J. JIMMERSON:

2 Q. Got it.

3 A. Let me make sure, the parties, when you're
4 talking about -- the parties had contemplated.

5 THE COURT: Parties, I know, party/Pardee.
6 It's hard. Our court reporter said yesterday, Oh, my
7 gosh, I don't know if they're saying "parties" or
8 "Pardee." I said, Jennifer, do the best you can, but
9 my understanding of the parties, which are Pardee and
10 CSI, contemplated a swapping of land after these
11 agreements, which includes the Option Agreement and the
12 Amendment I and 2.

13 THE WITNESS: Yes, your Honor.

14 THE COURT: Fill it in for me.

15 THE WITNESS: Yes, your Honor.

16 BY MR. J. J. JIMMERSON:

17 Q. How many years later did they do that?

18 THE COURT: Could you just fill in, I want to
19 make sure I understand your complete answer. I
20 apologize, not trying to be slow.

21 THE WITNESS: At the inception of the
22 earliest discussion, John Lash and I made a personal
23 commitment to each other that with a project that could
24 go over 40 years, that there would be absolutely no way
25 that you could identify, as you might in an infield

1 project in Clark County, that when you do a new town
2 development, that you have to have the greatest degree
3 of flexibility to allow the parties to ultimately get
4 the best plan.

5 And ultimately what Pardee wanted was a great
6 golf course community to start with. What CSI wanted
7 was a great community that ultimately would allow us to
8 sell property to other people if Pardee did not want
9 it, or to development it ourselves.

10 THE COURT: Okay.

11 BY MR. J. J. JIMMERSON:

12 Q. Between June 1 of 2004 and September 1 of
13 2004, did you have any meetings with Jim Wolfram or
14 Walt Wilkes?

15 A. I did not.

16 Q. Do you know whether or not Pardee had any
17 meeting with Mr. Wolfram or Walt Wilkes?

18 A. I don't.

19 Q. With regard to Amendment Number 2, the
20 negotiations that took place between June 1 of 2004 and
21 roughly September of 2004, did Mr. Wolfram or Mr.
22 Wilkes attend any such meetings, that you were aware
23 of, between yourself and Pardee?

24 A. No, they did not.

25 Q. Were they on any telephone calls, as far as

1 you recall, between Pardee and Coyote Springs?

2 A. Not that I was aware of.

3 Q. Did you have any conversations where you
4 disclosed the terms of Exhibit Number 2 with
5 Mr. Wolfram and Mr. Wilkes with respect to the 2004
6 time period?

7 A. No.

8 Q. Now, is there a reason why -- I'll just ask
9 this question: Is there a reason why exhibits K, L, P,
10 and Q are not attached as documents, because both sides
11 say this is the document?

12 A. Yes. They were excluded by agreement between
13 John and I at the time as not being necessary for
14 purposes of executing this document. Let me explain
15 why.

16 Q. Is there a document that says that, or is
17 this sort of an oral agreement between you and
18 Mr. Lash?

19 A. That was an oral agreement, because we were
20 still working on, working on how to use all the
21 information.

22 THE COURT: I apologize, my clerk just went
23 out, so she obviously needed a break, and I'm still
24 interested in the testimony, but we probably do need a
25 break.

1 MR. J. J. JIMMERSON: Fair enough. Thank
2 you.

3 THE COURT: I apologize.

4 Off the record.

5 (Off-the-record discussion.)

6 THE COURT: We're gonna be in recess for 15
7 minutes.

8 THE WITNESS: Thank you, your Honor.

9 (Short break.)

10 THE COURT: Have a seat, Mr. Whittemore.
11 You're still on the stand.

12 We left off with the Exhibits K, L, P, and Q.

13 BY MR. J. J. JIMMERSON:

14 Q. You mentioned they were intentionally omitted
15 by the agreement they not be included, and that may
16 have been an oral agreement, not a writing, because I
17 don't know everything that's in the file.

18 A. That there was an agreement to not include
19 them.

20 Q. Okay. Thank you.

21 Now, I think you've covered this document and
22 covered the changes.

23 Now, did you deliver this Amendment Number 2
24 to Mr. Wolfram or Mr. Wilkes contemporaneous to the
25 events of 2004 as opposed to Coyote Springs responding

1 to the subpoena we got?

2 MS. LUNDVALL: Your Honor, once again, I'm
3 going to object as far as the commentary.

4 MR. J. J. JIMMERSON: I'm asking the
5 question: Did you provide it to them in 2004, as
6 opposed to what the company provided to us in response
7 to subpoena that's a legitimate question, your Honor.

8 THE COURT: I think the question was: In
9 addition to complying with the subpoena, and did you
10 give it earlier.

11 BY MR. J. J. JIMMERSON:

12 Q. Earlier.

13 A. Not that I'm aware of.

14 Q. Thank you.

15 Now, because it's in two books, I actually
16 planned it that way, but if you compare 4, the second
17 amendment, and now pull up Exhibit 2 -- maybe you can
18 take that out.

19 A. You want me to take Exhibit 4 out?

20 Q. Well, either one. If you go to 2 --

21 THE COURT: 2 is the --

22 BY MR. J. J. JIMMERSON:

23 Q. Why don't you take it out.

24 A. Thank you.

25 THE COURT: Exhibit 2.

1 BY MR. J. J. JIMMERSON:

2 Q. Take that out?

3 A. Okay.

4 Q. Put them side by side.

5 MS. LUNDVALL: Are you asking him to place
6 two next --

7 THE WITNESS: Put 4 next to 2.

8 THE COURT: Yes. I think he wants them
9 available, easier for him to cross reference then.

10 BY MR. J. J. JIMMERSON:

11 Q. All right.

12 A. Okay.

13 Q. Thank you.

14 And all I'm saying is that by September 1,
15 you have the exhibits that you had hoped to have when
16 you signed the Baseline Agreement on June 1, right?

17 A. We had most of the --

18 Q. Right.

19 THE COURT: Most of the exhibits, okay.

20 BY MR. J. J. JIMMERSON:

21 Q. Let's look at Exhibit 2.

22 THE COURT: I'm sorry.

23 BY MR. J. J. JIMMERSON:

24 Q. Look at the language of Exhibit 2.

25 THE COURT: Okay.

1 BY MR. J. J. JIMMERSON:

2 Q. Go to the Baseline Agreement?

3 A. Can we refer to plaintiff's exhibits as, you
4 know, and defendant's exhibits?

5 Q. I'll be happy to do it, so you know
6 plaintiffs are numbers?

7 A. I know that.

8 Q. You know from your practice days.

9 THE COURT: Plaintiff's Exhibit 2.

10 BY MR. J. J. JIMMERSON:

11 Q. Follow along the language of Paragraph 2 of
12 Plaintiff's 2, the original Option Agreement,
13 June 1, 2004, and let's speak to the amendments that
14 are maps, Exhibits A through G and 11 and 12, like
15 we've just gone through.

16 So we know from Paragraph B what the Purchase
17 Property is, I'm not replotting that ground. The next
18 page, we know what the Option Property is, you've
19 already defined that for us.

20 Now, Paragraph 1, Page 2 of Exhibit 2,
21 Plaintiff's Exhibit 2, Bates Stamp Number 2, Page 2,
22 talks about the purchase and sale of purchase property.

23 Do you see that?

24 A. On Page 2?

25 Q. Yes.

1 A. Yes.

2 Q. All right. As of June 1 of 2004, the
3 Purchase Property was 3,600 acres, Exhibit 25, and on
4 September 1, it had been redefined to 1,950 acres; am I
5 correct?

6 A. I don't know whether the definition has
7 changed or the amount has changed.

8 Q. Well, the amount definitely?

9 A. Yeah.

10 Q. We already established that.

11 A. I do not believe that there was any course of
12 conduct or any other memorialization that had a change
13 to the definition. I'm being very specific.

14 Q. And I also am trying to do the same.

15 A. Yeah.

16 Q. But now by September 1, with this second
17 amendment, we do know there is a designation by you,
18 Coyote, and accepted by Pardee of residential
19 production real estate of 1,950 acres?

20 A. That's correct.

21 Q. And the 1,950 acres translated to \$84 million
22 for the reasons you also already told us?

23 A. Yes.

24 Q. So were you to do the math, you're going to
25 get more than 40,000 an acre?

1 A. Yes.

2 Q. All right. Now, when you look at paragraph,
3 Page 2, Paragraph 1, Page 2, let's just follow that
4 along. It says --

5 THE COURT: I'm sorry, counsel, where are
6 you?

7 MR. J. J. JIMMERSON: I'm gonna ask you to
8 focus. I just want to go through the structure of the
9 development so we're familiar with this.

10 THE COURT: Okay.

11 BY MR. J. J. JIMMERSON:

12 Q. Page 2, Paragraph 1, talks about the purchase
13 and sale of Purchase Property and which --

14 THE COURT: 1,950 acres.

15 BY MR. J. J. JIMMERSON:

16 Q. In June, 66 million. In September, it went
17 to 1,950 acres.

18 Go back, back to Page 4, Paragraph 1 (c).

19 You've already indicated if it's not
20 specifically amended in the second amendment, it still
21 stands, correct?

22 A. Unless there's a provision that says,
23 Notwithstanding the provision of that, yeah.

24 Q. Right. I'm with you.

25 Okay. Here's one of those provisions in

1 Paragraph 1 (c), Page 4 of Exhibit Plaintiff's 2, Bates
2 stamped 4: Notwithstanding any provision in the
3 contrary in this Paragraph 1, Seller and buyer
4 acknowledge and agree that the first portion of the
5 Purchase Property that will be developed by buyer is
6 that area containing approximately 1,500 acres of
7 production residential property as shown on Exhibit D.

8 Do you see that?

9 A. Yes, sir.

10 Q. Let's go to Exhibit D now, Amendment 2.

11 And again, to help everything, what I'm
12 seeing is Bates Stamp Number 1568 of Plaintiff's 4.

13 Do you see that?

14 A. Well, Exhibit D of Plaintiff's Number 2 is --

15 THE COURT: I think he wants you to go to
16 Exhibit D.

17 BY MR. J. J. JIMMERSON:

18 Q. Is there an Exhibit D to Plaintiff's 2?

19 A. I want to explain.

20 THE COURT: Perfect.

21 THE WITNESS: I want to explain. The
22 parties' contemplated a map of the Initial Developed
23 Parcel and a phasing plan.

24 BY MR. J. J. JIMMERSON:

25 Q. Right. Let's go through that.

1 A. And it's blank.

2 Q. Exactly, so Exhibit D, Plaintiff's Bates
3 Stamp 52, is blank?

4 A. Correct.

5 Q. By Amendment 2, it's no longer blank, so
6 let's go to Amendment 2, Bates number, I think it's
7 1558.

8 THE COURT: 1568.

9 BY MR. J. J. JIMMERSON:

10 Q. 1568, thank you.

11 A. Yes, sir.

12 Q. All right. Now, was it true on June 1 of
13 2004 that the initial drawdown for residential was
14 about 1,500 acres within the 3,600 acres defined as
15 Purchase Property as shown on Page 4 of Exhibit 2?

16 A. The area which is crosshatched on Page
17 Bates 1568 represents the planning area of 1,950 acres,
18 which is why it's called the Initial Developed Parcel
19 and it states that Phase 1 is 250 acres in the south,
20 southwest corner of this document.

21 Q. Okay.

22 A. That's what, this is now a map of the Initial
23 Developed Parcel.

24 Q. Now, if you looked at Exhibit 2, Page 4?

25 A. Yes.

1 Q. You had agreed to develop the term Initial
2 Developed Parcel as roughly 1,500 acres?

3 A. And it was modified as a result of --

4 Q. Okay.

5 THE COURT: 2

6 THE WITNESS: -- Exhibit D.

7 BY MR. J. J. JIMMERSON:

8 Q. I just need you to say yes or no.

9 A. Yes.

10 Q. Initially, in June 1, it was estimated to be
11 1,500 acres, and that was defined as the Initial
12 Developed Parcel?

13 A. Yes.

14 Q. Now, two months later, September 1, or three
15 months later, three months later it's now been agreed
16 to be modified, changed to 1,950 acres, right, and it's
17 shown in the crosshatch area of Exhibit D, Wolfram
18 1568?

19 A. Yes, the 1,950, with the understanding that
20 Phase 1, which is what we were really referring to, is
21 the 250 acres in the lower corner.

22 Q. Got it. Got it.

23 THE COURT: So Phase 1 of the 1,950 was 250?
24 That was include in the 1,950?

25 THE WITNESS: Yes, your Honor. And most

1 importantly, that was the area which finally had been
2 fixed by both parties.

3 THE COURT: Okay.

4 THE WITNESS: Somewhat in stone.

5 THE COURT: Okay.

6 THE WITNESS: Subject to my earlier testimony
7 that if there were changes into that 250, that they'd
8 be -- you'd swap out the acreage if it was for planning
9 purposes or you needed something for a wash.

10 THE COURT: Okay. That was kind of in stone?

11 THE WITNESS: Kind of in stone.

12 THE COURT: Okay.

13 BY MR. J. J. JIMMERSON:

14 Q. Now, within the crosshatch of 1,950 acres,
15 Exhibit D, where is the 250 approximately?

16 A. Where is it?

17 Q. On your crosshatch?

18 A. Yeah.

19 Q. Where is the 250 within the 1,950?

20 A. It's the lower southwest corner.

21 Q. Okay. I think that is the southeast corner.
22 You think it's the --

23 A. Southwest corner, right at the bottom of --

24 Q. Uh-huh.

25 THE COURT: Can you --

1 THE WITNESS: Can I show you?

2 MR. J. J. JIMMERSON: Right in here.

3 THE COURT: I want to get it right.

4 THE WITNESS: Since this is a judge trial, if
5 we could put this little line as being Highway 168.

6 THE COURT: Okay.

7 THE WITNESS: If you put that there, and if
8 you put this line as Highway 93, we can define the 250
9 acres as the 250 acres on the corner at the
10 intersection of Highway 93, north/south, and
11 Highway 168.

12 BY MR. J. J. JIMMERSON:

13 Q. Why don't you take a pen, use my pen and just
14 put a designation, put this 93.

15 And this is the highway right here, Harvey?

16 A. Uh-huh, Highway 168.

17 MS. LUNDVALL: Do you want to identify, for
18 purposes of the record, which exhibit you're drawing
19 on?

20 THE WITNESS: Yes, it's Page 1568.

21 MS. LUNDVALL: Thank you.

22 THE WITNESS: It's Bates stamped 1568.

23 Do I need to say anything else?

24 THE COURT: Exhibit 4? It's 4, right?

25 BY MR. J. J. JIMMERSON:

1 Q. And the road actually curves like this?

2 A. Yes, it does.

3 Q. That's what I'm asking.

4 A. Yeah.

5 Q. So this here, so turn a little to the right
6 and the left and --

7 MS. LUNDVALL: Your Honor, once again --

8 THE COURT: For clarification, the 250 --

9 MS. LUNDVALL: May we put the exhibits back
10 with the witness, please?

11 MR. J. J. JIMMERSON: Of course, we certainly
12 can.

13 THE COURT: The original, the Phase 1, 250
14 acres that was kind of cast in stone, is right in that
15 area?

16 THE WITNESS: That's correct, your Honor.

17 THE COURT: Thank you. I appreciate that.
18 Thank you.

19 THE WITNESS: Yes.

20 BY MR. J. J. JIMMERSON:

21 Q. All right.

22 THE COURT: What you call Phase 1?

23 THE WITNESS: That's correct, your Honor.
24 And it's now called Map Of Initial Developed Parcel.

25 THE COURT: Okay.

1 BY MR. J. J. JIMMERSON:

2 Q. Now, would you turn to, in Paragraph D it
3 says, At the initial purchase closing, in consideration
4 of the payment of the entire deposit of \$10 million; is
5 that right?

6 THE WITNESS: Yes.

7 THE COURT: I'm sorry, I need the page.

8 MR. J. J. JIMMERSON: Page 4, Paragraph D.

9 THE COURT: I got it.

10 BY MR. J. J. JIMMERSON:

11 Q. At the initial purchase closing, in
12 consideration of the payment of the entire deposit,
13 \$10 million, buyer shall be entitled to legal title to
14 the portion of the Initial Developed Parcel consisting
15 of approximately 250 neat useable acres.

16 A. Yes.

17 And now you can, your Honor, it's very
18 important, buyer will receive record title to
19 approximately 3,605 acres at the initial purchase
20 closing, showing that the parties contemplated, as I
21 indicated earlier that the 3,605 was simply security
22 for performance, because they were only giving me
23 10 million.

24 Q. Okay.

25 A. And if you multiplied 3605 times 44,000 --

1 Q. And it's \$120 million.

2 MS. LUNDVALL: Hold on, please let the
3 witness testify.

4 THE COURT: I would appreciate that too.
5 Start again, so 3,605 was security for th
6 performance?

7 THE WITNESS: For the performance. If you
8 had multiplied 3,605 by either the 40,000 net number or
9 the 44,000 number, which is ultimately achieved down
10 the rode in furtherance -- you would come up with a
11 number of 120 million plus.

12 THE COURT: Right.

13 THE WITNESS: Not 66 million, not 84 million,
14 not anything else. It was security for the performance
15 of my obligations, because they wanted record title to
16 a parcel, because Pardee did not -- nobody had maps.

17 BY MR. J. J. JIMMERSON:

18 Q. Okay.

19 A. That's -- sorry.

20 Q. That's no problem. That's fine.

21 And by Amendment Number 2, you did have --

22 A. By Amendment Number 2, we had a, we had an
23 idea of -- if you take a look at what is on Bates 1568,
24 by virtue of what I see on that Exhibit D, it appears
25 to me that the crosshatch of 1,950 acres would have to

1 have been done by map.

2 Q. Thank you.

3 A. And that there would be exhibits reflecting
4 that.

5 Q. Thank you.

6 THE COURT: And that would just be a portion
7 of the 3605.22?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: Not where the remaining portion
10 of the 3605.22 is located?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Is that your testimony?

13 THE WITNESS: That is.

14 THE COURT: I just want to make sure.

15 BY MR. J. J. JIMMERSON:

16 Q. Now, in reading the two agreements together?

17 A. Yes, sir.

18 Q. Okay. Exhibit 2, Plaintiff's 2, the June 1,
19 2004, what you call the Baseline Agreement?

20 A. Yes.

21 Q. All right. And the Amendment Number 2, the
22 September 1, 2004, Amendment Number 2, reading them
23 together --

24 A. Yes, sir.

25 Q. Okay. For definitional purposes, Purchase

1 Property remains, as of September 1, 3,600 acres,
2 correct? I want to go down one by one.

3 A. Now --

4 Q. Yes or no, Mr. Whittemore.

5 THE COURT: Can you answer that yes or no?

6 THE WITNESS: The answer is no as of this
7 date because, because the 1,750 --

8 BY MR. J. J. JIMMERSON:

9 Q. You mean 1,950?

10 A. The 1,950, minus the 250, the 1,950 now
11 represents the total parcel that the parties are
12 contemplating as being security for the entire purchase
13 price.

14 THE COURT: For the 84 million?

15 THE WITNESS: For the 84 million.

16 THE COURT: So basically the 84 million was
17 for 1,950 acres?

18 THE WITNESS: Yes.

19 BY MR. J. J. JIMMERSON:

20 Q. Is there a definitional, is there a change in
21 definitions from, in the second amendment, from that
22 which is in the first amendment? That language that
23 says Purchase Property, defined as Exhibit 25 of 3,600
24 acres, is now something different? There isn't, is
25 there --

1 A. It's, is there a sentence that says that, is
2 there an exhibit that, is there a sentence that says
3 it? No. Is there an exhibit that says it? Yes.

4 Q. Okay. Thank you.

5 Now, the 1,950 acres, let's look at Amendment
6 Number 2, if we could.

7 A. Yes, sir.

8 Q. All right. Specifically referenced -- let me
9 find it.

10 I will ask you this question: Do you know
11 where the 1,950 acre reference is?

12 A. In --

13 THE COURT: Amendment 2?

14 BY MR. J. J. JIMMERSON:

15 Q. It will be in Exhibit 4.

16 THE COURT: The first one has --

17 MR. J. J. JIMMERSON: I had it, and I just
18 lost it here.

19 THE COURT: Okay.

20 MS. LUNDVALL: 1,950 is a designation for not
21 Purchase Property, but for the initial development.

22 MR. J. J. JIMMERSON: Correct.

23 THE COURT: Paragraph Number 5, it is found
24 on Page 3 of Exhibit Number 4.

25 / / / /

1 BY MR. J. J. JIMMERSON:

2 Q. Right, exactly, and that's my point. The
3 only thing that changed between Plaintiff's 2 and
4 Plaintiff's 4, the Initial Developed Parcel, that
5 changed from 1,500 acres to 1,950 acres.

6 Do you see that?

7 A. Yes, I do.

8 Q. The Purchase Property definition never
9 changed between the amendments, would you agree?

10 MS. LUNVALL: Your Honor, once again, this is
11 not a question.

12 THE COURT: I think what he is doing is to
13 clarify his testimony, so Mr. Whittemore, if his
14 understanding is incorrect, you let him know.

15 THE WITNESS: I'll let him know. I am not
16 shy. I try to be honest.

17 THE COURT: Do it again.

18 BY MR. J. J. JIMMERSON:

19 Q. Purchase Property remains the same as defined
20 in both agreements, both agreements being defined as
21 Exhibit 2 and Exhibit 4?

22 A. Purchase Property in -- because now that you
23 brought me this page, I need you to understand why I'm
24 creating the distinction between a recital,
25 Paragraph B --

1 Q. Right.

2 A. Bates Number 1, your Honor.

3 THE COURT: Okay, I'm there.

4 THE WITNESS: That reference is to a map.

5 BY MR. J. J. JIMMERSON:

6 Q. Right.

7 A. Okay. Now, if you go to Page 4, Bates 4 in
8 the actual agreement, the purchase price of the
9 Purchase Property on Paragraph B, your Honor, right in
10 the middle of the page.

11 THE COURT: Paragraph B or C?

12 THE WITNESS: B, B on Page 2 -- 3, I will get
13 to 4, so the purchase price of the property is
14 \$66 million.

15 Now, if you go through and read all of
16 Paragraph C and go to Paragraph D, you'll now
17 understand why, and Paragraph C is very important,
18 because it creates the process by which the 1,500 acre
19 initial development, Initial Developed Parcel, is taken
20 out, and that there's a reversionary right out of that
21 3,600 acres that is contemplated by Paragraph C, and
22 that was all the reconveyance mechanisms that I was
23 talking about earlier, and then up go to Paragraph D,
24 and Paragraph D says, Buyer shall be entitled to legal
25 title to the portion of the Initial Developed Parcel

1 consisting of approximately 250 net useable acres, even
2 though buyer shall receive record title to
3 approximately 3,600 acres.

4 That's why, your Honor, that's why the 3,600
5 is simply a place holder security interest reference in
6 a way that doesn't create lot of deeds of trust or we
7 have to do anything else, because I was sticking my
8 hand out to Pardee and saying, I trust this company so
9 much, I'm going to give you title to 3,600 acres when
10 pursuant to this agreement, you're only buying 250
11 acres for \$10 million.

12 But back to your question of has that
13 changed. The answer is by definition it's changed,
14 because now they're committing to buy 1,950 acres for
15 \$84 million.

16 BY MR. J. J. JIMMERSON:

17 Q. Right, okay.

18 Now, I'm gonna ask the same question now, and
19 I would like you to answer. I've heard your
20 explanation.

21 Would you work with me?

22 A. Yes.

23 Q. Did the term "Purchase Property" change as
24 defined in Exhibit 2 in Exhibit 4?

25 A. Now we're switching to Purchase Property?

1 Q. That's the only question I asked the time
2 before. You chose to give an answer, and I'm being
3 patient.

4 A. That's not what I said.

5 Q. Answer my question. Did the term "Purchase
6 Property," as defined in Exhibit 2 as 3,600 acres, do
7 the words "Purchase Property" and the definition in
8 Exhibit 2 language in Exhibit 4 --

9 A. Mr. Jimmerson, I've already said there's no
10 sentence to -- I have no knowledge, I have no knowledge
11 that a sentence specifically changing a definition
12 change from your, from the initial Baseline Agreement
13 to this amendment.

14 Q. That's all I need. Thank you.

15 A. Yeah.

16 Q. Thank you.

17 A definition that did change is Initial
18 Development Parcel, correct?

19 A. Not the definition, but the amount.

20 Q. But the definition, according to this, was
21 the 1,500 acres, Exhibit 2?

22 A. That's why I said "the amount."

23 Q. And then the Initial Developed Parcel was
24 changed to 1,950?

25 A. Yes. The amount. The definition initial of

1 what it was did not change, the amount changed.

2 Q. Okay.

3 A. Okay.

4 Q. Thank you.

5 A. Okay.

6 Q. And Initial Developed --

7 THE COURT: From 15 through 19?

8 THE WITNESS: Yes, your Honor.

9 BY MR. J. J. JIMMERSON:

10 Q. And the Initial Development Parcel is 1,950
11 acres within the 3,600 acres Purchase Property, and
12 that's clearly established?

13 A. That is clear.

14 Q. Okay.

15 A. If you --

16 Q. Thank you.

17 A. I do not believe I need to explain that any
18 differently than the 1,950 is included within the 3,605
19 acres which was received, designated and received by
20 deed from CSI to Pardee as part of this transaction.

21 Q. And as you clearly said, and I want to honor
22 it, okay, you protected yourself by retaining a
23 reversionary interest for things Pardee doesn't acquire
24 and pay for?

25 A. Correct.

1 Q. No problem.

2 And that included a reversionary interest
3 beyond the 1,950 acres of September 1 of 2004?

4 A. And within the 1,950, if they didn't perform.

5 Q. Got it. Thank you.

6 THE COURT: So once again, so I'm clear,
7 Pardee committed to buy 1,950 acres within that
8 designated Parcel 1 for \$84 million?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: Thank you.

11 BY MR. J. J. JIMMERSON:

12 Q. Okay. Now, would you turn, please, to
13 Paragraph 2 of Exhibit 2, Bates Stamp Number 4, Page 5?

14 This is called Grant of Option.

15 A. That's correct.

16 Q. There's two types of options, and you've
17 already worked with me on it?

18 A. Yes.

19 Q. One is I get to buy it all, you go home a
20 rich man 1.2 or 1.4 billion richer, right?

21 A. Yes.

22 Q. Fine. Then there is a second type of option
23 that talks about a another feature or right given to
24 Pardee.

25 What is that second type of option?

1 A. That's called the Option Property price,
2 which relates to the land which CSI designated as
3 single-family residential.

4 Q. Right. And for purposes of definitions, on
5 June 1, it was outside of 3,600 acres. On September 1
6 it is outside of 1,950 acres, fair?

7 A. No.

8 Q. Okay. On a map, show me the Option Property.

9 THE COURT: Can you explain your answer so I
10 know, because we need to know?

11 THE WITNESS: Yes.

12 THE COURT: We need to understand.

13 THE WITNESS: The Option Property, by
14 definition, because we had retained the right, we had
15 only really sold them 250 acres to start at this point
16 and 1,950 acres at some other point, that property
17 within that area or outside that area could either be,
18 if it was outside that area it could have been
19 designated commercial then residential or residential,
20 and then commercial within the area that we retained,
21 our right to reacquire, could have been a golf course,
22 could have been a water facility.

23 Excuse me, your Honor, may I point some other
24 things out?

25 THE COURT: Yes.

1 THE WITNESS: So, for example, within, within
2 the area of the development, because of the constraints
3 of where the wells were gonna be and where the water
4 campus needed to be, within what Mr. Jimmerson is
5 calling the Purchase Property, it's clear that the
6 parties contemplated that there would be other uses
7 within that, like those that I just gave.

8 BY MR. J. J. JIMMERSON:

9 Q. Okay.

10 A. So when you say CSI did not retain any
11 interest or somehow the Option Property was just
12 limited to the Purchase Property, I think we're
13 conflating the agreements of the property.

14 Q. First of all, I'm not saying anything like
15 that.

16 THE COURT: Can I ask a follow-up question?

17 If you go to what's defined as Parcel 1, the
18 Purchase Property within the Option Agreement, and CSI
19 uses it for other uses, then that protects -- you would
20 have to make that up if they brought that property some
21 other place, right, so they're even --

22 THE WITNESS: Yes. At any time, at any time
23 that, that CSI reacquired and used for another purpose
24 property which had previously been designated as --

25 THE COURT: For Pardee?

1 THE WITNESS: For Pardee, we would have to
2 correspondingly let Pardee pick another portion of a
3 parcel for single-family, and that's the way that the
4 project worked.

5 BY MR. J. J. JIMMERSON:

6 Q. Thank you.

7 THE COURT: So for the 1,950 they committed
8 to, if CSI had to take parts of that, for some reason
9 Jack Nicklaus wants that?

10 THE WITNESS: Right.

11 THE COURT: Then Pardee would have to be
12 given another part, but that wouldn't be exercising an
13 option, that would be giving them the benefit of the
14 bargain for 84 million?

15 THE WITNESS: Yes, your Honor. You've
16 exactly got it. There is a swapping process by which
17 Pardee and CSI would get together and say, Here's the
18 land we're gonna designate.

19 Again, within that area, Mr. Jimmerson, if we
20 want to have a small coffee shop, village center type
21 of amenity so that people could go get coffee in the
22 morning, that would be a commercial site within that
23 area. It would punch it out a little bit.

24 BY MR. J. J. JIMMERSON:

25 Q. Three acres? Five acres?

1 A. Three acres, five acres, and roads and major
2 arterials and areas that couldn't be built upon because
3 they had utility trumps, all of those things had to be
4 taken into account post designation of this simple
5 snapshot of bare dessert along Highways 93 and 168.

6 Q. I'm with you.

7 A. So that's the only thing I want to correct,
8 because I think you got it. The bottom line is the
9 parties agreed to sell land, the parties' then further
10 intent said, Here's the next phase, how we get down to
11 1,950, because we're giving you a little bit more
12 money, now we want you to do more, so the number goes
13 up a little bit, and that's how you get to the
14 84 million.

15 Q. Okay, good.

16 THE COURT: Okay. I assume if you're gonna
17 swap out land, it's gonna be something that Pardee will
18 agree to, and it will be of mutual benefit?

19 THE WITNESS: Yes, your Honor.

20 BY MR. J. J. JIMMERSON:

21 Q. All right. September 1 then we have two
22 agreements that have been inked, right?

23 A. Oh, September 1, the commission letter?

24 Q. We have two documents that have been inked?

25 A. Yes. Well, two documents, yes.

1 Q. And you also -- that is the first amendment?

2 A. That's what I was going to say.

3 Q. So three documents have been inked, no
4 problem. The second one doesn't have --

5 A. Right.

6 Q. The next one, being the key here --

7 A. Uh-huh.

8 Q. -- as we've already established this morning,
9 under the terms of the two agreements read together
10 option property is outside of the 1,950 acres, correct,
11 subject to your swap option that might happen in the
12 future? For definitional purposes, knowing where you
13 were exactly at a moment in time, September 1, 2004,
14 you had Purchase Property defined, and you had Option
15 Property defined as shown by the maps?

16 MS. LUNDVALL: And once again, I'm going to
17 object to this as leading. I think the question is
18 more appropriate to the witness: What was Option
19 Property?

20 THE COURT: I think we kind of went through
21 this, I'm gonna overrule it. We have gone through it
22 with the maps, so I think we're pretty clear, you know,
23 what you meant by Purchase Property and Option
24 Property, he's trying to make sure we clarify, am I
25 right, following you, Mr. Jimmerson?

1 MR. J. J. JIMMERSON: Of course.

2 THE COURT: Let's do it again.

3 THE WITNESS: Let's do it one more time.

4 THE COURT: Make sure we're as clear as we
5 can on the record.

6 THE WITNESS: Under the original Baseline
7 Agreement, under, on Plaintiff Bates Stamp Number 1,
8 3,605.22 acres is designated as Purchase Property.

9 BY MR. J. J. JIMMERSON:

10 Q. Okay.

11 A. That term and in the recital is not what I
12 felt was controlling, because what I felt was
13 controlling was the -- on the bottom of Bates Stamp
14 Number 4 is not what I felt was controlling, making it,
15 it clear that what Pardee was getting was 250 acres out
16 of the 3,605 acres, and that the Initial Developed
17 Parcel in this agreement was \$1,500 -- 1,500 acres,
18 period.

19 Q. I totally agree. That changed then on
20 September 1 slightly. They're still take the 250
21 initial drawdown --

22 A. Yes, sir.

23 Q. -- on the southwest corner of Parcel 1,
24 Purchase Property?

25 A. Yes.

1 Q. And they've enlarged the Initial Developed
2 Parcel from 1,950 acres up from --

3 A. That's correct, and none of that is outside
4 of anything or inside anything, that's just what the
5 parties agreed.

6 Q. But we do know geographically it was in what
7 was initially described as Purchase Property,
8 Exhibit 2, as you have described it?

9 A. The answer is yes.

10 Q. As the documents described it?

11 A. As it's been described.

12 Q. And through the September 1st second
13 amendment, that definition remained the same?

14 A. There's no change in the words.

15 Q. All right. Now, about that same time period,
16 real estate commission agreement was negotiated between
17 Mr. Wolfram and Mr. Wilkes and Pardee.

18 Did you have any involvement in that?

19 A. No, sir.

20 Q. All right. Months pass, and there is yet now
21 a third agreement.

22 Can I just ask you when is, when does close
23 of escrow for the 250 acres occur?

24 A. I would have to take a look at when the, the
25 wire transfer came in. I don't recall the specific

1 date.

2 Q. Do you remember it was in 2004 versus 2005?

3 A. I would have to look at the agreement.

4 Q. All right. In any event, you got paid
5 \$10 million?

6 A. Yes, sir.

7 Q. 40,000 an acre, was that the first drawdown?

8 A. There is a, that's the first drawdown, I
9 believe that's correct.

10 Q. Now, look now at Exhibit 5. Seven months
11 pass and --

12 A. Okay.

13 MS. LUNDVALL: Your Honor, I now need to make
14 an objection as to seven months passing from the close
15 of escrow.

16 MR. J. J. JIMMERSON: I didn't say, "from
17 close of escrow."

18 MS. LUNDVALL: That's what the question was
19 and what the implication was, and that's a false
20 statement based on the context of these documents;
21 therefore, I'm objecting.

22 BY MR. J. J. JIMMERSON:

23 Q. Five months passed between September 1 and
24 March 28th -- excuse me, did five months pass from
25 September 1 of 2004 to March 28th of 2005? Six months?

1 A. Yeah, by calendar.

2 Q. Okay. And what is this Exhibit 5, Amended
3 And Restated Option Agreement For The Purchase Of Real
4 Property And Joint Escrow Instructions?

5 A. Okay, we reestablish, by agreement, a
6 document which goes into great depth as to
7 incorporating new, new terms of very significant
8 obligations on the parties, and I guess, your Honor,
9 the best way to put it is it restates for another time
10 the true status of the agreement between Pardee and CSI
11 at that exact moment.

12 THE COURT: Okay. March 28th, 2005?

13 THE WITNESS: Yes.

14 BY MR. J. J. JIMMERSON:

15 Q. How long did it take to negotiate Exhibit 5,
16 The Option agreement For The Purchase Of Real Property
17 And Joint Escrow Instruction dated March 28th of 2005?

18 A. From the beginning of this process, when I
19 met Lash and started to negotiate with Pardee, wasn't a
20 moment, a day, or a week that didn't go by that we were
21 talking about some modification to a prior -- it just
22 didn't stop.

23 THE COURT: So it was ongoing.

24 THE WITNESS: Absolutely, your Honor.

25 / / / /

1 BY MR. J. J. JIMMERSON:

2 Q. Now, did you have any meetings with
3 Mr. Wolfram and Mr. Wilkes from the beginning of 2004
4 to March 2005?

5 A. Not that I recall.

6 Q. Specifically, did you have any conversations
7 regarding this Amended And Restated Option Agreement of
8 March 28, 2005?

9 A. No, I did not.

10 Q. Were they part of any negotiation with regard
11 to the changes on behalf of Coyote and Pardee to be
12 made?

13 A. No.

14 Q. And did you cause this document to be sent to
15 Wolfram and Wilkes after it was signed in late March of
16 2005?

17 A. No, I did not.

18 Q. I read the document, and I agree with you,
19 there are significant changes from June 1 and
20 September 1 of 2004?

21 A. Right. We restated and redid the agreement.

22 Q. All right. Now, would you tell the Court
23 what changes, as it relates to drawdowns, occur now on
24 March 28th, 2005?

25 A. Okay. There's a purchase and sale of

1 property which provides for payments to be made by
2 Pardee to reach the acquisition target price of
3 84 million.

4 THE COURT: And that 1,950 acres minus the
5 250 that had already been --

6 THE WITNESS: Yes.

7 THE COURT: Had it been taken down by this
8 point?

9 THE WITNESS: It had, so your Honor is
10 absolutely correct, we've got money that is remaining
11 to be paid under the original --

12 THE COURT: Agreement?

13 THE WITNESS: -- agreement that's been
14 restated, and they're going to now, over time, buy a
15 total of 1,950, and we said, Okay, your option to
16 acquire the entire site is restated, and we put a
17 schedule of payments that have to be made, the
18 obligations of the parties with respect to how they're
19 gonna work together with respect to water development,
20 how we're gonna work together on planning and
21 developing the property. It is now a very --

22 THE COURT: Real thing?

23 THE WITNESS: It's getting very, very real.

24 BY MR. J. J. JIMMERSON:

25 Q. I want to show you one other definition in

1 the original agreement, Exhibit 2, that will go into 2,
2 into 5.

3 Exhibit 2, the original Baseline Agreement, I
4 just want to show you the term, what's called Purchase
5 Property Remainder. I want you to explain that. I
6 didn't ask that question. I omitted to do that.

7 It's at Page 4 of Exhibit 2.

8 A. Bates 4.

9 Q. Right, exactly, Paragraph 1 (c).

10 A. Yes.

11 Q. So we have an understanding now, there's
12 Purchase Property defined as 3,600 acres, there's
13 Initial Developed Parcel of 1,500 acres, and then
14 there's this concept of the remainder. Define what
15 that means, and we'll see it in the later document.

16 A. Yes. All of the -- when you specifically
17 pick out one parcel of a larger parcel, the parcel
18 that's picked out is the parcel, and the remainder
19 parcel now becomes a parcel, because in the process of
20 creating one, you end up with two.

21 THE COURT: Okay.

22 THE WITNESS: So this reversionary parcel is,
23 by definition, retained by the original owner, which
24 is, which is --

25 THE COURT: So if you take one off another

1 one, you get what's left. They don't take --

2 THE WITNESS: That's correct, and it creates
3 a parcel.

4 BY MR. J. J. JIMMERSON:

5 Q. And the more they acquire, the less the
6 reversionary parcel would be?

7 A. Yes.

8 Q. Now, we see that again here on March 28th of
9 2005 repeated again. So just a couple of things I want
10 to establish.

11 Would you agree with me that the definition
12 of Purchase Property in Exhibit 2, the original
13 Baseline Agreement of June 1, 2004, never changed even
14 with the amended restated document, Exhibit 5, March
15 28, 2005, in terms of the definition?

16 A. Okay. Now, this is gonna get hypertechnical,
17 but you have to be.

18 This document --

19 THE COURT: "This," meaning Exhibit --

20 THE WITNESS: Excuse me, your Honor, thank
21 you very much. Exhibit 5.

22 BY MR. J. J. JIMMERSON:

23 Q. Yep.

24 A. It's an amended and restated agreement, and
25 therefore, nothing which is contained in the earlier

1 agreements, please, your Honor, to Bates 125, Page 45
2 of the agreement --

3 THE COURT: Okay, I'll find it. I got it.

4 BY MR. J. J. JIMMERSON:

5 Q. To use your words, would it be a superceding
6 document?

7 A. Yes.

8 Q. That's the concept you're trying to
9 communicate here, right?

10 A. Yes. Whatever terms anybody wants to use.

11 THE COURT: I understand superceding,
12 Mr. Jimmerson.

13 It means, what you're saying is, say this is
14 the new complete agreement. Any agreements prior to
15 that have no force and effect?

16 THE WITNESS: That is correct.

17 BY MR. J. J. JIMMERSON:

18 Q. And to evidence the point, there is, in fact,
19 a new definition of Purchase Property, isn't there,
20 within Exhibit 5, Page 2, Bates stamp Number 82?

21 THE COURT: Can we -- I apologize,
22 Mr. Jimmerson, I'm trying to follow the witness. I
23 apologize if I stopped you.

24 MR. J. J. JIMMERSON: That's okay.

25 THE COURT: But we're on Page 125 Bates

1 stamped.

2 THE WITNESS: And Paragraph 25.

3 You asked me the question, I believe -- could
4 I have it repeated?

5 BY MR. J. J. JIMMERSON:

6 Q. I withdrew it.

7 The term "Purchase Property" we know didn't
8 change from one and, Exhibit 2 and Exhibit 4, but now
9 I'm suggesting to you that it does change, the
10 definition does change on March 28th in Exhibit 5, and
11 I call to your attention to Page 2, Bates Stamp Number
12 82, to perhaps Bates Number 82 to help you understand
13 that.

14 A. Okay.

15 Q. And the way I'm reading this document --

16 MS. LUNDVALL: Hold on, is there a question?

17 MR. J. J. JIMMERSON: Yeah, there is.

18 THE COURT: Tell us what to look at. I
19 apologize Mr. Jimmerson, I was, wasn't following as
20 quickly.

21 MR. J. J. JIMMERSON: Not a problem.

22 THE COURT: Where are we, Exhibit 5?

23 MR. J. J. JIMMERSON: The bottom of Page 1,
24 Paragraph C.

25 THE COURT: Page 1, Bates Stamp --

1 MR. J. J. JIMMERSON: 81.

2 BY MR. J. J. JIMMERSON:

3 Q. The parties desire to enter into this
4 agreement to provide for buyer's purchase of the
5 property entire site, consisting of the portion of
6 Section 20 and 21 of T13S, R63E, M.D.M. Clark County,
7 Nevada, as more fully described on Exhibit B attached
8 hereto and incorporated herein, containing
9 approximately 511.82 acres more or less as shown on the
10 map attached hereto as Exhibit B-1 and made a part
11 hereof, the Purchase Property.

12 You can see that?

13 A. Yes. Yes.

14 Q. So no longer is the Purchase Property 3,600
15 acres as shown by a record map, now it's changed to
16 511.82 acres as defined.

17 Why did that happen?

18 A. What we did is in this recital, bring the
19 documents up to speed from a time perspective without
20 changing the parties's express understanding of what
21 the transaction was, and so if you go to some of the
22 exhibits, you will see great definition, your Honor,
23 as, as you go through the attachments on this
24 particular agreement.

25 Q. Okay.

1 A. And you will see from my perspective that the
2 Exhibit C-1 --

3 THE COURT: Of this document, okay.

4 THE WITNESS: Exhibit C-1, it's 749, your
5 Honor.

6 THE COURT: Let me get there. Thank you.

7 THE WITNESS: Uh-huh.

8 BY MR. J. J. JIMMERSON:

9 Q. I don't know where you're getting 749. Can
10 you help me?

11 A. Yes. It says Bates Stamp 749.

12 THE COURT: They're real small.

13 THE WITNESS: It's in Exhibit C-1.

14 BY MR. J. J. JIMMERSON:

15 Q. I've got Pardee 52, 53.

16 THE COURT: It's right here.

17 THE WITNESS: It's a purple one on the side.
18 Can I go to the map, your Honor?

19 THE COURT: Yes. Hold on.

20 BY MR. J. J. JIMMERSON:

21 Q. I need you to look at the document you have
22 in your book there.

23 A. It's there. It's 749.

24 Q. I got it.

25 A. Jim, it looks like this.

1 THE COURT: We're on the same page.

2 THE WITNESS: May I approach the map?

3 THE COURT: Absolutely, you can explain how
4 we got there.

5 THE WITNESS: So this portion of the land,
6 which extends probably over to the edge of this board,
7 that is the parcel which has now been acquired in fee
8 as a result of the BLM reconfiguration moving over.

9 BY MR. J. J. JIMMERSON:

10 Q. So one thing we have to establish is
11 reconfiguration occurs between September 1 and
12 March 28?

13 A. Well, the designation of the land which is
14 going to be actually done occurs, whether it's
15 finalized or not, the parties are --

16 THE COURT: But at least you know what it's
17 gonna be.

18 THE WITNESS: Yes. We know what it's gonna
19 be your Honor, and therefore, if you turn on that page
20 and if you turn the exhibit to head north/south --

21 BY MR. J. J. JIMMERSON:

22 Q. Can we agree the highway is on the left?

23 A. Highway 93 is on the left.

24 THE COURT: It says, Highway 93.

25 THE WITNESS: And it cuts it off,

1 unfortunately, highway 168, but you'll see
2 Carl Savely's language that says -- there's corner of
3 the initial property, right there.

4 THE COURT: Yes.

5 THE WITNESS: Now, this is a planning map.
6 We finally have a planning map of what the parties
7 potentially think the development would look like at
8 Coyote Springs.

9 THE COURT: Okay.

10 THE WITNESS: Then, if you turn it back to
11 the way that it would put in, it says, Parcel
12 boundaries and phasing may be modified during
13 development as used on this exhibit. The additional
14 residential neighborhoods, the production residential
15 property, and the Option Property is that portion of
16 the production residential property located outside of
17 the boundary of the initial property.

18 BY MR. J. J. JIMMERSON:

19 Q. Now, whether you look at this map or another
20 map that's here, tell us, show us where the initial
21 property is and show us where the Option Property is
22 under this new agreement, March 28th, of 2005?

23 A. Because that is superceding agreement, this
24 agreement and this map is now the most up-to-date
25 snapshot of what the initial property was.

1 THE COURT: Okay. The initial property is
2 the first 250 acres they'd already paid for at this
3 point.

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Taken it down.

6 THE WITNESS: They have taken it down.

7 THE COURT: I don't want to use the wrong
8 term.

9 THE WITNESS: They had taken it down. We had
10 received the money, they had received the title. It
11 was not subject to any reversionary right.

12 THE COURT: It was theirs?

13 THE WITNESS: That was theirs.

14 THE COURT: That's what --

15 THE WITNESS: That's what I was pointing out,
16 if you turn sideways, that little thing right there
17 that says, Initial property.

18 THE COURT: Okay.

19 BY MR. J. J. JIMMERSON:

20 Q. And it might go down a little further?

21 A. For sure it goes down a little further,
22 because the designation of the Exhibit -- the map cuts
23 off the southernmost parts of my property.

24 THE COURT: It doesn't go to the other
25 highway?

1 THE WITNESS: It goes to the other highway,
2 that's correct, 168, your Honor.

3 BY MR. J. J. JIMMERSON:

4 Q. My question to you then is: Within the
5 legend that you just read into the record, where is
6 capital O, capital P, Option Property, located?

7 A. Okay.

8 THE COURT: We know that the Purchase
9 Property is this.

10 THE WITNESS: Now, the Option Property,
11 there's two pieces. There are now still two pieces of
12 Option Property.

13 BY MR. J. J. JIMMERSON:

14 Q. Okay.

15 A. There is an option for the entire site, which
16 is called Option Property.

17 Q. Right.

18 A. And there is the right of Pardee to buy all
19 single-family residential that I designated, which is
20 an option to purchase property.

21 Q. That's what I went over, which there are two
22 types of options, right?

23 THE COURT: So the right to buy all that CSI
24 designates in the future as single-family residential?

25 THE WITNESS: Yes.

1 THE COURT: But you haven't even done all
2 that yet.

3 THE WITNESS: No, your Honor.

4 THE COURT: So we don't know what they may
5 have an option on.

6 THE WITNESS: We're doing it.

7 THE COURT: I don't mean you're doing it
8 unilaterally, I understand that.

9 THE WITNESS: And collectively, the parties
10 are designating this because Pardee wants to buy, and
11 CSI wants to sell.

12 THE COURT: Okay. So they have an option,
13 Pardee does, to buy all or any part thereof of what CSI
14 will designate as single property.

15 THE WITNESS: Single-family residential.

16 THE COURT: Single-family residential.

17 THE WITNESS: SFR, Single-Family residential
18 production. You'll see in the record, your Honor,
19 traditional residential neighborhoods, you'll see it as
20 production residential property. There are lots of
21 different designations within this industry that mean
22 the same thing.

23 / / / /

24 BY MR. J. J. JIMMERSON:

25 Q. But designations are important.

1 THE COURT: It's confusing on agreements.

2 BY MR. J. J. JIMMERSON:

3 Q. But designations are important versus
4 residential or commercial?

5 A. It is.

6 THE COURT: So at this point, you couldn't
7 give us -- there isn't a map included here of this
8 Option 2, correct?

9 MR. J. J. JIMMERSON: There is, your Honor.

10 THE WITNESS: Of the --

11 THE COURT: Not the entire site, I get that,
12 of, of what may potentially be Option 2, which is what,
13 you didn't give us a map of that?

14 THE WITNESS: I think we can --

15 THE COURT: Not the entire site, I'm saying.

16 THE WITNESS: I think we can --

17 THE COURT: All right.

18 BY MR. J. J. JIMMERSON:

19 Q. That's what I want to point out.

20 THE COURT: That would help.

21 BY MR. J. J. JIMMERSON:

22 Q. I just want to show the definition, if you
23 turn to Page 2.

24 THE COURT: This is Exhibit 5?

25 / / / /

1 BY MR. J. J. JIMMERSON:

2 Q. Exhibit 5, Page 2, we've established now and
3 with this superceding amended and restated document we
4 have a new definition of Purchase Property. It's no
5 longer 3,600 acres, it's 511 acres.

6 Do you see that?

7 A. The 500?

8 Q. I'm just reading the words.

9 A. I'm gonna wait for the Judge to get there.

10 THE COURT: Because I put my question here:
11 How did it become 511.82 acres?

12 BY MR. J. J. JIMMERSON:

13 Q. They made it that way.

14 A. We have made that definition apply to the
15 511, because we can identify the 511 on the entire site
16 through the map.

17 Q. Okay.

18 A. And it doesn't change, it does not change the
19 underlying obligation to buy the 1,950 that we
20 subsequently designate, your Honor, to reach the total
21 purchase price of 84 million, so we're gonna go through
22 that process.

23 THE COURT: As you keep going forward, you
24 are able to solidify in stone what was included in the
25 1,950?

1 THE WITNESS: Yes, your Honor.

2 THE COURT: That's all, so the 84 million.

3 BY MR. J. J. JIMMERSON:

4 Q. The designations, therefore, are subject to
5 change as the months and years go by as this project
6 unfolds?

7 A. Right.

8 THE COURT: Designation for --

9 BY MR. J. J. JIMMERSON:

10 Q. Residential?

11 A. Yes. If CSI took property and said, We're
12 going to sell it as multi-family, it wouldn't be
13 available for sale as single-family.

14 Q. Exactly.

15 A. Or you'll pay a multi-family price, down
16 zone, continue and make it into single-family, but that
17 would all be the work of the individual purchase.

18 Q. Okay.

19 A. Nor could -- excuse me, let me finish, nor
20 could we, nor would the property include the sites that
21 we have designated as golf course, recreation, water
22 facilities, recreational facilities, major interior or
23 arterial roads, paths, recreational areas throughout.

24 THE COURT: Right. So I want to make sure
25 I'm clear, so it was March 28th, 2005, when this

1 Amended And Restated Option Agreement For The Purchase
2 Of Real Property And Joint Escrow Instructions, you
3 have solidified to Pardee 511.82 acres where that's
4 gonna be located at CSI. You still owe them the
5 difference between 1,950 and 511 to designate specific
6 sites by map.

7 THE WITNESS: You're correct, your Honor.

8 BY MR. J. J. JIMMERSON:

9 Q. Subject to them paying the balance?

10 THE COURT: I know if they don't pay, I'm
11 trying to get acreage.

12 MS. LUNDVALL: Is it possible for us to take
13 a lunch break?

14 THE COURT: Let me write this down.

15 MR. J. J. JIMMERSON: Could I have two
16 minutes? I just want to complete this line of
17 questioning.

18 THE COURT: Okay.

19 BY MR. J. J. JIMMERSON:

20 Q. Now, Purchase Property is now tied to a map.
21 Let's look at Exhibit B.

22 THE COURT: Let me ask this: How much longer
23 are you going to be?

24 I need to talk to the witness.

25 Can you come back?

1 THE WITNESS: I can stay.

2 THE COURT: I know you mentioned something.

3 MR. J. J. JIMMERSON: At the break I
4 referenced something that we weren't gonna get done by
5 lunch.

6 THE COURT: We're almost done with this line
7 of questioning.

8 BY MR. J. J. JIMMERSON:

9 Q. Just with regard to B, the purchase, it's
10 defined as 511 acres, 500 acres as shown in Exhibit B-1
11 and made a part hereof of the Purchase Property, that's
12 the new defined term of the Purchase Property.

13 Let's turn to 745, which is, -- I am not --
14 not B-1. B-1?

15 A. 52.

16 Q. 51 and 52, but the map shows it as 52 and
17 show us what that is?

18 A. Okay. Because the parties knew, because the
19 parties knew that they were going to have the 250 in
20 the corner, they, and the, the fee area was going to
21 move over to this side.

22 THE COURT: Move over, because you traded
23 with BLM?

24 THE WITNESS: Right. What they did was say,
25 We're gonna take all along the state highway these

1 parcels. Rather than go up here, we're gonna come
2 along here, so that map reflects going along from west
3 to east if you turn to the map. Again, you have to
4 turn the map.

5 THE COURT: That's 52, right?

6 THE WITNESS: Yes. If you turn to 52, your
7 Honor, and you go sideways.

8 BY MR. J. J. JIMMERSON:

9 Q. Which one would be north?

10 THE COURT: I think it says, The Mount Diablo
11 Meridian.

12 BY MR. J. J. JIMMERSON:

13 Q. So the words, "The Mount Diablo," that would
14 be at the top?

15 A. This is supposed to be designating north,
16 your Honor.

17 THE COURT: Okay.

18 THE WITNESS: And this corner, this corner,
19 if you take a look, your Honor, at this point right
20 here.

21 BY MR. J. J. JIMMERSON:

22 Q. I want to see it too.

23 A. If you take a look at this point here, if you
24 put a red dot right there, or blue dot, for the record,
25 I'll show the other counsel.

1 THE COURT: Yes.

2 THE WITNESS: I'm circling that.

3 THE COURT: It's a blue dot.

4 THE WITNESS: It's a blue circle.

5 My understanding is that if you blew it up,
6 that corner would look exactly like that right here, so
7 what they've done is flipped things on the side, and
8 that corner is the corner of Highway 93 and State Route
9 168.

10 BY MR. J. J. JIMMERSON:

11 Q. Don't run away.

12 THE COURT: So that's what's gonna be an
13 addition to the original 250, that's the difference to
14 get up to your 511.82 at that point?

15 THE WITNESS: I'm not gonna hold myself to
16 that, because I haven't done the calculation, but the
17 general intent of that was in that direction, your
18 Honor.

19 THE COURT: So the general intent was to go
20 from the 250, so it was a contiguous 511.82.

21 THE WITNESS: And if you needed to go above,
22 you would, but right now we have parcels, we have
23 sections that you can give an aliquot.

24 THE COURT: Hence, the description we just
25 had.

1 THE WITNESS: Rather than metes and bounds,
2 if you read real quickly, I know Jim wants me back up
3 there, but if you turn to Page 51, you'll see that it
4 is an aliquot description rather than metes and bounds.

5 THE COURT: Okay.

6 BY MR. J. J. JIMMERSON:

7 Q. And when you used the word "aliquot," what
8 did you mean to communicate?

9 A. Aliquot is a real estate term which describes
10 by sections and quarter sections or lots within those,
11 a portion of properties.

12 Q. And you've got more recorded maps by this
13 time too?

14 A. We've each got, because we haven't yet
15 finalized all the plans, we're making, we're gonna be
16 using this as a temporary way to describe --

17 THE COURT: Where they're going.

18 THE WITNESS: Where they're going.

19 BY MR. J. J. JIMMERSON:

20 Q. And I get you back up here, I just didn't
21 understand why the circle is on this map.

22 A. Go like that.

23 So this is at an angle. This is at an angle.

24 Q. Okay.

25 A. So that point, this here and this here, this

1 here.

2 Q. Got it.

3 Now, how far east is this far east point on
4 Bates Number 51, B-1?

5 A. Okay. I can tell you exactly.

6 Q. Please.

7 A. It is quarter sections, 1, 2, 3, 4, 5, 6, 7,
8 8, it is two miles from this point, your Honor.

9 THE COURT: Okay.

10 THE WITNESS: Two miles further here. I
11 can't tell you.

12 BY MR. J. J. JIMMERSON:

13 Q. This is 8,000 feet, we know that.

14 A. I know this is 8,000.

15 Q. No, here is 8,000. I will give you that this
16 is 7,999.

17 A. It keeps going, so there is Parcel 2, Parcel
18 2, right there is 526 acres along here.

19 Q. And there's, okay, so it's --

20 A. All I want the Court to understand is now,
21 rather -- because the way this map was presented to
22 you, you could get confused that this going this way --

23 THE COURT: Is that --

24 THE WITNESS: This, and it's not --

25 / / / /

1 BY MR. J. J. JIMMERSON:

2 Q. Right.

3 A. It's this --

4 THE COURT: The bottom portion.

5 BY MR. J. J. JIMMERSON:

6 Q. And that's what I'm trying to establish
7 before we break for lunch, where the Purchase Property
8 was in June of 2004 has now changed to another location
9 by March 28th of 2005?

10 A. Absolutely.

11 Q. It's no longer here or here, it's now
12 horizontal more, and it does, in fact, extend beyond
13 the Parcel 1 line from --

14 A. I don't know, Mr. Jimmerson, whether it cuts
15 off here, because there's a section line. The point is
16 what they were trying to do was, again, while we were
17 doing this with Mr. Lash and Pardee, we were always
18 making sure that the Pardee received more than the
19 amount of land that they had paid for, that there was
20 additional security.

21 Q. Now, would you --

22 THE COURT: And then as you went along, what
23 they paid for, you gave them what they bought. You
24 said, Here's what you get for this much, you know,
25 we're gonna make up the difference. We know you paid

1 84 million, we're gonna get there.

2 THE WITNESS: Exactly. That's exactly what
3 we are doing.

4 BY MR. J. J. JIMMERSON:

5 Q. Before the lunch break, I need to establish
6 this: Isn't it true that some of the land here,
7 Exhibit B-1, extends more to the east, beyond the
8 Parcel 1 Purchase Property limit to the east?

9 A. I think based upon, based on my understanding
10 of what that exhibit shows and your representations
11 that that's 8,000 square feet -- I mean 8,000 feet,
12 yes, it would extend into an area that is not described
13 on that map.

14 THE COURT: As Parcel 1?

15 THE WITNESS: As Parcel 1.

16 BY MR. J. J. JIMMERSON:

17 Q. In this area?

18 A. Yes.

19 MR. JIMMERSON: I have nothing further at
20 this time. I'm not passing the witness.

21 THE COURT: He's not finished with his
22 direct.

23 MR. J. J. JIMMERSON: The defendant asked to
24 take a lunch break.

25 THE WITNESS: Jim, are you buying lunch?

1 MR. J. J. JIMMERSON: I will buy lunch,
2 absolutely.

3 THE COURT: All right. We'll take a break.

4 (A lunch recess was taken.)

5 THE COURT: So are you on standby?

6 THE WITNESS: I'm gonna have to leave right
7 at 3:15.

8 THE COURT: Okay, that's fine. You
9 graciously said you will come back.

10 THE WITNESS: Yes.

11 THE COURT: Whatever, we'll do what we do.
12 I'm keeping an open mind until all the evidence is in,
13 but thank you for your time.

14 THE WITNESS: Thank you.

15 BY MR. J. J. JIMMERSON:

16 Q. Mr. Whittemore, good afternoon.

17 A. Good morning.

18 Q. We'll work at least another hour and fifteen
19 minutes. Let me know when you have to go.

20 I've read the agreements. I don't see the
21 right to swap in the written words of either Exhibit 2,
22 4, or 5.

23 Am I mistaken?

24 MS. LUNDVALL: From his perspective, once
25 again, not starting out the afternoon very well, what

1 he has interpreted out of these agreements is
2 irrelevant. He needs to answer the question without
3 giving the commentary to the Court, and I would ask for
4 this, that is continuing problem that we have.

5 THE COURT: I think what he's asking is, is
6 literally, in those two documents. It refers to either
7 party getting the right to swap.

8 MR. J. J. JIMMERSON: Right.

9 THE COURT: And he can answer, I mean that's
10 -- so I'm gonna overrule.

11 THE WITNESS: And if you were to refer to
12 Exhibit --

13 BY MR. J. J. JIMMERSON:

14 Q. Let's start with 2.

15 MS. LUNDVALL: You've asked the question.
16 Please allow him to answer.

17 THE COURT: Sustained. Let Mr. Whittemore
18 tell us. I've already got my exhibits out. This is
19 Exhibit 5.

20 THE WITNESS: An example of that,
21 Mr. Jimmerson, is page 1568.

22 BY MR. J. J. JIMMERSON:

23 Q. What do you, are you looking at, please?

24 A. It's Bates stamped 1568, which is in the
25 Plaintiff's Number 4.

1 Q. That's the second amendment then, thank you.

2 A. Yeah.

3 Q. All right, no problem.

4 THE COURT: Sorry.

5 THE WITNESS: There we go.

6 And you can see that the parties agreed that
7 the crosshatch series, the Initial Developed Parcel is
8 1,950, Phase 1 is 250 acres located in the southern
9 portion of the parcel, and the parties already mutually
10 agree upon the phasing of the additional purchases.

11 BY MR. J. J. JIMMERSON:

12 Q. All right.

13 A. Okay. Now, may I finish, please?

14 Q. I'm not saying anything.

15 A. Okay. Then if you go to the other map we
16 had?

17 THE COURT: Exhibit 5?

18 THE WITNESS: Yes, please.

19 Your Honor, what Bates Stamp is that?

20 THE COURT: 749 of Exhibit 5. It's the real
21 small one.

22 THE WITNESS: Right. Right. I have it as
23 751, your Honor.

24 THE COURT: Okay.

25 THE WITNESS: 749, they are -- no, your Honor

1 is correct, there are two exhibits, and Exhibits C-1
2 with two separate maps, and Exhibit C-2, and, and then
3 the second page of Exhibit C-2, Page 749, I don't know
4 whether that was in the wrong, or, or not.

5 THE COURT: I see where it -- it's in front
6 of it.

7 THE WITNESS: Right in front of it.

8 Then 751, and 752 are all exhibits that talk
9 about, and then you turn the page to the biggest one,
10 which is 755, developed by Pardee's consultants
11 GC Wallace.

12 And your Honor, may I approach the big thing
13 again?

14 THE COURT: Yes.

15 Did I pull out 755? I don't have mine here.

16 MR. J. J. JIMMERSON: It is part of the same
17 exhibit, just as Exhibit D, second page, I believe.

18 THE COURT: I'm looking at --

19 MR. J. J. JIMMERSON: It's Exhibit 5.

20 THE COURT: I have Exhibit 5. And I go from,
21 I see where I go from 751, 752, and then this goes to
22 58.

23 MR. J. J. JIMMERSON: Keep going.

24 THE COURT: 55 is what I'm looking for?

25 THE WITNESS: 755.

1 THE COURT: I apologize. I'm used to it
2 being in consecutive order.

3 THE WITNESS: Well, these exhibits --
4 Mr. Jimmerson asked is there anything in the documents
5 that refers to "swap."

6 THE COURT: Swap.

7 BY MR. J. J. JIMMERSON:

8 Q. Language.

9 A. If we can go to 755 and hold it this way.

10 THE COURT: Okay.

11 MR. J. J. JIMMERSON: That corner, again,
12 that are corner is right here. That corner is right at
13 the bottom.

14 THE COURT: I see a six. Is that similar?

15 THE WITNESS: This is, this part right there,
16 your Honor.

17 THE COURT: Right.

18 THE WITNESS: It has Number 6 on it.

19 THE COURT: Okay.

20 THE WITNESS: Number 6 on it.

21 THE COURT: And that is --

22 THE WITNESS: That is this corner of this,
23 and I'll see that the lines aren't straight, they're
24 kind of curvy, and then you go over Exhibit -- Parcel 5
25 now, it says Parcel 5, and it's starting a little bit

1 curvy.

2 Now, these documents, all the exhibits that
3 are attached with respect to those plans have the
4 notations on these exhibits that reflect what compels
5 the parties to agree to the specific parcel lines, and
6 therefore, swap within those areas, by saying, as used
7 on this exhibit, the term traditional residential
8 property means the production residential property,
9 which is also described as the Option Property together
10 with the Purchase Property.

11 The Initial Developed Parcel is located in
12 the southern portion of the area marked Traditional
13 Residential Neighborhood, and this parcel is Phase 1 of
14 the production residential property.

15 Buyer anticipate the development of phases of
16 production residential property to start along the
17 southerly boundary and move northward to the adjacent
18 areas.

19 All these things taken together compel one to
20 understand that as the development proceeded, when we
21 put a golf course, it's physically there, your Honor.

22 THE COURT: Okay.

23 THE WITNESS: When you put a golf course in
24 that area, you take land away from Pardee that you have
25 to replace at a location different, in a different

1 location within that might be reflected on the first
2 document.

3 So, Mr. Jimmerson, these documents and others
4 that occur later in time require the parties to jointly
5 plan the development and concur where the roads go, and
6 therefore, where the parcel line goes, where a golf
7 course goes, and therefore, as a result of creating a
8 parcel for a golf course to create a parcel for a
9 residential subdivision adjacent to this golf course.

10 To the north of the golf course, along the
11 edge of the golf course are some custom lots, but all
12 along the way, within that development area, your
13 Honor, the parties came up with --

14 THE COURT: Single-family.

15 THE WITNESS: Single-family and what we
16 retained and what we did, but at the end of the day,
17 you had to what we call equalize the money to the
18 property and who had to pay 50 percent for this, who
19 had to pay 25 percent for that, all those equalizations
20 took place, and that's how I meant swapping,
21 Mr. Jimmerson.

22 I didn't mean that there was a phrase in here
23 that said that the parties shall do A, B, C, D, and E,
24 I was giving you a process rather than necessarily a
25 specific description in the document.

1 BY MR. J. J. JIMMERSON:

2 Q. All right. I think we both have accomplished
3 our goals. There's no language in the four corners of
4 the agreement that requires swapping. What you will
5 say as you sit here, and I understand, is it requires a
6 mutual agreement of the parties to operate in good
7 faith, and there's many good faith requirements that
8 are in writing here?

9 A. Yes, Mr. Jimmerson, I think that's fair.

10 Q. Okay.

11 A. With one caveat. I believe that at some
12 point in our relationship, we did get around to
13 formalizing and saying those exact words, which are,
14 You get this, we get this, and therefore --

15 THE COURT: To become memorialized later down
16 the line, but not as of --

17 THE WITNESS: Not as of this time, because
18 nothing had been built yet.

19 THE COURT: Exhibit 5, okay.

20 BY MR. J. J. JIMMERSON:

21 Q. Would you look at Exhibit 5 again? It's the
22 restated agreement of March 28th, and it's renumbered
23 slightly, instead of 18, Broker Commission, it's 19.
24 Look for these at Paragraph 19 of Exhibit --

25 A. Exhibit 19?

1 THE COURT: Paragraph.

2 MR. J. J. JIMMERSON: Paragraph.

3 THE COURT: Paragraph 19, excuse me. Broker
4 commissions, okay.

5 BY MR. J. J. JIMMERSON:

6 Q. And by my review --

7 MS. LUNDVALL: Once again, I'm gonna ask him
8 not to say, "This is what I read," to the witness.

9 MR. J. J. JIMMERSON: This is my style, your
10 Honor. Sorry it doesn't suit the opposing counsel.

11 BY MR. JAMES M. JIMMERSON:

12 Q. The line in the earlier Option Agreement,
13 Exhibit 2 --

14 A. It looks very similar without doing word for
15 word.

16 Q. Would you agree the word for word,
17 Notwithstanding, is also identical, Notwithstanding the
18 foregoing?

19 A. Oh, yes, yeah, it's still in there.

20 Q. Now, were you advised that by now, March 28th
21 of 2005, there had been, indeed, a contract entered
22 into between Pardee and Wolfram and Wilkes and their
23 respective companies?

24 A. I was advised that by Mr. Levy.

25 Q. Lawyer for Pardee?

1 A. Lawyer for Pardee, that they had reached an
2 agreement, because I had asked him in one of our
3 meetings, Do we still need this language, and he said,
4 Yes.

5 Q. Okay. And in that meeting of Levy and
6 yourself --

7 A. It was a group meeting, but it was --

8 Q. Sometime preparatory of March 28, 2005?

9 A. Before this agreement was signed, as I
10 indicated, we had negotiating sessions every day, every
11 week over the phone, and again, you sit down when you
12 finally get the document, and I can't tell you this is
13 Carl Savely's second version, so we had received
14 comments and put them in here, and then by March 28th,
15 the parties are agreed and ready to go.

16 Q. So in terms of conversation you had with
17 Mr. Levy, and not being precise, would a February/March
18 2005 time period be accurate in terms of when you
19 learned that there was still a necessity to have the
20 Broker Commissions and Finder Fees paragraph restated
21 here?

22 A. From my perspective, yes, because I did not
23 want to pay a broker's fee.

24 Q. Go back to the definitions. We talked about
25 Purchase Property and how that definition changed.

1 Let's see if the Option Property definition changed
2 herein in the amended and restated document in
3 Exhibit 5.

4 Turn to Page 2, same paragraph we were
5 talking about, and it follows after the description of
6 Purchase Property of 511 acres, and I will pick it up.

7 And little i, the fourth line, Buyer's option
8 to purchase remaining property, entire site, which is
9 or becomes designated for single-family detached
10 production residential use as described, the Option
11 Property and a number of several phases referred to
12 here collectively as Option Parcels and individually as
13 Option Parcel upon the terms and conditions hereinafter
14 set forth, end of quote.

15 Do you see that?

16 A. Yes.

17 Q. By looking at the maps or whatever you feel
18 is best for us, tell me now how Option Property has
19 been defined now under the new amended restated March
20 28th agreement, Exhibit 5?

21 A. Okay. I advanced this discussion, apparently
22 inappropriately, because you now need to go to
23 Exhibit C-1, which are the three, if you look at
24 PH Bates Number 53.

25 THE COURT: Okay.

1 THE WITNESS: That's, that's after Bates 52
2 that we put the little blue circle around.

3 THE COURT: Okay.

4 THE WITNESS: It says, Map Of Option
5 Property.

6 THE COURT: Let me get to it, please. You
7 are ahead of me a little bit.

8 Exhibit C-1, did you say?

9 THE WITNESS: It's your reference to
10 Exhibit C, Map Of Option Property, and you look at that
11 and it is blank.

12 THE COURT: Yeah, I see a blank.

13 THE WITNESS: Yes, exactly.

14 THE COURT: Okay.

15 THE WITNESS: You're on the right page.

16 THE COURT: Okay. I got nervous.

17 THE WITNESS: No, because the parties needed
18 more specificity.

19 BY MR. J. J. JIMMERSON:

20 Q. Okay.

21 A. And therefore, they started to create the
22 Exhibits C-1, has two pages, okay.

23 Q. I'm with you, thank you.

24 A. So --

25 Q. And C-1, so we have it here, is at Bates

1 Stamp 7 --

2 THE WITNESS: 749.

3 Q. It's blank, and then 749 and 65.

4 BY MR. J. J. JIMMERSON:

5 Q. My eyes are bad.

6 A. Now, what do we show? We show all the
7 potential option property in Clark County on Page 749.

8 THE COURT: Okay.

9 THE WITNESS: That's everything to the west
10 of the Pahranaagat Wash.

11 Can I identify this? Can I approach, your
12 Honor.

13 THE COURT: Yes.

14 BY MR. J. J. JIMMERSON:

15 Q. I need you to show us by holding it up and
16 showing the position, counsel?

17 A. I will.

18 Q. Thank you.

19 A. So 749 shows it, your Honor.

20 Q. Okay. This is --

21 THE WITNESS: This is the southern edge, and
22 again, it's cut off a little bit. It's cut off a
23 little bit, and then the northern edge, which is the
24 Lincoln County line, so now this shows everything to
25 the east of U.S. Highway 93.

1 THE COURT: Right.

2 THE WITNESS: And everything south of, up to
3 the Lincoln County line, and everything east of the
4 demarcation section lines, that shows the eastern
5 boundary of the Coyote Springs project in Clark County.

6 BY MR. J. J. JIMMERSON:

7 Q. Okay.

8 A. What is missing is the bottom line, which we
9 know is Highway 168.

10 THE COURT: We just don't show it.

11 THE WITNESS: We just don't show it here.
12 So this, so this, you want to know what the Option
13 Property is.

14 BY MR. J. J. JIMMERSON:

15 Q. Right.

16 A. This is the Option Property in Clark County.
17 Then the next page --

18 THE COURT: This is the Option Property in
19 Clark County.

20 BY MR. J. J. JIMMERSON:

21 Q. So would you say here and there, in other
22 words, is the everything but the little rectangle in
23 the bottom left corner?

24 A. Well, as defined in this agreement.

25 Q. That's what I'm asking.

1 A. As defined in this agreement, the Option
2 Property is the remaining acres that are required to be
3 purchased under the agreement of 1,950, so, you know,
4 you had 1,950 -- I'm sorry if I'm standing, your Honor.
5 Is that okay?

6 THE COURT: I'm fine. I'm following.

7 THE WITNESS: And so you subtracted 250, so
8 you have to get 1,700 acres in this general area.

9 BY MR. J. J. JIMMERSON:

10 Q. Which is still the purchase property, ask,
11 then you're talking about something outside that; is
12 that right?

13 Q. If I understand your statement --

14 A. Yes, this is really hard, but originally,
15 remember the Purchase Property was all this?

16 Q. Right.

17 A. Now the Purchase Property goes like this.

18 Q. Okay.

19 A. And now this is saying the Purchase Property
20 is all of this, because it's Clark County, and we want
21 to give the advantage of taking everything in here.

22 THE COURT: If it's designated as --

23 THE WITNESS: Yes, and you exercise your
24 option.

25 THE COURT: And you exercise your option, so

1 you're just giving them every available that you can?

2 THE WITNESS: We're giving them their choice,
3 their options, and as this development plan went, they
4 certainly wouldn't go from, your Honor, this corner to
5 this corner, because there would be no advantage of
6 continuity of development.

7 THE COURT: But you gave them the option if
8 they want to go up north?

9 THE WITNESS: They can go up, they can go
10 here, but the reason why this happens, your Honor, they
11 come down in this direction is 'cause we designed and
12 built a Jack Nicklaus signature golf course, because
13 it's part of our requirements under our obligation to
14 spend money to develop there.

15 THE COURT: That would be attractive to
16 Pardee.

17 THE WITNESS: That is extremely attractive to
18 Pardee and their lots, your Honor, located within the
19 area that has the golf courses, as he we sit here
20 today. Their lots are here and our property, CSI's
21 property is in this same area because they own the golf
22 course.

23 BY MR. J. J. JIMMERSON:

24 Q. If I can sort of summarise, stay right here,
25 if you will. Purchase Property, including the 1,950 of

1 2004 June and September 1 now changes. March 28th of
2 2005 has it going along here, right?

3 A. Sure.

4 Q. 511 acres going this way?

5 THE COURT: They have 511.

6 BY MR. J. J. JIMMERSON:

7 Q. With that being that, where is the Option
8 Property as you read the language of the new agreement?

9 THE WITNESS: The Option Property is located
10 within the Purchase Property, as defined by the entire
11 Clark County side.

12 BY MR. J. J. JIMMERSON:

13 Q. Okay.

14 A. If Pardee designates it and we agree this
15 should be residential production property, and we want
16 to exercise our option to purchase it, we'll probably
17 go along with it, because everybody's interest is in
18 getting the right kind of mix and everything else.

19 THE COURT: You're basically giving them
20 everything else that hasn't been squared down -- I know
21 that's not in stone -- purchased.

22 THE WITNESS: Yes. Subject to, subject to
23 the limitation that we're gonna retain commercial,
24 we're gonna retain multi-family.

25 THE COURT: But you have to designate, you,

1 CSI, has to designate it as single-family residential
2 property.

3 THE WITNESS: Yes.

4 THE COURT: But you're saying it could be
5 anything. It's up to you to decide, and you get first
6 option?

7 THE WITNESS: And then Exhibit C-1, the
8 second page, says the Option Property that are a
9 portion of the crosshatched area designated as
10 production residential property or traditional
11 residential neighborhood during the joint planning
12 process.

13 So for Lincoln County, this document right
14 after the one that we just picked up says how -- Jim
15 asked, Mr. Jimmerson asked how do we know what is
16 covered by these agreements.

17 THE COURT: What's the Bates stamp?

18 THE WITNESS: 55, your Honor.

19 THE COURT: Okay.

20 THE WITNESS: That's what he was referring
21 to.

22 THE COURT: Okay.

23 THE WITNESS: Okay. So if you put these two
24 together, these two C-1's, nots C-1 (a) or C-1 (b), but
25 these two C-1's you've got Clark County and you've got

1 Lincoln County, and it's clear that the parties were
2 saying if Pardee agreed to build single-family homes
3 within these areas after the joint planning process,
4 that they would have the right to purchase that
5 property by exercising an option to do so.

6 THE COURT: Could have.

7 BY MR. J. J. JIMMERSON:

8 Q. Okay.

9 A. Now, if we go to C-2, both C-2's.

10 THE COURT: Give me the Bates Stamp number.

11 THE WITNESS: Bates Stamp 751 and 752.

12 THE COURT: Okay.

13 THE WITNESS: And I hate to keep doing it,
14 but it's just easiest now to go to PH 58 and Bates
15 Stamp 755.

16 Okay. That's okay. Because now these four,
17 and 754, if you take all those out from 751, including
18 the Pardee Homes 55, excuse me, Pardee Homes 751, your
19 Honor.

20 THE COURT: Right.

21 THE WITNESS: 752, your Honor.

22 BY MR. J. J. JIMMERSON:

23 Q. 56?

24 A. 58, Map Of Initial, and 755 and 754, why
25 they're out of order, I don't know.

1 THE COURT: Okay.

2 THE WITNESS: Okay. Now, if you take that
3 package, your Honor --

4 THE COURT: Together.

5 THE WITNESS: -- together, if you simply say,
6 Okay, where are we, what do we have, who's got what, by
7 going through each of these documents, you can identify
8 where the planning process has taken place.

9 For example, the first page of Exhibit 2,
10 it's the planning process on all of Clark County, as
11 you see it, right?

12 THE COURT: Correct.

13 THE WITNESS: Then you go to 752, and I'll
14 see the opposite, the rest of that gray area.

15 THE COURT: Right.

16 THE WITNESS: You see, your Honor, that those
17 lines match up?

18 THE COURT: They do.

19 THE WITNESS: Do you see that, your Honor, or
20 should I come up and show you just to make sure.

21 THE COURT: Why don't we --

22 THE WITNESS: You want your record.

23 THE COURT: We want to get it right.

24 THE WITNESS: Right.

25 Everything on the same thing.

1 THE COURT: Absolutely.

2 THE WITNESS: So this line right here is
3 gonna be the edge of this line here.

4 THE COURT: This line right here, this
5 squiggly line.

6 THE WITNESS: No.

7 THE COURT: That's this line, this one
8 matches up.

9 THE WITNESS: It to ultimately match up with
10 what is going to be called --

11 THE COURT: Yes.

12 THE WITNESS: There you go.

13 THE COURT: Okay.

14 THE WITNESS: It says, Lease.

15 THE COURT: It says, Lease.

16 THE WITNESS: Yeah. We moved it over, so
17 what we've done is in these two pages show what can be
18 done in Clark County. Then on Exhibit D, 55, 755, your
19 Honor, it shows Pardee's proposed phasing plan of what
20 they're gonna do, which is now more consistent with
21 this direction than that direction, because they had
22 determined, excuse me, so the court reporter gets it,
23 that direction being north along Highway 93, instead
24 the parties have said it's better to go east from 93
25 above 168 over to that area, and the reason why is

1 there's a golf course, there's roads, and we want the
2 lots and the, the residential property that's gonna be
3 associated with that.

4 BY MR. J. J. JIMMERSON:

5 Q. Just answer that question. Those same maps,
6 where are the, where's the Option Property? It's been
7 changed. Where is it now on the same map.

8 A. I've answered it. Everything, everything
9 that's included in Clark County, they have the right to
10 purchase residential -- property, which is designated
11 as single-family residential or production homes.

12 Q. Excluding the 511 acres, the Purchase
13 Property now, and --

14 A. The 511 is treated differently, because the
15 parties believed that they had identified 511 acres
16 that Pardee wants, but it's not 511, Mr. Jimmerson,
17 because I've explained that the 511, included within
18 the 511 are golf courses.

19 THE COURT: That's not theirs.

20 THE WITNESS: That's not theirs so you
21 started with the 511, and you came in, and so, and it's
22 so frustrating, because I can understand with the
23 utilization of the different terms without
24 understanding what was actually going on.

25 THE COURT: Contemporaneously.

1 THE WITNESS: On the ground
2 contemporaneously. You could not understand that there
3 were these great big parcels that were taken out as a
4 result of development choices made by both parties.

5 THE COURT: Right.

6 BY MR. J. J. JIMMERSON:

7 Q. Now, would you look, please --

8 THE COURT: It's almost a moving target.

9 THE WITNESS: Yes, your Honor, it is.

10 BY MR. JAMES M. JIMMERSON:

11 Q. Would you look then, please, at Exhibit 55,
12 which falls at 749?

13 A. You want me to look at Bates 755?

14 THE COURT: This one.

15 BY MR. J. J. JIMMERSON:

16 Q. Yes. The bottom says it's Option Property,
17 that property crosshatched area designated as
18 production residential property or traditional
19 residential neighborhood during the joint planning
20 process.

21 Do you see that?

22 A. Yes. I'm trying to find it, but I recall
23 reading it.

24 Q. I want you to have it in front of you. It's
25 55, and it follows 749, it's the second C-1. You had

1 two C-1's in your hand. It's the second one.

2 A. Can't find the first C-1 now.

3 Q. Just find any C-1?

4 A. I have a C-2, I got a --

5 Q. Hang on, it's gotten out of place here.

6 That's Exhibit D. That's 755, Here's Exhibit C-2?

7 Q. Right.

8 A. C-1 and then the second C-1, you're talking
9 about 55.

10 Q. Let's talk about this one first.

11 A. Okay. Back --

12 Q. The C-1?

13 A. Back to the C-1's.

14 Q. Right. C-1 now with the color map, which is
15 749, Bates Stamp 749?

16 A. Yes, sir.

17 Q. Okay, great, and we'll turn the page to page
18 755.

19 A. Okay.

20 Q. At the top, it says I believe the following:
21 Parcel boundaries and phasing may be modified during
22 development. As used in this Exhibit, the term
23 "traditional residential neighborhood" means that the
24 production residential property the Option Property is
25 that portion of the production residential property

1 located outside the boundary of the initial property.

2 Do you see that?

3 A. Yes.

4 Q. Do you agree with that statement, yes or no.

5 THE COURT: If you can't answer yes or no --

6 THE WITNESS: It's a no.

7 BY MR. J. J. JIMMERSON:

8 Q. It's a no. You don't agree with your own
9 statement on this document?

10 A. I do not believe it's accurate in that the
11 initial property, in my judgment, had already been
12 planned to be modified. The golf course was gonna
13 be --

14 Q. And the initial property, that which we see
15 looking at the documents, top left-hand portion, but it
16 would really be the bottom left-hand portion?

17 A. It's the bottom property map as you hold it
18 correctly, and remember, that was identified as 250
19 acres that that was gonna be the starting point of the
20 development to ensure that Pardee had \$10 million worth
21 of land.

22 Q. Right. But whether you agree with it or not,
23 this document says what it says.

24 A. Oh, yeah, it definitely says what it says.

25 Q. All right. Now, turning the page --

1 A. Yes, sir.

2 Q. -- to C-1, Bates Stamp P H 55?

3 A. Yes, sir.

4 Q. It says at the bottom of the Option Property,
5 that property crosshatched designated as production
6 residential property or traditional residential
7 neighborhood during the joint planning process, end of
8 quote, and it shows everything north of the north edge
9 of Clark County.

10 Do you see that?

11 A. Yes, I do.

12 Q. And is that what is being referenced as
13 crosshatched?

14 A. Yes.

15 Q. That's how I interpret it.

16 A. You're accurate.

17 Q. So now, in combination, that is to say the
18 land south of the Lincoln line, first C-1, 749?

19 A. Yes.

20 Q. And land north of the county line, PH 55 is
21 the Option Property?

22 A. It includes the Option Property, that's
23 really, if you combine these two things, Mr. Jimmerson,
24 it's really called the entire site.

25 Q. For purposes of this contract, you title it

1 Option Property?

2 A. No, sir. For purposes of this contract, we
3 cannot lose sight of the fact that this is an entire
4 site, and that within specific areas we identify
5 single-family production property, which becomes the
6 option property that remains.

7 There are two options. The parties
8 negotiated an option which allowed Pardee to buy the
9 entire site. That's Option Number 1.

10 Option Number 2 was Pardee negotiated and
11 said, We, Pardee, want to be the single person that
12 controls what happens on single-family production
13 property. We want to be the master developer of that,
14 either build our own homes or bring in guest builders.

15 At no time did anybody think that these maps
16 were going to require X number of acres of land. That
17 was done in a different section of the contract when
18 Mr. Lash asked me to use my best efforts to get, I
19 think 13,000 acres of single-family homes in Lincoln
20 County.

21 At the time we all had a big appetite. As it
22 turned out, they weren't going there.

23 Q. It, it didn't happen.

24 A. Not going north of the Clark County line.

25 Q. Right.

1 A. But there is a provision that talks about the
2 total number of single-family homes, and there is a
3 provision that makes it clear that Pardee has an option
4 to buy all the single-family residential property that
5 the parties designate --

6 Q. Okay.

7 A. -- within this entire site.

8 Q. You understand the concept of parol evidence
9 not being permitted to alter the terms of a contract?

10 A. Of course.

11 Q. And this sort of is an integrated agreement?
12 It says so, right?

13 A. Yes.

14 Q. So you're not suggesting you're entering
15 parol evidence to try to construct this document?

16 MS. LUNDVALL: Your Honor, I'm going to
17 object. There is a difference between an integrated
18 contract and parol evidence, so this question contains
19 a material misstatement to the witness.

20 MR. J. J. JIMMERSON: We have been approached
21 by opposing counsel there can't be parol evidence, and
22 all I'm suggesting is at a moment in time, and there
23 are eight further amendments, your Honor, which we'll
24 go through. At a moment in time there was a definition
25 with respect to Option Property and a definition with

1 respect to Purchase Property. It affects those terms
2 in the agreement in Exhibit 1 that I haven't bothered
3 this man with, but I'm trying.

4 You have to understand how this developed. I
5 don't have any quarrel with the cooperation between
6 these parties, I understand that, but they never went
7 back to the plaintiff to modify the definitions.

8 THE COURT: That's a whole different issue.
9 My problem with the question is he's not here as an
10 expert on parol evidence. You happen to be an
11 attorney, God love you, but I will object, I don't want
12 the question anyway, because I think that's a legal
13 issue. I'm sure we will at some point or have argued
14 it recently.

15 MS. LUNDVALL: Exactly.

16 THE COURT: He's a percipient witness, and
17 that's why I'm going to sustain the objection that I
18 don't think it's appropriate to ask him a legal
19 question.

20 Now, and I understand, okay, so we'll do it
21 that way.

22 MS. LUNDVALL: Thank you, your Honor.

23 And in addition, the Court's order dealing
24 with the parol evidence only dealt with the initial
25 agreement.

1 THE COURT: I understand. I went back and
2 looked at it, Ms. Lundvall.

3 MS. LUNDVALL: Thank you, your Honor.

4 THE COURT: I know where we stand, and let's
5 move forward, and Mr. Jimmerson is ready to move
6 forward.

7 BY MR. J. J. JIMMERSON:

8 Q. The parcel boundaries and phasing required
9 the continual mutual agreement of the parties; is that
10 right?

11 A. Yes.

12 Q. And the continual mutual agreement of the
13 parties is something that progressed months and years
14 following May of 2004 through 2008 and 2009?

15 A. Yes, sir.

16 Q. Okay. And the definition of Purchase
17 Property, as we see in March of 2005, is different than
18 the definition of the Purchase Property from May of
19 2004, correct?

20 A. The, the entire document reflects an approach
21 which is becoming more refined with every paragraph,
22 because every day there's something happening to change
23 the boundaries. So when we say, so when we say the
24 Purchase Property is fixed at a specific point in time,
25 in my judgment, is irrelevant with respect to whether

1 or not Pardee and CSI agreed to sell certain property
2 and that they performed in doing so.

3 BY MR. J. J. JIMMERSON:

4 Q. Do you know whether or not the definitions of
5 Purchase Property and Option Property impact the amount
6 of compensation my clients are entitled to receive?

7 A. No. I recall that during the deposition
8 there was a percentage difference, something like that.

9 Q. Would you agree that the choice to build
10 1,950 going north changed between September 1 of 2004,
11 Amendment 2, to March 28th of 2005?

12 A. There was a physical change?

13 Q. There was a physical location change, yes?

14 A. Yes, sir.

15 Q. And there was a physical location change in
16 the definition of Option Property in March of 2005,
17 correct?

18 A. No.

19 Q. In other words, what you're looking at,
20 these, Exhibit C-1, are different than the Exhibit C's
21 of the earlier agreements we went over the Amendment
22 Number 2 or the original agreement?

23 MS. LUNDVALL: Once again, your Honor, this
24 is now misstating this witness' testimony. I don't
25 know how many times he has to tell Mr. Jimmerson that

1 it, it requires a designation by CSI of what the Option
2 Property was.

3 MR. J. J. JIMMERSON: I understand.

4 MS. LUNDVALL: And he --

5 THE COURT: I understand. I do understand
6 the testimony. I think we've gone over this many
7 times, so let's just move on.

8 MR. J. J. JIMMERSON: Thank you.

9 THE COURT: Because we understand the point
10 of what's in the documents, so we understand the
11 interpretation and the understanding of at least CSI,
12 which is what Mr. Whittemore is here for.

13 BY MR. J. J. JIMMERSON:

14 Q. The parties to the amended and restated
15 agreement March 28, 2005, were CSI and Pardee, right?

16 A. Yes, sir.

17 Q. Were Mr. Wolfram and Mr. Wilkes generally a
18 party to that agreement?

19 A. Not that I recall.

20 Q. Would you turn, please, to the amendments in
21 Exhibit 6?

22 A. Okay.

23 Q. We're gonna cover eight more amendments to
24 this now restated document.

25 THE COURT: Hold on. Exhibit 6, we need a

1 new book.

2 THE WITNESS: I apologize if these are going
3 back out of order.

4 MR. J. J. JIMMERSON: 20 lashes.

5 THE COURT: Mr. Whittemore, mine went back
6 out of order, but we'll fix them at the end of the day.
7 We'll get them fixed.

8 Exhibit 6, right, Mr. Jimmerson?

9 MR. J. J. JIMMERSON: Yes, your Honor.

10 THE WITNESS: And we're talking about --

11 THE COURT: A new binder.

12 MR. J. J. JIMMERSON: It's a new binder,
13 hundred percent, right.

14 THE WITNESS: Can I put in Number 4, please?

15 BY MR. J. J. JIMMERSON:

16 Q. Please.

17 A. Thank you.

18 Okay, back up on the shelf. Thank you.

19 Okay. Jim.

20 Q. Would you look at Exhibit Number 6, which is
21 called, Amendment Number 1 to the Amended And Restated
22 Option Agreement, which I will tell you we've been
23 looking at Exhibit 5.

24 MS. LUNDVALL: Your Honor, at this point in
25 time, I need to place a caution for purposes of the

1 court reporter and ask her for to designate this
2 portion of the record as confidential that is
3 confidential beginning at Exhibit 6. That begins the
4 designation for the purposes of our stipulated
5 protective order.

6 THE COURT: Can you note that in the record,
7 and after we do the testimony we'll see how we want to
8 do it, but absolutely.

9 (The following portion of the transcript
10 is designated as confidential by
11 agreement of counsel for the parties.)

12 THE COURT: So we're starting out with
13 Exhibit 6, Amendment Number 1 to Exhibit 5.

14 THE WITNESS: Yes, because the other ones
15 didn't exist.

16 Let's go.

17 BY MR. J. J. JIMMERSON:

18 Q. Now, a year and four months, a year and three
19 months have passed. The date of this document is the
20 28th of July, 2006.

21 Do you see that?

22 A. Yes, I do.

23 Q. So we were at the amended and restated
24 superceding document, March 28th, 2005?

25 A. Yes, sir.

1 Q. And a year and three months have passed,
2 we're in the July of 2006.

3 What happens to this Amendment Number 1 to
4 the superceding amended and restated document of
5 March 28th of 2005?

6 A. Okay. Within this document, Pardee exercises
7 its right to purchase an additional parcel, and we also
8 have created a, on the land itself, on the physical
9 land as reflected in Exhibit A, Bates 1103, your Honor.

10 THE COURT: Okay. Thank you.

11 That's referred to as Exhibit A, as part of
12 the document?

13 THE WITNESS: As part of the document, your
14 Honor. It says, Map Showing Parcel Map Land And
15 Additional Purchase Parcel. That's the, that's what
16 it's entitled.

17 THE COURT: Okay.

18 THE WITNESS: So what have we done? Pardee
19 and CSI have agreed -- and the orientation of this map,
20 your Honor, is correct.

21 THE COURT: Okay.

22 THE WITNESS: So that the lower left-hand
23 corner of this map, you have the great big north. They
24 actually put it in the correct way.

25 THE COURT: Okay.

1 THE WITNESS: This goes along on the map in
2 front of us simply straight up Highway 93.

3 BY MR. J. J. JIMMERSON:

4 Q. Like that?

5 A. Yes.

6 Q. Like that?

7 A. Yes.

8 Q. And so what is happening?

9 A. What is happening?

10 Q. A takedown of 822 acres?

11 A. We are doing the following: If you could
12 blow up the numbers on the little parcels that look
13 like fingers, they are golf holes, your Honor.

14 THE COURT: This is what you're talking about
15 here?

16 THE WITNESS: If I could show --

17 THE COURT: Would you please?

18 THE WITNESS: I'm not gonna get them out of
19 order, because otherwise the books are gonna be
20 horrible, but this, your Honor, these are, these are
21 golf holes.

22 THE COURT: That's okay.

23 THE WITNESS: These, your Honor, these
24 fingers are golf holes.

25 See, this is --

1 THE COURT: Oh, these are golf holes?

2 THE WITNESS: Yes, that look like they're
3 coming out of this.

4 THE COURT: Oh, so for the record, for the
5 record -- poor Ms. Lundvall, she's left out.

6 It's on the right side of this exhibit, which
7 is 1103. It looks like, it does look like fingers.
8 These are golf holes on the right side, correct?

9 THE WITNESS: That's correct, from the
10 Highway 93 to -- this is called Coyote Springs Parkway.

11 THE COURT: Okay.

12 THE WITNESS: So those are holes, and if you
13 were to count them out, you'd find nine or ten holes
14 within those areas designated in that corner.

15 THE COURT: Okay.

16 THE WITNESS: This is the good news and the
17 bad news. Mr. Jimmerson is gonna say, Isn't that the
18 first parcel?

19 THE COURT: Parcel Number 1?

20 THE WITNESS: Isn't that the first part of
21 250 acres? And the answer is, Of course.

22 THE COURT: Yes.

23 THE WITNESS: Of course, because the parties
24 agreed that these were placeholders until we developed
25 where residential homes are gonna be.

1 Now, your Honor, with Mr. Jimmerson's
2 approval, can I see show you where the single-family
3 residential property is?

4 MR. J. J. JIMMERSON: That's fine.

5 THE WITNESS: I think it will be help.

6 THE COURT: We know where the golf holes are.

7 THE WITNESS: Except for this parcel right
8 there, right here, your Honor.

9 THE COURT: Except for that parcel.

10 THE WITNESS: That parcel is part of a custom
11 lot agreement.

12 THE COURT: Right here, where I'm yellowing
13 it in on mine.

14 THE WITNESS: That's the special one, and CSI
15 kept land over here but clearly was contemplating that
16 this would be land that ultimately would be purchased
17 by Pardee.

18 THE COURT: Okay.

19 THE WITNESS: Okay? So we wanted to have a
20 custom lot agreement, because as part of the
21 demographics, Pardee determined that there would be
22 custom lot buyers.

23 THE COURT: On the golf course?

24 THE WITNESS: By the golf course, and they
25 have had enough single-family homes here, here, here,

1 and if we could show it?

2 THE COURT: There are three locations of SFR
3 land, correct?

4 THE WITNESS: Yes.

5 Can we show it on the map? This would really
6 be helpful if you bring it up for the Judge. This is
7 so clear.

8 Your Honor, here's Highway 93.

9 THE COURT: Okay.

10 THE WITNESS: And here's 168.

11 THE COURT: 168.

12 THE WITNESS: And this little thing
13 Mr. Jimmerson was pointing to was that outer edge
14 boundary of what has been on these various exhibits.

15 THE COURT: Right.

16 THE WITNESS: And you will see, you can get
17 Google Earth, you will see, you will see, number one,
18 the golf course; number two, you will see actually
19 graded lots that were ready for production, and you'd
20 see there's nothing over here, because we don't know,
21 but Pardee has in the back of their minds that, Wait a
22 second, that could potentially be a multi-family, I
23 will have to go back to Mr. Whittemore, see if I can
24 keep that for multi-family and get more single-family
25 residential up there, see if he will let me buy

1 multi-family. Can we buy all the custom lots? No.
2 We'll keep those. We'll sell them. We'll split them.
3 If you want to pay us and put in the infrastructure,
4 we'll come up with a custom lot agreement.

5 THE COURT: That was a separate --

6 THE WITNESS: Separate agreement totally,
7 happened after the golf course was being built.

8 THE COURT: But CSI has to compensate them
9 for what you took?

10 THE WITNESS: Yes. That land is now part of
11 -- it's like jellybeans, you take three, you've got to
12 give me back three somewhere else, okay, because at the
13 end of the day, you still have to -- Pardee's given us
14 84 million.

15 THE COURT: For 650 acres?

16 THE WITNESS: 950 acres.

17 THE COURT: 950 acres?

18 THE WITNESS: Yes. And anything other than
19 that is all just simply adjustments of where these
20 things are going.

21 Here's the water plant that I was talking
22 about right up here. Here's, these are, these are
23 ponds where you're actually delivering water to
24 everything.

25 The point was that none of this could have

1 been identified during the process of negotiating this
2 agreement, because you didn't have all the
3 professionals coming in and identifying where they want
4 to, your Honor.

5 So now Mr. Jimmerson asked, Okay, tell me
6 what these exhibits mean now in Number 6, and what
7 we're doing --

8 THE COURT: Okay. What you are doing
9 July 28th, 2006?

10 THE WITNESS: What we're doing is showing
11 that we're gonna build exactly that on this exhibit and
12 start to put together a plan where you can see that
13 buyer is exercising their right to purchase an
14 additional 822 acres.

15 THE COURT: When you say "buyer," you mean
16 Pardee?

17 THE WITNESS: Pardee. They're gonna add
18 822.88 towards their 1,950, and then that segment also
19 includes areas designated as commercial property and
20 certain lands which also is designated for custom lots,
21 because again, the parties have an agreement as to what
22 happens with those specific things. While they're
23 getting 822, they're not ultimately gonna get to keep
24 exactly that 822, because there will be further
25 adjustments, so again, Pardee, in my perspective, is

1 being overcompensated for what they're paying. In
2 other words, they're getting more land during this
3 process.

4 MR. J. J. JIMMERSON: Okay.

5 MS. LUNDVALL: Your Honor, at this point in
6 time, can we capture this Google Earth image and mark
7 this as Defendant's next in line? It would be
8 Exhibit VV.

9 THE COURT: I assume your technical person --

10 MR. J. J. JIMMERSON: That's fine. It
11 doesn't matter.

12 THE COURT: I assume you're the one that can
13 capture it for us, your technical person?

14 MS. LUNDVALL: Thank you.

15 THE COURT: And make it VV.

16 MS. LUNDVALL: It will be Exhibit VV.

17 THE COURT: I want to make sure my clerk
18 heard it.

19 MS. LUNDVALL: And we would move for the
20 admission of VV.

21 THE COURT: Any objection? Okay, it's
22 admitted.

23 MR. J. J. JIMMERSON: No objection.

24 THE WITNESS: So what happens, this is really
25 critical, CSI is relieved of lots of obligations to

1 build additional golf courses and to do other things,
2 and CSI is going to be paid a water commodity charge of
3 \$150,000 a month, because it's very expensive to pump
4 that water, deliver the water and do all that, so the
5 parties are again splitting costs and coming up with
6 plans to --

7 THE COURT: Keep the golf course?

8 THE WITNESS: -- keep the golf course green.

9 BY MR. J. J. JIMMERSON:

10 Q. Okay.

11 THE COURT: As part of this Amendment 1?

12 THE WITNESS: That's correct, because you
13 will see we talk about water, financing it through GID,
14 we talk about infrastructure, sharing infrastructure
15 costs, we've negotiated a CC&R handbook, and that's
16 reflected in this agreement. We're adopting it. So
17 throughout this document, paragraph by paragraph, we
18 are now describing again a brand new deal.

19 BY MR. J. J. JIMMERSON:

20 Q. Okay.

21 A. Modified, but it is not a superceding
22 document yet, because the lawyers haven't gotten mad at
23 us enough to say, Well, we have to put it into one
24 document.

25 THE COURT: And the 822.88 acres, that still

1 could be applied towards 1,950, but it may not all be
2 applied, depending on what happens.

3 THE WITNESS: Exactly, your Honor, because
4 again, just like the earlier property was subject to
5 these minor modifications, until you have a very
6 specific plan and you've done all your calculations and
7 adjustments --

8 THE COURT: Right.

9 Is somebody keeping track of all these
10 jellybeans, I hope?

11 THE WITNESS: That's exactly the point, is
12 that Pardee will never lose a jellybean, and neither
13 will CSI, I can just tell you that, okay?

14 THE COURT: Somehow I suspected that. I
15 don't even want to know what the jellybean counter got,
16 okay.

17 BY MR. J. J. JIMMERSON:

18 Q. Could we just look at the balance of the
19 exhibits?

20 A. Sure.

21 Q. Okay. What is Exhibit A, please? Is it 822
22 acres? Is it 250 acres? Is it 1,950 acres? What's
23 Exhibit A? I read it as 822 acres. If I'm misreading
24 it, correct me. The parcel says, it says 822 acres,
25 see?

1 A. I believe that the parcel of land that is
2 designated as -- well, unfortunately we're gonna have
3 to get into -- to make sense of this, your Honor, I'm
4 gonna have to take you forward, Mr. Jimmerson, to 1105.

5 THE COURT: Bates Stamp 1105, that's fine,
6 because right now Exhibit A, which is 1102, is blank.
7 It says, See attached, but I don't know if the order we
8 have here, do you, Mr. Whittemore?

9 THE WITNESS: I think the order is correct.

10 THE COURT: Okay.

11 THE WITNESS: So I think that that
12 information, I think that that shows you something
13 that, in relationship to 1105, will become clear.

14 THE COURT: Okay.

15 THE WITNESS: So if you'll please turn to
16 1105?

17 THE COURT: Okay.

18 THE WITNESS: Okay. Now, here we go.

19 To get to the total that -- and 1106.

20 THE COURT: Think of them in conjunction with
21 each other?

22 THE WITNESS: Yes, I would ask that you do
23 so, simply because, Mr. Jimmerson, your Honor, what has
24 happened --

25 THE COURT: Mr. Jimmerson, do you want to

1 come up?

2 MR. J. J. JIMMERSON: Yes, please.

3 THE COURT: Ms. Lundvall, you're invited to
4 come up at will.

5 MS. LUNDVALL: Thank you, your Honor.

6 THE COURT: You're not left out.

7 THE WITNESS: You can see the degree of
8 specificity that has now taken place with respect to
9 the property.

10 This is the Lincoln County line. There's
11 Highway 93. There's 168. There's the golf course
12 right there we previously --

13 THE COURT: That orients us, okay.

14 THE WITNESS: This line, your Honor, do you
15 have a highlighter?

16 THE COURT: I do.

17 THE WITNESS: Mr. Jimmerson, this line will
18 generally look like what everybody was worried about at
19 the beginning of the world, so what the parties did,
20 those designations are here, and these designations, I
21 can tell you what they are.

22 MS. LUNDVALL: Because of the coloring on the
23 map?

24 THE WITNESS: Yeah, the coloring on the map.

25 Generally all of this is Pardee.

1 THE COURT: Okay.

2 THE WITNESS: And this wraps around to cover,
3 and I can't tell you the exact wash, your Honor, but
4 this is a good estimation. It's something like that.
5 That's also Pardee.

6 THE COURT: That's also Pardee.

7 THE WITNESS: Again, it had to be acquired,
8 your Honor, to equalize the amount of land they needed.

9 THE COURT: Sure.

10 THE WITNESS: And then this makes it very
11 clear, so if I grew this line, I grew this line a
12 little bit more like this, it looks like it's a little
13 bit higher, and I fit it down a little lower, it makes
14 it clear the CSI/Pardee planning area, 4,207 acres,
15 which clearly would have your 1,950 in this, leaving
16 excess acres for CSI. That's 4,207 acres.

17 The CSI planning area --

18 THE COURT: So you're saying what we see as
19 Exhibit 1106, the 4,207 would include --

20 THE WITNESS: The 1,950, yes.

21 THE COURT: So we're at 1,950 now, not -- at
22 least the area, not necessarily what each plot is?

23 THE WITNESS: That's correct. Therefore,
24 this line is extremely important, because the parties
25 have said, Well, CSI, this is your planning area for

1 the PGA Village. That alone --

2 THE COURT: I see.

3 THE WITNESS: You see, so the parties have
4 said to Pardee, Looks like your single-family
5 residential is gonna be over here, you should make
6 arrangements to provide services to do whatever is
7 next. Let's build the road together, and by the way,
8 we have just negotiated with the PGA to become the PGA
9 Village, the only one, huge, you know, pluses, yada,
10 yada, yada.

11 THE COURT: So this CSI planning area most
12 likely will not be available, you're telling Pardee
13 most likely, if it all works?

14 THE WITNESS: But if things are going really
15 well, we might drop you off over here, which, your
16 Honor, in time, there was considerable negotiation as
17 to whether we could get some single-family homes,
18 right, because Pardee was in the business of buying,
19 and we were in the business of trying to sell.

20 BY MR. J. J. JIMMERSON:

21 Q. Just a question, where is the 822?

22 A. Right here and right here.

23 Q. Okay.

24 THE COURT: And the 822 is part of the 1,950?

25 MS. LUNDVALL: Can I see that again?

1 THE WITNESS: Yes. The 822 is in here, and
2 the 1,950 is all in here.

3 THE COURT: Because the 822 included the golf
4 course?

5 THE WITNESS: Yes.

6 Well, but it wasn't -- you have to subtract
7 it out.

8 THE COURT: Exactly, so the jellybeans --
9 BY MR. J. J. JIMMERSON:

10 Q. But here's the question: Is the 822, the way
11 you explained it, I understood it being the 822 is out
12 of the 1,950; is that correct?

13 A. No.

14 Q. It's part of the 1,950?

15 A. Yes, it is, sir.

16 THE COURT: So the 822 is part of the 1,950.
17 I had that right, all right.

18 BY MR. J. J. JIMMERSON:

19 Q. And you indicated there were some other
20 concessions that were important to CSI, including not
21 having to do certain infrastructure, remember, that
22 Exhibit C had shown early on, and then there's this
23 joint and financed improvements where you're having a
24 sharing relationship with Pardee?

25 A. This is the most important document between

1 CSI and Pardee with respect to -- and this shows the
2 level of trust, hundreds and hundreds of millions of
3 dollars of improvements that Pardee is putting in and
4 knows that CSI is going to have to pay a percentage of
5 these down the road.

6 So this document, while it looks like, Oh,
7 it's just one page, is extraordinarily significant,
8 because it literally involves hundreds of millions of
9 dollars.

10 Q. Got it.

11 As it has turned out, did this project end by
12 virtue of the economic downturn?

13 A. I believe that Coyote Springs will succeed.
14 There has been, there have been reports of lawsuits
15 between Pardee and the successor owner members in CSI,
16 and I believe that those disputes, as well as the
17 economic realities, have caused the parties not to
18 advance construction on certain facilities.

19 Q. And the last three years, four years, as I
20 recall, 2009 to the present?

21 A. I would say that really, things started to
22 come to a grinding halt the summer of 2010.

23 Q. Okay.

24 A. Through today.

25 Q. And when did you lose your interest in CSI,

1 if you have lost your interest at all? I don't know if
2 you have.

3 A. Your Honor, the terms of my settlement
4 agreement with the Seenos is confidential.

5 Q. I just want to know the year when it. Ended
6 I don't want to know the terms.

7 THE COURT: We don't want to know that.
8 That's not relevant to our issues.

9 BY MR. J. J. JIMMERSON:

10 Q. I want to know when does your personal
11 knowledge of these amendments end?

12 THE COURT: That's what we're looking for.

13 BY MR. J. J. JIMMERSON:

14 Q. I'm sorry.

15 A. Fair enough.

16 I retired from Coyote Springs in March of
17 2011, and I resolved my disputes in probably January of
18 '12.

19 BY MR. J. J. JIMMERSON:

20 Q. Very good. Thank you.

21 MS. LUNDVALL: January 2012?

22 THE WITNESS: I think so, yes.

23 MS. LUNDVALL: You resolved your disputes
24 with the Seenos in 2012?

25 THE WITNESS: Yes, ma'am.

1 MS. LUNDVALL: January?

2 THE WITNESS: Yes, ma'am.

3 BY MR. J. J. JIMMERSON:

4 Q. Let's turn to the next exhibit.

5 A. My brain could be wrong on that, but I'm
6 giving you the best estimate.

7 MS. LUNDVALL: Was it this year or last year?

8 THE COURT: January of this year or last
9 year?

10 THE WITNESS: '13. Thank you.

11 THE COURT: I think she's refreshing your
12 recollection.

13 THE WITNESS: She did.

14 THE COURT: Okay. She doesn't want to
15 suggest --

16 THE WITNESS: It is.

17 THE COURT: -- it was this year, and we are
18 in 2013.

19 MR. J. J. JIMMERSON: It was one of the
20 greatest non-suggestions there ever was.

21 THE COURT: I get confused on 2012 and 2013.

22 THE WITNESS: I had totally missed that.

23 THE COURT: That's all right.

24 Okay, Mr. Jimmerson, where are we at now?

25 / / / /

1 BY MR. J. J. JIMMERSON:

2 Q. Turn now to Exhibit 7.

3 A. Exhibit 7, okay.

4 Q. This is called Exhibit 2, 2 of 8, so you have
5 the superceding restatement document in March 2005,
6 Exhibit 5, now we have the second of the two
7 amendments. There's gonna be eight.

8 Number 2, this is -- now, follow along if I'm
9 reading the date right. I think it's September the
10 30th, 2006, so this is just a month and a half after
11 the previous one.

12 So what is going on with this Amendment
13 Number 2?

14 A. I needed money.

15 Q. So what is happening here? If it doesn't
16 relate to the property, I'm gonna kind of move on.

17 A. No, because again, it's everything that they
18 did related to, ultimately, the payment for property.

19 Q. Okay.

20 A. And what they did was prepay the referenced
21 installments from Paragraph 1 (b) (3) of the prior
22 agreement and prepaid \$6 million to help me at a time
23 where I needed the help.

24 Q. Did you have to give anything back, free land
25 or anything like that?

1 A. No. We negotiated a, a, a discount at the
2 back end as a result of the prepayment, which was a
3 calculation of the interest that they would have lost
4 on it.

5 Q. Okay. A discount towards the end?

6 A. Yes.

7 Q. That's fine.

8 Let's go to the next, sir, to Exhibit 8 that
9 is Amendment Number 3 to that amended and restated
10 option agreement of March 2005, and this one is dated
11 November 22nd of 2006, so now it's about two and a half
12 months later?

13 A. Yes.

14 Q. What's going on with Amendment Number 3?
15 We're transferring the escrow from Stewart Title to
16 Chicago Title.

17 Q. What was that?

18 A. The partners had made a decision that they
19 wanted to move to Chicago Title.

20 Q. So had this essentially been a move from
21 Lisa Jones to Francis Butler or Francis Dunlap?

22 A. I don't recall.

23 Q. Do you see Francis Butler is now identified
24 as the person to receive this information in the middle
25 of the page on Paragraph 2?

1 A. Yes, I recall it.

2 Q. Very good.

3 Let's move to Number 9 to the March -- let's
4 see, it gets to which date, December 20th of 2007.
5 Now, this is a year and a month later, 13 months later,
6 from November of 2006 to December of 2007?

7 A. Magically.

8 MS. LUNDVALL: Your Honor, and as we're
9 continuing to go through this, Exhibits 7, 8, 9, they,
10 too, have the same designation as confidential, and I'm
11 assuming the transcript then will have that same
12 confidentiality at this point.

13 THE COURT: What we'll do, when you no longer
14 want the confidentiality, let the Court and the court
15 reporter will know. We'll keep it continuing it unless
16 the court reporter is instructed something different.

17 MS. LUNDVALL: Thank you.

18 THE COURT: You're welcome.

19 THE WITNESS: So finally, magic, jellybeans
20 are accounted for, Paragraph 2.

21 THE COURT: Okay.

22 THE WITNESS: We went from the 880 number
23 down to the 810.05.

24 BY MR. J. J. JIMMERSON:

25 Q. So Paragraph 2, Page 1 of the agreement is

1 hereby amended so that the term "Parcel Map Land"
2 described and defined in Paragraph 2 of the first
3 amendment shall consist of 810.05, acres and not the
4 acreage originally stated therein, which was the 822
5 and change?

6 A. 882.

7 THE COURT: So it was changed to --

8 THE WITNESS: 810. It went down because
9 there was adjustments.

10 THE COURT: But the 810.05 was still part of
11 the designated 1,950?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Just to make sure we're
14 consistent.

15 THE WITNESS: And this agreement then
16 restates, introduces the concept of the per acre price
17 now being reflective of that which was contained on the
18 original exhibit, and therefore, in Paragraph 3, the
19 price per acre was \$43,076.92.

20 BY MR. J. J. JIMMERSON:

21 Q. Okay. Stay in Paragraph 2.

22 It also says, Certain land designated for
23 development of custom lots pursuant to a separate
24 agreement between the parties, the 250 acre parcel
25 previously purchased by buyer at the initial closing, a

1 portion of the first golf course to the west of Coyote
2 Springs Parkway, and a portion of other areas
3 designated as commercial property pursuant to the
4 agreement which will be transferred to seller as
5 provided in the agreement.

6 What's happening here, the second portion of
7 the same paragraph? We reduced 882 to 810. What's
8 going on here?

9 A. What you're doing here is we have created
10 custom lots, which I showed your Honor.

11 THE COURT: Okay. Around the golf course?

12 THE WITNESS: Around the golf course and said
13 by separate agreement, What do you want to do? And we
14 negotiated and said, Okay, if you put in the
15 infrastructure to those custom lots, we'll sell them
16 and agree to split the proceeds in the following
17 fashion, and I believe it was 50/50.

18 BY MR. J. J. JIMMERSON:

19 Q. Okay. And was there a purchase price
20 structure? In other words, how did that work if you're
21 gonna go 50/50 on developing and selling custom lots,
22 and maybe you sell them to Tull Brothers or you sell
23 them to somebody else, how do you get paid since you
24 own them originally?

25 A. By separate agreement when they're closing

1 per parcel, per lot sold. There would be proceeds that
2 would be sent to Pardee and proceeds that would be sent
3 to CSI.

4 Q. Earlier in the documents I saw where you
5 retained for yourself and negotiated for Pardee what I
6 call a custom lot enhancement or increase in price?

7 A. Yes.

8 Q. I thought, if my recollection was right, it
9 was one and a half times, one and a half times if -- it
10 was a 50 percent increase in the basic price?

11 MS. LUNDVALL: It's not a custom lot
12 enhancement.

13 THE WITNESS: What we --

14 THE COURT: Does that refresh your
15 recollection, or do you know what he's speaking of?

16 THE WITNESS: No, I don't recall that, but I
17 do recall what we negotiated.

18 THE COURT: Okay. Well, that would help us.

19 THE WITNESS: We negotiated. We negotiated a
20 premium on each of those lots, and we agreed with
21 respect to some of those lots that there would be a
22 floor so that someone other than Pardee would come in,
23 sell the house at a stated price, and not include a
24 view premium or course premium unfairly to deprive the
25 original seller of the benefits of the deal.

1 THE COURT: Of the bargain.

2 THE WITNESS: Pardee would never do that to
3 us, but if Pardee sold it to somebody else, they might
4 come in and just simply say that the price of the house
5 is 425 instead of the price of the house being 350,
6 because as compared to everything else along the
7 neighborhood, it was 350, and that they received a
8 \$75,000, you know, increase.

9 BY MR. J. J. JIMMERSON:

10 Q. So how did you receive, if at all, how did
11 CSI received the custom lot premium?

12 A. We haven't yet, and we haven't received any
13 of the premiums on the lots along the golf course,
14 because none have been sold.

15 Q. Okay. But what was the agreement? What was
16 your premium increase?

17 A. My understanding is that what we did is
18 billed that premium increase just for that, the price
19 of the lot, because all of those lots were under the
20 control of Pardee and CSI.

21 Q. All right. And then the proceeds, if and
22 when they're sold, will go 50/50?

23 A. Yes. That's my recollection.

24 Q. Do you remember how many custom lots are
25 affected on --

1 A. I don't recall how many, but we were, what we
2 had determined was our value of the land was somewhat
3 equivalent as to the cost of infrastructure, and
4 therefore, the parties would basically, basically we'd
5 throw in the land and they would throw in the
6 improvements.

7 Q. All right. Thank you.

8 THE COURT: And that's a totally separate
9 agreement?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: It has nothing do with --

12 THE WITNESS: Not anything at all.

13 THE COURT: As far as our issues, I
14 understand what you're saying, nothing do with the
15 first Option Agreement?

16 THE WITNESS: No, no, your Honor.

17 THE COURT: I wanted to clarify.

18 THE WITNESS: No. It was totally done as a
19 result of separate negotiations and separate
20 agreements.

21 THE COURT: Okay.

22 MS. LUNDVALL: While we're here, do you want
23 to cover Paragraph 6?

24 MR. J. J. JIMMERSON: You're not telling me
25 how to conduct my examination, are you?

1 MS. LUNDVALL: I'm just trying move to things
2 along.

3 MR. J. J. JIMMERSON: I appreciate it.

4 BY MR. J. J. JIMMERSON:

5 Q. What else is being accomplished here in this
6 Exhibit Number 9, Amendment 4?

7 A. Well --

8 Q. You modified the price as reflected in
9 Exhibit E, Paragraph 3?

10 A. Uh-huh.

11 Q. And what's happening with regard to the
12 \$12 million? What's happened here?

13 A. Well, what happened, we have a modified
14 price per acre.

15 BY MR. J. J. JIMMERSON:

16 Q. Per acre.

17 A. What happened is we had calculated what the
18 additional purchase, parcel price is, and it says it's
19 \$12,641,331, which if you look at Exhibit A to the
20 Parcel 1 acreage calculation of July 30th, 2007, at
21 Bates Number 1121, your Honor.

22 THE COURT: Okay. There it is.

23 THE WITNESS: You'll see the custom lots.
24 There's a, there's total acreage, there's golf course
25 lots, there's Highway 93, there's Lake Village Park,

1 all of these parcels, all of these specific parcels now
2 have specific acreage next to their little name.

3 THE COURT: But that's all a separate
4 agreement?

5 THE WITNESS: Well, no, this includes --
6 because, because we're including everything, your
7 Honor.

8 THE COURT: Yes.

9 THE WITNESS: We are counting everything
10 here, and the subtotal is --

11 THE COURT: I see it now.

12 THE WITNESS: If you take a look, we've
13 charged for the wash, we've charged for a park, we
14 charged for, you know, everything that -- the highway.
15 You take a look at who is who for what, and then each
16 of those calculations, John I sat down and negotiated.

17 For example, if you take a look at 93-1, the
18 number is 21,583. By my calculation, it looks like
19 it's 50 percent of the 43,000, your Honor.

20 THE COURT: I see. And that would be your
21 negotiation?

22 THE WITNESS: Yes.

23 And then you will see 30,000 down below for
24 the washes, simply because I said, John, it's not fair,
25 these are only half, let's negotiate a fair price for

1 your obligation to pay for the washes that are
2 necessary for you to build the lots that you're
3 building on. He said, Okay, that's fair, and we agreed
4 to 30,000.

5 BY MR. J. J. JIMMERSON:

6 Q. All right.

7 a. And then the water campus you'll see is at
8 half price, and you add up all of those things on the
9 value, you come up with a subtotal of 22,964,408.
10 They've already paid \$10,000. Now, at 810.05, you see,
11 your Honor, the subtotal?

12 THE COURT: Hold on.

13 Yes.

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 THE WITNESS: And then across you'll see the
17 value of what the 810 would be in money.

18 THE COURT: 12 million.

19 THE WITNESS: And you subtract out
20 the 10 million you've already paid and then subtract
21 out a park credit, which they had already given to us,
22 so they don't pay us twice.

23 THE COURT: Right.

24 THE WITNESS: And you end up with a total of
25 \$12,641,331, which means that they're buying, as of

1 this date, that they're ahead of us. They have paid
2 more for that the kitty than we've given them property
3 for.

4 THE COURT: The property.

5 BY MR. J. J. JIMMERSON:

6 Q. Okay. Now, a couple of questions, first, do
7 you recall that as it relates to custom lots, even
8 though you had a separate agreement here --

9 A. Uh-huh.

10 Q. -- by 2007, do you recall the custom lots
11 that were developed by Pardee were part of the
12 definition of residential lots originally in May of
13 2004?

14 A. No.

15 MS. LUNDVALL: I'm going to object to that
16 representation, because that's not the language of the
17 agreement.

18 MR. J. J. JIMMERSON: Okay.

19 THE COURT: Do you have a recollection of it?

20 THE WITNESS: I specifically do.

21 THE COURT: Okay.

22 THE WITNESS: We would never have --

23 THE COURT: Based on that objection, as long
24 as Mr. Whittemore has a recollection of what's in
25 there, I don't -- can you tell us what you recall?

1 THE WITNESS: Yes. We had discussions, and
2 there was no chance that I was giving up the custom lot
3 business, because John knew, based upon my development
4 up in Red Hawk, that we were in the business of selling
5 custom lots on our golf courses in Northern Nevada, so
6 we specifically said no at the beginning of these
7 negotiations to have any discussions whatsoever
8 regarding custom lots. That occurred later.

9 BY MR. J. J. JIMMERSON:

10 Q. All right. Let me show you, please, Exhibit
11 2, just perhaps to refresh or correct your testimony.

12 THE COURT: Well --

13 MR. J. J. JIMMERSON: Well, your Honor --

14 MS. LUNDVALL: Come on. Come on.

15 THE COURT: Just ask the question,
16 Mr. Jimmerson, because if his recollection is wrong --

17 MR. J. J. JIMMERSON: I understand you,
18 Judge, but would you have me adopt his recollection
19 without looking at the document?

20 THE COURT: Not at all. If his recollection
21 is incorrect, Mr. Jimmerson, you should be refreshing
22 it appropriately.

23 THE WITNESS: Okay.

24 BY MR. J. J. JIMMERSON:

25 Q. Exhibit 2, second page.

1 A. Yeah.

2 Q. All right. As in the middle of the page.

3 A. Uh-huh.

4 Q. It says, As used in this agreement --

5 THE COURT: Hold on, let me find it.

6 The middle of the page.

7 MR. J. J. JIMMERSON: 2.

8 THE COURT: I'm sorry, that's my fault.

9 As used.

10 BY MR. J. J. JIMMERSON:

11 Q. As used in this agreement, the term,
12 "production residential property," means that portion
13 of the net useable acreage as defined below that
14 encompasses all of the Purchase property and the Option
15 Property, which includes, without limitation, all
16 single-family detached production residential lots,
17 which shall include lots on which custom homes are
18 constructed by buyer, end of quote.

19 A. You read that correctly.

20 Q. Does it include construction lots for which
21 custom lots are constructed by Pardee as a buyer, you
22 said?

23 A. No. No.

24 Q. So what changes this language?

25 A. Because if you will recall, the modifications

1 to the document in the Number 5, the amended and
2 restated agreement.

3 Q. All right.

4 A. And every single planning document referred
5 to what Pardee got as single-family production lots.

6 Q. Okay.

7 A. Not -- so because I was the person, the
8 person -- I was never going to designate the land
9 custom lots for Pardee. The custom lots were gonna be
10 retained. Just because I said, Well, if you allow us
11 to do so, we can, that's fine, but we were never -- and
12 that's why I explained it, we were never going to give
13 up the custom lots without us negotiating something
14 else for it.

15 Q. Within Exhibit 2, where does it state you
16 were never going to give them custom lots when their
17 definition in this contract that you signed speaks to
18 their residential properties including custom lots on
19 which they build houses?

20 MS. LUNDVALL: Your Honor, once again, I'm
21 gonna have to object. He keeps making reference to
22 custom lots. It's a reference to custom homes.

23 THE COURT: Homes?

24 MS. LUNDVALL: There is a difference between
25 custom homes and custom lots.

1 MR. J. J. JIMMERSON: Judge, it says --

2 MS. LUNDVALL: And he's not permitted to
3 misspeak.

4 THE COURT: I know.

5 MR. J. J. JIMMERSON: Shall include the lots.

6 THE COURT: Lots on custom homes.

7 Is there a difference, Mr. Whittemore,
8 between, at least for purposes of this case, between a
9 custom home lot and what it says here, let's get it
10 right, lots on which custom homes are constructed by
11 buyer?

12 Is there a difference?

13 THE WITNESS: In the context of that portion
14 of the agreement, that's not -- there's no difference.
15 They are internally consistent. That is not what my
16 testimony is.

17 THE COURT: But he's asking the question: Is
18 there a distinction?

19 THE WITNESS: No.

20 BY MR. J. J. JIMMERSON:

21 Q. Here's my point, are you telling me, and I'm
22 not fighting with you, because I don't know why you
23 feel this way, are you telling me that the language
24 here that I'm reading, that my clients read, that says,
25 quote, That residential property for which they're

1 gonna get a commission includes several items, one of
2 which is all or one of which is lots on which certain
3 construction -- excuse me, lots upon which custom homes
4 are constructed by buyer got changed later on?

5 A. I believe so.

6 Q. Okay. Do you know which documents, of those
7 that you've looked at, that deleted, as part of
8 residential property, lots upon which custom homes are
9 constructed by buyer?

10 A. Well, I sure hope it's in the contract.
11 Your Exhibit Number 5, it says, Amended And
12 Restated Option Agreement.

13 Q. Okay.

14 A. Because the --

15 Q. I didn't see it, but if I could call your
16 attention to it to help you, look at Bates Number 82,
17 Page 2 of Exhibit 5.

18 A. That's where I was.

19 Q. Okay. I don't see the change in the
20 language.

21 MS. LUNDVALL: Well, changes in language,
22 your Honor --

23 BY MR. J. J. JIMMERSON:

24 Q. Can we look at it, please, together?

25 THE COURT: Let's just let Mr. Whittemore

1 look at it, okay?

2 You've referenced to Page 2, Bates 082.

3 Could you take your time and look at that?

4 BY MR. J. J. JIMMERSON:

5 Q. In the middle of the page, same language, As
6 used in this agreement, are you with me?

7 A. Yes.

8 Q. As used in this agreement, the term
9 "production residential property" means that portion of
10 the net useable acres as defined below that encompasses
11 all of the Purchase Property and Option Property, which
12 includes, without limitation, all single-family
13 detached production residential lots, which shall
14 include single-family detached production residential
15 lots on which custom homes are constructed by buyer.

16 I don't see an amendment for that Exhibit 2,
17 do you?

18 A. Mr. Jimmerson, the language provides the
19 following: If I've designated a lot, a single-family
20 production lot, and it's on the golf course, and I give
21 them the approval that it can become a custom lot under
22 any sense of the word, that would be a land purchase
23 for which your clients would be entitled a commission,
24 based upon your statements to me that they're entitled
25 to commissions on residential production homes.

1 The custom homes referenced here are those
2 which require a two step process, not a one step
3 process.

4 A one step process, your Honor, is I own it,
5 I designate it as a custom, I designate it as a custom
6 lot.

7 THE COURT: Okay.

8 THE WITNESS: And in the example that
9 Mr. Jimmerson is going to, I would designate is as a
10 single-family production lot, and he would come back
11 and ask for my consent to come in and say, I would now
12 like, based upon what I see, to turn these
13 single-family production homes into custom lots. I had
14 the absolute right to say, No, because single-family
15 homes on custom lots was retained by me as part of the
16 negotiations.

17 They could, if -- just because it's an
18 allowed use does not mean that the owner gives up his
19 right to say, Stop, to say, Even though this is an
20 allowed use, I'm telling you you cannot do this at this
21 time, and that's what this process was all about, was
22 the control that we had on designating what went on on
23 the particular site.

24 THE COURT: And when you say, "you," you mean
25 CSI?

1 THE WITNESS: CSI.

2 BY MR. J. J. JIMMERSON:

3 Q. Where is it in Exhibit 2, the Baseline
4 Agreement, the right of you, having designated 1,500
5 acres as of June 1 of 2004, that you had retained the
6 right, even though you designated it as residential, to
7 pull it back and say, You can't build a custom lot? I
8 don't see any language.

9 MS. LUNDVALL: Your Honor, once again --

10 BY MR. J. J. JIMMERSON:

11 Q. You're right, what I say is irrelevant.
12 Where is it?

13 A. Mr. Jimmerson, the designation of
14 single-family residential by the master developer is
15 final until the individual who purchased the property
16 came back and got my consent to change it.

17 For example, if, as a result of the change in
18 market conditions, it became appropriate that they are
19 no longer single-family detached, your Honor, but
20 attached homes, duplexes, they would come back and say,
21 Can we build duplexes on this land, and we would say,
22 Yes.

23 Now, there is a very long process,
24 Mr. Jimmerson, that took place where we negotiated the
25 exact number of units which could be built on a

1 particular piece of land so that we could guarantee
2 that it gave flexibility to Pardee but did not ruin or
3 change the area plan we had devised.

4 And so, your Honor, what we did, and again,
5 this happens every day in my business, if someone comes
6 in and says, Harvey, we planned this, we want to change
7 it, I'm certainly not going to allow someone who pays
8 \$43,000 an acre for a single-family home to come in and
9 say, I'm turning it into commercial that's worth
10 \$500,000 without me getting my little piece of the
11 action. That's the reality.

12 BY MR. J. J. JIMMERSON:

13 Q. I'm with you.

14 All I'm saying to you is that when you sold
15 -- we know when you sold residential production
16 residential property to Pardee?

17 A. Yes.

18 Q. Okay. You did not retain, at least under the
19 terms of the agreement that I read, the ability to veto
20 their use of, their construction of lots for custom
21 homes?

22 A. I, I -- Jim, Mr. Jimmerson.

23 MS. LUNDVALL: Your Honor?

24 THE COURT: Let him answer.

25 THE WITNESS: I don't know whether it's, I

1 don't know whether it's in any of the documents that
2 you have in front of you. I don't have a clue of all
3 the things that have been put together or haven't been
4 put together, and I don't have any documentation in
5 front of me that says this is the agreement that does
6 A, B, C, D, and E.

7 What I do know is that by agreement, Pardee
8 and CSI agreed that no use that was designated could be
9 changed without the approval of the other if it
10 impacted a particular use or the valuation, because
11 Mr. Jimmerson, can you imagine Coyote Springs
12 controlling the commercial parts of this parcel and
13 immediately deciding that they thought that they could,
14 under their master plan amendments and their
15 development agreement, to put in a pig farm?

16 BY MR. J. J. JIMMERSON:

17 Q. Next to custom homes, I'm with you.

18 A. So there's zero chance that in that, in the
19 documentation and the relationships of the parties,
20 that you would have a circumstance where somebody could
21 use property in a way that harmed the other or to take
22 advantage of the other.

23 Q. I'm with you.

24 How many custom lots are allocated for Pardee
25 to build?

1 A. I believe the custom lots, I believe that the
2 total number of lots within that area might be like 72
3 or something.

4 Q. I thought it was less, right.

5 And my understanding of your testimony, they
6 have not yet been constructed; is that right?

7 A. They have not been sold. There has been work
8 done on the lots, rough grading, and no, I don't know
9 of any.

10 Q. But no foundations and no sales?

11 A. Nothing.

12 MR. J. J. JIMMERSON: That's fine.

13 Thank you very much.

14 **(End of the confidential portion of the**
15 **Transcript.)**

16 THE COURT: Mr. Jimmerson? Mr. Jimmerson,
17 who's your next witness?

18 MR. J.M. JIMMERSON: Jim Wolfram, your Honor.

19 THE COURT: Okay, where are my notes?

20 THE CLERK: Please remain standing and raise
21 your right hand.

22 JAMES F. WOLFRAM,
23 having been duly sworn to tell the truth, the whole
24 truth, and nothing but the truth, was examined and
25 testified as follows:

1 THE CLERK: For the record, please state your
2 name.

3 THE WITNESS: James F. Wolfram.

4 THE CLERK: Thank you.

5 THE COURT: This is a continuation from your
6 direct yesterday.

7 THE WITNESS: Oh, God, yes.

8 THE COURT: That's okay. Are you ready to
9 go?

10 THE WITNESS: I am.

11 THE COURT: Welcome back.

12 THE WITNESS: Okay.

13 THE COURT: Hopefully it will be easier.

14 THE WITNESS: Hopefully, yeah.

15 DIRECT EXAMINATION (RESUMED)

16 MR. J.M. JIMMERSON:

17 Q. Mr. Wolfram, can we begin by opening up to
18 Plaintiffs' Exhibit 2, the Option Agreement?

19 A. Okay.

20 Q. This is the Option Agreement for the Purchase
21 of Real Property and Joint Escrow Instructions dated
22 May of 2004.

23 Prior to this litigation, did you receive a
24 copy of this agreement?

25 A. Yes.

1 Q. Mr. Wolfram, can you please --

2 THE COURT: I'm sorry, prior to this
3 litigation?

4 MR. J.M. JIMMERSON: Yes.

5 THE COURT: Right.

6 I'm sorry. Thank you.

7 BY MR. J.M. JIMMERSON:

8 Q. Mr. Wolfram, please turn to Exhibit 3.

9 A. Okay.

10 Q. What's that agreement?

11 A. It's the Amended, Amendment to Option
12 Agreement for the Purchase of Real Property and Joint
13 Escrow Instructions.

14 Q. And what's the date?

15 A. This Amendment to Option Agreement for the
16 Purchase of Real Property and Joint Escrow
17 Instructions.

18 THE COURT: Mr. Wolfram, the court reporter
19 has to take everything down, so even though you can
20 read, can you slow down a little, because she can't
21 keep up with you.

22 MS. LUNDVALL: You're asking him to read the
23 entirety of Exhibit 3?

24 MR. J.M. JIMMERSON: No. I was asking for
25 the date.

1 THE COURT: I know. I think there was a
2 miscommunication.

3 THE WITNESS: 23rd day of July, 2004.

4 THE COURT: Which day of July, the 28th?

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 I'm sorry.

8 BY MR. J.M. JIMMERSON:

9 Q. And prior to this, did you receive this
10 agreement from either Pardee or the title company?

11 A. Yes.

12 Q. Thank you, Mr. Wolfram.

13 Please flip to Exhibit Number 4.

14 What is this document?

15 A. Amendment Number 2 to Option Agreement for
16 the Purchase of Real Property and Joint Escrow
17 Instructions.

18 Q. What's the date?

19 A. 31st day of August, 2004.

20 Q. Prior to this litigation, did you receive a
21 copy of it from either Pardee or the title company?

22 A. Yes, I did. I don't know if I got it right
23 before I signed on the 6th. I could have got it after
24 that, I'm not sure, within that period of time there.

25 Q. Okay. Please look at Exhibit Number 5.

1 What is this document?

2 A. Amended and Restated Option Agreement for the
3 Purchase of Real Property and Joint Escrow
4 Instructions.

5 Q. What is the date?

6 A. 28th day of March, 2005.

7 Q. And prior to this litigation, did you receive
8 a copy of this from either Pardee or the title company?

9 A. Yes, I did.

10 Q. Thank you, Mr. Wolfram.

11 I would like you to turn to the next binder,
12 Exhibit Number 6, please.

13 A. Okay.

14 THE COURT: Okay, Mr. Wolfram, this whole
15 Exhibit 5, you received prior to litigation? It's
16 pretty big.

17 THE WITNESS: Yeah, it's pretty big.

18 THE COURT: Prior to litigation, I want to
19 make sure.

20 THE WITNESS: Yeah, I have it.

21 THE COURT: Okay.

22 BY MR. J.M. JIMMERSON:

23 Q. Mr. Wolfram, what is this document at
24 Exhibit 6?

25 A. As a whole?

1 Q. Exhibit 6, I'm sorry.

2 A. Okay. Exhibit 6, that's Amendment Number 1
3 to Amended and Restated Option Agreement for the
4 Purchase of Real Property and Joint Escrow
5 Instructions.

6 Q. And what's the date?

7 A. It's dated the 28th day of July, 2006.

8 Q. Mr. Wolfram, prior to this litigation, did
9 you receive a copy of this from either Pardee or the
10 title company?

11 A. No.

12 Q. After you had commenced this litigation, did
13 you receive a copy of this from either the title
14 company or Pardee?

15 A. No.

16 Q. Do you know why you did not receive a copy of
17 this agreement from either of those people?

18 A. No.

19 Q. Okay. Do you see the Bates stamp at the
20 bottom left?

21 A. Yes.

22 Q. Okay. What is CSI Wolfram 1095?

23 Do you know what the CSI stands for?

24 A. Coyote Springs Investment.

25 Q. Thank you.

1 Mr. Wolfram, can you please flip to Exhibit
2 Number 7?

3 MS. LUNDVALL: Your Honor, for purposes of
4 the record, I just want to make sure that the court
5 reporter can end the confidentiality designation at
6 conclusion of Mr. Whittemore's testimony.

7 THE COURT: Okay.

8 MS. LUNDVALL: And even though we have begun
9 questions on 6 and 7, which are designated as
10 confidential, but we're not getting into the terms, and
11 so therefore, I do not believe there's any designation
12 of confidentiality.

13 THE COURT: So Mr. Whittemore, okay, all
14 right. Thank you.

15 We're on Exhibit 7, right?

16 MR. J.M. JIMMERSON: Yes, your Honor, we're
17 on Exhibit 7.

18 THE COURT: Okay.

19 BY MR. J.M. JIMMERSON:

20 Q. Mr. Wolfram, what is that document?

21 A. This is Amendment Number 2 to Amended and
22 Restated Option Agreement for the Purchase of Real
23 Property and Joint Escrow Instructions.

24 Q. And what is the date?

25 A. September 30th, 2006.

1 Q. And prior to this litigation, did you receive
2 a copy of it from either Pardee or the title company?

3 A. No.

4 Q. After you have commenced litigation against
5 Pardee, did you receive a copy of this from either
6 Pardee or the title company?

7 A. No.

8 Q. Do you know why you did not receive a copy of
9 it?

10 A. I do not.

11 Q. Do you see the Bates stamp at the very bottom
12 on the left?

13 A. I do.

14 Q. What is it?

15 A. CSI Wolfram 1110.

16 Q. Do you know what the CSI stands for?

17 A. Coyote Springs Investment.

18 Q. Thank you, Mr. Wolfram.

19 Please flip to Exhibit 8.

20 What's this document, Mr. Wolfram?

21 A. Amendment Number 3 to Amended and Restated
22 Option Agreement for the Purchase of Real Property and
23 Joint Escrow Instructions.

24 Q. What is the date?

25 A. 22nd day of November.

1 Q. I'm sorry, what was the year?

2 A. 2006, I'm sorry.

3 Q. Prior to this litigation, did you receive a
4 copy of this from either Pardee or the title company?

5 A. No.

6 Q. After this litigation commenced, did you
7 receive a copy of it from either Pardee or the title
8 company?

9 A. No.

10 Q. Do you know why you did not receive a copy of
11 this from either Pardee or the title company?

12 A. No.

13 Q. Do you see the Bates stamp at the bottom
14 there?

15 A. I do.

16 Q. What is it?

17 A. CSI Wolfram 1114.

18 Q. Do you know what the CSI stands for?

19 A. Coyote Springs Investment.

20 Q. Thank you, Mr. Wolfram.

21 Please flip to Exhibit Number 9.

22 What is this document?

23 A. Amendment Number 4 to Amended and Restated
24 Option Agreement for the Purchase of Real Property and
25 Joint Escrow Instructions.

1 Q. What's the date?

2 A. The date is the 20th day of December, 2007.

3 Q. Prior to this litigation, did you receive a
4 copy of it from either the title company or Pardee?

5 A. No.

6 Q. After you commenced litigation against
7 Pardee, did you receive a copy of it from either Pardee
8 or the title company?

9 A. No.

10 Q. Do you know why did you not receive a copy of
11 this document?

12 A. I do not.

13 Q. Mr. Wolfram, can you tell us what the Bates
14 Stamp is at the bottom there?

15 A. CSI Wolfram 1116.

16 Q. Do you know what the CSI stands for?

17 A. Coyote Springs Investment.

18 Q. Thank you Mr. Wolfram.

19 Can you please flip to Exhibit 10?

20 Can you tell us what this document is?

21 A. Amendment Number 5 to Amended and Restated
22 Option Agreement for the Purchase of Real Property and
23 Joint Escrow Instructions.

24 Q. Can you tell us what the date is?

25 A. 12th of May, 2008.

1 Q. And before commencing this litigation on
2 December 29, 2010, did you receive a copy of this from
3 either Pardee or the title company?

4 A. No.

5 Q. After commencing this litigation in December
6 of 2010, did you receive a copy of this from either
7 Pardee or the title company?

8 A. No.

9 Q. Do you know why you did not receive a copy of
10 this document?

11 A. No.

12 Q. Mr. Wolfram, do you see the Bates stamp at
13 the very bottom left or bottom right?

14 A. I do.

15 Q. What's this?

16 A. CSI Wolfram 1123.

17 Q. Do you know what the CSI stands for?

18 A. Coyote Springs Investment.

19 Q. Thank you, Mr. Wolfram.

20 Can you please flip to Exhibit Number 11?

21 What is this document?

22 A. Amended Number 6 to Amended and Restated
23 Option Agreement for the Purchase of Real Property and
24 Joint Escrow Instructions.

25 Q. What's the date?

1 A. It's date is the 30th date of January, 2009.

2 Q. Prior to commencing this litigation in
3 December of 2010, did you receive a copy of this from
4 either Pardee or the title company?

5 A. No.

6 Q. After commencing this litigation in December
7 of 2010, did you receive a copy of it from either the
8 title company or Pardee?

9 A. No.

10 Q. Do you know why you did not receive a copy of
11 this document?

12 A. No.

13 Q. Can you please tell us, do you see the Bates
14 stamp in the bottom right-hand corner of the document?

15 A. I do.

16 Q. What is it?

17 A. CSI Wolfram 1133.

18 Q. Can you tell us what the CSI is, if you know
19 what it is?

20 A. Coyote Springs Investment.

21 Q. Thank you, Mr. Wolfram.

22 Please flip now to Exhibit Number 12.

23 What's this document?

24 A. Amendment Number 7 to Amended and Restated
25 Option Agreement for the Purchase of Real Property and

1 Joint Escrow instructions.

2 Q. Can you tell me the date?

3 A. April 24th, 2009.

4 Q. Prior to commencing this litigation in
5 December of 2010, did you receive a copy of this
6 document from either Pardee or the title company?

7 A. No.

8 Q. After commencing this litigation in December
9 of 2010, did you receive a copy of this document from
10 either Pardee or the title company?

11 A. No.

12 Q. Do you know why you did not receive a copy of
13 this document from either of these two entities?

14 A. No.

15 Q. Do you see the Bates stamp on the bottom
16 right-hand corner of this document?

17 A. Yes.

18 Q. What is it?

19 A. CSI Wolfram 1144.

20 Q. Can you tell us me what CSI stands for, if
21 you know?

22 A. Coyote Springs Investment.

23 Q. Thank you, Mr. Wolfram.

24 Can you please flip to Exhibit 13.

25 Mr. Wolfram can you tell us what this

1 document is?

2 A. Amendment Number 8 to Amended and Restated
3 Option Agreement for the Purchase of Real Property and
4 Joint Escrow Instructions.

5 Q. Mr. Wolfram, what is the date?

6 A. June 18th, 2009.

7 Q. Prior to commencing this litigation in
8 December of 2010, did you receive a copy of this
9 document from either Pardee or the title company?

10 A. No.

11 Q. After commencing this litigation in December
12 of 2010, did you receive a copy of it from either
13 Pardee or the title company?

14 A. No.

15 Q. Do you know why you did not receive a copy of
16 this document from either Pardee or the title company?

17 A. No.

18 Q. Do you see the Bates stamp on the bottom
19 right?

20 A. Yes.

21 Q. What is it?

22 A. CSI Wolfram 1164.

23 Q. Do you know what the CSI stands for?

24 A. Coyote Springs Investment.

25 Q. Thank you.

1 MS. LUNDVALL: Now that he's finished with
2 that line of questioning, I want to make sure that the
3 exhibits that have been designated as Exhibit 6 through
4 13 have the confidentiality designation, and then for
5 purposes of creating the court record, they should be
6 treated accordingly.

7 THE COURT: So you want all his testimony for
8 those exhibits for the CSI number, his answers and the
9 dates, you want it all confidential?

10 MS. LUNDVALL: I don't think the transcript
11 needs to be, I'm just making reference to the exhibits
12 themselves.

13 THE COURT: Oh, I thought we had already
14 agreed on that, but okay, that's fine. I thought we
15 had already stipulated there.

16 MR. J.M. JIMMERSON: They're already in.

17 THE COURT: All right. So while we're on the
18 same page, they're already stipulated to being
19 confidential.

20 MR. J.M. JIMMERSON: Yes.

21 MR. J.J. JIMMERSON: And they're stipulated
22 into evidence too.

23 THE COURT: Yes, yes, and you know what we'll
24 probably do, I kind of looked into it, when the Court
25 keeps the evidence, we don't destroy it. I'm used to

1 being a litigator. They actually will seal it when
2 it's part of record here. I needed to correct myself,
3 because yesterday I said something about destroying
4 them. That's what you all will do, not me. I
5 apologize. I did look into this last night. There is
6 a way to keep it confidential, I can get it sealed as
7 part of the record.

8 MS. LUNDVALL: Thank you.

9 BY MR. J.M. JIMMERSON:

10 Q. Mr. Wolfram, prior to commencement of this
11 litigation, what did you ask for from either Pardee or
12 the title company in terms of information concerning
13 the development Coyote Springs as it pertained to your
14 commissions?

15 A. Well, I asked them for records, I asked them
16 for maps, parcel numbers, title company things in
17 general, that I would need to track any land sold, I
18 mean it would just be stuff that I'd have to have in
19 order to make a sale.

20 Q. Mr. Wolfram, did you ever have a conversation
21 or a meeting with Francis Butler or Francis Dunlap of
22 Chicago Title?

23 A. Several.

24 Q. Okay. And what were those meetings and those
25 conversations about?

1 A. These meetings --

2 MS. LUNDVALL: Your Honor, I would object to
3 any conversations between Ms. Butler. That would be
4 protected by hearsay. Those would be hearsay
5 documents, not protected.

6 MR. J.M. JIMMERSON: I'm not asking for a
7 specific quotation, he's absolutely entitled to say
8 what he asked for.

9 THE COURT: I understand what he asked for,
10 but I think what you're asking for is what she said in
11 that conversation.

12 What was your understanding -- I'm sorry, I'm
13 rephrasing you. I apologize.

14 It would be hearsay, the conversations,
15 because it's outside of the -- I assume you want it for
16 the truth, but you can certainly ask him for his
17 understanding after having conversations, if you want
18 to establish how many conversations?

19 THE WITNESS: Your Honor, I thought the
20 question was just to find out why I was over at the
21 title company.

22 MR. J.M. JIMMERSON: I'll ask that. I will
23 withdraw the question.

24 THE COURT: We can ask that foundation.

25 / / / /

1 BY MR. J.M. JIMMERSON:

2 Q. Why were you at the title company asking
3 questions?

4 A. I was at the title company, because there was
5 a period of time where I knew other land was being
6 taken down, or I felt it was being taken down, and I
7 was calling Pardee. I was -- they put me through to
8 John, through a couple of attorneys, through a
9 secretary. Nobody would tell me what was going on, so
10 I thought since I am on the recorded document in this
11 transaction, I could go to the title company. And they
12 would have the information maybe I could get to find
13 out what was going on.

14 THE COURT: And she's Chicago Title.

15 MR. J.M. JIMMERSON: Yes.

16 THE WITNESS: Yes.

17 BY MR. J.M. JIMMERSON:

18 Q. Were you successful in getting the
19 information you requested from Ms. Butler?

20 A. Absolutely not.

21 Q. Do you know why you were unsuccessful?

22 A. Yes, I know. Ms. Butler had told me.

23 MS. LUNDVALL: Now I'm gonna have to object.

24 THE COURT: What was your understanding of
25 why you were unsuccessful, so we don't have a hearsay

1 objection?

2 THE WITNESS: I was told that she wasn't
3 allowed t-- my understanding was --

4 THE COURT: Perfect.

5 THE WITNESS: -- that she just wasn't going
6 to give me the information.

7 THE COURT: Okay.

8 BY MR. J.M. JIMMERSON:

9 Q. Okay.

10 A. But there was a reason.

11 THE COURT: What's your understanding of what
12 the reason was? What was your understanding of the
13 reason why Ms. Butler would not give the information?

14 THE WITNESS: You say I can't say it if she
15 told me?

16 THE COURT: You can tell me what your
17 understanding is from what she told, you just can't say
18 word for word, because it's an out of court statement.
19 I know the evidence. You can give us your
20 understanding of the reason why Ms. Butler could not
21 give the information.

22 THE WITNESS: She was in a position where she
23 could not help me.

24 THE COURT: Okay.

25 / / / /

1 BY MR. J.M. JIMMERSON:

2 Q. Mr. Wolfram, from your understanding, do you
3 know whether or not she was instructed not to give you
4 the documents?

5 A. I do.

6 Q. What was that understanding?

7 A. That understanding was she said that
8 Mr. Lash --

9 MS. LUNDVALL: Your Honor, once again, we're
10 right back to the issue.

11 THE WITNESS: My understanding was --

12 MS. LUNDVALL: His testimony was she couldn't
13 tell him why. That's what he just said.

14 THE COURT: Well, now he's contradicting, so
15 just --

16 MR. J.M. JIMMERSON: The testimony wasn't she
17 couldn't tell him why, the testimony was she couldn't
18 tell --

19 THE COURT: You know what, just ask the next
20 question, because maybe he can kind of --

21 THE WITNESS: But there was a reason.

22 THE COURT: Clarify. Why don't you --

23 THE WITNESS: Your Honor, there was a reason
24 why she couldn't tell me, and --

25 THE COURT: What was your understanding?

1 THE WITNESS: I'm not allowed to say what she
2 told me, but there was a reason someone had told her
3 not to give me any information.

4 BY MR. J.M. JIMMERSON:

5 Q. Who was that someone, if you know?

6 A. John Lash.

7 Q. Okay. Mr. Wolfram, please flip to Exhibit JJ
8 in Defendant's binder.

9 A. Exhibit JJ.

10 THE COURT: In another binder?

11 MR. J.J. JIMMERSON: The defendant's exhibit
12 binder, Mr. Wolfram.

13 THE COURT: It's the one notebook.

14 THE WITNESS: Which one.

15 MR. J.J. JIMMERSON: Defendant's.

16 THE WITNESS: Oh, defendant's, oh, it's back
17 here.

18 MR. J.J. JIMMERSON: On this one, it's Binder
19 1 of 2.

20 THE WITNESS: I think it's in this one.

21 BY MR. J.M. JIMMERSON:

22 Q. You have it backwards there, Jim, but we'll
23 work with. We'll turn it around.

24 A. Okay.

25 THE COURT: You got it, okay.

1 MR. J.J. JIMMERSON: And this exhibit is in
2 evidence, your Honor. All the defendant's exhibits are
3 in by stipulation.

4 THE COURT: Yes, including VV we've now
5 added.

6 BY MR. J.M. JIMMERSON:

7 Q. Mr. Wolfram?

8 THE COURT: Let me get to JJ. I'm sorry.
9 I've helped you. I am not doing it.

10 Okay.

11 BY MR. J.M. JIMMERSON:

12 Q. Do you see this document, Mr. Wolfram?

13 A. I do.

14 Q. Okay. Can you tell me, it appears there are
15 two emails here. Can you tell me what the bottom email
16 or read in chronological order what this is about?

17 A. You mean, are you talking about, Hi, Lisa?

18 Q. Yes.

19 A. I guess from the bottom up, yeah, okay. Jim
20 came to see me a week or so ago. He --

21 Q. Mr. Wolfram, I think you're not on JJ.

22 A. Nope, I'm not.

23 THE COURT: Start --

24 THE WITNESS: At the bottom, Hi, Lisa, did
25 you have a chance to speak to John or legal counsel

1 regarding Jim Wolfram?

2 BY MR. J.M. JIMMERSON:

3 Q. Does this document show the response from
4 Lisa Lawson?

5 A. Yes.

6 Q. And what did Lisa say to Francis Dunlap?

7 A. She said, I spoke to John, and he said not to
8 give him any amendments, since they referenced the
9 multifamily and custom lot transaction. He said to
10 just let Jim know that you provided everything to him.

11 Q. In listening to Mr. Whittemore's testimony
12 and reviewing the documents that we just got done
13 looking at, the Amendments 1 through 8, do you believe
14 that you were provided everything?

15 A. No.

16 Q. Why do you say that?

17 A. Because I just didn't have it. I was asking
18 for certain things, and it wasn't being given to me. I
19 was, I was trying to find out, but I couldn't.

20 Q. Do you believe that -- did Francis Butler
21 tell you, did Francis Dunlap tell that you'd received
22 everything?

23 MS. LUNDVALL: Your Honor, I'm going to now
24 have to object. His question is directly asking for --

25 MR. J.M. JIMMERSON: No, it's not, your

1 Honor. We're not offering it for the truth, because we
2 believe he didn't get everything.

3 THE COURT: Referring to --

4 MR. J.M. JIMMERSON: In his response --

5 THE COURT: Do the question, again rephrase
6 it. We'll be okay.

7 MR. J.M. JIMMERSON: But I'm not offering it
8 for the truth.

9 THE COURT: Let me just hear it again.

10 BY MR. J.M. JIMMERSON:

11 Q. Did she tell you that you received
12 everything?

13 A. As much as she could give me.

14 Q. There is a difference. Did she say, I'm
15 giving you everything I can, or, You have everything?

16 A. I have everything.

17 Q. Okay. Thank you, Mr. Wolfram. Now we can
18 put defendant's binder away.

19 THE COURT: Okay, we shall do that.

20 BY MR. J.M. JIMMERSON:

21 Q. Mr. Wolfram, please flip to Exhibit 10.

22 Now we may want to mark this as confidential,
23 because we'll be getting into one or two of the terms
24 of this particular exhibit.

25 THE COURT: All right. We're on the

1 confidential.

2 (The following portion of the transcript
3 is designated as confidential by
4 agreement of counsel for the parties.)

5 BY MR. J.M. JIMMERSON:

6 Q. Mr. Wolfram, are you at Exhibit 10, Amendment
7 Number 5 to Amended and Restated Option Agreement?

8 A. Yes, I'm familiar.

9 Q. Did you receive a copy of this document
10 before you were testifying about yesterday and today?

11 A. Yes.

12 Q. Who did you receive a copy of this document
13 from?

14 A. Jim Jimmerson.

15 Q. Did you have a chance to read this document?

16 A. Yes.

17 Q. Okay. And can you please flip to Page 2?

18 At Paragraph Number 2, there is a chart. It
19 says the number of acres.

20 Do you know what that's in reference to?

21 A. Yes.

22 MS. LUNDVALL: He's now asking him to
23 interpret a document he's not a party to. He can give
24 his understanding of his reading of it, but it needs to
25 be clarified he's not a party to this agreement.

1 THE COURT: That was kind of my
2 understanding, because we know he's not a party and we
3 know he just got it from Mr. Jimmerson.

4 So what's your understanding as you read it,
5 is the question?

6 THE WITNESS: My understanding --

7 THE COURT: Or that's the gist of the
8 question.

9 THE WITNESS: My understanding is I should
10 probably have gotten it from someone besides
11 Mr. Jimmerson.

12 THE COURT: Okay. He'll help him. I'm lost.

13 BY MR. J.M. JIMMERSON:

14 Q. Mr. Wolfram, I'm asking what is your
15 understanding of the description and the number of
16 acres in that chart, that small chart there?

17 A. Okay, that's land that Pardee purchased.

18 Q. How do you know they purchased it from the
19 reading of this document?

20 A. It says right here. It gives the
21 description. Parcel 2 of Book 113, Page 55 of Parcel
22 Maps, and it goes on to LP-1 of Book 138, Page 51 of
23 Plats, and so on straight down.

24 Q. Does this document, this paragraph, indicate
25 to you that there was a transfer of land?

1 A. Yes.

2 Q. Where does it say that?

3 A. I've read it before, so give me a chance.

4 By executing this agreement, buyer hereby
5 exercises its right to purchase Initial Developed
6 Parcel consisting of approximately 859.93 acres, the
7 second additional purchase parcel, described as
8 follows.

9 Q. Now, do you understand that to be what you
10 just said, is that the foundation for your
11 understanding?

12 A. Yes.

13 Q. Okay. Now, it says, Description, and it's
14 got Parcel 2 Book 113, Page 55 of Parcel Maps.

15 What does that mean to you?

16 A. That means that's maps, it actually shows the
17 Parcel on it.

18 Q. Okay. And have you seen Book 113, Page 55 of
19 Parcel Maps before?

20 A. I have.

21 MR. J.M. JIMMERSON: Your Honor, I would like
22 to show the witness Exhibit 30.

23 THE COURT: Okay.

24 MR. J.M. JIMMERSON: It's gonna be one of the
25 big maps.

1 THE COURT: Oh, okay. We have a small one
2 here, but okay, that will probably work.

3 THE WITNESS: James, can you bring that over
4 closer?

5 MR. J.M. JIMMERSON: It's gonna be over here,
6 Jim.

7 THE COURT: Do you want him to go off the
8 others?

9 MR. J.M. JIMMERSON: This is only a
10 demonstrative. This is actually a fairly substantial
11 map. It's gonna have 12 or 13 pages.

12 THE COURT: Okay. Look at the top. We've
13 got quite a few pages, all right?

14 MS. LUNDVALL: How many pages do you have?

15 THE COURT: I have Plaintiff 10457 through
16 Plaintiff 10462. I assume they are in chronological
17 order.

18 MR. J.M. JIMMERSON: Your Honor, I would like
19 the Court to take notice that the original contained in
20 the corner of the room has the Clark County seal from
21 the Clark County Recorder's Office.

22 THE COURT: I will take notice, judicial
23 notice, that they are public records.

24 BY MR. J.M. JIMMERSON:

25 Q. Mr. Wolfram, what is this document in front

1 of you?

2 A. It's a parcel map, Parcel 2 of File --

3 THE COURT: Mr. Wolfram, I'm sorry?

4 THE WITNESS: It's a parcel map.

5 THE COURT: He's just too far away.

6 BY MR. J.M. JIMMERSON:

7 Q. Will you speak into the microphone, Jim?

8 It's a problem, remember?

9 A. There is a legal description, File 113 Page
10 54 Parcel Maps on this right here.

11 Q. Okay. Does it say 54 or 55?

12 A. The sheet I'm on says 54.

13 Q. Can you check the bottom right-hand corner
14 and make sure we're on the right exhibit?

15 A. 113, 55, the bottom is File 113 on Page 55.

16 Q. Okay. Is this the same Book 113, Page 55
17 described here, to your understanding?

18 A. Yes.

19 Q. Okay. If we were to look at this map, would
20 you expect a Parcel 2 to be contained in here?

21 A. Yes.

22 Q. Don't tell me it is yet. Would you expect it
23 to be, Mr. Wolfram, without looking at the document, I
24 need you to tell me, do you expect --

25 THE COURT: Based on your experience?

1 THE WITNESS: Yes, I do.

2 MR. J.M. JIMMERSON: Your Honor, I would like
3 to now enter this in evidence as Exhibit 30.

4 MS. LUNDVALL: No objection, your Honor.

5 THE COURT: Okay.

6 MR. J.M. JIMMERSON:

7 Q. Mr. Wolfram, now looking at what has been
8 entered into evidence as Plaintiffs' Exhibit 30, do you
9 see a Parcel 2 anywhere on any of the sheets?

10 A. Yes, I do.

11 Q. Okay. I'm gonna move up a little closer.

12 THE COURT: Absolutely, so he can see, no
13 problem.

14 MR. J.J. JIMMERSON: Try to put it so
15 Ms. Lundvall can see it as well.

16 MR. J.M. JIMMERSON: Yeah.

17 THE WITNESS: I need more room.

18 THE COURT: I know, I'm sorry. Usually we
19 don't have that long of documents.

20 THE WITNESS: Really?

21 THE COURT: Really.

22 THE WITNESS: Okay.

23 BY J.M. JIMMERSON:

24 Q. MR. Wolfram, that is demonstrative only a
25 portion of the map. If we were to put the sheets

1 together, okay, so it would be Sheet 5, Sheet 4 -- I'm
2 sorry, Sheet 4, Sheet 5, Sheet 2, Sheet 3 together,
3 would it appear to have some shape like this?

4 A. Yes.

5 Q. Okay. Can you show the Court, I've got mine
6 over here, but it's a much bigger page. I got my
7 Parcel 2 here, is your Parcel 2 anywhere near that?

8 MS. LUNDVALL: Well, if it's the same as far
9 as, if you're demonstrative is based upon the exhibit,
10 that you have now admitted, it better be in the same
11 place.

12 MR. J.J. JIMMERSON: Is that an objection?
13 What was that other than being difficult?

14 THE COURT: I think he's trying to establish
15 it is the same, right?

16 MR. J.M. JIMMERSON: I want to know that
17 we're pointing at the right things, your Honor.

18 THE WITNESS: Parcel 2, right?

19 BY MR. J.M. JIMMERSON:

20 Q. Okay. And can you tell me how many acres,
21 according to the evidence in front of you, how many
22 acres is Parcel 2 on the map?

23 A. Just a second, Parcel 2 is 395.87 acres.

24 Q. Is that the same number of acres as described
25 in Amendment Number 5, which is Exhibit 10?

1 A. Yes.

2 Q. Okay. Mr. Wolfram, looking at this map,
3 could you tell the Court how far away the easternmost
4 portion of Parcel 2 is from US Highway 93 is?

5 A. I could if we measured it. I could measure
6 the inches across. What's the scale on that, the scale
7 is one foot.

8 Q. You can look at --

9 A. One foot is 600 -- I get

10 Q. Are You sure it's one foot, or is it one
11 inch?

12 A. I'm sorry, one inch is equals 600 feet, so
13 we'll measure the inches and do the multiplication to
14 see what it is.

15 MR. J.M. JIMMERSON: Okay, your Honor,
16 permission to approach the witness with a measuring
17 tape?

18 THE COURT: Absolutely.

19 BY MR. J.M. JIMMERSON:

20 Q. Mr. Wolfram, can you please measure from
21 US Highway 93 to the easternmost point of Parcel 2?

22 A. Yes.

23 Q. So from here to approximately here?

24 A. It's approximately 19 and a half inches.

25 Q. Actually, Mr. Wolfram, could you do it from,

1 not from the top, but from the actual side?

2 A. Oh, the side?

3 Q. So it's on the same, I guess it would be
4 latitude?

5 A. I was going to look here. I was going by the
6 dots, I mean right here to here.

7 Q. I understand, Mr. Wolfram, but I would like
8 you to do it in the same latitude as the easternmost
9 point of US Highway 93.

10 MS. LUNDVALL: Your Honor, has counsel
11 measured this? If they have, maybe we can do a
12 stipulation to try to make these easier.

13 MR. J.M. JIMMERSON: We have, but I would
14 like to remeasure it now, if we could. If you would
15 trust my measurements --

16 THE COURT: Ms. Lundvall says she will
17 stipulate if it would help, Mr. Wolfram.

18 THE WITNESS: I see what you're doing, you're
19 measuring across the Purchase Property far side, yes.

20 BY MR. J.M. JIMMERSON:

21 Q. Okay. Would that be that measurement?

22 A. That would be.

23 Q. So it's six inches we're starting -- subtract
24 six -- actually, there we go, okay, it would be 15 and
25 3/8 inches.

1 Mr. Wolfram, you said we would need to
2 multiply the scale of one inch to 600 feet to get how
3 many feet from US Highway 93 to the easternmost edge of
4 Parcel 2?

5 A. You could be 15 and 3/8 times the scale,
6 times the scale, and that will tell you how many feet
7 we got in there.

8 Q. Okay. Can you please tell us how many feet
9 that is, if you've got a calculator in front of you?

10 A. Go ahead and do it. You've got it in your
11 hand.

12 MR. J.M. JIMMERSON: If there's no objection?

13 THE WITNESS: It's simple math, inches times,
14 you know.

15 MR. J.J. JIMMERSON: Could we offer 9,225
16 feet, subject to defense counsel's confirmation? Six
17 times -- 9,000 plus 3/8 of six hundred is 225, 9.225.

18 BY MR. J.M. JIMMERSON:

19 Q. Okay. Mr. Wolfram, from that calculation,
20 are you able to draw a conclusion as to whether or not
21 Parcel 2 is entirely within the bounds of Purchase
22 Property or Parcel 1 of that Map 9857?

23 A. It's outside the bounds of Parcel 1.

24 Q. How do you know that?

25 A. From yesterday, it's nearly 8,000 feet, and

1 this is over 9,000 feet.

2 Q. So if I were to subtract 9,225 from 8,000?

3 A. It would give you the number of feet to the
4 south side of the parcel.

5 Q. So approximately 1,225 feet?

6 A. Right.

7 Q. Thank you, Mr. Wolfram.

8 Mr. Wolfram, the next map, excuse me, the
9 next line below says, Parcel LP-1 of Book 138, Page 51
10 of Plats.

11 Does that mean there's a plat map entitled
12 "Book 138, Page 51"?

13 A. Let me get my bearings.

14 THE COURT: It's the second line down. It's
15 below Parcel 2 on the same map.

16 BY MR. J.M. JIMMERSON:

17 Q. I'm sorry, I'm back to Exhibit 10. I
18 apologize, Mr. Wolfram.

19 A. Oh, okay.

20 THE COURT: It has the next description.

21 THE WITNESS: That was it right there.

22 BY MR. J.M. JIMMERSON:

23 Q. Okay. Mr. Wolfram, have you looked at Plat
24 Map Book 138, Page 51?

25 A. Yes.