

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY J. WILLARD, individually and as;
Trustee of the Larry James Willard Trust Fund;
and OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

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Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; and JERRY HERBST,
an individual,

Respondents.

_____ /

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 1 OF 19

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¹ This document was inadvertently omitted earlier. It was added here because all of the other papers in the 19-volume appendix had already been numbered.

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20 EDWARD C. WOOLEY, and JUDITH A. WOOLEY

21 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
22 **IN AND FOR THE COUNTY OF WASHOE**

23 LARRY J. WILLARD, individually and as
24 trustee of the Larry James Willard Trust Fund;
25 OVERLAND DEVELOPMENT
26 CORPORATION, a California corporation;
27 EDWARD C. WOOLEY AND JUDITH A.
28 WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,

Plaintiffs,

v.

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; JERRY HERBST, an
individual; and JH, INC., a Nevada
corporation,

Defendants.

Case No. _____

Dept. _____

1 **VERIFIED COMPLAINT**

2 **(EXEMPT FROM ARBITRATION—AMOUNT IN EXCESS OF \$40,000.00)**

3 Plaintiffs LARRY J. WILLARD (“Willard”), individually and as trustee of the Larry
4 James Willard Trust Fund (“the Willard Trust”), OVERLAND DEVELOPMENT
5 CORPORATION (“Overland”), EDWARD C. WOOLEY and JUDITH A. WOOLEY (“the
6 Wooleys”), individually and as trustees of the Edward C. Wooley and Judith A. Wooley
7 Intervivos Revocable Trust 2000 (“the Wooley Trust”), by and through undersigned attorneys,
8 hereby allege, aver, and complain of Defendants BERRY-HINCKLEY INDUSTRIES (“BHI”),
9 JERRY HERBST (“Herbst”), and JH, INC. (“JH”) (collectively, “Defendants”) as follows:

10 **JURISDICTION**

11 1. This Court has jurisdiction over Defendants because Defendants are either
12 citizens or residents of the State of Nevada or do business in the State of Nevada, County of
13 Washoe.

14 2. Venue is proper in this Court because the properties at issue are located in this
15 judicial district and because the leases at issue expressly provide for venue in this Court.

16 **PARTIES**

17 3. Plaintiff Larry J. Willard (“Willard”) is, and at all times relevant herein was, a
18 citizen of the United States and a resident of the State of California. At all times relevant herein
19 Willard was trustee of the Larry James Willard Trust Fund (“the Willard Trust”).

20 4. Plaintiff Overland Development Corporation (“Overland”) is, and at all times
21 relevant herein was, a corporation organized and existing under the laws of the State of
22 California. Willard is the President of Overland. Willard, the Willard Trust, and Overland are
23 referred to hereinafter as “the Willard Plaintiffs.”

24 5. Plaintiffs Edward C. Wooley and Judith A. Wooley (collectively, “the Wooleys”)
25 are, and at all times relevant herein were, citizens of the United States of America and are
26 trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000 (“the
27 Wooley Trust”) (collectively, “the Wooley Plaintiffs”).

28 6. Defendant Berry-Hinckley Industries (“BHI”) is, and at all times relevant herein

1 was, a corporation organized and existing under the laws of the State of Nevada.

2 7. Defendant Jerry Herbst ("Herbst") is, and at all times relevant herein was, a
3 citizen of the State of Nevada.

4 8. Defendant JH, Inc. ("JH") is, and at all times relevant herein was, a corporation
5 organized and existing under the laws of the State of Nevada. JH is the parent company of BHI.

6 9. Plaintiffs are informed and believe and on that basis allege that Defendant JH is
7 the alter ego of Defendant BHI, given the commingling and diversion of the funds and assets of
8 each, the failure to segregate said funds, the unity of interest and ownership between JH, BHI,
9 and Herbst such that their individuality or separation has ceased, the disregard for corporate
10 formalities, the undercapitalization of BHI to the extent that it cannot satisfy its legal
11 obligations, and the commonality of officers, directors, and corporate office, resulting in BHI
12 serving as a mere shell for the affairs of JH and Herbst and being used solely for the purpose of
13 escaping personal liability. The interests of justice in avoiding inequitable results warrants the
14 disregarding of BHI's corporate form and the holding of BHI's parent company, JH, as well as
15 its sole shareholder, Herbst, liable for BHI's legal obligations.

16 **FIRST CAUSE OF ACTION**

(Breach of Lease Agreement)

17 *By the Willard Plaintiffs Against JH, Inc. and Berry-Hinckley Industries*

18 10. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set
19 forth at this point.

20 11. On November 18, 2005, BHI entered into a lease agreement (the "Willard
21 Lease") on the property owned by the Willard Plaintiffs located at 7695-7699 S. Virginia Street,
22 Reno, Nevada (the "Willard Property"). Under the Willard Lease, BHI agreed to lease the
23 Virginia Street Property from January 2006 through January 2026 at a monthly rental rate of
24 \$122,031.25, said rental rate increasing by 2% per month through the lease term. A true and
25 correct copy of the Willard Lease is attached hereto as Exhibit 1.

26 12. On February 17, 2007, BHI sent the Willard Plaintiffs a letter indicating Herbst's
27 intent to acquire BHI's convenience store assets. Attached to that letter was a letter from Herbst
28 requesting that the Willard Plaintiffs agree to a modifications of the Willard Lease in return for

1 Herbst personally guaranteeing lease payments by BHI through the duration of the revised lease
2 term. Also attached was a letter from Johnson Jacobson Wilcox dated January 31, 2007 attesting
3 to the fact that Herbst's net worth was in excess of \$200 million. A true and correct copy of the
4 February 17, 2007 letter and accompanying attachments is attached hereto as Exhibit 2.

5 13. On March 9, 2007, the Willard Plaintiffs agreed to amend the Willard Lease,
6 thereby forgoing \$5,250,045.20 in rent through the shortening of the lease term by 30 months, in
7 return for Herbst's personally guaranteeing that BHI would make all lease payments through the
8 term of the lease (the "Herbst-Willard Guaranty Agreement"). A true and correct copy of the
9 Herbst-Willard Guaranty Agreement is attached hereto as Exhibit 3. A true and correct copy of
10 the amendment to the Willard Lease is attached hereto as Exhibit 4.

11 14. In March 2013, BHI defaulted on the Willard Lease. BHI and Herbst negotiated
12 an agreement (the "Operating Agreement") with the Willard Plaintiffs under which BHI would
13 pay the Willard Plaintiffs 50% of net revenues minus \$10,000.00 from continuing to operate at
14 the Willard Property. A true and correct copy of the Interim Operating Agreement is attached
15 hereto as Exhibit 5.

16 15. BHI failed to tender any payments to the Willard Plaintiffs as required under the
17 Interim Operating Agreement, instead occupying the Willard Property through May 2013
18 without paying any rent. At the end of May 2013, BHI abandoned the Willard Property leaving
19 it in such a state of dishevelment and disrepair that Willard was fined and continues to be fined
20 by the City of Reno, said fines currently totaling \$3,265.00.

21 16. As a direct and proximate result of BHI breaching the Willard Lease, the Willard
22 Plaintiffs were deprived of rental income in the amount of \$19,443,836.94 that they otherwise
23 would have received. The net present value of the remaining lease payments using a discount
24 rate of 4% as specified in the Willard Lease was \$15,741,360.75 as of March 1, 2013.

25 17. As a further direct and proximate result of BHI breaching the Willard Lease, the
26 Willard Plaintiffs were forced to sell the Willard Property in March 2014 in a short sale, thereby
27 losing \$4,437,500.00 of earnest money invested in the Willard Property and incurring at least
28 \$3,000,000.00 in tax consequences and \$549,852.00 in closing costs.

1 18. As a further direct and proximate result of BHI breaching the Willard Lease, the
2 Willard Plaintiffs were forced to purchase insurance on the Willard Property at a cost of
3 \$4,554.53, were forced to pay for installation of a security fence for the Willard Property at a
4 cost of \$2,668.62, and were charged \$10,393.35 by Nevada Energy for utility fees rightly owed
5 by BHI.

6 19. As a further direct and proximate result of BHI breaching the Willard Lease,
7 Willard filed for bankruptcy protection, incurring \$22,623.00 in legal fees and \$15,000.00 in
8 accounting fees in the process. Six months later, upon the advice of counsel, Willard withdrew
9 his bankruptcy petition but has been rendered insolvent by virtue of the breaches by BHI and
10 Herbst.

11 20. As a further direct and proximate result of BHI breaching the Willard Lease, the
12 Willard Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in Santa Clara
13 County, California, thereby incurring \$35,000.00 in attorney's fees.

14 **SECOND CAUSE OF ACTION**

15 (Breach of Personal Guaranty)

16 *By the Willard Plaintiffs Against Jerry Herbst*

17 21. Paragraphs 1 through 20 above are hereby incorporated by reference as if fully set
18 forth at this point.

19 22. Upon receiving notice from the Willard Plaintiffs that BHI was in default of the
20 Willard Lease, Herbst breached his duties under the Herbst-Willard Guaranty in failing to tender
21 payment of rent due by BHI to the Willard Plaintiffs.

22 23. Under the terms of the Herbst-Willard Guaranty, Herbst guaranteed
23 "unconditionally, absolutely and irrevocably" the timely payment and performance of each of
24 BHI's obligations arising out of and under the Willard Lease. This guaranty was "a guaranty of
25 timely payment and performance of the Guaranteed Obligations and not merely of collectability
26 or enforceability of such obligations." Herbst agreed to be "directly responsible for the full
27 extent of any unsatisfied Guarantee Obligations." Herbst further agreed that his guaranty "is an
28 unconditional, absolute, present and continuing guaranty of payment and performance, and will
remain in full force and effect without regard to, and the obligations of [Herbst] hereunder shall

1 not be impaired, affected or released by, any of the following: (i) any modification, supplement,
2 extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension,
3 indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor
4 or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability
5 in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed
6 Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect
7 of this Agreement or any of the Guaranteed obligations; (vi) any transfer of the assets of Lessor
8 to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary
9 or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the
10 assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI
11 or any of its assets; (viii) any allegation or contest of the validity of the Lease or this
12 Agreement.”

13 24. In the Herbst-Willard Guaranty, Herbst expressly waived “any defense to its
14 obligations . . . that might arise as a result of any of the” contingencies articulated in Paragraph
15 20, and further waived “the effect of any fact, circumstance or event of any nature whatsoever
16 that would exonerate, or would constitute or give rise to a defense to, the obligation of a surety
17 or guarantor.”

18 25. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty
19 Agreement, the Willard Plaintiffs were forced to sell the Willard Property in March 2014 in a
20 short sale, thereby losing \$4,437,500.00 of earnest money invested in the Willard Property and
21 incurring at least \$3,000,000.00 in tax consequences and \$549,852.00 in closing costs.

22 26. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty
23 Agreement, the Willard Plaintiffs were forced to purchase insurance on the Willard Property at a
24 cost of \$4,554.53, were forced to pay for installation of a security fence for the Willard Property
25 at a cost of \$2,668.62, and were charged \$10,393.35 by Nevada Energy for utility fees rightly
26 owed by BHI.

27 27. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty
28 Agreement, Willard filed for bankruptcy protection, incurring \$22,623.00 in legal fees and

1 \$15,000.00 in accounting fees in the process. Six months later, upon the advice of counsel,
2 Willard withdrew his bankruptcy petition but has been rendered insolvent by virtue of the
3 breaches by BHI and Herbst.

4 28. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty
5 Agreement, the Willard Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in
6 Santa Clara County, California, thereby incurring \$35,000.00 in attorney's fees.

7 **THIRD CAUSE OF ACTION**

8 (Breach of Lease Agreement)

9 *By the Wooley Plaintiffs Against JH, Inc. and Berry-Hinckley Industries*

10 29. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set
11 forth at this point.

12 30. On December 2, 2005, BHI entered into a lease agreement ("Wooley Lease #1")
13 on the property owned by the Wooley Plaintiffs located at 1820 Highway 50 East, Carson City,
14 Nevada (the "Highway 50 Property"). Under Wooley Lease #1, BHI agreed to lease the
15 Highway 50 Property from December 1, 2005 through November 30, 2025 at a monthly rental
16 rate of \$22,666.67, said rental rate increasing by 2% per month through the lease term. A true
17 and correct copy of Wooley Lease #1 is attached hereto as Exhibit 6.

18 31. On June 6, 2006, BHI entered into a lease agreement ("Wooley Lease #2") on the
19 property owned by the Wooley Plaintiffs located at 1365 Baring Boulevard, Sparks, Nevada (the
20 "Sparks Property"). Under Wooley Lease #2, BHI agreed to lease the Sparks Property from
21 June 6, 2006 through September 30, 2025 at a monthly rental rate of \$19,856.25, said rental rate
22 increasing by 2% per month through the lease term. A true and correct copy of Wooley Lease
23 #2 is attached hereto as Exhibit 7.

24 32. On February 17, 2007, BHI sent the Wooley Plaintiffs a letter indicating Herbst's
25 intent to acquire BHI's convenience store assets. Attached to that letter was a letter from Herbst
26 requesting that the Wooley Plaintiffs agree to a modifications of Wooley Lease #1 and Wooley
27 Lease #2 in return for Herbst personally guaranteeing lease payments by BHI through the
28 duration of the revised lease terms. Also attached was a letter from Johnson Jacobson Wilcox
dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of \$200

1 million. A true and correct copy of the February 17, 2007 letter and accompanying attachments
2 is attached hereto as Exhibit 2.

3 33. On March 12, 2007, the Wooley Plaintiffs agreed to amend Wooley Lease #1 and
4 Wooley Lease #2, thereby forgoing \$1,834,663.77 in rent through the shortening of the lease
5 terms by 30 months, in return for Herbst's personally guaranteeing that BHI would make all
6 lease payments through the term of the lease (the "Herbst-Wooley Guaranty Agreement"). A
7 true and correct copy of the Herbst-Wooley Guaranty Agreement regarding the Highway 50
8 Property is attached hereto as Exhibit 8. A true and correct copy of the Herbst-Wooley
9 Guarantee is attached hereto as Exhibit 9. A true and correct copy of the amendment to Wooley
10 Lease #1 is attached hereto as Exhibit 10. A true and correct copy of the amendment to Wooley
11 Lease #2 is attached hereto as Exhibit 11.

12 34. In March 2013, BHI defaulted on Wooley Lease #1 and Wooley Lease #2.

13 35. As a direct and proximate result of BHI breaching Wooley Lease #1, the Wooley
14 Plaintiffs were deprived of rental income in the amount of \$4,420,244.00 that they otherwise
15 would have received. The net present value of the remaining lease payments using a discount
16 rate of 4% as specified in Wooley Lease #1 was \$3,323,543.49 as of March 1, 2013.

17 36. As a further direct and proximate result of BHI breaching Wooley Lease #1, the
18 Highway 50 Property suffered a diminution in value in an amount to be proven at trial but which
19 is at least \$2,000,000.00.

20 37. As a further direct and proximate result of BHI breaching Wooley Lease #1, the
21 Wooley Plaintiffs incurred property taxes in the amount of \$1,500.00.

22 38. As a further direct and proximate result of BHI breaching Wooley Lease #1, the
23 Wooley Plaintiffs were forced to purchase insurance on the Highway 50 Property at a cost of
24 \$3,840.00.

25 39. As a further direct and proximate result of BHI breaching Wooley Lease #1, the
26 Wooley Plaintiffs incurred maintenance costs on the Highway 50 Property of \$4,000.00.

27 40. As a further direct and proximate result of BHI breaching Wooley Lease #1, the
28 Wooley Plaintiffs incurred management fee costs on the Highway 50 Property of \$2,500.00.

41. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs were deprived of the security deposit from the subtenant at the Highway 50 Property in the amount of \$2,485.00.

42. As a direct and proximate result of BHI breaching Wooley Lease #2, the Wooley Plaintiffs were deprived of rental income in the amount of \$3,712,389.67 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in Wooley Lease #2 was \$3,046,715.50 as of March 1, 2013.

43. As a further direct and proximate result of BHI breaching Wooley Lease #2, the Wooley Plaintiffs were forced to sell the Sparks Property at a loss of \$147,847.30.

44. As a further direct and proximate result of BHI breaching Wooley Lease #2, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but which is at least \$600,000.00.

45. As a further direct and proximate result of BHI breaching Wooley Lease #1 and Wooley Lease #2, the Wooley Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in Santa Clara County, California, thereby incurring \$45,088.00 in attorney's fees.

FOURTH CAUSE OF ACTION

(Breach of Personal Guaranty)

By the Wooley Plaintiffs Against Jerry Herbst

46. Paragraphs 29 through 45 above are hereby incorporated by reference as if fully set forth at this point.

47. Upon receiving notice from the Wooley Plaintiffs that BHI was in default of the Wooley Leases, Herbst breached his duties under the Herbst-Wooley Guaranty in failing to tender payment of rent due by BHI to the Wooley Plaintiffs.

48. Under the terms of the Herbst-Wooley Guaranty, Herbst guaranteed "unconditionally, absolutely and irrevocably" the timely payment and performance of each of BHI's obligations arising out of and under the Wooley Leases. This guaranty was "a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectability or enforceability of such obligations." Herbst agreed to be "directly responsible for the full extent of any unsatisfied Guarantee Obligations." Herbst further agreed that his guaranty "is an

1 unconditional, absolute, present and continuing guaranty of payment and performance, and will
2 remain in full force and effect without regard to, and the obligations of [Herbst] hereunder shall
3 not be impaired, affected or released by, any of the following: (i) any modification, supplement,
4 extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension,
5 indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor
6 or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability
7 in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed
8 Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect
9 of this Agreement or any of the Guaranteed obligations; (vi) any transfer of the assets of Lessor
10 to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary
11 or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the
12 assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI
13 or any of its assets; (viii) any allegation or contest of the validity of the Lease or this
14 Agreement.”

15 49. In the Herbst-Wooley Guaranty, Herbst expressly waived “any defense to its
16 obligations . . . that might arise as a result of any of the” contingencies articulated in Paragraph
17 44, and further waived “the effect of any fact, circumstance or event of any nature whatsoever
18 that would exonerate, or would constitute or give rise to a defense to, the obligation of a surety
19 or guarantor.”

20 50. As a direct and proximate result of Herbst breaching the Herbst-Wooley
21 Guaranty, the Wooley Plaintiffs were deprived of rental income in the amount of \$8,145,301.73
22 that they otherwise would have received. The net present value of the remaining lease payments
23 using a discount rate of 4% as specified in the Wooley Leases was \$6,370,258.99 as of March 1,
24 2013.

25 51. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
26 Guaranty, the Highway 50 Property suffered a diminution in value in an amount to be proven at
27 trial but which is at least \$2,000,000.00.

28 52. As a further direct and proximate result of Herbst breaching the Herbst-Wooley

1 Guaranty, the Wooley Plaintiffs incurred property taxes in the amount of \$1,500.00.

2 53. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
3 Guaranty, the Wooley Plaintiffs were forced to purchase insurance on the Highway 50 Property
4 at a cost of \$3,840.00.

5 54. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
6 Guaranty, the Wooley Plaintiffs incurred maintenance costs on the Highway 50 Property of
7 \$4,000.00.

8 55. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
9 Guaranty, the Wooley Plaintiffs incurred management fee costs on the Highway 50 Property of
10 \$2,500.00.

11 56. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
12 Guaranty, the Wooley Plaintiffs were deprived of the security deposit from the subtenant at the
13 Highway 50 Property in the amount of \$2,485.00.

14 57. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
15 Guaranty, the Wooley Plaintiffs were forced to sell the Sparks Property at a loss of \$147,847.30.

16 58. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
17 Guaranty, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but
18 which is at least \$600,000.00.

19 59. As a further direct and proximate result of Herbst breaching the Herbst-Wooley
20 Guaranty, the Wooley Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in
21 Santa Clara County, California, thereby incurring \$45,088.00 in attorney's fees.

22 **FIFTH CAUSE OF ACTION**

(Breach of Fiduciary Duty)

23 *By the Willard Plaintiffs Against Jerry Herbst*

24 60. Paragraphs 1 through 28 above are hereby incorporated by reference as if fully set
25 forth at this point.

26 61. By virtue of the Herbst-Willard Guaranty entered into by and between the Willard
27 Plaintiffs and Herbst on March 9, 2007, Herbst owed and continues to owe the Willard Plaintiffs
28 a fiduciary duty.

1 62. Herbst breached that duty.

2 63. As a direct and proximate result of Herbst's breach of his fiduciary duty, the
3 Willard Plaintiffs suffered damages in the amount of \$23,873,479.21.

4 **SIXTH CAUSE OF ACTION**

5 (Breach of Fiduciary Duty)

6 *By the Wooley Plaintiffs Against Jerry Herbst*

7 64. Paragraphs 46 through 59 above are hereby incorporated by reference as if fully
8 set forth at this point.

9 65. By virtue of the Herbst-Wooley Guaranty entered into by and between the
10 Wooley Plaintiffs and Herbst on March 12, 2007, Herbst owed and continues to owe the Wooley
11 Plaintiffs a fiduciary duty.

12 66. Herbst breached that duty.

13 67. As a direct and proximate result of Herbst's breach of his fiduciary duty, the
14 Wooley Plaintiffs suffered damages in an amount to be proven at trial but which is at least
15 \$9,179,859.29.

16 **SEVENTH CAUSE OF ACTION**

17 (Attachment)

18 *By All Plaintiffs Against All Defendants*

19 68. Paragraphs 1 through 67 above are hereby incorporated by reference as if fully set
20 forth at this point.

21 69. Plaintiffs are informed and believe and on that basis allege that as a result of this
22 action, Defendants will attempt to transfer or otherwise conceal assets in an effort to make it
23 impossible for Plaintiffs to reach the property by execution after judgment is entered.

24 70. Plaintiffs are informed and believe and on that basis allege that Defendants will
25 move, transfer or otherwise conceal these assets in order to defeat or otherwise hinder Plaintiff's
26 ability to collect after judgment is entered.

27 71. These allegations are based in part on the fact that on March 18, 2013,
28 Defendants attorney, Gerald M. Gordon of Gordon Silver, sent a letter to Plaintiffs' attorney in
which Defendants threatened to declare bankruptcy rather than honor their obligations arising
under the leases. A true and correct copy of this letter is attached hereto as Exhibit 12.

1 72. These allegations are further based on the fact that on March 28, 2013,
2 Defendants attorney, Gerald M. Gordon of Gordon Silver, sent a letter to Plaintiffs' attorney
3 reiterating Defendants' threat of seeking bankruptcy protection and offering to pay a small
4 fraction of the amount due under the leases and Herbst's personal guaranty, an offer which
5 Plaintiffs rejected.

6 73. These allegations are further based on the fact that on July 1, 2013, while
7 Plaintiffs had the instant claim pending against Defendants in Santa Clara County, California,
8 Herbst and his wife transferred 100% of their interest in the estate located at 1701 Enclave
9 Court, Las Vegas, Nevada 89134 to their sons, Timothy Paul Herbst and Troy Dederick Herbst,
10 as trustees of the Jerry E. Herbst Residence Trust and the Maryanna Herbst Residence Trust.
11 Plaintiffs are informed and believe and on that basis allege that such transfer was for the purpose
12 of attempting to shelter the estate, which is estimated to be worth at least \$18 million, from
13 being attached by Plaintiffs.

14 74. In this action, Plaintiffs seek an attachment pursuant to NRS 31.013 because
15 extraordinary circumstances exist which will make it improbable for Plaintiffs to reach the
16 property of Defendants by execution after judgment has been entered. Specifically, Plaintiffs
17 seek an attachment of the following property:

- 18 • the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134, Parcel No.
19 138-20-416-003;
- 20 • the property located at 1001 South California Avenue, Parker, Arizona 85334,
21 Parcel No. 311-23-031;
- 22 • the property located at 1005 South California Avenue, Parker, Arizona 85344,
23 Parcel No. 311-23-030;
- 24 • the property located at 1009 South California Avenue, Parker, Arizona 85334,
25 Parcel No. 311-23-028A;
- 26 • the property located at 515 Saddle View Way 23, Park City, Utah 84060, Parcel
27 No. 01-923-06; and
- 28 • such other and further assets and properties owned by Defendants sufficient to

1 secure payment of Plaintiffs' claims against Defendants.

2 75. Pursuant to NRS Chapter 31, Plaintiffs seek issuance of a prejudgment writ of
3 attachment upon the assets of Defendant JH, Inc., Defendant Berry-Hinckley Industries, and
4 Defendant Jerry Herbst, to secure payment of Plaintiffs' claims against Defendants.

5 **EIGHTH CAUSE OF ACTION**

6 (Temporary Restraining Order)

7 *By All Plaintiffs Against All Defendants*

8 76. Paragraphs 1 through 75 above are hereby incorporated by reference as if fully set
9 forth at this point.

10 77. If Defendants are permitted the ability to transfer, sell, or otherwise conceal assets
11 during the pendency of this action, Plaintiffs will suffer irreparable harm.

12 78. If Defendants are permitted to have the ability to transfer, sell, or otherwise
13 conceal assets before this Court can issue a writ of attachment on the assets of Defendants, and
14 each of them, Plaintiffs will be denied the extraordinary relief provided in NRS Chapter 31 to
15 protect their rights.

16 79. An interlocutory injunction preventing Defendants or any person with actual
17 knowledge of the injunction is necessary to maintain the status quo until this Court can
18 determine whether a writ of attachment should issue and/or until the conclusion of this action
19 after trial.

20 80. Plaintiffs are entitled to a temporary restraining order and preliminary injunction
21 enjoining Defendants, and each of them, and any other person with notice of the injunction from
22 transferring, selling, or otherwise encumbering any assets or property of Defendants.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

25 **ON THE FIRST CAUSE OF ACTION:**

- 26 1. For direct damages in the discounted amount of \$15,766,991.73;
- 27 2. For consequential damages in the amount of \$8,080,856.50;
- 28 3. For late payment penalties of \$25,630.98 for the period of March 2013 through
May 2013;

1 4. For interest at a rate of 18% per annum as provided for under the Willard Lease
2 from March 1, 2013 through entry of judgment; and

3 5. For reasonable attorney's fees as provided for under the Willard Lease.

4 ON THE SECOND CAUSE OF ACTION:

5 1. For direct damages in the discounted amount of \$15,766,991.73;

6 2. For consequential damages in the amount of \$8,080,856.50;

7 3. For late payment penalties of \$25,630.98 for the period of March 2013 through
8 May 2013;

9 4. For interest at a rate of 18% per annum as provided for under the Willard Lease
10 from March 1, 2013 through entry of judgment; and

11 5. For reasonable attorney's fees as provided for under the Willard Lease.

12 ON THE THIRD CAUSE OF ACTION:

13 1. For direct damages in the discounted amount of \$6,370,258.99;

14 2. For consequential damages in an amount to be proven at trial but which is at least
15 \$2,809,600.30;

16 3. For interest at a rate of 18% per annum as provided for under the Wooley Leases
17 from March 1, 2013 through entry of judgment; and

18 4. For reasonable attorney's fees as provided for under the Wooley Leases.

19 ON THE FOURTH CAUSE OF ACTION:

20 1. For direct damages in the discounted amount of \$6,370,258.99;

21 2. For consequential damages in an amount to be proven at trial but which is at least
22 \$2,809,600.30;

23 3. For interest at a rate of 18% per annum as provided for under the Wooley Leases
24 from March 1, 2013 through entry of judgment; and

25 4. For reasonable attorney's fees as provided for under the Wooley Leases.

26 ON THE FIFTH CAUSE OF ACTION:

27 1. For damages in the amount of \$23,773,479.21;

28 2. For interest at a rate of 18% per annum as provided for under the Willard Lease

1 from March 1, 2013 through entry of judgment; and

2 3. For reasonable attorney's fees as provided for under the Willard Lease.

3 ON THE SIXTH CAUSE OF ACTION:

4 1. For damages in an amount to be proven at trial but which is at least
5 \$9,179,859.29;

6 2. For interest at a rate of 18% per annum as provided for under the Wooley Leases
7 from March 1, 2013 through entry of judgment; and

8 3. For reasonable attorney's fees as provided for under the Wooley Leases.

9 ON THE SEVENTH CAUSE OF ACTION:

10 1. For issuance of a writ of attachment to impress a lien upon the assets of
11 Defendants, and each of them, in order to secure judgment in favor of Plaintiffs, which including
12 interest accrued to date will exceed \$41,526,899.64. Such assets include the following:

13 • the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134, Parcel No.
14 138-20-416-003;

15 • the property located at 1001 South California Avenue, Parker, Arizona 85334,
16 Parcel No. 311-23-031;

17 • the property located at 1005 South California Avenue, Parker, Arizona 85344,
18 Parcel No. 311-23-030;

19 • the property located at 1009 South California Avenue, Parker, Arizona 85334,
20 Parcel No. 311-23-028A;

21 • the property located at 515 Saddle View Way 23, Park City, Utah 84060, Parcel
22 No. 01-923-06; and

23 • such other and further assets and properties owned by Defendants sufficient to
24 secure payment of Plaintiffs' claims against Defendants.

25 ON THE EIGHTH CAUSE OF ACTION:

26 1. For a temporary restraining order and preliminary injunction preventing
27 Defendants, and each of them, and any person with knowledge of the injunction from
28 transferring, selling, or otherwise encumbering the assets of Defendants.

1 ON ALL CAUSES OF ACTION:

- 2 1. For pre-judgment interest upon such damages through entry of judgment at the
3 rate of 18 percent per annum as provided for under the Lease Agreements;
4 2. For costs of suit;
5 3. For such other orders and further relief as the Court deems just and proper.

6 Respectfully submitted,

7 THE O'MARA LAW FIRM, P.C.

8
9 DATED: August ⁸7, 2014

By: 

10 DAVID C. O'MARA
11 Nevada Bar No. 8599
12 311 East Liberty Street
13 Reno, Nevada 89501
14 (775) 323-1321
15 (775) 323-4082 (facsimile)

16 LAW OFFICES OF BRIAN P. MOQUIN

17
18 DATED: August 7, 2014

By: 

19 BRIAN P. MOQUIN
20 *Pro Hac Vice* Application Pending
21 California Bar No. 257583
22 3506 La Castellet Court
23 San Jose, CA 95148
24 (408) 300-0022
25 (408) 843-1678 (facsimile)

26 *Attorneys for Plaintiffs*
27
28

- 18 -

COMPLAINT

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-entitled matter

X

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

_____ A specific state or federal law, to wit:

-or-

_____ For the administration of a public program

-or-

_____ For an application for a federal or state grant

-or-

_____ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: August 8, 2014.

THE O'MARA LAW FIRM, PC

BY: /s David C. O'Mara
DAVID C. O'MARA, ESQ.

EXHIBIT INDEX

EXHIBIT NO:	DESCRIPTION	PAGES
1.	Lease Agreement (November 18, 2005)	36
2.	Herbst Offer Letter	16
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4.	Lease Agreement (Dec. 2005)	6
5.	Interim Operating Agreement (March 2007)	5
6.	Lease Agreement (Dec. 2, 2005)	29
7.	Lease Agreement (June 6, 2006)	36
8.	Herbst Guaranty (March 2007) Hwy 50	5
9.	Herbst Guaranty (March 12, 2007)	5
10.	First Amendment to Lease Agreement (Mar. 12, 2007) (HWY 50)	8
11.	First Amendment to Lease Agreement (Mar 12, 2007) (Baring)	8
12.	Gordon Silver Letter dated March 18, 2013	3
13.	Gordon Silver Letter dated March 28, 2013	3

EXHIBIT 1

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of November 18, 2005 by and between **OVERLAND DEVELOPMENT CORPORATION INC. dba LJW ENTERPRISES INC.** and **LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030, and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, NV 89511

In consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

Certain Defined Terms. Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.

Lease of Property; Use; Possession. In consideration of the Rentals and other Monetary Obligations to be paid by Lessee and of the other terms, covenants and conditions on Lessee's part to be kept and performed, Lessor hereby leases to Lessee, and Lessee hereby takes and leases, the Property (as such term is defined in Exhibit A attached hereto and which Property is located at the address set forth in Exhibit B attached hereto and situated on the real property legally described in Exhibit B attached hereto), subject to the Permitted Encumbrances, all Legal Requirements (including any existing violation thereof), and the condition of the Property as of the Effective Date; *provided, however*, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any Permitted Encumbrance which may have expired or been terminated. During the Lease Term, the Property shall be used solely for the operation of a Permitted Facility, and related purposes such as ingress, egress and parking.

To the maximum extent permitted by law, Lessee waives the implied warranty of suitability of the Property and Lessee acknowledges that it has accepted the Property "as is," in its current condition, with no representations, warranties or covenants, express or implied, on the part of the Lessor with respect to condition of the same or the suitability of the Property for Lessee's intended use.

Lease Term; Extension. The initial term of this Lease ("Initial Term") shall commence February 24, 2006 ("Effective Date") and shall expire at midnight on August 23, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this

Sample Lease
1/4/2006
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Lease shall terminate on the last day of the Initial Term or, if applicable, the last day of the Extension Term then in effect.

4. Rental and Other Monetary Obligations.

A. *Base Monthly Rental.* During the Initial Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental; *provided, however,* if the Effective Date is a date other than the first day of the month, Lessee shall pay to Lessor (or any other party designated by Lessor) on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month. During the Extension Terms, if any, Lessee shall pay the Rental (including the Base Monthly Rental) in the manner set forth in this Section 4. Unless otherwise specifically stated to the contrary herein, Lessee shall perform all its obligations under this Lease at its sole cost and expense and shall pay all Rental and any other Monetary Obligation due hereunder when due and payable, without notice or demand.

B. *Adjustments.* On the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rent Adjustment. The "Rent Adjustment" shall be an amount equal to two percent (2%) of the Base Annual Rental in effect immediately prior to the applicable Adjustment Date. The Adjustment Date shall be on the annual anniversary of the Effective Date.

C. *Additional Rental.* Lessee shall pay and discharge, as additional rental ("Additional Rental"), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Base Annual Rental or Base Monthly Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within five (5) days after Lessor's demand for payment thereof or, if later, when the same are due. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

D. *Payment of Rental and Other Monetary Obligations.* All Rental and other Monetary Obligations which Lessee is required to pay hereunder shall be the unconditional obligation of Lessee and shall be payable in full when due without any setoff, abatement, deferment, deduction or counterclaim whatsoever, except as set forth herein. All payments of Base Monthly Rental and any other Monetary Obligations payable to Lessor shall be remitted to Lessor at Lessor's address set forth in the first paragraph of this Lease or such other address as Lessor may designate pursuant to Section 24 hereof.

E. *Late Payment Charge.* Lessee acknowledges that late payment by Lessee to Lessor of Rental will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix in advance.

Sample Lease
1/4/2006

Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the Property. Therefore, if any payment which is required to be made by Lessee to Lessor pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, then Lessee shall pay to Lessor, as a late payment charge, five percent (5%) of the amount of the delinquent payment. Additionally, if any payment which is required to be made by Lessee pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, such payment shall bear interest at the Default Rate until received by Lessor. The late payment charge and default interest shall be paid to Lessor at the time of payment of the delinquent amount. The late payment charge and the default interest charge shall compensate Lessor for the expenses incurred by Lessor in financing, collecting and processing the late payment. The parties agree that the late charge and the default interest charge represent a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Lessee.

5. **Gaming.** Lessor hereby conditionally assigns to Lessee all leases, written or oral, and all agreements for use or occupancy of the Property together with any and all extensions and renewals thereof and any and all further leases, subleases, lettings or agreements (including subleases thereof and tenancies following attornment) upon or covering the use or occupancy of the Property all of which leases, agreements, subleases and tenancies are herein sometimes collectively referred to as the "Assigned Leases"; (ii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or which may now or hereafter become due from or out of the Assigned Leases or any part thereof, including, but not limited to, security deposits, minimum rents, additional rents, parking rents, deficiency rents and liquidated damages following default, any premium payable by any tenant upon the exercise of a cancellation privilege contained in its Lease; all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property; any and all rights and claims of any kind which Lessor has or hereafter may have against the tenants under the Assigned Leases and any subtenants and other occupants of the Property; any award granted Lessor after the date hereof in any court proceeding involving any tenant in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by any tenant in lieu of rent (any and all such moneys, rights and claims identified in this paragraph are herein sometimes referred to as the "Rents" and sometimes as the "Rent"); and (iii) all of the rights, powers and privileges of Lessor (A) to accept prepayment of more than one (1) monthly installment of the Rent thereunder, and (B) except with respect to the Assigned Lease, (I) to cancel, terminate or accept the surrender of any Assigned Lease, and (II) to amend, modify or abridge any of the terms, covenants or conditions of any Assigned Lease. The assignment contained in this Section 5 and Lessee's interest in the Assigned Leases shall become void and of no further force or effect upon the expiration or early termination of this Lease and upon such event, Lessor shall be the sole party with any interest as a landlord or lessor in the Assigned Leases. Furthermore, Lessee shall have no right to collect any amounts under the Assigned Leases upon the occurrence and continuance of an Event of Default and all such amounts shall be paid to Lessor during any such period.

6. **Nevada Gaming Control Board.** Lessor will follow all laws of the State of Nevada and cooperate with WGI in making application to the Nevada Gaming Control Board as may be required.

7. **Rentals To Be Net to Lessor.** The Base Annual Rental payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the Rentals specified during the Lease Term, and all Costs and obligations of every kind and nature whatsoever relating to the Property shall be performed and paid by Lessee, including but not limited to all impositions, operating charges, maintenance charges, construction costs and any other charges, costs and expenses now existing or that arise or may be contemplated under the Permitted Encumbrances or otherwise, all maintenance and repair expenses, all utility expenses, all Taxes, all premiums for insurance required to be maintained by Lessee pursuant to the terms hereof and all other expenses, charges, assessments and costs associated with the Property or otherwise provided to be paid by Lessee pursuant to the terms of this Lease. All such charges, costs and expenses shall constitute Additional Rental and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Base Annual Rental. It is the intention of the parties except as expressly provided herein that this Lease shall not be terminable for any reason by Lessee, and that Lessee shall in no event be entitled to any abatement of, or reduction in, Rental payable under this Lease, except as otherwise expressly provided herein. Any present or future law to the contrary shall not alter this agreement of the parties.

8. **Taxes and Assessments.** Lessee shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance, one hundred percent (100%) of the following (collectively, "Taxes"): all taxes and assessments of every type or nature assessed against or imposed upon the Property or Lessee during the Lease Term, including without limitation, all ad valorem taxes, assessments and special assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, or any tax or charge levied in lieu of such taxes and assessments; all taxes, charges, license fees and or similar fees imposed by reason of the use of the Property by Lessee; and all excise, transaction, privilege, license, sales, use and other taxes upon the Rental or other Monetary Obligations hereunder, the leasehold estate of either party or the activities of either party pursuant to this Lease, and all interest, surcharges or service or other fees payable in connection with the foregoing.

Within thirty (30) days after each tax and assessment payment is required by this Section to be paid and upon request of Lessor, Lessee shall, upon prior written request of Lessor, provide Lessor with evidence reasonably satisfactory to Lessor that such payment was made in a timely fashion. Lessee may, at its own expense, contest or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that (A) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (B) no monetary Event of Default has occurred, (C) Lessee shall promptly provide Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceeding, and (D) Lessee shall indemnify and hold Lessor harmless against any loss, Costs or damages arising from or related to such contest.

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If Lessee shall fail to pay any Taxes when due and before any delinquency, penalty or interest is imposed on such Taxes, Lessor shall have the right to pay the same after notice to Lessee, in which case Lessee shall repay in full such amount to Lessor with Lessee's next Base Monthly Rental installment together with interest at the Default Rate.

9. **Utilities.** Lessee shall contract, in its own name, for and pay when due (and hold Lessor free and harmless from) all charges for the connection and use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term. All utility charges, assessments and fees for the last year of the Lease shall be prorated as of the termination date of this Lease. No full or partial utility deprivation including, but not limited to, blackout, brownout, or rationing, nor any loss of or damage to improvements related to disruption or failure of any utility service shall give rise to any abatement of Rentals nor give rise to any right of Lessee to offset Rentals or to terminate the Lease, unless caused by the gross negligence or willful misconduct of Lessor or its agents, employees or contractors (but not of any other tenants or occupants of the Property). Lessor shall reasonably cooperate with Lessee, but without out-of-pocket expense to Lessor, in Lessee's efforts to restore utility service to the Property, provided, however, that if the utility service was disrupted due to Lessor's gross negligence or willful misconduct, then the cost of such restoration shall be borne by Lessor.

10. **Insurance.** Throughout the Lease Term, Lessee shall maintain, at its sole expense, the following types and amounts of insurance:

A. Insurance against loss or damage to the Property and all buildings and improvements thereon under an "all risk" insurance policy, which shall include coverage against all risks of direct physical loss, including loss by fire, lightning, and other risks normally included in the standard ISO special form (which shall include coverage for all risks commonly insured for properties similar to the Property in the Reno, Nevada area, including insurance coverage for damage caused by earthquake, flood, tornado, windstorm and other disasters for which insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Lessor from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an increased cost of construction endorsement, debris removal coverage and a waiver of subrogation endorsement in favor of Lessor. While any portion of the improvements on the Property is being rebuilt on the Land, Lessee shall provide such property insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy in an amount equal to 100% of the full insurable replacement value of the improvements on the Property or such portion as is being rebuilt. The insurance policy shall insure Lessee as loss payee. No parties other than Lessor, Lessor's Lender and Lessee may be named as insureds or loss payees on such property insurance policy.

B. Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury, liquor liability coverage (to the extent liquor is sold or manufactured at the Property), garage liability coverage including

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without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Property or adjoining ways, streets, parking lots or sidewalks. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Section 15 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee, Lessor or Lessor's Lender because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 general aggregate per location, or such higher limits as Lessor may reasonably require from time to time or as may be required by the Permitted Encumbrances, and shall be of form and substance satisfactory to Lessor.

C. Workers' compensation insurance in the statutorily mandated limits covering all persons employed by Lessee on the Property or any persons employed by Lessee in connection with any work done on or about any Property for which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property, together with Employers Liability Insurance with limits of not less than \$100,000 per accident or disease and \$500,000 aggregate by disease.

D. Rental value insurance, equal to 100% of the Base Annual Rental (as may adjusted hereunder) for a period of not less than twelve (12) months; which insurance shall be carved out of Lessee's business interruption coverage for a separate rental value insurance payable to Lessor, or if rental value insurance is included in Lessee's business interruption coverage, the insurer shall provide priority payment to any Rental obligations, and such obligations shall be paid directly to Lessor. Such insurance is to follow form of the real property "all risk" coverage and is not to contain a co-insurance clause.

E. Comprehensive Boiler & Machinery Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus, if any, located in or about the Property in an amount not less than the actual replacement cost of the Property. Such insurance should be in an amount of the lesser of 25% of the 100% replacement cost or \$5,000,000.00.

All insurance policies shall:

(i) Provide (1) for a waiver of subrogation by the insurer as to claims against Lessor, Lessor's Lenders and their employees, officers and agents, (2) that the insurer shall not deny a claim and that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Lessee, its officers, directors, employees or agents, or anyone acting for Lessee or any sublessee or other occupant of the Property, and (3) that any losses otherwise payable thereunder shall be payable notwithstanding any act or omission of Lessor, Lessor's Lenders or Lessee which might, absent such provision, result in a forfeiture of all or a part of such insurance payment;

(ii) Be primary and provide that any "other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lessor and the insurance policy shall not be brought into contribution with insurance maintained by Lessor;

(iii) intentionally omitted

(iv) Contain a standard non-contributory mortgagee clause or endorsement in favor of any Lessor's Lender designated by Lessor;

(v) Provide that the policy of insurance shall not be terminated, cancelled or amended without at least thirty (30) days' prior written notice to Lessor and to any Lessor's Lender covered by any standard mortgagee clause or endorsement;

(vi) Provide that the insurer shall not have the option to restore the Property if Lessor elects to terminate this Lease in accordance with the terms hereof;

(vii) Be in amounts sufficient at all times to satisfy any coinsurance requirements thereof;

(viii) Except for workers' compensation insurance referred to in Section 10.C above, name Lessor and any Lessor Affiliate requested by Lessor, as an "additional insured" (and, with respect to any Lessor's Lender designated by Lessor, as an "additional insured mortgagee") with respect to general liability insurance, and as a "named insured" with respect to real property and "loss payee" with respect to all real property and rent value insurance, as appropriate and as their interests may appear;

(ix) Be evidenced by delivery to Lessor and any Lessor's Lender designated by Lessor of an Acord Form 28 for property coverage (or any other form requested by Lessor) and an Acord Form 25 for liability, workers' compensation and umbrella coverage (or any other form requested by Lessor); provided that in the event that either such form is no longer available, such evidence of insurance shall be in a form reasonably satisfactory to Lessor and any lender designated by Lessor; such certificates of insurance shall be delivered to Lessor prior to the Effective Date; and

(x) Be issued by insurance companies licensed to do business in the states where the Property is located and which are rated A:VIII or better by Best's Insurance Guide or are otherwise approved by Lessor.

It is expressly understood and agreed that (I) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by Lessee, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Lessee shall immediately obtain new or additional insurance reasonably satisfactory

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to Lessor and any lender designated by Lessor; (II) the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease; and (III) Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any servicer or lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times.

Lessee shall pay as they become due all premiums for the insurance required by this Section 10. In the event that Lessee fails to comply with any of the foregoing requirements of this Section 10 within ten (10) days of the giving of written notice by Lessor to Lessee, Lessor shall be entitled to procure such insurance. Any sums expended by Lessor in procuring such insurance shall be Additional Rental and shall be repaid by Lessee, together with interest thereon at the Default Rate, from the time of payment by Lessor until fully paid by Lessee immediately upon written demand therefor by Lessor.

Anything in this Section 10 to the contrary notwithstanding, any insurance which Lessee is required to obtain pursuant to this Section 10 may be carried under a "blanket" policy or policies covering other properties or liabilities of Lessee provided that such "blanket" policy or policies that otherwise comply with the provisions of this Section 10 and specify the location of the Property.

11. Intentionally Omitted

12. **Compliance With Laws, Restrictions, Covenants, Encumbrances and Agreements.** It is expressly understood and agreed that the obligations of Lessee under this Section shall survive the expiration or earlier termination of this Lease for any reason.

A. *Legal and Gaming Law Compliance.* Lessee's use and occupation of the Property, the use and occupation of the Property by any other person (including but not limited to any subtenants and WGI) and the condition of the Property, shall, at Lessee's sole cost and expense, comply with all Legal Requirements (including without limitation the Americans with Disabilities Act and all Legal Requirements related to gaming operations and the sales of tobacco and liquor on the Property). Lessee shall promptly file, or cause to be filed, and provide to Lessor any notices, reports or other filings that Lessee or any other Person is required to file or provide to any Governmental Authorities regarding the business operations conducted on or from the Property, including but not limited to those described in Subsection D(iii) hereof and those required by Governmental Authorities with respect to gaming operations and the sales of tobacco and liquor on the Property, including any filings required to be made in connection with the change of ownership or control of Lessee and, within fifteen (15) days of Lessee's receipt of written notice from Lessor of any planned or actual change in the ownership or control of Lessor or any planned or actual change in the ownership of the Property.

B. *Acts Resulting in Increased Insurance Rates.* Lessee will use its commercially reasonable efforts to prevent any act or condition to exist on or about the Property which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase.

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Lessee shall comply with all orders and directives of any insurance companies issuing liability, fire, or extended coverage insurance pursuant to Section 10 hereof, and Lessee shall not do, bring, or keep anything in or about the Property that will cause a cancellation of any insurance covering the Property.

C. *Prevention of Nuisance.* Lessee shall not commit nor cause or permit to be committed any public or private nuisance on the Property.

D. *Environmental.*

(i) *Covenants.* All uses and operations on or of the Property, including the use and operation of UST's on the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto. Lessee shall keep the Property or cause the Property to be kept free and clear of all Environmental Liens, whether due to any act or omission of Lessee or any other Person. Lessee hereby represents and warrants that Lessee shall not install and shall not permit any person to install any asbestos containing materials ("ACM") or materials or equipment containing polychlorinated biphenyl ("PCBs") in the Property, and to the extent any ACM, PCBs or other Hazardous Materials are on or in the Property, the same shall be maintained, stored and used in accordance with all Legal Requirements.

(ii) *Notification Requirements.* Lessee shall immediately notify Lessor in writing upon Lessee obtaining actual knowledge of (1) any Releases or Threatened Releases in, on, under or from the Property other than in Permitted Amounts, or migrating towards any of the Property; (2) any non-compliance with any Environmental Laws related in any way to any of the Property; (3) any actual or potential Environmental Lien; (4) any required or proposed Remediation of environmental conditions relating to any of the Property required by applicable Governmental Authorities; and (5) any written or oral notice or other communication which Lessee becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances or USTs, or Remediation thereof at or on the Property, other than in Permitted Amounts, possible liability of any Person relating to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Subsection D.

(iii) *Reports and Investigations.* Lessee shall promptly supply Lessor with copies of all reports of any testing of the Property conducted by or at the request of Lessor or any Governmental Authorities and all submissions by Lessee to any Governmental Authority concerning environmental matters, the USTs, or Hazardous Materials. Lessee shall furnish to Lessor certificates of enrollment issued by the State of Nevada, Division of Environmental Protection, for each UST at the Property no later than October 30 of each year, and gasoline storage tank permits issued by the Department of Air Quality Management of the County

in which the Property is located with respect to each UST on the Property no later than May 5 of each year, and such other certificates or permits as may be issued or required by any other Governmental Authority; all of the foregoing shall evidence continuing compliance of each UST on the Property with all applicable Legal Requirements. Additionally, upon Lessor's reasonable request in the event that Lessor reasonably suspects that Contamination (as hereafter defined) may have occurred or be occurring at the Property, Lessee agrees to perform, at Lessee's sole expense, an environmental assessment of the Property, including soil borings, to confirm whether such Contamination is occurring. Additionally, at least ninety (90) days prior to the expiration of the Lease Term, Lessee agrees to perform an environmental assessment of the Property in order to define the nature and extent of Contamination, if any.

(iv) *Indemnification.* Lessee shall indemnify, defend, protect and hold each of the Indemnified Parties free and harmless from and against any and all Losses, arising from or caused in whole or in part, directly or indirectly, by any of the following, unless arising from or caused by the gross negligence or willful misconduct of the Indemnified Party requesting indemnification: (a) the use, storage, transportation, disposal, release, discharge or generation of Hazardous Materials to, in, on, under or about the Property (whether occurring before or after the date hereof) (any of the foregoing in violation of Legal Requirements is "Contamination"), including diminution in value of the Property; and (b) the cost of any required or necessary repair, remediation, cleanup or detoxification and the preparation of any closure or other required plans or reports, whether such action is required or necessary prior to or following transfer of title to the Property (such acts are sometimes referred to herein as "Corrective Action"), and (c) Lessee's failure to comply with any Legal Requirements. Lessee's obligations to perform Corrective Action shall include, without limitation, and whether foreseeable or unforeseeable, all cost of any investigation (including consultants and attorneys fees and testing) required or necessary repair, remediation, restoration clean up, detoxification or decontamination of the Property and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the Term of this Lease. This agreement to indemnify, defend, protect and hold harmless each of the Indemnified Parties shall be in addition to any other obligations or liabilities Lessee may have to Lessor or the Indemnified Parties, if any, at common law under all statutes and ordinances or otherwise and survive the termination of the Lease.

In the event that Lessee is required to perform Corrective Action to address any Contamination, Lessee shall perform such activities in a diligent manner. In the event that Lessee has not completed its Corrective Action (if necessary), as required herein, by the expiration of the Lease Term, Lessor shall grant Lessee, and its consultants, contractors and agents a revocable license, at no cost to Lessee except as set forth in the succeeding sentence, to enter upon the Property from and after the date of expiration of the Lease Term to conduct Corrective Action and to place and remove all necessary equipment and

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improvements on the Property sufficient to satisfy the requirements of all Governmental Authorities regarding the Contamination. If such post-expiration Corrective Action will unreasonably interfere with a reasonably foreseeable intended commercial use of the Property (i.e., if Lessor cannot reasonably lease the Property for reasonable commercial uses at reasonable market rents), the Lease Term shall be extended until sixty (60) days after the Corrective Action has been performed such that post-expiration Corrective Action by Lessee no longer unreasonably interferes with a reasonably foreseeable commercial use of the Property, and Lessee agrees to keep Lessor apprised of the anticipated completion date of the Corrective Action.

E. *Intentionally Omitted.*

F. *Dealer Requirements.* In addition to the requirements set forth in this Lease, Lessee, in its use, occupancy and maintenance of the Property shall comply with all requirements of its Dealer Agreements with Dealer. Lessee hereby consents to Lessor providing information it obtains to Dealer and to Lessor obtaining from Dealer information which Dealer receives relating to Lessee's operation of its business on the Property.

G. *WGI Agreements.* Lessee represents that the WGI Agreement is in full force and effect, and that the WGI Agreement permits WGI to operate gaming machines on the Property. Lessee shall abide by all the terms and conditions of the WGI Agreement, and Lessee represents and warrants that WGI has approved this Lease, if WGI has such approval rights under the WGI Agreement.

H. *Winner's Corner.* Lessee shall at all times operate the gas station and convenience store on the Property under the trade name "Winner's Corner" and/or under a major oil brand (such as Chevron, BP, Amoco, Shell, Sun Oil, or the such).

13. **Maintenance; Repairs and Reconstruction.** Lessee shall, at its sole cost and expense, be responsible for keeping all of the buildings, structures, improvements and signs erected on the Property in good and substantial order, condition, and repair, including but not limited to replacement, maintenance and repair of all structural or load-bearing elements, roofs, walls, foundations, gutters and downspouts, heating, ventilating and air conditioning systems, any building security and monitoring system, windows, walls, doors, electrical and other utility systems and equipment, mechanical equipment, plumbing and all other components of the buildings, mowing of lawns and care, weeding and replacement of plantings; replacing, resurfacing and striping of walkways, driveways and parking areas, and adjacent public sidewalks; removal of snow and ice from the Property and adjacent public sidewalks, removal of trash, maintenance of utility lines and exterior lighting and signage on Property, and any maintenance, repairs or replacements (or fees or reserves therefor) as may be required by any Permitted Encumbrances. All such replacements, maintenance and repair shall keep the Property in good repair and in a clean, safe, and sanitary condition and in compliance with all Legal Requirements and insurance regulations. Lessee must make all repairs, corrections, replacements, improvements or alterations necessitated by age, Lessee's use, or natural elements

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or as required pursuant to Governmental Authorities or Legal Requirements. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs, corrections, improvements or alterations at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition or repair, or which would otherwise require Lessor to make repairs, corrections, improvements, replacements or alterations. If the buildings or any improvements on the Property violate any Permitted Encumbrances or Legal Requirements, then Lessee shall, upon the written demand of a Governmental Authority or the written demand of a party to or beneficiary of any Permitted Encumbrance, repair, restore, relocate and/or rebuild the same in accordance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances.

Lessee shall, at its sole cost and expense, be responsible to repair or reconstruct damage or destruction to any buildings, structures or improvements erected on the Property from acts of God or any other catastrophes or causes. Any such repairs or reconstruction shall restore the buildings and all improvements on the Property to substantially the same condition immediately prior to such damages or destruction and this Lease shall remain in full force and effect, provided, however, that Lessee shall have the right to replace the improvements with different structures so long as (a) the value of the Property with such different structures is no less than the value of the Property immediately prior to the date of casualty and the different square footage of the new buildings is no less than the buildings existing as of the date hereof, and (b) the new structure can be built and occupied in compliance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances. Such repair, restoration, relocation and rebuilding (all of which are herein called a "repair") shall be commenced within a reasonable time however no more than thirty (30) days after the later of (i) the date that such damage or destruction occurred, (ii) the date that all permits and other approvals necessary to authorize such rebuilding have been issued following reasonable pursuit of the same by Lessee, and (iii) the date that any insurance proceeds payable to Lessor or its lender in conjunction with such damage or destruction, if any, have been made available to Lessee as set forth herein; thereafter, the repair shall be diligently pursued to completion. Lessee shall give Lessor at least fifteen (15) days written notice prior to commencing the repair to permit the Lessor to post appropriate notices of non-responsibility, and all such repair work shall be subject to the provisions of Section 14 hereof related to alterations, improvements and additions to the Property.

The proceeds of any insurance maintained under Section 10 hereof shall be made available to Lessee for payment of costs and expense of repair.

14. Waste; Alterations and Improvements; Trade Fixtures and Equipment. Lessee shall not commit actual or constructive waste upon the Property. During the Lease Term, Lessee may construct any additions or improvements to the Property and make such structural or non-structural alterations to the Property as are reasonably necessary or desirable for Lessee's use of the Property for a Permitted Facility. All improvements, alterations, or additions shall be constructed by Lessee at Lessee's sole cost and expense. Prior to the commencement of construction of any additions, improvements, or alterations to the Property, Lessee shall give Lessor at least fifteen (15) days written notice to allow Lessor to post appropriate notices of non-responsibility. Notwithstanding anything herein to the contrary, without Lessor's prior written

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consent, Lessee shall not make any alterations that will decrease the value or function of the improvements located on the Property.

Lessee's right to make any alterations, improvements and additions shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate Governmental Authorities, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner. All alterations, improvements or other construction by Lessee shall be in compliance with all Legal Requirements, and all alterations and improvements shall be done and performed in good and workmanlike manner, using new and first quality materials. All costs of any such improvements shall be paid by Lessee.

Upon completion of any such work, Lessee shall submit to Lessor as-built plans of any structural, mechanical or interior utility improvements and alterations made, a sworn construction statement, lien waivers from all persons or entities providing materials, services or equipment for the work completed and, if available, an endorsement to Lessor's policy of title insurance or other evidence from a title company confirming the absence of any liens or other matters of record related to the work performed.

Unless expressly released by Lessor in writing, all improvements or alterations shall be and remain, at the time of expiration or other termination of this Lease, the property of Lessor without payment or offset unless such improvements are not attached to the Property. Notwithstanding anything herein to the contrary, all plumbing, electrical, HVAC equipment, doors, ceiling and floor tiles, and wall coverings shall become the property of Lessor and remain in place on the Property upon expiration or other termination of this Lease.

During the Lease Term, Lessee shall have the right to locate in the Property such personal property, furniture, trade fixtures, and equipment (hereafter referred to as "Fixtures and Equipment") as shall be considered by Lessee to be appropriate or necessary to Lessee's use and occupancy of the Property.

All Fixtures and Equipment shall be provided by Lessee at Lessee's own cost and expense. During the term of this Lease, Lessee may remove any Fixtures and Equipment installed by Lessee, and any and all such Fixtures and Equipment shall remain the sole property of Lessee. Lessee shall perform (and pay all costs associated with) any and all restoration necessitated by the removal of Lessee's Fixtures and Equipment, including but not limited to damage resulting from removal of any of Lessee's signs in or about the Property.

Lessee shall keep the Property free and clear of all mechanic's, materialmen or similar liens, including, but not limited to, those resulting from the construction of alterations, improvements, additions, trade fixtures, and equipment performed by or for Lessee.

Lessee shall have the right to contest the correctness or validity of any such lien if, Lessee first procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the state in which the Property are located in an amount required by Legal Requirements to remove such lien. The bond or its equivalent shall meet all applicable requirements of the state in which the Property are located. In the event that any lien does so

attach, and is not released within thirty (30) days after written notice to Lessee thereof, Lessor, in its sole discretion, may pay and discharge the same and relieve the Property therefrom, and Lessee agrees to repay and reimburse Lessor as Additional Rental upon demand for the amount so paid by Lessor. On final determination of the lien or claim of lien Lessee will immediately pay any judgment rendered, and all costs and charges, and shall cause the lien to be released or satisfied. In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is in its best interest to do so.

15. **Indemnification.** Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor's agents and employees from all claims for any damage or injury to the full extent permitted by law. Lessee agrees that Lessor shall not be responsible or liable to Lessee or Lessee's employees, agents, customers or invitees for bodily injury, personal injury or property damage occasioned by the acts or omissions of any other lessee or such lessee's employees, agents, contractors, customers or invitees. In addition to other specific indemnification provisions set forth in this Lease, Lessee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Lessee's use and occupancy of the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee or any Person thereon, with supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Lessee, its officers, employees, agents or other Persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

16. **Quiet Enjoyment.** So long as Lessee shall pay the Rental and other Monetary Obligations herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Lessee shall have, subject and subordinate to Lessor's rights herein, the right to the peaceful and quiet occupancy of the Property, subject to the Permitted Encumbrances, Laws and the WGI Agreement and any use or occupancy agreements, leases or licenses now affecting the Property or hereinafter made by Lessee.

17. **Inspection; Right of Entry.** Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and to inspect the same; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease or by law; to show the Property to prospective brokers, agents, buyers, or persons interested in an exchange, at any time; and to show the Property to prospective tenants within two hundred forty (240) days prior to the expiration of this Lease or any time during the option period and to place upon the Property any "to let" or "for lease" signs at any time within two hundred forty (240) days prior to the expiration of this Lease. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but, subject to Section 37, excluding damages arising as a result of the negligence or intentional misconduct of Lessor.

18. **Condemnation and Casualty.**

A. *Damage or Destruction to the Property; No Abatement of Rent.* If the Property is damaged or destroyed as a result of fire or other casualty Lessee shall promptly restore the Property pursuant to the terms of Section 13 hereof. Notwithstanding the partial or total destruction of the Property and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of Rentals or of any other obligation of Lessee hereunder including, without limitation, payment of operating expenses, insurance premiums and Taxes, by reason of such damage or destruction unless the Lease is terminated by virtue of another provision of this Lease.

B. *Option to Terminate.* If the Property is damaged or destroyed during the last one (1) year of the Lease Term to the extent that the Property is untenable, Lessee may terminate this Lease as of the date of such damage or destruction by giving written notice to Lessor of such election within thirty (30) days following the date of such fire or other casualty, in which case, all insurance proceeds related to the Property (other than attributable to Lessee's Fixtures and Equipment) will be paid over to Lessor, or if required by Lessor's Lender, to such lender.

C. *Termination Upon Taking.* If as a consequence of a Taking, (i) any part of the convenience store building on the Property; or (ii) twenty-five percent (25 %) or more of the parking area at the Property shall be taken and Lessee determines in its reasonable discretion that such Taking will have a material adverse impact on the ability of Lessee to conduct its normal business operations from the Property, then, within thirty (30) days after the date on which Lessee receives written notice of such Taking, Lessee may terminate this Lease by written notice to Lessor which termination shall be effective as of the date the condemning authority takes actual possession of the portion of the Property that is subject to the Taking. If Lessee terminates this Lease, Lessor shall promptly refund to Lessee all unearned Annual Base Rental and other amounts paid in advance by Lessee.

D. *Obligation to Restore.* If a Taking does not result in a termination of this Lease pursuant to Subsection C hereof, Lessee shall restore the Property to a condition similar in physical appearance to that which existed immediately prior to the Taking to the extent possible such that Lessee can conduct its normal business operations. Lessee shall commence such restoration within ninety (90) days after the occurrence of the taking and shall complete such restoration within six (6) months after the occurrence of the taking.

E. *Condemnation Award.* Any condemnation award payable during the term of this Lease shall belong to and be paid to Lessor, including but not limited to awards payable with respect to damage to either the fee or leasehold estates, except that Lessee shall receive from the award the following:

- i. If Lessee exercises its rights to terminate this Lease, the portion of the award, if any, attributable to Lessee's Equipment or Fixtures that are taken in the Taking and the unamortized cost of any leasehold improvements made to the Property by Lessee after the date hereof that are taken in the Taking.

ii. The portion of the award, if any, attributable to severance damages for the repair or restoration of the Property (herein called "repair"), but only if Lessee does not exercise Lessee's right to terminate the Lease and further provided, that such damages shall be deposited and disbursed in accordance with the provisions hereof related to the handling of insurance proceeds that are applied to a repair of the Property and Lessee shall promptly commence and diligently complete the repair so that upon completion the Property will have a character and commercial value as nearly as possible equal to the value of the Property immediately prior to the taking, and further provided that, in the event such damages are insufficient to cover the cost of repair, then any amounts required over the amount thereof that are required to complete said repair shall be promptly deposited with the disbursing entity by Lessee in advance of commencing the repair.

iii. Additionally, if this Lease is terminated as a result of any such taking, Lessee shall be permitted to recover its relocation expenses and the going concern value of Lessee's business from the condemning authority (but not from Lessor or the portion of the award otherwise payable to Lessor) as provided by law.

19. Intentionally Deleted.

20. **Default, Conditional Limitations, Remedies and Measure of Damages.**

A. *Event of Default.* Each of the following shall be an event of default by Lessee under this Lease (each, an "Event of Default"):

(i) If any Rental or other Monetary Obligation due under this Lease is not paid within five (5) Business Days of notice it is past due, provided, however, that if within the first twelve (12) months of the Lease Term, Lessor has given two (2) such notices to Lessee, then a default shall be deemed to have occurred when such failure has continued for three (3) business days after the same is due, without notice thereof by Lessor to Lessee; and further, provided, however, that after the first twelve (12) months of the Lease Term, if Lessor has given such notice to Lessee within the preceding twelve (12) months, then a default shall be deemed to have occurred when such failure has continued for three (3) Business Days after the same is due, without notice thereof by Lessor to Lessee;

(ii) if there is an Insolvency Event;

(iii) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; *provided, however*, if any such failure does not involve the payment of any Monetary Obligation, does not place any rights or property of Lessor in immediate jeopardy, as determined by Lessor in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of thirty (30) days shall

have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such thirty (30) day period, as determined by Lessor in its reasonable discretion, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30) day period. If Lessee shall fail to correct or cure such failure within such period and said period is not extended by the parties, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(iv) if Lessee shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or

B. *Remedies.* Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:

(i) To terminate this Lease, whereupon Lessee's right to possession of the Property shall cease and this Lease, except as to Lessee's liability, shall be terminated. Upon such termination, Lessor shall be entitled to recover liquidated damages equal to the total of (i) the cost of recovering possession of the Property; (ii) the unpaid Rental earned at the time of termination, plus interest at the Default Rate thereon; (iii) late charges and interest at the Default Rate on the unpaid Rental; (iv) the present value of the balance of the Base Annual Rental for the remainder of the Lease Term using a discount rate of four percent (4%), less the present value of the reasonable rental value of the Property for the balance of the Term remaining after a one-year period following repossession using a discount rate of four percent (4%); (v) costs of operating the Property until relet and the reasonable costs of performing any obligations of Lessee under this Lease to be performed upon termination or expiration of this Lease (including but not limited to the Lessee's obligations under Sections 12.D and 27 hereof); and (vi) any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default.

(ii) To the extent not prohibited by applicable law, to reenter and take possession of the Property (or any part thereof) without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor's

rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate, and Lessor may recover liquidated damages as set forth in Subsection (i) above.

(iii) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.

(iv) To relet the Property or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor may, in its sole discretion, determine, which other Monetary Obligations include, without limitation, all commercially reasonable repossession costs, brokerage commissions, attorneys' fees and expenses and repair costs. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(v) To recover from Lessee all Costs paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(vi) To immediately or at any time thereafter, and with or without notice, at Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor's right to exercise any or all remedies set forth herein.

(vii) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease.

(viii) To seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

All powers and remedies given by this Section to Lessor, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to

exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

C. *Default by Lessor.* Lessor shall be in default under this Lease if Lessor fails or refuses to perform any obligation of Lessor under the terms of this Lease, and if the failure to perform the obligation is not cured within thirty (30) days after notice of the default has been given by Lessee to Lessor. If the default cannot reasonably be cured within thirty (30) days, then Lessor shall not be in default if Lessor commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

Lessee, at any time after expiration of the cure period provided above and a subsequent written notice to Lessor, may cure the default at Lessor's cost. If Lessee at any time, as a result of Lessor's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Lessee shall be due immediately from Lessor to Lessee at the time the sum is paid, and if paid at a later date shall bear interest at the rate of twelve percent (12%) per annum from the date the sum is paid by Lessee until the date Lessee is reimbursed by Lessor. Any amounts due from Lessor to Lessee pursuant to this Section 15 may be deducted or offset against Lessee's Base Monthly Rental.

21. *Mortgage, Subordination and Attornment.* Lessor's interest in this Lease and/or the Property shall not be subordinate to any liens or encumbrances placed upon the Property by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. Notwithstanding the terms of or the parties to the WGI Agreement and any other agreements pursuant to which Persons other than Lessee have the right to occupy any portion of the Property, such agreements shall, as between Lessor and Lessee, be treated as an instrument subordinate to Lessor's interest in the Property and this Lease. Lessee shall keep the Property free from any liens for work performed, materials furnished or obligations incurred by Lessee. NOTICE IS HEREBY GIVEN THAT LESSEE IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST, SECURITY INTEREST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PROPERTY OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID.

This Lease at all times shall automatically be subordinate to the lien of any and all Deeds of Trust now or hereafter placed upon the Property by Lessor, provided, that the holder of such interest shall not disturb Lessee's use and enjoyment of Lessee's rights under this Lease so long as Lessee is not in default hereunder. Lessee covenants and agrees to execute and deliver, upon demand, such further instruments which are acceptable to Lessee, subordinating this Lease to the lien of any or all such Deeds of Trust as shall be desired by Lessor, or any present or proposed Deeds of Trust; provided, that the terms and provisions of any such instrument are commercially reasonable. The Lessee acknowledges that the terms and provisions of the Instrument attached hereto as Exhibit C are commercially reasonable.

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If any Lessor's Lender, mortgagee, receiver or other secured party elects to have this Lease and the interest of Lessee hereunder be superior to any such Deed of Trust and evidences such election by notice given to Lessee, then this Lease and the interest of Lessee hereunder shall be deemed superior to any such Deed of Trust, whether this Lease was executed before or after such Deed of Trust and in that event such mortgagee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of such Deed of Trust and had been assigned to such mortgagee, receiver or other secured party.

In the event any purchaser or assignee of any mortgagee or deed of trust holder at a foreclosure sale acquires title to the Property, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as Lessor under this Lease, Lessee shall attorn to mortgagee or deed of trust holder or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, if the Successor Lessor in its sole discretion elects to recognize Lessee's tenancy under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue after the date that such Successor Lessor acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Lessee shall give written notice to any Lessor's Lender of whom Lessee is notified of in writing of any breach or default by Lessor of any of its obligations under this Lease and give such lender or mortgagee the same rights to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto. Upon request by Lessor, Lessee shall authorize Lessor to release to Lessee's financial statements delivered to Lessor pursuant to this Lease to such Lessor's Lender.

22. Estoppel Certificate and Other Documents. At any time, and from time to time, each party shall, promptly and in no event later than ten (10) days after a request from the other execute, acknowledge and deliver to the requesting party, as the case may be, a certificate in the form supplied by the requesting party, certifying: (A) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor; (B) the commencement and expiration dates of the Lease Term; (C) the date to which the Rentals have been paid under this Lease and the amount thereof then payable; (D) whether there are then any existing defaults by Lessee or Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (E) that no notice has been received by the certifying party of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (F) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee; and; (G) and any other information reasonably requested by the requesting party.

Lessor and Lessee further agree to reasonably negotiate execute all reasonable documents, including without limitation, estoppel certificates, non-disturbance certificates and other documents requested by WGI, any Lessor's Lender or any lender of Lessee in connection

with a loan to be obtained by Lessor or Lessee, or in connection with a sale, assignment, sublease or other disposition of the Lessor's interest under this Lease.

23. **Assignment/Subletting.** Lessee's interest in this Lease shall not, voluntarily, involuntarily, or by operation of law, be assigned to any third person or entity without the prior written consent of Lessor which will not be unreasonably withheld conditioned or delayed.

In the event of an assignment of Lessee's interest under this Lease to a third person or entity which has been approved by the Lessor, the original Lessee shall be relieved from any and all further obligations under the terms of this Lease upon delivery to Lessor of an originally executed assumption of all of Lessee's obligations under this Lease by the assignee, and upon cure of all then existing defaults of Lessee under the terms of this Lease.

Other than for the WGI Agreement and any Replacement WGI Agreement, and any other agreements pursuant to which experienced and reputable operators are permitted to occupy discreet portions of the convenience store building located on the site for uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances (such other agreements are referred to herein as "Permitted Subleases"), Lessee may not sublease all or any part of the Property without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. In no event will any Permitted Subleases, or any other subleases that Lessor consents to relieve Lessee of any liability hereunder during the period of any such subletting. Additionally, Lessee shall give Lessor at least thirty (30) days advance notice of any proposed Permitted Sublease, which notice shall be accompanied by a copy of the form of the Permitted Sublease.

Each Permitted Sublease, and any other sublease that Lessor may consent to pursuant to the foregoing paragraph shall provide that (i) the term thereof will not exceed the Initial Term hereof and any extensions of the Initial Term that are permitted hereunder; (ii) the sublease and subtenant shall be subject to and bound by all the terms and conditions of this Lease (except that the Lessee shall continue to pay all Rental and Monetary Obligations hereunder and Lessee shall collect any rents owed by the subtenant pursuant to the sublease); (iii) the sublease shall state that, at Lessor's election, the subtenant will attorn to Lessor and recognize Lessor as Lessee's successor under the sublease for the balance of the sublease term if this Lease is surrendered by Lessee or terminated by reason of Lessee's default.

24. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease (collectively called "Notices") shall be in writing and given by any one of the following: (A) hand delivery, (B) express overnight delivery service, (C) certified or registered mail, return receipt requested or (D) facsimile, provided that a copy of such facsimile is also sent via certified or registered mail, return receipt requested, or by overnight delivery service, within one Business Day of the transmission of such facsimile, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next Business Day, if delivered by a reputable express overnight delivery service, (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt

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requested, or (iv) transmission, if delivered by facsimile pursuant to the requirements of Section 24.D above. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:

If to Lessee:	Berry-Hinckley Industries Attn: Paul A. Morabito 425 Maestro Drive Reno, NV 89511 Telephone: (775) 689-1222 Facsimile: (775) 689-1232
With a copy to:	Hodgson Russ LLP Attn: Sujata Yalamanchili One M&T Plaza, Suite 2000 Buffalo, NY 14023 Telephone: (716) 848-1657 Facsimile: (716) 849-0349
If to Lessor:	Overland Development Corporation Inc. Attn: Larry Willard 133 Glenridge Avenue Los Gatos, CA 95030
With a copy to	Sam Chuck, Esq. Rossi, Hamerslough, Reischl & Chuck 1960 The Alameda, Suite 200 San Jose, CA 95126 Telephone: (408) 261-4252 Facsimile: (408) 261-4292

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

25. **Holdover.** If Lessee remains in possession of the Property after the expiration of the term hereof, Lessee, at Lessor's option and within Lessor's sole discretion, may be deemed a Lessee on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease.

26. **Intentionally Omitted.**

27. **Surrender.** At the expiration of the Lease Term, Lessee may remove from the Property all of Lessee's Fixtures and Equipment. Lessee shall repair any damage caused by such removal and shall leave the Property broom clean and in good and working condition and repair inside and out, and comply with all of the requirements of Section 12.D hereof. Lessor may, in

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its sole discretion, elect to retain or dispose of in any manner any Fixtures or Equipment, personal property and vehicles to which Lessee is entitled but which Lessee does not remove from the Property pursuant to this Section within ten (10) days after notice, provided, however, that upon demand, Lessee shall reimburse Lessor for all costs incurred by Lessor in removing any Fixtures and Equipment and any all personal property, vehicles and inventory, Hazardous Materials, USTs and related equipment, located in or about the Property that are left therein by Lessee or in restoring the Property to the condition required by this Lease.

28. **Financial Statements; Compliance Certificate.** Once per calendar year, and within 120 days after the end of Lessee's fiscal year, Lessee shall furnish to Lessor audited financial statements of Lessee for the immediately preceding fiscal year. Lessor shall maintain such statements in confidence but may disclose any financial statements furnished by Lessee to Lessor's lawyers, any prospective purchaser of the Property who has entered into a signed purchase agreement with Lessor, prospective and existing lenders of Lessor, and to Lessor's consultants and accountants; Lessor shall advise such permitted recipients that the financial statements furnished to them are to be held in confidence. In no event shall Lessor knowingly disclose Lessee's financial statements to competitors of Lessee.

29. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform (each, a "Force Majeure Event") shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

30. **No Merger.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of the Property by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (A) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (B) the fee estate or ownership of the Property or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

31. **Characterization.** Lessor and Lessee acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

32. **Easements.** During the Lease Term, Lessor shall not have the right to grant easements on, over, under and above the Property without the prior consent of Lessee, which consent will not be unreasonably withheld, conditioned or delayed.

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33. **Bankruptcy. Intentionally Omitted.**

34. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other Costs in addition to any other relief to which it may be entitled. In addition, the prevailing party shall, upon demand, be entitled to all attorneys' fees and all other Costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

35. **Memorandum of Lease.** Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor's standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, a description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public. Further, upon Lessor's request, Lessee agrees to execute and acknowledge a termination of lease and/or quit claim deed in recordable form to be held by Lessor until the expiration or sooner termination of the Lease Term.

36. **No Broker.** Lessor and Lessee represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Property. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

37. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** Lessor and Lessee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought by either of the parties hereto against the other or its successors with respect to any matter arising out of or in connection with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Property, and/or any claim for injury or damage, or any emergency or statutory remedy. This waiver by the parties hereto of any right either may have to a trial by jury has been negotiated and is an essential aspect of their bargain. Furthermore, Lessee hereby knowingly, voluntarily and intentionally waives the right it may have to seek punitive, consequential, special and indirect damages from Lessor, Lessor's Lenders, and any of the Affiliates, officers, directors, members, managers or employees of Lessor, Lessor's Lenders, or any of their successors with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought with respect to any matter arising out of or in connection with this Lease or any document contemplated herein or related hereto. The waiver by Lessee of any right it may have to seek punitive, consequential, special and indirect damages has been negotiated by the parties hereto and is an essential aspect of their bargain.

38. **Miscellaneous.**

A. *Time Is of the Essence.* Time is of the essence with respect to each and every provision of this Lease.

B. *Waiver and Amendment.* No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an amount less than the Rental and other Monetary Obligations stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.

C. *Successors Bound.* Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

D. *Captions.* Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Severability.* The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

F. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease; provided such documents are reasonably acceptable to each parties' counsel.

G. *Entire Agreement.* This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

H. *Forum Selection; Jurisdiction; Venue; Choice of Law.* For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Nevada. Lessee consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Nevada in accordance with applicable law. Furthermore, Lessee waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section shall limit or restrict the right of Lessor to commence any proceeding in the federal or state courts located in

the state where each Property is located to the extent Lessor deems such proceeding necessary or advisable to exercise remedies available under this Lease.

I. *Counterparts.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

J. *Prohibited Persons and Transactions.* Lessee and Lessor (each a "Representing Party") represents to its current knowledge to the other that the Representing Party is not a person or entity, nor owns property or interests in property, which is blocked pursuant to Executive Order 13224 signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism" or under any rules and regulations related thereto.

39. *Intentionally Omitted.*

40. *Amendments to Accommodate Sale to Tenants In Common.* At the request of Lessor, Lessee shall execute any amendments to this Lease that Lessor deems reasonably necessary to accommodate Lessor's sale of the Property to tenants in common (and subsequent management of the Property by such tenants in common or a manager appointed by them), provided that such amendments do not materially and negatively impact Lessee's obligations hereunder.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

Larry Willard
LARRY WILLARD

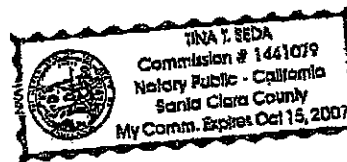
Tax Identification No. [REDACTED]

STATE OF California)
COUNTY OF Santa Clara) ss

The foregoing instrument was acknowledged before me on 12/2/05 by Larry Willard, the President of Overland on behalf of the limited liability company.

Tina J. Seda
Notary Public

My Commission Expires: 10-15-07



STATE OF CALIFORNIA
COUNTY OF Santa Clara

) S.S.

On December 2, 2005 before me,

Tina T. Seda

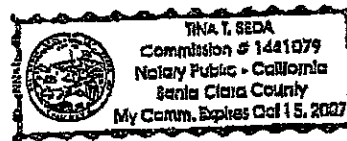
a Notary Public in and for said County and State, personally
appeared

Larry J. Willard

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their
authorized capacity(ies) and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of
which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

Signature Tina T. Seda



(This area for official notarial seal)

notyack rev. (010598)

LESSEE:


BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation

By: 

Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

California
STATE OF ~~NEVADA~~
Orange)ss
COUNTY OF ~~WASHINGTON~~

The foregoing instrument was acknowledged before me on 1/4/06 by Paul Morabito, as Chief Executive Officer of **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation, on behalf of the corporation.


Notary Public

My Commission Expires: 2/14/07

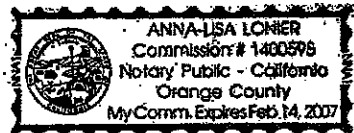


EXHIBIT A
DEFINED TERMS

The following terms shall have the following meanings for all purposes of this Lease:

"Additional Rental" has the meaning set forth in Section 4.C.

"Adjustment Date" means _____, and every anniversary thereafter during the Initial Term, and any Extension Term.

"Affiliate" means any Person which directly or indirectly controls, is under common control with or is controlled by any other Person. For purposes of this definition, "controls", "under common control with", and "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

"Base Annual Rental" means \$1,464,375.00.

"Base Monthly Rental" means an amount equal to 1/12 of the applicable Base Annual Rental.

"Business Day" means Monday through Friday, except those days on which the United States Postal Service does not deliver regular first-class mail.

"Casualty" means any loss of or damage to any property included within or related to any Property or arising from an adjoining property caused by fire, flood or other casualty.

"Condemnation" means a Taking and/or a Requisition.

"Costs" means all reasonable costs and expenses incurred by a Person, including without limitation; reasonable attorneys' fees and expenses, court costs, expert witness fees, costs of tests and analyses, repair and maintenance, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, brokerage fees, escrow fees, title insurance and other insurance premiums, appraisal fees, stamp taxes, recording fees and transfer taxes or fees, as the circumstances require.

"Dealer" means any Person that supplies gasoline and/or diesel fuel to Lessee at the Property for sale to third parties, or its successor or assigns.

"Dealer Agreement" means a written agreement or other document granting Lessee the right to operate a gas station operation under the flag, brand or trade name of a Dealer.

"Default Rate" means 18% per annum or the highest rate permitted by law, whichever is less.

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"Deed of Trust" means any and all deeds of trust, mortgages or other liens to secure debts or other security instruments here and after placed by Lessor on the Property or any part thereof (except the Lessee's personal property or trade fixtures), and to any and all renewals, modifications, consolidations, replacements, extensions or substitutions of any such instruments.

"Effective Date" has the meaning set forth in Section 3 of this Lease.

"Environmental Laws" means federal, state and local laws, ordinances, common law requirements and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees having the effect of law in effect now or in the future and including all amendments, that relate to Hazardous Materials, Regulated Substances, USTs, and/or the protection of human health or the environment, or relating to liability for or Costs of Remediation or prevention of Releases, and apply to Lessee and/or the Property.

"Environmental Liens" means liens that may be imposed pursuant to Environmental Laws, including but not limited to Nevada Revised Statutes Chapters 459 and 618.

"Event of Default" has the meaning set forth in Section 20.A.

"Expiration Date" has the meaning set forth in Section 3.

"Extension Option" has the meaning set forth in Section 3.

"Extension Term" has the meaning set forth in Section 3.

"Force Majeure Event" has the meaning set forth in Section 29.

"Governmental Authority" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, any state or any political subdivision thereof (including but not limited to the Nevada Department of Environmental Protection, the Nevada Gaming Control Board and the Nevada Gaming Commission) with authority to adopt, modify, amend, interpret, give effect to or enforce any federal, state and local laws, statutes, ordinances, rules or regulations, including common law, or to issue court orders.

"Hazardous Materials" includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants which pose a hazard to the Property or to Persons on or about the Property, cause the Property to be in violation of any local, state or federal law or regulation, (including without limitation, any Environmental Law), or are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", "pollutants", or words of similar import under any applicable local, state or federal law or under the regulations adopted, orders issued, or publications promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq.*; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, *et seq.*; and

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(iv) regulations adopted and publications promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) underground storage tanks; and (d) any other Regulated Substances, chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of any adjoining property.

"Indemnified Parties" means Lessor, any Lessor's Lenders and their members, managers, officers, directors, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns, including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Lessor or any Lessor's Lenders, as applicable.

"Initial Term" has the meaning set forth in Section 3.

"Insolvency Event" means (a) Lessee's (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against Lessee (i) seeking to adjudicate it a bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against Lessee, either such proceeding shall remain undismissed for a period of one hundred twenty (120) days or any of the actions sought in such proceeding shall occur; or (c) Lessee taking any corporate action to authorize any of the actions set forth above in this definition.

"Law(s)" means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted Governmental Authority, court or agency, now or hereafter enacted or in effect.

"Lease Term" shall have the meaning described in Section 3.

"Legal Requirements" means the requirements of all present and future Laws (including without limitation, Environmental Laws and Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all judicial and administrative interpretations thereof, including any judicial order, consent, decree or judgment, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Lessee or to the Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of to the Property, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of the Property.

"Lessor's Lender" means any lender of Lessor that has a lien on the Property, including any lenders named in any Deed of Trust.

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"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, diminutions in value, fines, penalties, interest, charges, fees, judgments, awards, amounts paid in settlement and damages of whatever kind or nature, inclusive of bodily injury and property damage to third parties (including, without limitation, attorneys' fees and other Costs of defense).

"Monetary Obligations" means all Rental and all other sums payable or reimbursable by Lessee under this Lease to Lessor, to any third party on behalf of Lessor, or to any Indemnified Party.

"Notices" has the meaning set forth in Section 24.

"Permitted Amounts" shall mean, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Laws and is customarily employed in, or associated with, similar businesses located in the states where the Property is located.

"Permitted Encumbrances" shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements, survey exceptions, parties in possession and other matters of title that affect the Property as of the date of Lessor's acquisition thereof and those items which hereafter affect title as permitted under this Lease, including but not limited to those identified in the owner's policy of title insurance issued to Lessor by First American Title Insurance Company or an agent thereof in conjunction with Lessor's acquisition of the Property.

"Permitted Facility" means a gas station with convenience store (and restaurant and postal unit operations within a convenience store), and uses incidental or related thereto including but not limited to a car wash, quick lube/oil change facility, the operation of gaming devices within the convenience store and offices for Lessee's operations, together with uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances.

"Permitted Sublease" has the meaning set forth in Section 23.

"Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Property" means, that parcel or parcels of real estate located at the address set forth in Exhibit B and legally described on Exhibit B attached hereto (which parcels may be fee estates or easement estates), together with all rights, privileges, and appurtenances associated therewith, all buildings, fixtures and other improvements now or hereafter located on such parcels of real estate (whether or not affixed to such real estate).

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"Regulated Substances" means "petroleum" and "petroleum-based substances" or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

"Release" means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs.

"Remediation" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

"Rental" means, collectively, the Base Annual Rental and the Additional Rental.

"Rent Adjustment" has the meaning set forth in Section 4.B.

"Successor Lessor" has the meaning set forth in Section 21.

"Taking" means (a) any taking or damaging of all or a portion of the Property (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special, or (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means, or (b) any de facto condemnation that constitutes a compensable taking under applicable law. The Taking shall be considered to have taken place as of the later of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the law applicable to the Property.

"Threatened Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding any Property which may result from such Release.

"USTs" means any one or combination of tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

"WGI" means Winner's Gaming, Inc.

"WGI Agreement" means any and all agreements of Lessee with WGI pursuant to which WGI currently operates gaming machines or devices and related equipment (or the technological evolution thereof) on the Property and any Substitute WGI Agreement (as defined in Section 12.F).

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EXHIBIT B**ADDRESS AND LEGAL DESCRIPTION OF PROPERTY**

PROPERTY ADDRESS: 7695 - 7699 S. Virginia Street, Reno, Nevada (APN 043-011-48)

PROPERTY LEGAL DESCRIPTION:**Parcel I**

The land referred to herein is situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South Half (S 1/2) of the Northwest Quarter (NW 1/4) of Section 6, Township 19 North, Range 20 East, M.D.M., and being more particularly described as follows:

Commencing at the Southwest corner as Parcel "C", a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, on file in the County Recorders Office, Washoe County, Nevada; thence North 00°16'56" East, a distance of 579.25 feet to the Northerly side of Longley Lane, Thence along said Northerly side South 69°21'09" West, a distance of 21.41 feet to the true point of beginning.

Thence along the said Northerly line of Longley Lane South 69°21'09" West, a distance of 301.22 feet to the Easterly line of U.S. 395; thence along said Easterly line North 21°04'38" West, a distance of 653.04 feet; thence leaving said Easterly line North 14°55'49" East, a distance of 126.66 feet, thence North 89°52'07" East, a distance of 458.81 feet; thence North 19°19'30" West, a distance of 0.78 feet; thence North 84°51'10" East, a distance of 213.17 feet to the Westerly line of South Virginia Street; thence along said Westerly line South 20°39'19" East, a distance of 257.92 feet; thence leaving said westerly line of South Virginia North 89°40'18" West, a distance of 275.76 feet; thence South 00°16'56" West, a distance of 406.67 feet to the true point of beginning.

Parcel II

A non-exclusive easement for ingress, egress and access by and for vehicular pedestrian traffic and vehicle parking as set forth in that certain mutual parking and access agreement recorded April 12, 1995 in Book 4282, Page 40 as Instrument No. 1885230 of Official Records, Washoe County Recorder's Office, Washoe County, Nevada.

Note: The above metes and bounds legal description appeared previously in that certain document recorded August 27, 1996, in Book 4656, Page 716, as Instrument No. 2024695.

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EXHIBIT 2

BERRY-HINCKLEY INDUSTRIES

Memorandum

To Berry-Hinckley Industries - convenience store landlords
Re Jerry Herbs acquisition of Winners Corner & Chevron convenience stores
Date Saturday, February 17th, 2007

Over the past several weeks, Jerry Herbst of Terrible Herbst, Inc., in Las Vegas, Nevada, has been in discussions with us to acquire the convenience store assets of Berry-Hinckley Industries.

The Herbst's business is the second largest petroleum provider in Nevada after Berry-Hinckley, they have a 50% retail marketshare in Clark County (Las Vegas), and through a separate company controlled by the Herbst's three sons, operate in excess of 7,000 slot machines on a route and four casinos in Southern Nevada.

As a landlord of one of our properties, Mr. Herbst has requested that you consider certain changes to the leases that you have with Berry-Hinckley as a condition of assignment. We have attached an Estoppel, as well as a Lease modification document. Mr. Herbst has also attached a letter, in which he offers to personally guaranty your lease, as well as a brief summary on his net worth and company description. With this transaction, Mr. Herbst is also acquiring Berry-Hinckley's option to own Winners Gaming, Inc. which operates the slot machines in all of our convenience stores.

Our goal is to have all Estoppels and other documents agreed to and executed by February 23, 2006, and they will then be held by Chicago Title Insurance Company in escrow until closing.

Please address any concerns to Philip Tripoli, Berry-Hinckley's Vice President of Development at (775) 223-3590 or by e-mail at Philip.tripoli@berry-hinckley.com. If you refer this on to your attorney to review, please have them communicate directly with Berry-Hinckley's counsel:

Sujata Yalamanchili, Esq.
 Hodgson Russ LLP
 One M&T Plaza, Suite 2000
 Buffalo, New York 14203
 Telephone (716) 848-1657; fax 849-0349
syalaman@hodgsonruss.com

We are looking forward to working with Jerry Herbst and you, reaching a successful conclusion for all parties.

Thank you for your trust and confidence in Berry-Hinckley Industries.

Sujata Yalamanchili
 Direct Dial: 716.848.1657
 syalamani@hodgsonruss.com



February 17, 2007

Larry Willard
 133 Glenridge Avenue
 Los Gatos, CA 95030

Dear Mr. Willard:

Re: Jerry Herbst - Acquisition of Winners Corner & Chevron Convenience Stores
#1 Highway 95A - #195

Enclosed please find the following documents:

1. Gary M. Johnson's Letter dated January 31, 2007;
2. Letter from Jerry Herbst regarding the acquisition of C-Stores dated December 14, 2006;
3. Memo dated December 18, 2006;
4. The Landlord's Estoppel Certificate; and
5. First Amendment to Lease Agreement.

Please feel free to contact me with any questions you may have.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sujata Yalamanchili", written over a horizontal line.

Sujata Yalamanchili

SY/tmr
 Enclosures



January 31, 2007

To Whom It May Concern

RE: Jerry Herbst

Our firm has compiled, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, the personal financial statement of Jerry and Maryanna Herbst as of December 31 each year from the 1980's through 2005. A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We did not audit or review the personal financial statements of Mr. and Mrs. Herbst and, accordingly, did not express an opinion or any other form of assurance on them.

The net worth of Mr. and Mrs. Herbst, as reported on the statement compiled by us as of December 31, 2005, was in excess of \$200 million.

Sincerely,

JOHNSON JACOBSON WILCOX

Gary M. Johnson

GMJ:jkj

Certified Public Accountants and Consultants

7490 W. SAMARA AVE., LAS VEGAS, NV 89117-7277 • TEL 702 394-0100 • FAX 702 394-0410



"the best bad guy in the west"

December 14, 2006

Dear Sir,

It is with pleasure that I am writing to you to inform you of our proposed transaction with PAMCo, Inc. to acquire the C-Store assets of Berry Hinkley Industries ("BHI"). The BHI C-Stores are strategically important to my family of companies as we are in the process of entering the Northern Nevada market. These assets will create a significant platform for us to grow our business.

In our review of the existing leases we identified a few minor provisions which we feel need modification. We are forwarding to you a contract amendment and consent form that we are asking you to execute and return to us. In exchange for this amendment and consent I will be willing to personally guarantee the lease obligation.

I look forward to establishing a good tenant/landlord relationship with you and am very excited about closing the proposed transaction.

Regards,

Jerry Herbst
Chairman of the Board
Terrible Herbst, Inc.

TERRIBLE HERBST, INC.



BUSINESS OVERVIEW

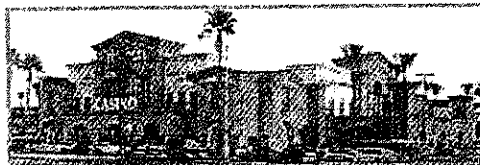
Terrible Herbst, Inc. ("Terrible Herbst" or the "Company") is one of the most recognized brands in the Las Vegas metropolitan area. The Terrible Herbst legacy dates back to 1937 when Ed Herbst (Jerry Herbst father) opened his first service station. The Terrible Herbst brand and familiar "Bad Guy" cowboy logo, has been an icon in Nevada since 1959 and is currently used at five casinos, over 100 gasoline stations and convenience stores as well as over 850 slot route locations throughout the state of Nevada.



Terrible Herbst, Inc. is owned by Jerry and Maryanna Herbst who have a combined net worth in excess of approximately \$240 million. Terrible Herbst, Inc. operates over 100 gas station and convenience stores, many of which include lube facilities and car washes, throughout Southern Nevada. Terrible Herbst has a leading position in the Southern Nevada and maintains a market share of approximately 50% of total fuel sales, which is equivalent to a statewide market share of approximately 30%.

The Herbst family uses cross-marketing efforts to capitalize on the strong recognition and high level of quality and value associated with the Terrible Herbst trade name and cowboy logo. The company has established strategic and/or marketing alliances with Chevron, ARCO, Pizza Hutt, Burger King, Port of Subs, Coke and McDonalds.

The Terrible Herbst name and logo are also used by Herbst Gaming, which is owned and operated by Ed, Tim and Troy Herbst. Herbst Gaming began operations in 1997 and is now one of the largest slot route operators in Nevada with an excess of 7,200 slot machines. Additionally, Herbst Gaming currently operates eight Terrible's casinos in locations spread throughout Nevada, Iowa and Missouri.



In recent transactions, Herbst Gaming has entered into a contract with MGM Mirage to purchase Buffalo Bill's, Primm Valley and Whiskey Pete's Hotel-Casino in Primm, Nevada. In addition, the Company recently entered the Reno market with its acquisition of the Sands Regent in Reno, Nevada.

LANDLORD'S ESTOPPEL CERTIFICATE

Landlord hereby certifies as follows:

1. A true, accurate, and complete copy of the Lease is attached hereto as **Exhibit A**. The Lease is in full force and effect and, has not been amended or modified, except as set forth above.

2. That Landlord is the fee owner of the Premises and has not assigned its interest in the Lease. There is no mortgage financing on the Premises, except for _____. The loan documents related to such deed of trust provide that the lender under such deed of trust will not disturb the Lease so long as the Tenant attorns to the Landlord's successor.

3. The original term of the Lease commenced on _____, _____ and has been renewed _____ such that the current term of the Lease expires on _____. The Tenant has _____ additional renewal periods, such that the Lease might expire as late as _____.

4. That the Monthly Rent due under the Lease has been paid through _____ and all Additional Rent due under the Lease has been paid through _____. That there exist at this time no charges, liens, claims, or offsets against the rents or other charges due or to become due under the Lease. That there is no defense, offset, claim or counterclaim by or in favor of Landlord against Tenant under the Lease or against the obligations of Landlord under the Lease.

5. Landlord has no knowledge of any outstanding notice of default given by Tenant. To the best of Landlord's knowledge, Landlord and Tenant are not in default of any of the agreements, terms, amendments, covenants, or conditions of the Lease on the part of Landlord or the Tenant to be performed or complied with, and no condition or set of facts exist which, with the passage of time and/or the giving of notice would constitute a default by either party in the performance of any of the agreements, terms, amendments, covenants, or conditions of the Lease.

6. That the above certifications are made by Landlord knowing that they will be relied upon by _____.

In addition, Landlord hereby consents to the encumbrance of the Tenant's interest in the Lease with a leasehold deed of trust and collateral assignment of the Tenant's interest in favor of First National Bank of Nevada or another lender of the Tenant. Landlord hereby agrees to give such lender notice of any default under the Lease and that such lender has the right (but no obligation) to cure such default within the time period set forth in the Lease with respect to monetary defaults and with respect to non-monetary defaults so long as such lender promptly commences to cure such default and diligently pursues such cure.

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of December __, 2006 by and between **OVERLAND DEVELOPMENT CORPORATION INC. dba LJW ENTERPRISES INC.** and **LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030 and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of March 1, 2006 (the "Lease") with respect to real property and improvements as described in the Lease;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

2. **Winner's Corner.** Section 12.H is deleted in its entirety.
3. **Default, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.B:

"*Remedies.* Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

and replaced with the following:

“Remedies. Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:”

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: “In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a “Successor Lessor”), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments.”

5. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

“For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee’s right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor’s consent.”

(b) The following paragraph is added to the end of Section 23:

“Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee’s rights under this Lease upon a foreclosure on Lessee’s interests

herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

9. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

**OVERLAND DEVELOPMENT CORPORATION
INC. dba LJW ENTERPRISES INC. and LARRY
J. WILLARD, TRUSTEE OF THE LARRY
JAMES WILLARD TRUST**

By: _____

Printed Name: _____

Title: _____

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 (SEAL)

STATE OF _____)
) SS:
 COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 (SEAL)

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of December, 2006 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Overland Development Corporation Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (collectively, the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for #1 Highway 95-A & Goldfield, Yerington, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 6 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or nonexercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) the date on which Guarantor no longer owns any interest, directly or indirectly, in BHI. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signatures on following page]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

OVERLAND DEVELOPMENT CORPORATION INC.

By: _____
Name:
Title:

LARRY JAMES WILLARD TRUST

By: _____
Name: Larry J. Willard
Title: Trustee

100133298_1.DOC

EXHIBIT 3

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 9th day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Overland Development Corporation Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (collectively, the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 7695 South Virginia, Reno, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premisses, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership,

insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

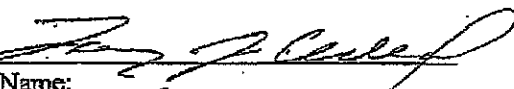
[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

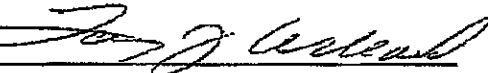

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

OVERLAND DEVELOPMENT CORPORATION INC.

By: 
Name:
Title: *President*

LARRY JAMES WILLARD TRUST

By: 
Name: Larry J. Willard
Title: Trustee

Herbst Lease Guaranty - 7695 South Virginia.DOC

EXHIBIT 4

7695 S. Virginia

Amendment to Lease Agreement

March 9, 2007

THIS AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into effective as of December 1, 2006 by and between OVERLAND DEVELOPMENT CORP. dba LJW ENTERPRISES INC. and LARRY WILLARD, TRUSTEE OF THE LARRY JAMES WILLIARD TRUST ("Lessor", whose address is 133 Glenridge Avenue, Los Gatos, CA 95030 and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into a Lease Agreement dated as of November 18, 2005 (the "Lease") with respect to real property and improvements as described in the Lease, 7695 S. Virginia, Reno

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, Capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

NOW, THEREFORE, In consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided that, within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., or E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

2. **Winner's Corner.** Section 12.H is deleted in its entirety.

3. **Default, Conditional Limitation, Remedies and Measure of Damages.** The following language is deleted in its entirety from the first paragraph of Section 20.B:

"*Remedies.* Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

and replaced with the following:

"*Remedies.* Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice

of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment.** Section 23 is amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such

lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morahito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

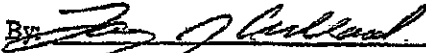
9. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

**OVERLAND DEVELOPMENT CORP. INC.
dba LJW ENTERPRISES**

By: 

Printed Name: LARRY J. WILLARD

Title: President

**LARRY WILLARD, TRUSTEE OF THE
LARRY JAMES WILLARD TRUST**

By: 

Printed Name: LARRY J. WILLARD

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: 

Printed Name: Irena Lloyd

Title: Corporate Secretary

STATE OF California)
COUNTY OF Santa Clara) SS:

On March 9, 2007 before me, Mary M. Edgar, a Notary Public in
and for said State, personally appeared Larry J. Willard, personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



STATE OF Nevada)
COUNTY OF Washoe) SS:

On June 19, 2007 before me, Marguerite Benson-Braun, a Notary Public in
and for said State, personally appeared Gregory Lloyd, personally known
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Marguerite Benson-Braun

(SEAL)

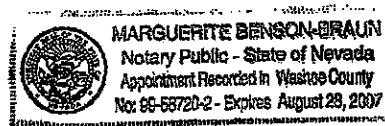


EXHIBIT 5

3. RELATIONSHIP OF PARTIES.

Nothing in this Agreement shall be construed as reserving to Owner any right to exercise any control over, or to direct in any respect Operator's performance of the Services; the entire control and direction of the Services shall be and remain in Operator, subject only to Operator's performance of the obligations of this Agreement in compliance with all laws and regulations governing the operation of the Location and the Services provided at the Location. It is expressly understood and agreed that it is not the purpose or intention of this Agreement to create between the parties hereto, nor shall the same be construed as creating, nor shall Owner or Operator ever assert that this Agreement creates or created the relation of employer and employee, co-employer or joint employer, any type of partnership relationship, a franchise relationship under the Federal Petroleum Marketing Practices Act or any state franchise laws, or any joint venture. Neither Operator nor any person performing any duties or engaged in any work pursuant to this Agreement for or on behalf of Operator is authorized to impose on Owner any obligations or liability whatsoever except as expressly provided herein.

4. COMPENSATION TO OPERATOR.

In consideration of Operator performing the Services and the other mutual covenants set forth herein, Owner shall pay to Operator the sum of Ten Thousand and No/100ths Dollars (\$10,000.00) per month (the "Fee"), and Owner then shall be entitled to all Net Profits (below defined) generated at the Location during each month of the term of this Agreement. The Fee and Net Profits payment shall be payable as set forth below.

Operator shall have fifty (50) days from the end of each month to tender the Net Profits to Owner and provide Owner with an accounting of the subject month's Net Profits. Based thereon, commencing on July 20, 2013, and continuing no later than the twentieth (20th) day of each month thereafter as necessary depending on the length of the term of this Agreement, Operator shall tender to Owner the subject month's Net Profits attributable to the Location, minus the Fee, which such Fee shall be retained by Operator. In the event that the Net Profits for any given month are negative or otherwise not sufficient to pay the Fee, Owner shall not be entitled to any payment and shall instead pay to Operator the amount of the negative Net Profits (if applicable) plus the balance of the Fee within three (3) days of receipt of written demand therefore. As used herein, the term Net Profits shall mean the gross receipts collected by Operator in operating the Location in any given month, minus any and all expenses incurred by Operator in operating the Location during such month including, but not limited to, the cost of all insurance required to be carried by Operator as well as the actual cost to Operator of all inventory sold during such month (regardless of whether Operator purchased such inventory during the subject month, or any previous month). Each payment of Net Profits to Owner hereunder (or alternatively, demand by Operator for payment of the Fee and/or negative Net Profits) shall be accompanied by documentation, certified by an officer of Operator to be accurate, supporting Operator's calculation of Net Profits for the subject month.

10. **CONFLICTING PROVISIONS.**

Except as otherwise expressly provided herein, Operator's use and occupancy of the Location shall be on the terms and provisions as set forth in the Lease. In the event of a conflict between the terms and provisions set forth in the Lease and the terms and provisions set forth in this Agreement, the terms and provisions of this Agreement shall control.

IN WITNESS WHEREOF, Owner and Operator have executed this Agreement as of the Effective Date.

"OPERATOR"

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By: 

Name: Chris Kemper

Title: V.P. of Admin.

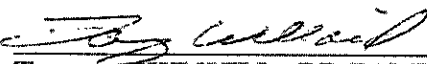
"OWNER"

OVERLAND DEVELOPMENT
CORPORATION INC., D/B/A LJW
ENTERPRISES, INC., a
CALIFORNIA corporation

By: 

Name: LARRY WILLARD

Title: President



Trustee, **THE WILLARD FAMILY TRUST**
DATED NOVEMBER 14, 1987

EXHIBIT 6

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of December __, 2005 by and between [EDWARD C. WOOLEY and JUDITH A. WOOLEY], a _____ ("Lessor"), whose address is _____, and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, NV 89511

In consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

1. **Certain Defined Terms.** Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.
2. **Lease of Property; Use; Possession.** In consideration of the Rentals and other Monetary Obligations to be paid by Lessee and of the other terms, covenants and conditions on Lessee's part to be kept and performed, Lessor hereby leases to Lessee, and Lessee hereby takes and leases, the Property (as such term is defined in Exhibit A attached hereto and which Property is located at the address set forth in Exhibit B attached hereto and situated on the real property legally described in Exhibit B attached hereto), subject to the Permitted Encumbrances, all Legal Requirements (including any existing violation thereof), and the condition of the Property as of the Effective Date; *provided, however*, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any Permitted Encumbrance which may have expired or been terminated. During the Lease Term, the Property shall be used solely for the operation of a Permitted Facility, and related purposes such as ingress, egress and parking.

To the maximum extent permitted by law, Lessee waives the implied warranty of suitability of the Property and Lessee acknowledges that it has accepted the Property "as is," in its current condition, with no representations, warranties or covenants, express or implied, on the part of the Lessor with respect to condition of the same or the suitability of the Property for Lessee's intended use.

3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May 1, 2006 ("Effective Date") and shall expire at midnight on April 30, 2006 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for two (2) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this Lease shall terminate on the last day of the Initial Term or, if applicable, the last day of the Extension Term then in effect.

Sample Lease
1/7/6/2006
000160/09999 GBDOS 477142v2

4. Rental and Other Monetary Obligations.

A. *Base Monthly Rental.* During the Initial Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental; *provided, however, if the Effective Date is a date other than the first day of the month, Lessee shall pay to Lessor (or any other party designated by Lessor) on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month.* During the Extension Terms, if any, Lessee shall pay the Rental (including the Base Monthly Rental) in the manner set forth in this Section 4. Unless otherwise specifically stated to the contrary herein, Lessee shall perform all its obligations under this Lease at its sole cost and expense and shall pay all Rental and any other Monetary Obligation due hereunder when due and payable, without notice or demand.

B. *Adjustments.* On the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rent Adjustment. The "Rent Adjustment" shall be an amount equal to two percent (2%) of the Base Annual Rental in effect immediately prior to the applicable Adjustment Date. The Adjustment Date shall be on the annual anniversary of the Effective Date.

C. *Additional Rental.* Lessee shall pay and discharge, as additional rental ("Additional Rental"), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Base Annual Rental or Base Monthly Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within five (5) days after Lessor's demand for payment thereof or, if later, when the same are due. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

D. *Payment of Rental and Other Monetary Obligations.* All Rental and other Monetary Obligations which Lessee is required to pay hereunder shall be the unconditional obligation of Lessee and shall be payable in full when due without any setoff, abatement, deferment, deduction or counterclaim whatsoever, except as set forth herein. All payments of Base Monthly Rental and any other Monetary Obligations payable to Lessor shall be remitted to Lessor at Lessor's address set forth in the first paragraph of this Lease or such other address as Lessor may designate pursuant to Section 24 hereof.

E. *Late Payment Charge.* Lessee acknowledges that late payment by Lessee to Lessor of Rental will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix in advance. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the Property. Therefore, if any payment which is

required to be made by Lessee to Lessor pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, then Lessee shall pay to Lessor, as a late payment charge, five percent (5%) of the amount of the delinquent payment. Additionally, if any payment which is required to be made by Lessee pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, such payment shall bear interest at the Default Rate until received by Lessor. The late payment charge and default interest shall be paid to Lessor at the time of payment of the delinquent amount. The late payment charge and the default interest charge shall compensate Lessor for the expenses incurred by Lessor in financing, collecting and processing the late payment. The parties agree that the late charge and the default interest charge represent a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Lessee.

5. **Gaming.** Lessor hereby conditionally assigns to Lessee all leases, written or oral, and all agreements for use or occupancy of the Property together with any and all extensions and renewals thereof and any and all further leases, subleases, lettings or agreements (including subleases thereof and tenancies following attornment) upon or covering the use or occupancy of the Property all of which leases, agreements, subleases and tenancies are herein sometimes collectively referred to as the "Assigned Leases"; (ii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or which may now or hereafter become due from or out of the Assigned Leases or any part thereof, including, but not limited to, security deposits, minimum rents, additional rents, parking rents, deficiency rents and liquidated damages following default, any premium payable by any tenant upon the exercise of a cancellation privilege contained in its Lease; all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property; any and all rights and claims of any kind which Lessor has or hereafter may have against the tenants under the Assigned Leases and any subtenants and other occupants of the Property; any award granted Lessor after the date hereof in any court proceeding involving any tenant in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by any tenant in lieu of rent (any and all such moneys, rights and claims identified in this paragraph are herein sometimes referred to as the "Rents" and sometimes as the "Rent"); and (iii) all of the rights, powers and privileges of Lessor (A) to accept prepayment of more than one (1) monthly installment of the Rent thereunder, and (B) except with respect to the Assigned Lease, (I) to cancel, terminate or accept the surrender of any Assigned Lease, and (II) to amend, modify or abridge any of the terms, covenants or conditions of any Assigned Lease. The assignment contained in this Section 5 and Lessee's interest in the Assigned Leases shall become void and of no further force or effect upon the expiration or early termination of this Lease and upon such event, Lessor shall be the sole party with any interest as a landlord or lessor in the Assigned Leases. Furthermore, Lessee shall have no right to collect any amounts under the Assigned Leases upon the occurrence and continuance of an Event of Default and all such amounts shall be paid to Lessor during any such period.

6. **Nevada Gaming Control Board.** Lessor will follow all laws of the State of Nevada and cooperate with WGI in making application to the Nevada Gaming Control Board as may be required.

7. **Rentals To Be Net to Lessor.** The Base Annual Rental payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the Rentals specified during the Lease Term, and all Costs and obligations of every kind and nature whatsoever relating to the Property shall be performed and paid by Lessee, including but not limited to all impositions, operating charges, maintenance charges, construction costs and any other charges, costs and expenses now existing or that arise or may be contemplated under the Permitted Encumbrances or otherwise, all maintenance and repair expenses, all utility expenses, all Taxes, all premiums for insurance required to be maintained by Lessee pursuant to the terms hereof and all other expenses, charges, assessments and costs associated with the Property or otherwise provided to be paid by Lessee pursuant to the terms of this Lease. All such charges, costs and expenses shall constitute Additional Rental and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Base Annual Rental. It is the intention of the parties except as expressly provided herein that this Lease shall not be terminable for any reason by Lessee, and that Lessee shall in no event be entitled to any abatement of, or reduction in, Rental payable under this Lease, except as otherwise expressly provided herein. Any present or future law to the contrary shall not alter this agreement of the parties.

8. **Taxes and Assessments.** Lessee shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance, one hundred percent (100%) of the following (collectively, "Taxes"): all taxes and assessments of every type or nature assessed against or imposed upon the Property or Lessee during the Lease Term, including without limitation, all ad valorem taxes, assessments and special assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, or any tax or charge levied in lieu of such taxes and assessments; all taxes, charges, license fees and or similar fees imposed by reason of the use of the Property by Lessee; and all excise, transaction, privilege, license, sales, use and other taxes upon the Rental or other Monetary Obligations hereunder, the leasehold estate of either party or the activities of either party pursuant to this Lease, and all interest, surcharges or service or other fees payable in connection with the foregoing.

Within thirty (30) days after each tax and assessment payment is required by this Section to be paid and upon request of Lessor, Lessee shall, upon prior written request of Lessor, provide Lessor with evidence reasonably satisfactory to Lessor that such payment was made in a timely fashion. Lessee may, at its own expense, contest or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that (A) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (B) no monetary Event of Default has occurred, (C) Lessee shall promptly provide Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceeding, and (D) Lessee shall indemnify and hold Lessor harmless against any loss, Costs or damages arising from or related to such contest.

If Lessee shall fail to pay any Taxes when due and before any delinquency, penalty or interest is imposed on such Taxes, Lessor shall have the right to pay the same after notice to

Lessee, in which case Lessee shall repay in full such amount to Lessor with Lessee's next Base Monthly Rental installment together with interest at the Default Rate.

9. **Utilities.** Lessee shall contract, in its own name, for and pay when due (and hold Lessor free and harmless from) all charges for the connection and use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term. All utility charges, assessments and fees for the last year of the Lease shall be prorated as of the termination date of this Lease. No full or partial utility deprivation including, but not limited to, blackout, brownout, or rationing, nor any loss of or damage to improvements related to disruption or failure of any utility service shall give rise to any abatement of Rentals nor give rise to any right of Lessee to offset Rentals or to terminate the Lease, unless caused by the gross negligence or willful misconduct of Lessor or its agents, employees or contractors (but not of any other tenants or occupants of the Property). Lessor shall reasonably cooperate with Lessee, but without out-of-pocket expense to Lessor, in Lessee's efforts to restore utility service to the Property; provided, however, that if the utility service was disrupted due to Lessor's gross negligence or willful misconduct, then the cost of such restoration shall be borne by Lessor.

10. **Insurance.** Throughout the Lease Term, Lessee shall maintain, at its sole expense, the following types and amounts of insurance:

A. Insurance against loss or damage to the Property and all buildings and improvements thereon under an "all risk" insurance policy, which shall include coverage against all risks of direct physical loss, including loss by fire, lightning, and other risks normally included in the standard ISO special form (which shall include coverage for all risks commonly insured for properties similar to the Property in the Reno, Nevada area, including insurance coverage for damage caused by earthquake, flood, tornado, windstorm and other disasters for which insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Lessor from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an increased cost of construction endorsement, debris removal coverage and a waiver of subrogation endorsement in favor of Lessor. While any portion of the improvements on the Property is being rebuilt on the Land, Lessee shall provide such property insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy in an amount equal to 100% of the full insurable replacement value of the improvements on the Property or such portion as is being rebuilt. The insurance policy shall insure Lessee as loss payee. No parties other than Lessor, Lessor's Lender and Lessee may be named as insureds or loss payees on such property insurance policy.

B. Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury, liquor liability coverage (to the extent liquor is sold or manufactured at the Property), garage liability coverage including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Property or adjoining ways, streets, parking lots or

sidewalks. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Section 15 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee, Lessor or Lessor's Lender because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 general aggregate per location, or such higher limits as Lessor may reasonably require from time to time or as may be required by the Permitted Encumbrances, and shall be of form and substance satisfactory to Lessor.

C. Workers' compensation insurance in the statutorily mandated limits covering all persons employed by Lessee on the Property or any persons employed by Lessee in connection with any work done on or about any Property for which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property, together with Employers Liability Insurance with limits of not less than \$100,000 per accident or disease and \$500,000 aggregate by disease.

D. Rental value insurance, equal to 100% of the Base Annual Rental (as may adjusted hereunder) for a period of not less than twelve (12) months; which insurance shall be carved out of Lessee's business interruption coverage for a separate rental value insurance payable to Lessor, or if rental value insurance is included in Lessee's business interruption coverage, the insurer shall provide priority payment to any Rental obligations, and such obligations shall be paid directly to Lessor. Such insurance is to follow form of the real property "all risk" coverage and is not to contain a co-insurance clause.

E. Comprehensive Boiler & Machinery Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus, if any, located in or about the Property in an amount not less than the actual replacement cost of the Property. Such insurance should be in an amount of the lesser of 25% of the 100% replacement cost or \$5,000,000.00.

All insurance policies shall:

(i) Provide (1) for a waiver of subrogation by the insurer as to claims against Lessor, Lessor's Lenders and their employees, officers and agents, (2) that the insurer shall not deny a claim and that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Lessee, its officers, directors, employees or agents, or anyone acting for Lessee or any sublessee or other occupant of the Property, and (3) that any losses otherwise payable thereunder shall be payable notwithstanding any act or omission of Lessor, Lessor's Lenders or Lessee which might, absent such provision, result in a forfeiture of all or a part of such insurance payment;

(ii) Be primary and provide that any "other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lessor and

the insurance policy shall not be brought into contribution with insurance maintained by Lessor;

(iii) intentionally omitted

(iv) Contain a standard non-contributory mortgagee clause or endorsement in favor of any Lessor's Lender designated by Lessor;

(v) Provide that the policy of insurance shall not be terminated, cancelled or amended without at least thirty (30) days' prior written notice to Lessor and to any Lessor's Lender covered by any standard mortgagee clause or endorsement;

(vi) Provide that the insurer shall not have the option to restore the Property if Lessor elects to terminate this Lease in accordance with the terms hereof;

(vii) Be in amounts sufficient at all times to satisfy any coinsurance requirements thereof;

(viii) Except for workers' compensation insurance referred to in Section 10.C above, name Lessor and any Lessor Affiliate requested by Lessor, as an "additional insured" (and, with respect to any Lessor's Lender designated by Lessor, as an "additional insured mortgagee") with respect to general liability insurance, and as a "named insured" with respect to real property and "loss payee" with respect to all real property and rent value insurance, as appropriate and as their interests may appear;

(ix) Be evidenced by delivery to Lessor and any Lessor's Lender designated by Lessor of an Acord Form 28 for property coverage (or any other form requested by Lessor) and an Acord Form 25 for liability, workers' compensation and umbrella coverage (or any other form requested by Lessor); provided that in the event that either such form is no longer available, such evidence of insurance shall be in a form reasonably satisfactory to Lessor and any lender designated by Lessor; such certificates of insurance shall be delivered to Lessor prior to the Effective Date; and

(x) Be issued by insurance companies licensed to do business in the states where the Property is located and which are rated A:VIII or better by Best's Insurance Guide or are otherwise approved by Lessor.

It is expressly understood and agreed that (I) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by Lessee, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Lessee shall immediately obtain new or additional insurance reasonably satisfactory to Lessor and any lender designated by Lessor; (II) the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease;

and (III) Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any servicer or lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times.

Lessee shall pay as they become due all premiums for the insurance required by this Section 10. In the event that Lessee fails to comply with any of the foregoing requirements of this Section 10 within ten (10) days of the giving of written notice by Lessor to Lessee, Lessor shall be entitled to procure such insurance. Any sums expended by Lessor in procuring such insurance shall be Additional Rental and shall be repaid by Lessee, together with interest thereon at the Default Rate, from the time of payment by Lessor until fully paid by Lessee immediately upon written demand therefor by Lessor.

Anything in this Section 10 to the contrary notwithstanding, any insurance which Lessee is required to obtain pursuant to this Section 10 may be carried under a "blanket" policy or policies covering other properties or liabilities of Lessee provided that such "blanket" policy or policies that otherwise comply with the provisions of this Section 10 and specify the location of the Property.

11. Intentionally Omitted

12. **Compliance With Laws, Restrictions, Covenants, Encumbrances and Agreements.** It is expressly understood and agreed that the obligations of Lessee under this Section shall survive the expiration or earlier termination of this Lease for any reason.

A. *Legal and Gaming Law Compliance.* Lessee's use and occupation of the Property, the use and occupation of the Property by any other person (including but not limited to any subtenants and WGI) and the condition of the Property, shall, at Lessee's sole cost and expense, comply with all Legal Requirements (including without limitation the Americans with Disabilities Act and all Legal Requirements related to gaming operations and the sales of tobacco and liquor on the Property). Lessee shall promptly file, or cause to be filed, and provide to Lessor any notices, reports or other filings that Lessee or any other Person is required to file or provide to any Governmental Authorities regarding the business operations conducted on or from the Property, including but not limited to those described in Subsection D(iii) hereof and those required by Governmental Authorities with respect to gaming operations and the sales of tobacco and liquor on the Property, including any filings required to be made in connection with the change of ownership or control of Lessee and, within fifteen (15) days of Lessee's receipt of written notice from Lessor of any planned or actual change in the ownership or control of Lessor or any planned or actual change in the ownership of the Property.

B. *Acts Resulting in Increased Insurance Rates.* Lessee will use its commercially reasonable efforts to prevent any act or condition to exist on or about the Property which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase. Lessee shall comply with all orders and directives of any insurance companies issuing liability, fire, or extended coverage insurance pursuant to Section 10 hereof, and Lessee

shall not do, bring, or keep anything in or about the Property that will cause a cancellation of any insurance covering the Property.

C. *Prevention of Nuisance.* Lessee shall not commit nor cause or permit to be committed any public or private nuisance on the Property.

D. *Environmental.*

(i) *Covenants.* All uses and operations on or of the Property, including the use and operation of UST's on the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto. Lessee shall keep the Property or cause the Property to be kept free and clear of all Environmental Liens, whether due to any act or omission of Lessee or any other Person. Lessee hereby represents and warrants that Lessee shall not install and shall not permit any person to install any asbestos containing materials ("ACM") or materials or equipment containing polychlorinated biphenyl ("PCBs") in the Property, and to the extent any ACM, PCBs or other Hazardous Materials are on or in the Property, the same shall be maintained, stored and used in accordance with all Legal Requirements.

(ii) *Notification Requirements.* Lessee shall immediately notify Lessor in writing upon Lessee obtaining actual knowledge of (1) any Releases or Threatened Releases in, on, under or from the Property other than in Permitted Amounts, or migrating towards any of the Property; (2) any non-compliance with any Environmental Laws related in any way to any of the Property; (3) any actual or potential Environmental Lien; (4) any required or proposed Remediation of environmental conditions relating to any of the Property required by applicable Governmental Authorities; and (5) any written or oral notice or other communication which Lessee becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances or USTs, or Remediation thereof at or on the Property, other than in Permitted Amounts, possible liability of any Person relating to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Subsection D.

(iii) *Reports and Investigations.* Lessee shall promptly supply Lessor with copies of all reports of any testing of the Property conducted by or at the request of Lessor or any Governmental Authorities and all submissions by Lessee to any Governmental Authority concerning environmental matters, the USTs, or Hazardous Materials. Lessee shall furnish to Lessor certificates of enrollment issued by the State of Nevada, Division of Environmental Protection, for each UST at the Property no later than October 30 of each year, and gasoline storage tank permits issued by the Department of Air Quality Management of the County in which the Property is located with respect to each UST on the Property no later than May 5 of each year, and such other certificates or permits as may be issued

or required by any other Governmental Authority; all of the foregoing shall evidence continuing compliance of each UST on the Property with all applicable Legal Requirements. Additionally, upon Lessor's reasonable request in the event that Lessor reasonably suspects that Contamination (as hereafter defined) may have occurred or be occurring at the Property, Lessee agrees to perform, at Lessee's sole expense, an environmental assessment of the Property, including soil borings, to confirm whether such Contamination is occurring. Additionally, at least ninety (90) days prior to the expiration of the Lease Term, Lessee agrees to perform an environmental assessment of the Property in order to define the nature and extent of Contamination, if any.

(iv) *Indemnification.* Lessee shall indemnify, defend, protect and hold each of the Indemnified Parties free and harmless from and against any and all Losses, arising from or caused in whole or in part, directly or indirectly, by any of the following, unless arising from or caused by the gross negligence or willful misconduct of the Indemnified Party requesting indemnification: (a) the use, storage, transportation, disposal, release, discharge or generation of Hazardous Materials to, in, on, under or about the Property (whether occurring before or after the date hereof) (any of the foregoing in violation of Legal Requirements is "Contamination"), including diminution in value of the Property; and (b) the cost of any required or necessary repair, remediation, cleanup or detoxification and the preparation of any closure or other required plans or reports, whether such action is required or necessary prior to or following transfer of title to the Property (such acts are sometimes referred to herein as "Corrective Action"), and (c) Lessee's failure to comply with any Legal Requirements. Lessee's obligations to perform Corrective Action shall include, without limitation, and whether foreseeable or unforeseeable, all cost of any investigation (including consultants and attorneys fees and testing) required or necessary repair, remediation, restoration clean up, detoxification or decontamination of the Property and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the Term of this Lease. This agreement to indemnify, defend, protect and hold harmless each of the Indemnified Parties shall be in addition to any other obligations or liabilities Lessee may have to Lessor or the Indemnified Parties, if any, at common law under all statutes and ordinances or otherwise and survive the termination of the Lease.

In the event that Lessee is required to perform Corrective Action to address any Contamination, Lessee shall perform such activities in a diligent manner. In the event that Lessee has not completed its Corrective Action (if necessary), as required herein, by the expiration of the Lease Term, Lessor shall grant Lessee, and its consultants, contractors and agents a revocable license, at no cost to Lessee except as set forth in the succeeding sentence, to enter upon the Property from and after the date of expiration of the Lease Term to conduct Corrective Action and to place and remove all necessary equipment and improvements on the Property sufficient to satisfy the requirements of all Governmental Authorities regarding the Contamination. If such post-expiration

Corrective Action will unreasonably interfere with a reasonably foreseeable intended commercial use of the Property (i.e., if Lessor cannot reasonably lease the Property for reasonable commercial uses at reasonable market rents), the Lease Term shall be extended until sixty (60) days after the Corrective Action has been performed such that post-expiration Corrective Action by Lessee no longer unreasonably interferes with a reasonably foreseeable commercial use of the Property, and Lessee agrees to keep Lessor apprised of the anticipated completion date of the Corrective Action.

E. *Intentionally Omitted.*

F. *Dealer Requirements.* In addition to the requirements set forth in this Lease, Lessee, in its use, occupancy and maintenance of the Property shall comply with all requirements of its Dealer Agreements with Dealer. Lessee hereby consents to Lessor providing information it obtains to Dealer and to Lessor obtaining from Dealer information which Dealer receives relating to Lessee's operation of its business on the Property.

G. *WGI Agreements.* Lessee represents that the WGI Agreement is in full force and effect, and that the WGI Agreement permits WGI to operate gaming machines on the Property. Lessee shall abide by all the terms and conditions of the WGI Agreement, and Lessee represents and warrants that WGI has approved this Lease, if WGI has such approval rights under the WGI Agreement.

H. *Winner's Corner.* Lessee shall at all times operate the gas station and convenience store on the Property under the trade name "Winner's Corner" and/or under a major oil brand (such as Chevron, BP, Amoco, Shell, Sun Oil, or the such).

13. **Maintenance; Repairs and Reconstruction.** Lessee shall, at its sole cost and expense, be responsible for keeping all of the buildings, structures, improvements and signs erected on the Property in good and substantial order, condition, and repair, including but not limited to replacement, maintenance and repair of all structural or load-bearing elements, roofs, walls, foundations, gutters and downspouts, heating, ventilating and air conditioning systems, any building security and monitoring system, windows, walls, doors, electrical and other utility systems and equipment, mechanical equipment, plumbing and all other components of the buildings, mowing of lawns and care, weeding and replacement of plantings; replacing, resurfacing and striping of walkways, driveways and parking areas, and adjacent public sidewalks; removal of snow and ice from the Property and adjacent public sidewalks, removal of trash, maintenance of utility lines and exterior lighting and signage on Property, and any maintenance, repairs or replacements (or fees or reserves therefor) as may be required by any Permitted Encumbrances. All such replacements, maintenance and repair shall keep the Property in good repair and in a clean, safe, and sanitary condition and in compliance with all Legal Requirements and insurance regulations. Lessee must make all repairs, corrections, replacements, improvements or alterations necessitated by age, Lessee's use, or natural elements or as required pursuant to Governmental Authorities or Legal Requirements. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford

Lessee the right to make repairs, corrections, improvements or alterations at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition or repair, or which would otherwise require Lessor to make repairs, corrections, improvements, replacements or alterations. If the buildings or any improvements on the Property violate any Permitted Encumbrances or Legal Requirements, then Lessee shall, upon the written demand of a Governmental Authority or the written demand of a party to or beneficiary of any Permitted Encumbrance, repair, restore, relocate and/or rebuild the same in accordance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances.

Lessee shall, at its sole cost and expense, be responsible to repair or reconstruct damage or destruction to any buildings, structures or improvements erected on the Property from acts of God or any other catastrophes or causes. Any such repairs or reconstruction shall restore the buildings and all improvements on the Property to substantially the same condition immediately prior to such damages or destruction and this Lease shall remain in full force and effect, provided, however, that Lessee shall have the right to replace the improvements with different structures so long as (a) the value of the Property with such different structures is no less than the value of the Property immediately prior to the date of casualty and the different square footage of the new buildings is no less than the buildings existing as of the date hereof, and (b) the new structure can be built and occupied in compliance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances. Such repair, restoration, relocation and rebuilding (all of which are herein called a "repair") shall be commenced within a reasonable time however no more than thirty (30) days after the later of (i) the date that such damage or destruction occurred, (ii) the date that all permits and other approvals necessary to authorize such rebuilding have been issued following reasonable pursuit of the same by Lessee, and (iii) the date that any insurance proceeds payable to Lessor or its lender in conjunction with such damage or destruction, if any, have been made available to Lessee as set forth herein; thereafter, the repair shall be diligently pursued to completion. Lessee shall give Lessor at least fifteen (15) days written notice prior to commencing the repair to permit the Lessor to post appropriate notices of non-responsibility, and all such repair work shall be subject to the provisions of Section 14 hereof related to alterations, improvements and additions to the Property.

The proceeds of any insurance maintained under Section 10 hereof shall be made available to Lessee for payment of costs and expense of repair.

14. Waste; Alterations and Improvements; Trade Fixtures and Equipment. Lessee shall not commit actual or constructive waste upon the Property. During the Lease Term, Lessee may construct any additions or improvements to the Property and make such structural or non-structural alterations to the Property as are reasonably necessary or desirable for Lessee's use of the Property for a Permitted Facility. All improvements, alterations, or additions shall be constructed by Lessee at Lessee's sole cost and expense. Prior to the commencement of construction of any additions, improvements, or alterations to the Property, Lessee shall give Lessor at least fifteen (15) days written notice to allow Lessor to post appropriate notices of non-responsibility. Notwithstanding anything herein to the contrary, without Lessor's prior written consent, Lessee shall not make any alterations that will decrease the value or function of the improvements located on the Property.

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Lessee's right to make any alterations, improvements and additions shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate Governmental Authorities, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner. All alterations, improvements or other construction by Lessee shall be in compliance with all Legal Requirements, and all alterations and improvements shall be done and performed in good and workmanlike manner, using new and first quality materials. All costs of any such improvements shall be paid by Lessee.

Upon completion of any such work, Lessee shall submit to Lessor as-built plans of any structural, mechanical or interior utility improvements and alterations made, a sworn construction statement, lien waivers from all persons or entities providing materials, services or equipment for the work completed and, if available, an endorsement to Lessor's policy of title insurance or other evidence from a title company confirming the absence of any liens or other matters of record related to the work performed.

Unless expressly released by Lessor in writing, all improvements or alterations shall be and remain, at the time of expiration or other termination of this Lease, the property of Lessor without payment or offset unless such improvements are not attached to the Property. Notwithstanding anything herein to the contrary, all plumbing, electrical, HVAC equipment, doors, ceiling and floor tiles, and wall coverings shall become the property of Lessor and remain in place on the Property upon expiration or other termination of this Lease.

During the Lease Term, Lessee shall have the right to locate in the Property such personal property, furniture, trade fixtures, and equipment (hereafter referred to as "Fixtures and Equipment") as shall be considered by Lessee to be appropriate or necessary to Lessee's use and occupancy of the Property.

All Fixtures and Equipment shall be provided by Lessee at Lessee's own cost and expense. During the term of this Lease, Lessee may remove any Fixtures and Equipment installed by Lessee, and any and all such Fixtures and Equipment shall remain the sole property of Lessee. Lessee shall perform (and pay all costs associated with) any and all restoration necessitated by the removal of Lessee's Fixtures and Equipment, including but not limited to damage resulting from removal of any of Lessee's signs in or about the Property.

Lessee shall keep the Property free and clear of all mechanic's, materialmen or similar liens, including, but not limited to, those resulting from the construction of alterations, improvements, additions, trade fixtures, and equipment performed by or for Lessee.

Lessee shall have the right to contest the correctness or validity of any such lien if, Lessee first procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the state in which the Property are located in an amount required by Legal Requirements to remove such lien. The bond or its equivalent shall meet all applicable requirements of the state in which the Property are located. In the event that any lien does so attach, and is not released within thirty (30) days after written notice to Lessee thereof, Lessor, in its sole discretion, may pay and discharge the same and relieve the Property therefrom, and Lessee agrees to repay and reimburse Lessor as Additional Rental upon demand for the amount

so paid by Lessor. On final determination of the lien or claim of lien Lessee will immediately pay any judgment rendered, and all costs and charges, and shall cause the lien to be released or satisfied. In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is in its best interest to do so.

15. **Indemnification.** Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor's agents and employees from all claims for any damage or injury to the full extent permitted by law. Lessee agrees that Lessor shall not be responsible or liable to Lessee or Lessee's employees, agents, customers or invitees for bodily injury, personal injury or property damage occasioned by the acts or omissions of any other lessee or such lessee's employees, agents, contractors, customers or invitees. In addition to other specific indemnification provisions set forth in this Lease, Lessee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Lessee's use and occupancy of the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee or any Person thereon, with supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Lessee, its officers, employees, agents or other Persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

16. **Quiet Enjoyment.** So long as Lessee shall pay the Rental and other Monetary Obligations herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Lessee shall have, subject and subordinate to Lessor's rights herein, the right to the peaceful and quiet occupancy of the Property, subject to the Permitted Encumbrances, Laws and the WGI Agreement and any use or occupancy agreements, leases or licenses now affecting the Property or hereinafter made by Lessee.

17. **Inspection; Right of Entry.** Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and to inspect the same; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease or by law; to show the Property to prospective brokers, agents, buyers, or persons interested in an exchange, at any time; and to show the Property to prospective tenants within two hundred forty (240) days prior to the expiration of this Lease or any time during the option period and to place upon the Property any "to let" or "for lease" signs at any time within two hundred forty (240) days prior to the expiration of this Lease. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but, subject to Section 37, excluding damages arising as a result of the negligence or intentional misconduct of Lessor.

18. **Condemnation and Casualty.**

A. *Damage or Destruction to the Property; No Abatement of Rent.* If the Property is damaged or destroyed as a result of fire or other casualty Lessee shall promptly restore the Property pursuant to the terms of Section 13 hereof. Notwithstanding the partial or total destruction of the Property and any part thereof, and

notwithstanding whether the casualty is insured or not, there shall be no abatement of Rentals or of any other obligation of Lessee hereunder including, without limitation, payment of operating expenses, insurance premiums and Taxes, by reason of such damage or destruction unless the Lease is terminated by virtue of another provision of this Lease.

B. *Option to Terminate.* If the Property is damaged or destroyed during the last one (1) year of the Lease Term to the extent that the Property is untenable, Lessee may terminate this Lease as of the date of such damage or destruction by giving written notice to Lessor of such election within thirty (30) days following the date of such fire or other casualty, in which case, all insurance proceeds related to the Property (other than attributable to Lessee's Fixtures and Equipment) will be paid over to Lessor, or if required by Lessor's Lender, to such lender.

C. *Termination Upon Taking.* If as a consequence of a Taking, (i) any part of the convenience store building on the Property; or (ii) twenty-five percent (25 %) or more of the parking area at the Property shall be taken and Lessee determines in its reasonable discretion that such Taking will have a material adverse impact on the ability of Lessee to conduct its normal business operations from the Property, then, within thirty (30) days after the date on which Lessee receives written notice of such Taking, Lessee may terminate this Lease by written notice to Lessor which termination shall be effective as of the date the condemning authority takes actual possession of the portion of the Property that is subject to the Taking. If Lessee terminates this Lease, Lessor shall promptly refund to Lessee all unearned Annual Base Rental and other amounts paid in advance by Lessee.

D. *Obligation to Restore.* If a Taking does not result in a termination of this Lease pursuant to Subsection C hereof, Lessee shall restore the Property to a condition similar in physical appearance to that which existed immediately prior to the Taking to the extent possible such that Lessee can conduct its normal business operations. Lessee shall commence such restoration within ninety (90) days after the occurrence of the taking and shall complete such restoration within six (6) months after the occurrence of the taking.

E. *Condemnation Award.* Any condemnation award payable during the term of this Lease shall belong to and be paid to Lessor, including but not limited to awards payable with respect to damage to either the fee or leasehold estates, except that Lessee shall receive from the award the following:

i. If Lessee exercises its rights to terminate this Lease, the portion of the award, if any, attributable to Lessee's Equipment or Fixtures that are taken in the Taking and the unamortized cost of any leasehold improvements made to the Property by Lessee after the date hereof that are taken in the Taking.

ii. The portion of the award, if any, attributable to severance damages for the repair or restoration of the Property (herein called "repair"), but only if Lessee does not exercise Lessee's right to terminate the Lease and further

provided, that such damages shall be deposited and disbursed in accordance with the provisions hereof related to the handling of insurance proceeds that are applied to a repair of the Property and Lessee shall promptly commence and diligently complete the repair so that upon completion the Property will have a character and commercial value as nearly as possible equal to the value of the Property immediately prior to the taking, and further provided that, in the event such damages are insufficient to cover the cost of repair, then any amounts required over the amount thereof that are required to complete said repair shall be promptly deposited with the disbursing entity by Lessee in advance of commencing the repair.

iii. Additionally, if this Lease is terminated as a result of any such taking, Lessee shall be permitted to recover its relocation expenses and the going concern value of Lessee's business from the condemning authority (but not from Lessor or the portion of the award otherwise payable to Lessor) as provided by law.

19. Intentionally Deleted.

20. **Default, Conditional Limitations, Remedies and Measure of Damages.**

A. *Event of Default.* Each of the following shall be an event of default by Lessee under this Lease (each, an "Event of Default"):

(i) If any Rental or other Monetary Obligation due under this Lease is not paid within five (5) Business Days of notice it is past due, provided, however, that if within the first twelve (12) months of the Lease Term, Lessor has given two (2) such notices to Lessee, then a default shall be deemed to have occurred when such failure has continued for three (3) business days after the same is due, without notice thereof by Lessor to Lessee; and further, provided, however, that after the first twelve (12) months of the Lease Term, if Lessor has given such notice to Lessee within the preceding twelve (12) months, then a default shall be deemed to have occurred when such failure has continued for three (3) Business Days after the same is due, without notice thereof by Lessor to Lessee;

(ii) if there is an Insolvency Event;

(iii) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; *provided, however*, if any such failure does not involve the payment of any Monetary Obligation, does not place any rights or property of Lessor in immediate jeopardy, as determined by Lessor in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of thirty (30) days shall have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure

cannot reasonably be cured within such thirty (30) day period, as determined by Lessor in its reasonable discretion, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30) day period. If Lessee shall fail to correct or cure such failure within such period and said period is not extended by the parties, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(iv) if Lessee shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or

B. *Remedies.* Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:

(i) To terminate this Lease, whereupon Lessee's right to possession of the Property shall cease and this Lease, except as to Lessee's liability, shall be terminated. Upon such termination, Lessor shall be entitled to recover liquidated damages equal to the total of (i) the cost of recovering possession of the Property; (ii) the unpaid Rental earned at the time of termination, plus interest at the Default Rate thereon; (iii) late charges and interest at the Default Rate on the unpaid Rental; (iv) the present value of the balance of the Base Annual Rental for the remainder of the Lease Term using a discount rate of four percent (4%), less the present value of the reasonable rental value of the Property for the balance of the Term remaining after a one-year period following repossession using a discount rate of four percent (4%); (v) costs of operating the Property until relet and the reasonable costs of performing any obligations of Lessee under this Lease to be performed upon termination or expiration of this Lease (including but not limited to the Lessee's obligations under Sections 12.D and 27 hereof); and (vi) any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default.

(ii) To the extent not prohibited by applicable law, to reenter and take possession of the Property (or any part thereof) without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor's rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving

Lessee written notice thereof, in which event this Lease will terminate, and Lessor may recover liquidated damages as set forth in Subsection (i) above.

(iii) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.

(iv) To relet the Property or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor may, in its sole discretion, determine, which other Monetary Obligations include, without limitation, all commercially reasonable repossession costs, brokerage commissions, attorneys' fees and expenses and repair costs. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(v) To recover from Lessee all Costs paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(vi) To immediately or at any time thereafter, and with or without notice, at Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor's right to exercise any or all remedies set forth herein.

(vii) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease.

(viii) To seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

All powers and remedies given by this Section to Lessor, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Lessor

may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

C. *Default by Lessor.* Lessor shall be in default under this Lease if Lessor fails or refuses to perform any obligation of Lessor under the terms of this Lease, and if the failure to perform the obligation is not cured within thirty (30) days after notice of the default has been given by Lessee to Lessor. If the default cannot reasonably be cured within thirty (30) days, then Lessor shall not be in default if Lessor commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

Lessee, at any time after expiration of the cure period provided above and a subsequent written notice to Lessor, may cure the default at Lessor's cost. If Lessee at any time, as a result of Lessor's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Lessee shall be due immediately from Lessor to Lessee at the time the sum is paid, and if paid at a later date shall bear interest at the rate of twelve percent (12%) per annum from the date the sum is paid by Lessee until the date Lessee is reimbursed by Lessor. Any amounts due from Lessor to Lessee pursuant to this Section 15 may be deducted or offset against Lessee's Base Monthly Rental.

21. **Mortgage, Subordination and Attornment.** Lessor's interest in this Lease and/or the Property shall not be subordinate to any liens or encumbrances placed upon the Property by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. Notwithstanding the terms of or the parties to the WG! Agreement and any other agreements pursuant to which Persons other than Lessee have the right to occupy any portion of the Property, such agreements shall, as between Lessor and Lessee, be treated as an instrument subordinate to Lessor's interest in the Property and this Lease. Lessee shall keep the Property free from any liens for work performed, materials furnished or obligations incurred by Lessee. NOTICE IS HEREBY GIVEN THAT LESSEE IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST, SECURITY INTEREST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PROPERTY OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID.

This Lease at all times shall automatically be subordinate to the lien of any and all Deeds of Trust now or hereafter placed upon the Property by Lessor, provided, that the holder of such interest shall not disturb Lessee's use and enjoyment of Lessee's rights under this Lease so long as Lessee is not in default hereunder. Lessee covenants and agrees to execute and deliver, upon demand, such further instruments which are acceptable to Lessee, subordinating this Lease to the lien of any or all such Deeds of Trust as shall be desired by Lessor, or any present or proposed Deeds of Trust; provided, that the terms and provisions of any such instrument are commercially reasonable. The Lessee acknowledges that the terms and provisions of the Instrument attached hereto as Exhibit C are commercially reasonable.

If any Lessor's Lender, mortgagee, receiver or other secured party elects to have this Lease and the interest of Lessee hereunder be superior to any such Deed of Trust and evidences

such election by notice given to Lessee, then this Lease and the interest of Lessee hereunder shall be deemed superior to any such Deed of Trust, whether this Lease was executed before or after such Deed of Trust and in that event such mortgagee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of such Deed of Trust and had been assigned to such mortgagee, receiver or other secured party.

In the event any purchaser or assignee of any mortgagee or deed of trust holder at a foreclosure sale acquires title to the Property, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as Lessor under this Lease, Lessee shall attorn to mortgagee or deed of trust holder or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, if the Successor Lessor in its sole discretion elects to recognize Lessee's tenancy under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue after the date that such Successor Lessor acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Lessee shall give written notice to any Lessor's Lender of whom Lessee is notified of in writing of any breach or default by Lessor of any of its obligations under this Lease and give such lender or mortgagee the same rights to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto. Upon request by Lessor, Lessee shall authorize Lessor to release to Lessee's financial statements delivered to Lessor pursuant to this Lease to such Lessor's Lender.

22. Estoppel Certificate and Other Documents. At any time, and from time to time, each party shall, promptly and in no event later than ten (10) days after a request from the other execute, acknowledge and deliver to the requesting party, as the case may be, a certificate in the form supplied by the requesting party, certifying: (A) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor; (B) the commencement and expiration dates of the Lease Term; (C) the date to which the Rentals have been paid under this Lease and the amount thereof then payable; (D) whether there are then any existing defaults by Lessee or Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (E) that no notice has been received by the certifying party of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (F) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee; and; (G) and any other information reasonably requested by the requesting party.

Lessor and Lessee further agree to reasonably negotiate execute all reasonable documents, including without limitation, estoppel certificates, non-disturbance certificates and other documents requested by WGL, any Lessor's Lender or any lender of Lessee in connection with a loan to be obtained by Lessor or Lessee, or in connection with a sale, assignment, sublease or other disposition of the Lessor's interest under this Lease.

23. **Assignment/Subletting.** Lessee's interest in this Lease shall not, voluntarily, involuntarily, or by operation of law, be assigned to any third person or entity without the prior written consent of Lessor which will not be unreasonably withheld conditioned or delayed.

In the event of an assignment of Lessee's interest under this Lease to a third person or entity which has been approved by the Lessor, the original Lessee shall be relieved from any and all further obligations under the terms of this Lease upon delivery to Lessor of an originally executed assumption of all of Lessee's obligations under this Lease by the assignee, and upon cure of all then existing defaults of Lessee under the terms of this Lease.

Other than for the WGI Agreement and any Replacement WGI Agreement, and any other agreements pursuant to which experienced and reputable operators are permitted to occupy discreet portions of the convenience store building located on the site for uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances (such other agreements are referred to herein as "Permitted Subleases"), Lessee may not sublease all or any part of the Property without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. In no event will any Permitted Subleases, or any other subleases that Lessor consents to relieve Lessee of any liability hereunder during the period of any such subletting. Additionally, Lessee shall give Lessor at least thirty (30) days advance notice of any proposed Permitted Sublease, which notice shall be accompanied by a copy of the form of the Permitted Sublease.

Each Permitted Sublease, and any other sublease that Lessor may consent to pursuant to the foregoing paragraph shall provide that (i) the term thereof will not exceed the Initial Term hereof and any extensions of the Initial Term that are permitted hereunder; (ii) the sublease and subtenant shall be subject to and bound by all the terms and conditions of this Lease (except that the Lessee shall continue to pay all Rental and Monetary Obligations hereunder and Lessee shall collect any rents owed by the subtenant pursuant to the sublease); (iii) the sublease shall state that, at Lessor's election, the subtenant will attorn to Lessor and recognize Lessor as Lessee's successor under the sublease for the balance of the sublease term if this Lease is surrendered by Lessee or terminated by reason of Lessee's default.

24. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease (collectively called "Notices") shall be in writing and given by any one of the following: (A) hand delivery, (B) express overnight delivery service, (C) certified or registered mail, return receipt requested or (D) facsimile, provided that a copy of such facsimile is also sent via certified or registered mail, return receipt requested, or by overnight delivery service, within one Business Day of the transmission of such facsimile, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next Business Day, if delivered by a reputable express overnight delivery service, (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested, or (iv) transmission, if delivered by facsimile pursuant to the requirements of Section 24.D above. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:

Sample Lease
1-4-2009

If to Lessee:

Berry-Hinckley Industries
 Attn: Paul A. Morabito
 425 Maestro Drive
 Reno, NV 89511
 Telephone: (775) 689-1222
 Facsimile: (775) 689-1232

With a copy to:

Hodgson Russ LLP
 Attn: Sujata Yalamanchili
 One M&T Plaza, Suite 2000
 Buffalo, NY 14023
 Telephone: (716) 848-1657
 Facsimile: (716) 849-0349

If to Lessor:

With a copy to

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

25. **Holdover.** If Lessee remains in possession of the Property after the expiration of the term hereof, Lessee, at Lessor's option and within Lessor's sole discretion, may be deemed a Lessee on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease.

26. **Intentionally Omitted.**

27. **Surrender.** At the expiration of the Lease Term, Lessee may remove from the Property all of Lessee's Fixtures and Equipment. Lessee shall repair any damage caused by such removal and shall leave the Property broom clean and in good and working condition and repair inside and out, and comply with all of the requirements of Section 12.D hereof. Lessor may, in its sole discretion, elect to retain or dispose of in any manner any Fixtures or Equipment, personal property and vehicles to which Lessee is entitled but which Lessee does not remove from the Property pursuant to this Section within ten (10) days after notice, provided, however, that upon demand, Lessee shall reimburse Lessor for all costs incurred by Lessor in removing any Fixtures and Equipment and any all personal property, vehicles and inventory, Hazardous

Materials, USTs and related equipment, located in or about the Property that are left therein by Lessee or in restoring the Property to the condition required by this Lease.

28. **Financial Statements; Compliance Certificate.** Once per calendar year, and within 120 days after the end of Lessee's fiscal year, Lessee shall furnish to Lessor audited financial statements of Lessee for the immediately preceding fiscal year. Lessor shall maintain such statements in confidence but may disclose any financial statements furnished by Lessee to Lessor's lawyers, any prospective purchaser of the Property who has entered into a signed purchase agreement with Lessor, prospective and existing lenders of Lessor, and to Lessor's consultants and accountants; Lessor shall advise such permitted recipients that the financial statements furnished to them are to be held in confidence. In no event shall Lessor knowingly disclose Lessee's financial statements to competitors of Lessee.

29. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform (each, a "Force Majeure Event") shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

30. **No Merger.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of the Property by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (A) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (B) the fee estate or ownership of the Property or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

31. **Characterization.** Lessor and Lessee acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

32. **Easements.** During the Lease Term, Lessor shall not have the right to grant easements on, over, under and above the Property without the prior consent of Lessee, which consent will not be unreasonably withheld, conditioned or delayed.

33. **Bankruptcy.** Intentionally Omitted.

34. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party shall be

entitled to recover all of its reasonable attorneys' fees and other Costs in addition to any other relief to which it may be entitled. In addition, the prevailing party shall, upon demand, be entitled to all attorneys' fees and all other Costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

35. **Memorandum of Lease.** Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor's standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, a description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public. Further, upon Lessor's request, Lessee agrees to execute and acknowledge a termination of lease and/or quit claim deed in recordable form to be held by Lessor until the expiration or sooner termination of the Lease Term.

36. **No Broker.** Lessor and Lessee represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Property. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

37. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** Lessor and Lessee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought by either of the parties hereto against the other or its successors with respect to any matter arising out of or in connection with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Property, and/or any claim for injury or damage, or any emergency or statutory remedy. This waiver by the parties hereto of any right either may have to a trial by jury has been negotiated and is an essential aspect of their bargain. Furthermore, Lessee hereby knowingly, voluntarily and intentionally waives the right it may have to seek punitive, consequential, special and indirect damages from Lessor, Lessor's Lenders, and any of the Affiliates, officers, directors, members, managers or employees of Lessor, Lessor's Lenders, or any of their successors with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought with respect to any matter arising out of or in connection with this Lease or any document contemplated herein or related hereto. The waiver by Lessee of any right it may have to seek punitive, consequential, special and indirect damages has been negotiated by the parties hereto and is an essential aspect of their bargain.

38. **Miscellaneous.**

A. *Time Is of the Essence.* Time is of the essence with respect to each and every provision of this Lease.

B. *Waiver and Amendment.* No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an

amount less than the Rental and other Monetary Obligations stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.

C. *Successors Bound.* Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

D. *Captions.* Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Severability.* The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

F. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease; provided such documents are reasonably acceptable to each parties' counsel.

G. *Entire Agreement.* This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

H. *Forum Selection; Jurisdiction; Venue; Choice of Law.* For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Nevada. Lessee consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Nevada in accordance with applicable law. Furthermore, Lessee waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section shall limit or restrict the right of Lessor to commence any proceeding in the federal or state courts located in the state where each Property is located to the extent Lessor deems such proceeding necessary or advisable to exercise remedies available under this Lease.

I. *Counterparts.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

J. *Prohibited Persons and Transactions.* Lessee and Lessor (each a "Representing Party") represents to its current knowledge to the other that the Representing Party is not a person or entity, nor owns property or interests in property, which is blocked pursuant to Executive Order 13224 signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism" or under any rules and regulations related thereto.

39. **Intentionally Omitted.**

40. **Amendments to Accommodate Sale to Tenants In Common.** At the request of Lessor, Lessee shall execute any amendments to this Lease that Lessor deems reasonably necessary to accommodate Lessor's sale of the Property to tenants in common (and subsequent management of the Property by such tenants in common or a manager appointed by them), provided that such amendments do not materially and negatively impact Lessee's obligations hereunder.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Tax Identification No.

STATE OF California)
COUNTY OF San Joaquin) ss.

The foregoing instrument was acknowledged before me on Dec 2, 2005 by Chris. Gonzales, the Notary Public of Edward C. Woolley, on behalf of the limited liability company. Judith A. Woolley

Notary Public

My Commission Expires: Apr 1, 2009



LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation

By: 

Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

California
STATE OF ~~NEVADA~~

Orange
COUNTY OF ~~WASHINGTON~~)ss

The foregoing instrument was acknowledged before me on 1/4/06 by Paul Morabito, as Chief Executive Officer of **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation, on behalf of the corporation.

My Commission Expires: 2/14/07


Notary Public

EXHIBIT 7

100-42676

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of _____, 2006 by and between EDWARD WOOLEY AND JUDITH WOOLEY, individuals (collectively "Lessor") and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

In consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

1. **Certain Defined Terms.** Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.
2. **Lease of Property; Use; Possession.** In consideration of the Rentals and other Monetary Obligations to be paid by Lessee and of the other terms, covenants and conditions on Lessee's part to be kept and performed, Lessor hereby leases to Lessee, and Lessee hereby takes and leases, the Property (as such term is defined in Exhibit A attached hereto and which Property is located at the address set forth in Exhibit B attached hereto and situated on the real property legally described in Exhibit B attached hereto) and commonly known as 1365 Baring Boulevard Sparks, Nevada, subject to the Permitted Encumbrances, all Legal Requirements (including any existing violation thereof), and the condition of the Property as of the Effective Date; *provided, however,* that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any Permitted Encumbrance which may have expired or been terminated. During the Lease Term, the Property shall be used for the operation of a Permitted Facility, and lawful or related purposes such as ingress, egress and parking.
3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May __, 2006 ("Effective Date") and shall expire at midnight on October 31, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this Lease shall terminate on the last day of the Initial Term or, if applicable, the last day of the Extension Term then in effect.
4. **Rental and Other Monetary Obligations.**
 - A. **Base Monthly Rental.** During the Initial Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental; *provided, however,* if the Effective Date is a date other than the first day of the month, Lessee shall

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pay to Lessor (or any other party designated by Lessor) on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month. During the Extension Terms, if any, Lessee shall pay the Rental (including the Base Monthly Rental) in the manner set forth in this Section 4. Unless otherwise specifically stated to the contrary herein, Lessee shall perform all its obligations under this Lease at its sole cost and expense and shall pay all Rental and any other Monetary Obligation due hereunder when due and payable, without notice or demand.

B. *Adjustments.* On the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rent Adjustment. The "Rent Adjustment" shall be an amount equal to two (2) percent of the Base Annual Rental in effect immediately prior to the applicable Adjustment Date. The Adjustment Date shall be on the annual anniversary of the Effective Date.

C. *Additional Rental.* Lessee shall pay and discharge, as additional rental ("Additional Rental"), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Base Annual Rental or Base Monthly Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within five (5) days after Lessor's demand for payment thereof or, if later, when the same are due. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

D. *Payment of Rental and Other Monetary Obligations.* All Rental and other Monetary Obligations which Lessee is required to pay hereunder shall due without any setoff, abatement, deferment, deduction or counterclaim whatsoever, except as set forth herein. All payments of Base Monthly Rental and any other Monetary Obligations payable to Lessor shall be remitted to Lessor at Lessor's address set forth in the first paragraph of this Lease or such other address as Lessor may designate pursuant to Section 24 hereof.

E. *Late Payment Charge.* Lessee acknowledges that late payment by Lessee to Lessor of Rental will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix in advance. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the Property. Therefore, if any payment which is required to be made by Lessee to Lessor pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, then Lessee shall pay to Lessor, as a late payment charge, five percent (5%) of the amount of the delinquent payment. Additionally, if any payment which is required to be made by Lessee pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, such

payment shall bear interest at the Default Rate until received by Lessor. The late payment charge and default interest shall be paid to Lessor at the time of payment of the delinquent amount. The late payment charge and the default interest charge shall compensate Lessor for the expenses incurred by Lessor in financing, collecting and processing the late payment. The parties agree that the late charge and the default interest charge represent a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Lessee.

5. **Gaming.** Lessor hereby conditionally assigns to Lessee all leases, written or oral, and all agreements for use or occupancy of the Property together with any and all extensions and renewals thereof and any and all further leases, subleases, lettings or agreements (including subleases thereof and tenancies following attornment) upon or covering the use or occupancy of the Property all of which leases, agreements, subleases and tenancies are herein sometimes collectively referred to as the "Assigned Leases"; (ii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or which may now or hereafter become due from or out of the Assigned Leases or any part thereof, including, but not limited to, security deposits, minimum rents, additional rents, parking rents, deficiency rents and liquidated damages following default, any premium payable by any tenant upon the exercise of a cancellation privilege contained in its Lease; all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property; any and all rights and claims of any kind which Lessor has or hereafter may have against the tenants under the Assigned Leases and any subtenants and other occupants of the Property; any award granted Lessor after the date hereof in any court proceeding involving any tenant in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by any tenant in lieu of rent (any and all such moneys, rights and claims identified in this paragraph are herein sometimes referred to as the "Rents" and sometimes as the "Rent"); and (iii) all of the rights, powers and privileges of Lessor (A) to accept prepayment of more than one (1) monthly installment of the Rent thereunder, and (B) except with respect to the Assigned Lease, (I) to cancel, terminate or accept the surrender of any Assigned Lease, and (II) to amend, modify or abridge any of the terms, covenants or conditions of any Assigned Lease. The assignment contained in this Section 5 and Lessee's interest in the Assigned Leases shall become void and of no further force or effect upon the expiration or early termination of this Lease and upon such event, Lessor shall be the sole party with any interest as a landlord or lessor in the Assigned Leases. Furthermore, Lessee shall have no right to collect any amounts under the Assigned Leases upon the occurrence and continuance of an Event of Default and all such amounts shall be paid to Lessor during any such period.

6. **Nevada Gaming Control Board.** Lessor will follow all laws of the State of Nevada, and cooperate with Winner's Gaming Inc. ("WGI") or its successor in making application to the Nevada Gaming Control Board if such application or approval is required.

7. **Rentals To Be Net to Lessor.** The Base Annual Rental payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the Rentals specified during the Lease Term, and all Costs and obligations of every kind and nature whatsoever relating to the Property shall be performed and paid by Lessee, including but not limited to all impositions, operating

charges, maintenance charges, construction costs and any other charges, costs and expenses now existing or that arise or may be contemplated under the Permitted Encumbrances or otherwise, all maintenance and repair expenses, all utility expenses, all Taxes, all premiums for insurance required to be maintained by Lessee pursuant to the terms hereof and all other expenses, charges, assessments and costs associated with the Property or otherwise provided to be paid by Lessee pursuant to the terms of this Lease. All such charges, costs and expenses shall constitute Additional Rental and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Base Annual Rental. It is the intention of the parties except as expressly provided herein that this Lease shall not be terminable for any reason by Lessee, and that Lessee shall in no event be entitled to any abatement of, or reduction in, Rental payable under this Lease, except as otherwise expressly provided herein. Any present or future law to the contrary shall not alter this agreement of the parties.

8. **Taxes and Assessments.** Lessee shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance, one hundred percent (100%) of the following (collectively, "Taxes"): all taxes and assessments of every type or nature assessed against or imposed upon the Property or Lessee during the Lease Term, including without limitation, all ad valorem taxes, assessments and special assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, or any tax or charge levied in lieu of such taxes and assessments; all taxes, charges, license fees and or similar fees imposed by reason of the use of the Property by Lessee; and all excise, transaction, privilege, license, sales, use and other taxes upon the Rental or other Monetary Obligations hereunder, the leasehold estate of either party or the activities of either party pursuant to this Lease, and all interest, surcharges or service or other fees payable in connection with the foregoing.

Upon request of Lessor, Lessee shall, upon prior written request of Lessor, provide Lessor with evidence reasonably satisfactory to Lessor that such payment was made in a timely fashion. Lessee may, at its own expense, contest or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that (A) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (B) no monetary Event of Default has occurred, (C) Lessee shall promptly provide Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceeding, and (D) Lessee shall indemnify and hold Lessor harmless against any loss, Costs or damages arising from or related to such contest.

If Lessee shall fail to pay any Taxes when due and before any delinquency, penalty or interest is imposed on such Taxes, Lessor shall have the right to pay the same after notice to Lessee, in which case Lessee shall repay in full such amount to Lessor with Lessee's next Base Monthly Rental installment together with interest at the Default Rate.

9. **Utilities.** Lessee shall contract, in its own name, for and pay when due (and hold Lessor free and harmless from) all charges for the connection and use of water, gas, electricity,

telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term. All utility charges, assessments and fees for the last year of the Lease shall be prorated as of the termination date of this Lease. No full or partial utility deprivation including, but not limited to, blackout, brownout, or rationing, nor any loss of or damage to improvements related to disruption or failure of any utility service shall give rise to any abatement of Rentals nor give rise to any right of Lessee to offset Rentals or to terminate the Lease, unless caused by the gross negligence or willful misconduct of Lessor or its agents, employees or contractors (but not of any other tenants or occupants of the Property). Lessor shall reasonably cooperate with Lessee, but without out-of-pocket expense to Lessor, in Lessee's efforts to restore utility service to the Property; provided, however, that if the utility service was disrupted due to Lessor's gross negligence or willful misconduct, then the cost of such restoration shall be borne by Lessor.

10. **Insurance.** Throughout the Lease Term, Lessee shall maintain, at its sole expense, the following types and amounts of insurance:

A. Insurance against loss or damage to the Property and all buildings and improvements thereon under an "all risk" insurance policy, which shall include coverage against all risks of direct physical loss, including loss by fire, lightning, and other risks normally included in the standard ISO special form (which shall include coverage for all risks commonly insured for properties similar to the Property in the Reno, Nevada area, including insurance coverage for damage caused by earthquake, flood, tornado, windstorm and other disasters for which insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Lessor from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an increased cost of construction endorsement, debris removal coverage and a waiver of subrogation endorsement in favor of Lessor. While any portion of the improvements on the Property is being rebuilt on the Land, Lessee shall provide such property insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy in an amount equal to 100% of the full insurable replacement value of the improvements on the Property or such portion as is being rebuilt. The insurance policy shall insure Lessee as loss payee. No parties other than Lessor, Lessor's Lender and Lessee may be named as insureds or loss payees on such property insurance policy.

B. Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury, liquor liability coverage (to the extent liquor is sold or manufactured at the Property), garage liability coverage including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Property or adjoining ways, streets, parking lots or sidewalks. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Section 15 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee, Lessor or

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(vi) Provide that the insurer shall not have the option to restore the Property if Lessor elects to terminate this Lease in accordance with the terms hereof;

(vii) Be in amounts sufficient at all times to satisfy any coinsurance requirements thereof;

(viii) Except for workers' compensation insurance referred to in Section 10.C above, name Lessor and any Lessor Affiliate requested by Lessor, as an "additional insured" (and, with respect to any Lessor's Lender designated by Lessor, as an "additional insured mortgagee") with respect to general liability insurance, and as a "named insured" with respect to real property and "loss payee" with respect to all real property and rent value insurance, as appropriate and as their interests may appear;

(ix) Be evidenced by delivery to Lessor and any Lessor's Lender designated by Lessor of an Acond Form 28 for property coverage (or any other form requested by Lessor) and an Acond Form 25 for liability, workers' compensation and umbrella coverage (or any other form requested by Lessor); provided that in the event that either such form is no longer available, such evidence of insurance shall be in a form reasonably satisfactory to Lessor and any lender designated by Lessor; such certificates of insurance shall be delivered to Lessor prior to the Effective Date; and

(x) Be issued by insurance companies licensed to do business in the states where the Property is located and which are rated A:VIII or better by Best's Insurance Guide or are otherwise approved by Lessor.

It is expressly understood and agreed that (I) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by Lessee, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Lessee shall immediately obtain new or additional insurance reasonably satisfactory to Lessor and any lender designated by Lessor; (II) the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease; and (III) Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any servicer or lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times.

Lessee shall pay as they become due all premiums for the insurance required by this Section 10. In the event that Lessee fails to comply with any of the foregoing requirements of this Section 10 within ten (10) days of the giving of written notice by Lessor to Lessee, Lessor shall be entitled to procure such insurance. Any sums expended by Lessor in procuring such insurance shall be Additional Rental and shall be repaid by Lessee, together with interest thereon at the Default Rate, from the time of payment by Lessor until fully paid by Lessee immediately upon written demand therefor by Lessor.

Anything in this Section 10 to the contrary notwithstanding, any insurance which Lessee is required to obtain pursuant to this Section 10 may be carried under a "blanket" policy or policies covering other properties or liabilities of Lessee provided that such "blanket" policy or policies that otherwise comply with the provisions of this Section 10 and specify the location of the Property.

11. **Intentionally Omitted**

12. **Compliance With Laws, Restrictions, Covenants, Encumbrances and Agreements.** It is expressly understood and agreed that the obligations of Lessee under this Section shall survive the expiration or earlier termination of this Lease for any reason.

A. *Legal and Gaming Law Compliance.* Lessee's use and occupation of the Property, the use and occupation of the Property by any other person (including but not limited to any subtenants and WGI) and the condition of the Property, shall, at Lessee's sole cost and expense, comply with all Legal Requirements (including without limitation the Americans with Disabilities Act and all Legal Requirements related to gaming operations and the sales of tobacco and liquor on the Property). Lessee shall promptly file, or cause to be filed, and provide to Lessor any notices, reports or other filings that Lessee or any other Person is required to file or provide to any Governmental Authorities regarding the business operations conducted on or from the Property, including but not limited to those described in Subsection D(iii) hereof and those required by Governmental Authorities with respect to gaming operations and the sales of tobacco and liquor on the Property, including any filings required to be made in connection with the change of ownership or control of Lessee and, within fifteen (15) days of Lessee's receipt of written notice from Lessor of any planned or actual change in the ownership or control of Lessor or any planned or actual change in the ownership of the Property.

B. *Acts Resulting in Increased Insurance Rates.* Lessee will use its commercially reasonable efforts to prevent any act or condition to exist on or about the Property which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase. Lessee shall comply with all orders and directives of any insurance companies issuing liability, fire, or extended coverage insurance pursuant to Section 10 hereof, and Lessee shall not do, bring, or keep anything in or about the Property that will cause a cancellation of any insurance covering the Property.

C. *Prevention of Nuisance.* Lessee shall not commit nor cause or permit to be committed any public or private nuisance on the Property.

D. **Environmental.**

(i) *Covenants.* All uses and operations on or of the Property, including the use and operation of UST's on the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto. Lessee shall keep the Property or cause the

Property to be kept free and clear of all Environmental Liens due to any act or omission of Lessee.

(ii) *Notification Requirements.* Lessee shall immediately notify Lessor in writing upon Lessee obtaining actual knowledge of (1) any Releases or Threatened Releases in, on, under or from the Property other than in Permitted Amounts, or migrating towards any of the Property; (2) any non-compliance with any Environmental Laws related in any way to any of the Property; (3) any actual or potential Environmental Lien; (4) any required or proposed Remediation of environmental conditions relating to any of the Property required by applicable Governmental Authorities; and (5) any written or oral notice or other communication which Lessee becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances or USTs, or Remediation thereof at or on the Property, other than in Permitted Amounts, possible liability of any Person relating to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Subsection D.

(iii) *Reports and Investigations.* Lessee shall promptly supply Lessor with copies of all reports of any testing of the Property conducted by or at the request of Lessor or any Governmental Authorities and all submissions by Lessee to any Governmental Authority concerning environmental matters, the USTs, or Hazardous Materials. Lessee shall furnish to Lessor certificates of enrollment issued by the State of Nevada, Division of Environmental Protection, for each UST at the Property no later than October 30 of each year, and gasoline storage tank permits issued by the Department of Air Quality Management of the County in which the Property is located with respect to each UST on the Property no later than May 5 of each year, and such other certificates or permits as may be issued or required by any other Governmental Authority; all of the foregoing shall evidence continuing compliance of each UST on the Property with all applicable Legal Requirements. Additionally, upon Lessor's reasonable request in the event that Lessor reasonably suspects that Contamination (as hereafter defined) may have occurred or be occurring at the Property, Lessee agrees to perform, at Lessee's sole expense, an environmental assessment of the Property, including soil borings, to confirm whether such Contamination is occurring.

(iv) *Indemnification.* Lessee shall indemnify, defend, protect and hold each of the Indemnified Parties free and harmless from and against any and all Losses, arising from or caused in whole or in part, directly or indirectly, by any of the following, unless arising from or caused by the gross negligence or willful misconduct of the Indemnified Party requesting indemnification: (a) the use, storage, transportation, disposal, release, discharge or generation of Hazardous Materials to, in, on, under or about the Property (whether occurring before or after the date hereof) (any of the foregoing in violation of Legal Requirements is

"Contamination"), including diminution in value of the Property; and (b) the cost of any required or necessary repair, remediation, cleanup or detoxification and the preparation of any closure or other required plans or reports, whether such action is required or necessary prior to or following transfer of title to the Property (such acts are sometimes referred to herein as "Corrective Action"), and (c) Lessee's failure to comply with any Legal Requirements. Lessee's obligations to perform Correction Action shall include, without limitation, and whether foreseeable or unforeseeable, all cost of any investigation (including consultants and attorneys fees and testing) required or necessary repair, remediation, restoration clean up, detoxification or decontamination of the Property and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the Term of this Lease. This agreement to indemnify, defend, protect and hold harmless each of the Indemnified Parties shall be in addition to any other obligations or liabilities Lessee may have to Lessor or the Indemnified Parties, if any, at common law under all statutes and ordinances or otherwise and survive the termination of the Lease.

In the event that Lessee is required to perform Corrective Action to address any Contamination, Lessee shall perform such activities in a diligent manner. In the event that Lessee has not completed its Corrective Action (if necessary), as required herein, by the expiration of the Lease Term, Lessor shall grant Lessee, and its consultants, contractors and agents a revocable license, at no cost to Lessee except as set forth in the succeeding sentence, to enter upon the Property from and after the date of expiration of the Lease Term to conduct Corrective Action and to place and remove all necessary equipment and improvements on the Property sufficient to satisfy the requirements of all Governmental Authorities regarding the Contamination. If such post-expiration Corrective Action will unreasonably interfere with a reasonably foreseeable intended commercial use of the Property (i.e., if Lessor cannot reasonably lease the Property for reasonable commercial uses at reasonable market rents), the Lease Term shall be extended until sixty (60) days after the Corrective Action has been performed such that post-expiration Corrective Action by Lessee no longer unreasonably interferes with a reasonably foreseeable commercial use of the Property, and Lessee agrees to keep Lessor apprised of the anticipated completion date of the Corrective Action.

E. **Intentionally Omitted.**

F. **Dealer Requirements.** In addition to the requirements set forth in this Lease, Lessee, in its use, occupancy and maintenance of the Property shall comply with all requirements of its Dealer Agreements with Dealer. Lessee hereby consents to Lessor providing information it obtains to Dealer and to Lessor obtaining from Dealer information which Dealer receives relating to Lessee's operation of its business on the Property.

G. *WGI Agreements.* Lessee represents that the WGI Agreement is in full force and effect, and that the WGI Agreement permits WGI to operate gaming machines on the Property. Lessee shall abide by all the terms and conditions of the WGI Agreement, and Lessee represents and warrants that WGI has approved this Lease, if WGI has such approval rights under the WGI Agreement.

13. **Maintenance; Repairs and Reconstruction.** Lessee shall, at its sole cost and expense, be responsible for keeping all of the buildings, structures, improvements and signs erected on the Property in good and substantial order, condition, and repair, including but not limited to replacement, maintenance and repair of all structural or load-bearing elements, roofs, walls, foundations, gutters and downspouts, heating, ventilating and air conditioning systems, any building security and monitoring system, windows, walls, doors, electrical and other utility systems and equipment, mechanical equipment, plumbing and all other components of the buildings, mowing of lawns and care, weeding and replacement of plantings; replacing, resurfacing and striping of walkways, driveways and parking areas, and adjacent public sidewalks; removal of snow and ice from the Property and adjacent public sidewalks, removal of trash, maintenance of utility lines and exterior lighting and signage on Property, and any maintenance, repairs or replacements (or fees or reserves therefor) as may be required by any Permitted Encumbrances. All such replacements, maintenance and repair shall keep the Property in good repair and in a clean, safe, and sanitary condition and in compliance with all Legal Requirements and insurance regulations. Lessee must make all repairs, corrections, replacements, improvements or alterations necessitated by age, Lessee's use, or natural elements or as required pursuant to Governmental Authorities or Legal Requirements. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs, corrections, improvements or alterations at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition or repair, or which would otherwise require Lessor to make repairs, corrections, improvements, replacements or alterations. If the buildings or any improvements on the Property violate any Permitted Encumbrances or Legal Requirements, then Lessee shall, upon the written demand of a Governmental Authority or the written demand of a party to or beneficiary of any Permitted Encumbrance, repair, restore, relocate and/or rebuild the same in accordance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances.

Lessee shall, at its sole cost and expense, be responsible to repair or reconstruct damage or destruction to any buildings, structures or improvements erected on the Property from acts of God or any other catastrophes or causes. Any such repairs or reconstruction shall restore the buildings and all improvements on the Property to substantially the same condition immediately prior to such damages or destruction and this Lease shall remain in full force and effect, provided, however, that Lessee shall have the right to replace the improvements with different structures so long as (a) the value of the Property with such different structures is no less than the value of the Property immediately prior to the date of casualty and the different square footage of the new buildings is no less than the buildings existing as of the date hereof, and (b) the new structure can be built and occupied in compliance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and

the Permitted Encumbrances. Such repair, restoration, relocation and rebuilding (all of which are herein called a "repair") shall be commenced within a reasonable time however no more than thirty (30) days after the later of (i) the date that such damage or destruction occurred, (ii) the date that all permits and other approvals necessary to authorize such rebuilding have been issued following reasonable pursuit of the same by Lessee, and (iii) the date that any insurance proceeds payable to Lessor or its lender in conjunction with such damage or destruction, if any, have been made available to Lessee as set forth herein; thereafter, the repair shall be diligently pursued to completion. Lessee shall give Lessor at least fifteen (15) days written notice prior to commencing the repair to permit the Lessor to post appropriate notices of non-responsibility, and all such repair work shall be subject to the provisions of Section 14 hereof related to alterations, improvements and additions to the Property.

The proceeds of any insurance maintained under Section 10 hereof shall be made available to Lessee for payment of costs and expense of repair.

14. Waste; Alterations and Improvements; Trade Fixtures and Equipment. Lessee shall not commit actual or constructive waste upon the Property. During the Lease Term, Lessee may construct any additions or improvements to the Property and make such structural or non-structural alterations to the Property as are reasonably necessary or desirable for Lessee's use of the Property for a Permitted Facility. All improvements, alterations, or additions shall be constructed by Lessee at Lessee's sole cost and expense. Prior to the commencement of construction of any additions, improvements, or alterations to the Property, Lessee shall give Lessor at least fifteen (15) days written notice to allow Lessor to post appropriate notices of non-responsibility. Notwithstanding anything herein to the contrary, without Lessor's prior written consent, Lessee shall not make any alterations that will decrease the value or function of the improvements located on the Property.

Lessee's right to make any alterations, improvements and additions shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate Governmental Authorities, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner. All alterations, improvements or other construction by Lessee shall be in compliance with all Legal Requirements, and all alterations and improvements shall be done and performed in good and workmanlike manner, using new and first quality materials. All costs of any such improvements shall be paid by Lessee.

Upon completion of any such work, Lessee shall submit to Lessor as-built plans of any structural, mechanical or interior utility improvements and alterations made, a sworn construction statement, lien waivers from all persons or entities providing materials, services or equipment for the work completed and, if available, an endorsement to Lessor's policy of title insurance or other evidence from a title company confirming the absence of any liens or other matters of record related to the work performed.

Unless expressly released by Lessor in writing, all improvements or alterations shall be and remain, at the time of expiration or other termination of this Lease, the property of Lessor without payment or offset unless such improvements are not attached to the Property.

Notwithstanding anything herein to the contrary, all plumbing, electrical, HVAC equipment, doors, ceiling and floor tiles, and wall coverings shall become the property of Lessor and remain in place on the Property upon expiration or other termination of this Lease.

During the Lease Term, Lessee shall have the right to locate in the Property such personal property, furniture, trade fixtures, and equipment (hereafter referred to as "Fixtures and Equipment") as shall be considered by Lessee to be appropriate or necessary to Lessee's use and occupancy of the Property.

All Fixtures and Equipment shall be provided by Lessee at Lessee's own cost and expense. During the term of this Lease, Lessee may remove any Fixtures and Equipment installed by Lessee, and any and all such Fixtures and Equipment shall remain the sole property of Lessee. Lessee shall perform (and pay all costs associated with) any and all restoration necessitated by the removal of Lessee's Fixtures and Equipment, including but not limited to damage resulting from removal of any of Lessee's signs in or about the Property.

Lessee shall keep the Property free and clear of all mechanic's, materialmen or similar liens, including, but not limited to, those resulting from the construction of alterations, improvements, additions, trade fixtures, and equipment performed by or for Lessee.

Lessee shall have the right to contest the correctness or validity of any such lien if Lessee first procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the state in which the Property are located in an amount required by Legal Requirements to remove such lien. The bond or its equivalent shall meet all applicable requirements of the state in which the Property are located. In the event that any lien does so attach, and is not released within thirty (30) days after written notice to Lessee thereof, Lessor, in its sole discretion, may pay and discharge the same and relieve the Property therefrom, and Lessee agrees to repay and reimburse Lessor as Additional Rental upon demand for the amount so paid by Lessor. On final determination of the lien or claim of lien Lessee will immediately pay any judgment rendered, and all costs and charges, and shall cause the lien to be released or satisfied. In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is in its best interest to do so.

15. **Indemnification.** Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor's agents and employees from all claims for any damage or injury to the full extent permitted by law. Lessee agrees that Lessor shall not be responsible or liable to Lessee or Lessee's employees, agents, customers or invitees for bodily injury, personal injury or property damage occasioned by the acts or omissions of any other lessee or such lessee's employees, agents, contractors, customers or invitees. In addition to other specific indemnification provisions set forth in this Lease, Lessee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Lessee's use and occupancy of the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee or any Person thereon, with supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Lessee, its officers, employees, agents or other

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Persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

16. **Quiet Enjoyment.** So long as Lessee shall pay the Rental and other Monetary Obligations herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Lessee shall have, subject and subordinate to Lessor's rights herein, the right to the peaceful and quiet occupancy of the Property, subject to the Permitted Encumbrances, Laws and the WGI Agreement and any use or occupancy agreements, leases or licenses now affecting the Property or hereinafter made by Lessee.

17. **Inspection; Right of Entry.** Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and to inspect the same; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease or by law; to show the Property to prospective brokers, agents, buyers, or persons interested in an exchange, at any time; and to show the Property to prospective tenants within two hundred forty (240) days prior to the expiration of this Lease or any time during the option period and to place upon the Property any "to let" or "for lease" signs at any time within two hundred forty (240) days prior to the expiration of this Lease. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but, subject to Section 37, excluding damages arising as a result of the negligence or intentional misconduct of Lessor.

18. **Condemnation and Casualty.**

A. *Damage or Destruction to the Property; No Abatement of Rent.* If the Property is damaged or destroyed as a result of fire or other casualty Lessee shall promptly restore the Property pursuant to the terms of Section 13 hereof. Notwithstanding the partial or total destruction of the Property and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of Rentals or of any other obligation of Lessee hereunder including, without limitation, payment of operating expenses, insurance premiums and Taxes, by reason of such damage or destruction unless the Lease is terminated by virtue of another provision of this Lease.

B. *Option to Terminate.* If the Property is damaged or destroyed during the last one (1) year of the Lease Term to the extent that the Property is untenable, Lessee may terminate this Lease as of the date of such damage or destruction by giving written notice to Lessor of such election within thirty (30) days following the date of such fire or other casualty, in which case, all insurance proceeds related to the Property (other than attributable to Lessee's Fixtures and Equipment) will be paid over to Lessor, or if required by Lessor's Lender, to such lender.

C. *Termination Upon Taking.* If as a consequence of a Taking, (i) any part of the convenience store building on the Property; or (ii) twenty-five percent (25 %) or more

of the parking area at the Property shall be taken and Lessee determines in its reasonable discretion that such Taking will have a material adverse impact on the ability of Lessee to conduct its normal business operations from the Property, then, within thirty (30) days after the date on which Lessee receives written notice of such Taking, Lessee may terminate this Lease by written notice to Lessor which termination shall be effective as of the date the condemning authority takes actual possession of the portion of the Property that is subject to the Taking. If Lessee terminates this Lease, Lessor shall promptly refund to Lessee all unearned Annual Base Rental and other amounts paid in advance by Lessee.

D. *Obligation to Restore.* If a Taking does not result in a termination of this Lease pursuant to Subsection C hereof, Lessee shall restore the Property to a condition similar in physical appearance to that which existed immediately prior to the Taking to the extent possible such that Lessee can conduct its normal business operations. Lessee shall commence such restoration within ninety (90) days after the occurrence of the taking and shall complete such restoration within six (6) months after the occurrence of the taking.

E. *Condemnation Award.* Any condemnation award payable during the term of this Lease shall belong to and be paid to Lessor, including but not limited to awards payable with respect to damage to either the fee or leasehold estates, except that Lessee shall receive from the award the following:

(i) If Lessee exercises its rights to terminate this Lease, the portion of the award, if any, attributable to Lessee's Equipment or Fixtures that are taken in the Taking and the unamortized cost of any leasehold improvements made to the Property by Lessee after the date hereof that are taken in the Taking.

(ii) The portion of the award, if any, attributable to severance damages for the repair or restoration of the Property (herein called "repair"), but only if Lessee does not exercise Lessee's right to terminate the Lease and further provided, that such damages shall be deposited and disbursed in accordance with the provisions hereof related to the handling of insurance proceeds that are applied to a repair of the Property and Lessee shall promptly commence and diligently complete the repair so that upon completion the Property will have a character and commercial value as nearly as possible equal to the value of the Property immediately prior to the taking, and further provided that, in the event such damages are insufficient to cover the cost of repair, then any amounts required over the amount thereof that are required to complete said repair shall be promptly deposited with the disbursing entity by Lessee in advance of commencing the repair.

(iii) Additionally, if this Lease is terminated as a result of any such taking, Lessee shall be permitted to recover its relocation expenses and the going concern value of Lessee's business from the condemning authority (but not from

Lessor or the portion of the award otherwise payable to Lessor) as provided by law.

19. Intentionally Deleted.

20. **Default, Conditional Limitations, Remedies and Measure of Damages.**

A. *Event of Default.* Each of the following shall be an event of default by Lessee under this Lease (each, an "Event of Default"):

(i) If any Rental or other Monetary Obligation due under this Lease is not paid within five (5) Business Days of notice it is past due,

(ii) if there is an Insolvency Event;

(iii) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; *provided, however*, if any such failure does not involve the payment of any Monetary Obligation, does not place any rights or property of Lessor in immediate jeopardy, as determined by Lessor in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of thirty (30) days shall have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such thirty (30) day period, as determined by Lessor in its reasonable discretion, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30) day period. If Lessee shall fail to correct or cure such failure within such period and said period is not extended by the parties, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(iv) if Lessee shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution.

B. *Remedies.* Upon the occurrence of an Event of Default, Lessor shall provide notice thereof to WGI and shall provide WGI with a thirty day period in which to elect, by notice to Lessor, to cure such Event of Default, in which case, Lessor will provide WGI reasonable access to the Premises to cure such Event of Default, and will accept such cure as if performed by Lessee. WGI may also elect within such thirty day period, to take an assignment of tenant's interests under this Lease, in which case, WGI will have a period of one hundred twenty (120) days following such assignment in which to further assign such tenant's rights, or to sublet the Premises, to a entity or person which will operate the Premises as a Permitted Facility, without the need for Lessor's consent or approval.

If WGI does not elect either such option then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:

(i) To terminate this Lease, whereupon Lessee's right to possession of the Property shall cease and this Lease, except as to Lessee's liability, shall be terminated. Upon such termination, Lessor shall be entitled to recover liquidated damages equal to the total of (i) the cost of recovering possession of the Property; (ii) the unpaid Rental earned at the time of termination, plus interest at the Default Rate thereon; (iii) late charges and interest at the Default Rate on the unpaid Rental; (iv) the present value of the balance of the Base Annual Rental for the remainder of the Lease Term using a discount rate of four percent (4%), less the present value of the reasonable rental value of the Property for the balance of the Term remaining after a one-year period following repossession using a discount rate of four percent (4%); (v) costs of operating the Property until relet and the reasonable costs of performing any obligations of Lessee under this Lease to be performed upon termination or expiration of this Lease (including but not limited to the Lessee's obligations under Sections 12.D and 27 hereof); and (vi) any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default.

(ii) To the extent not prohibited by applicable law, to reenter and take possession of the Property (or any part thereof) without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor's rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate, and Lessor may recover liquidated damages as set forth in Subsection (i) above.

(iii) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.

(iv) To relet the Property or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor may, in its sole

discretion, determine, which other Monetary Obligations include, without limitation, all commercially reasonable repossession costs, brokerage commissions, attorneys' fees and expenses and repair costs. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(v) To recover from Lessee all Costs paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(vi) To immediately or at any time thereafter, and with or without notice, at Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor's right to exercise any or all remedies set forth herein.

(vii) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease.

(viii) To seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

All powers and remedies given by this Section to Lessor, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

C. *Default by Lessor.* Lessor shall be in default under this Lease if Lessor fails or refuses to perform any obligation of Lessor under the terms of this Lease, and if the failure to perform the obligation is not cured within thirty (30) days after notice of the default has been given by Lessee to Lessor. If the default cannot reasonably be cured within thirty (30) days, then Lessor shall not be in default if Lessor commences to cure

the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

Lessee, at any time after expiration of the cure period provided above and a subsequent written notice to Lessor, may cure the default at Lessor's cost. If Lessee at any time, as a result of Lessor's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Lessee shall be due immediately from Lessor to Lessee at the time the sum is paid, and if paid at a later date shall bear interest at the rate of twelve percent (12%) per annum from the date the sum is paid by Lessee until the date Lessee is reimbursed by Lessor. Any amounts due from Lessor to Lessee pursuant to this Section 15 may be deducted or offset against Lessee's Base Monthly Rental.

21. Mortgage, Subordination and Attornment. Lessor's interest in this Lease and/or the Property shall not be subordinate to any liens or encumbrances placed upon the Property by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. Notwithstanding the terms of or the parties to the WGI Agreement and any other agreements pursuant to which Persons other than Lessee have the right to occupy any portion of the Property, such agreements shall, as between Lessor and Lessee, be treated as an instrument subordinate to Lessor's interest in the Property and this Lease. Lessee shall keep the Property free from any liens for work performed, materials furnished or obligations incurred by Lessee. NOTICE IS HEREBY GIVEN THAT LESSEE IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST, SECURITY INTEREST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PROPERTY OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID.

This Lease at all times shall automatically be subordinate to the lien of any and all Deeds of Trust now or hereafter placed upon the Property by Lessor, provided, that the holder of such interest shall not disturb Lessee's use and enjoyment of Lessee's rights under this Lease so long as Lessee is not in default hereunder. Lessee covenants and agrees to execute and deliver, upon demand, such further instruments which are acceptable to Lessee, subordinating this Lease to the lien of any or all such Deeds of Trust as shall be desired by Lessor, or any present or proposed Deeds of Trust; provided, that the terms and provisions of any such instrument are commercially reasonable. The Lessee acknowledges that the terms and provisions of the Instrument attached hereto as Exhibit C are commercially reasonable.

If any Lessor's Lender, mortgagee, receiver or other secured party elects to have this Lease and the interest of Lessee hereunder be superior to any such Deed of Trust and evidences such election by notice given to Lessee, then this Lease and the interest of Lessee hereunder shall be deemed superior to any such Deed of Trust, whether this Lease was executed before or after such Deed of Trust and in that event such mortgagee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of such Deed of Trust and had been assigned to such mortgagee, receiver or other secured party.

In the event any purchaser or assignee of any mortgagee or deed of trust holder at a foreclosure sale acquires title to the Property, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as Lessor under this Lease, Lessee shall attorn to mortgagee or deed of trust holder or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, if the Successor Lessor in its sole discretion elects to recognize Lessee's tenancy under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue after the date that such Successor Lessor acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Lessee shall give written notice to any Lessor's Lender of whom Lessee is notified of in writing of any breach or default by Lessor of any of its obligations under this Lease and give such lender or mortgagee the same rights to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto. Upon request by Lessor, Lessee shall authorize Lessor to release to Lessee's financial statements delivered to Lessor pursuant to this Lease to such Lessor's Lender.

22. Estoppel Certificate and Other Documents. At any time, and from time to time, each party shall, promptly and in no event later than ten (10) days after a request from the other execute, acknowledge and deliver to the requesting party, as the case may be, a certificate in the form supplied by the requesting party, certifying: (A) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor; (B) the commencement and expiration dates of the Lease Term; (C) the date to which the Rentals have been paid under this Lease and the amount thereof then payable; (D) whether there are then any existing defaults by Lessee or Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (E) that no notice has been received by the certifying party of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (F) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee; and; (G) and any other information reasonably requested by the requesting party.

Lessor and Lessee further agree to reasonably negotiate execute all reasonable documents, including without limitation, estoppel certificates, non-disturbance certificates and other documents requested by WGL, any Lessor's Lender or any lender of Lessee in connection with a loan to be obtained by Lessor or Lessee, or in connection with a sale, assignment, sublease or other disposition of the Lessor's interest under this Lease.

23. Assignment/Subletting. Except as provided in Section 20, above, Lessee's interest in this Lease shall not, voluntarily, involuntarily, or by operation of law, be assigned to any third person or entity without the prior written consent of Lessor which will not be unreasonably withhold conditioned or delayed.

In the event of an assignment of Lessee's interest under this Lease to a third person or entity which has been approved by the Lessor, the original Lessee shall be relieved from any and all further obligations under the terms of this Lease upon delivery to Lessor of an originally executed assumption of all of Lessee's obligations under this Lease by the assignee, and upon cure of all then existing defaults of Lessee under the terms of this Lease.

Other than for the WGI Agreement and any Replacement WGI Agreement, and any other agreements pursuant to which experienced and reputable operators are permitted to occupy discreet portions of the convenience store building located on the site for uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances (such other agreements are referred to herein as "Permitted Subleases"), Lessee may not sublease all or any part of the Property without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. In no event will any Permitted Subleases, or any other subleases that Lessor consents to relieve Lessee of any liability hereunder during the period of any such subletting. Additionally, Lessee shall give Lessor at least thirty (30) days advance notice of any proposed Permitted Sublease, which notice shall be accompanied by a copy of the form of the Permitted Sublease.

Each Permitted Sublease, and any other sublease that Lessor may consent to pursuant to the foregoing paragraph shall provide that (i) the term thereof will not exceed the Initial Term hereof and any extensions of the Initial Term that are permitted hereunder; (ii) the sublease and subtenant shall be subject to and bound by all the terms and conditions of this Lease (except that the Lessee shall continue to pay all Rental and Monetary Obligations hereunder and Lessee shall collect any rents owed by the subtenant pursuant to the sublease); (iii) the sublease shall state that, at Lessor's election, the subtenant will attorn to Lessor and recognize Lessor as Lessee's successor under the sublease for the balance of the sublease term if this Lease is surrendered by Lessee or terminated by reason of Lessee's default.

24. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease (collectively called "Notices") shall be in writing and given by any one of the following: (A) hand delivery, (B) express overnight delivery service, (C) certified or registered mail, return receipt requested or (D) facsimile, provided that a copy of such facsimile is also sent via certified or registered mail, return receipt requested, or by overnight delivery service, within one Business Day of the transmission of such facsimile, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next Business Day, if delivered by a reputable express overnight delivery service, (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested, or (iv) transmission, if delivered by facsimile pursuant to the requirements of Section 24.D above. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:

If to Lessee:

Berry-Hinckley Industries
Attn: Paul A. Morabito

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Woolley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/5/2006
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425 Maestro Drive
 Reno, NV 89511
 Telephone: (775) 689-1222
 Facsimile: (775) 689-1232

With a copy to:

Hodgson Russ LLP
 Attn: Sujata Yalamanchili
 One M&T Plaza, Suite 2000
 Buffalo, NY 14023
 Telephone: (716) 848-1657
 Facsimile: (716) 849-0349

And with a copy to:

Winners Gaming Inc.
 Attn: Paul A. Morabito
 425 Maestro Drive
 Reno, NV 89511
 Telephone: (775) 689-1222
 Facsimile: (775) 689-1232

If to Lessor:

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

25. **Holdover.** If Lessee remains in possession of the Property after the expiration of the term hereof, Lessee, at Lessor's option and within Lessor's sole discretion, may be deemed a Lessee on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease.

26. **Intentionally Omitted.**

27. **Surrender.** At the expiration of the Lease Term, Lessee may remove from the Property all of Lessee's Fixtures and Equipment. Lessee shall repair any damage caused by such removal and shall leave the Property broom clean and in good and working condition and repair inside and out, and comply with all of the requirements of Section 12.D hereof. Lessor may, in its sole discretion, elect to retain or dispose of in any manner any Fixtures or Equipment, personal property and vehicles to which Lessee is entitled but which Lessee does not remove from the Property pursuant to this Section within ten (10) days after notice, provided, however, that upon demand, Lessee shall reimburse Lessor for all costs incurred by Lessor in removing any Fixtures and Equipment and any all personal property, vehicles and inventory, Hazardous Materials, USTs and related equipment, located in or about the Property that are left therein by Lessee or in restoring the Property to the condition required by this Lease.

28. **Financial Statements; Compliance Certificate.** Once per calendar year, and within 120 days after the end of Lessee's fiscal year, Lessee shall furnish to Lessor audited financial statements of Lessee for the immediately preceding fiscal year. Lessor shall maintain such statements in confidence but may disclose any financial statements furnished by Lessee to Lessor's lawyers, any prospective purchaser of the Property who has entered into a signed purchase agreement with Lessor, prospective and existing lenders of Lessor, and to Lessor's consultants and accountants; Lessor shall advise such permitted recipients that the financial statements furnished to them are to be held in confidence. In no event shall Lessor knowingly disclose Lessee's financial statements to competitors of Lessee.

29. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform (each, a "Force Majeure Event") shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

30. **No Merger.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of the Property by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (A) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (B) the fee estate or ownership of the Property or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

31. **Characterization.** Lessor and Lessee acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

32. **Easements.** During the Lease Term, Lessor shall not have the right to grant easements on, over, under and above the Property without the prior consent of Lessee, which consent will not be unreasonably withheld, conditioned or delayed.

33. **Bankruptcy.** Intentionally Omitted.

34. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other Costs in addition to any other relief to which it may be entitled. In addition, the prevailing party shall, upon demand, be

entitled to all attorneys' fees and all other Costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

35. **Memorandum of Lease.** Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor's standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, a description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public. Further, upon Lessor's request, Lessee agrees to execute and acknowledge a termination of lease and/or quit claim deed in recordable form to be held by Lessor until the expiration or sooner termination of the Lease Term.

36. **No Broker.** Lessor and Lessee represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Property. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

37. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** Lessor and Lessee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought by either of the parties hereto against the other or its successors with respect to any matter arising out of or in connection with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Property, and/or any claim for injury or damage, or any emergency or statutory remedy. This waiver by the parties hereto of any right either may have to a trial by jury has been negotiated and is an essential aspect of their bargain. Furthermore, Lessee hereby knowingly, voluntarily and intentionally waives the right it may have to seek punitive, consequential, special and indirect damages from Lessor, Lessor's Lenders, and any of the Affiliates, officers, directors, members, managers or employees of Lessor, Lessor's Lenders, or any of their successors with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought with respect to any matter arising out of or in connection with this Lease or any document contemplated herein or related hereto. The waiver by Lessee of any right it may have to seek punitive, consequential, special and indirect damages has been negotiated by the parties hereto and is an essential aspect of their bargain.

38. **Miscellaneous.**

A. *Time Is of the Essence.* Time is of the essence with respect to each and every provision of this Lease.

B. *Waiver and Amendment.* No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an amount less than the Rental and other Monetary Obligations stipulated to be due under

this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.

C. *Successors Bound.* Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

D. *Captions.* Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Severability.* The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

F. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease; provided such documents are reasonably acceptable to each parties' counsel.

G. *Entire Agreement.* This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

H. *Forum Selection; Jurisdiction; Venue; Choice of Law.* For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Nevada. Lessee consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Nevada in accordance with applicable law. Furthermore, Lessee waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section shall limit or restrict the right of Lessor to commence any proceeding in the federal or state courts located in the state where each Property is located to the extent Lessor deems such proceeding necessary or advisable to exercise remedies available under this Lease.

I. *Counterparts.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

J. *Prohibited Persons and Transactions.* Lessee and Lessor (each a "Representing Party") represents to its current knowledge to the other that the Representing Party is not a person or entity, nor owns property or interests in property, which is blocked pursuant to Executive Order 13224 signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism" or under any rules and regulations related thereto.

39. **Intentionally Omitted.**

40. **Amendments to Accommodate Sale to Tenants In Common.** At the request of Lessor, Lessee shall execute any amendments to this Lease that Lessor deems reasonably necessary to accommodate Lessor's sale of the Property to tenants in common (and subsequent management of the Property by such tenants in common or a manager appointed by them), provided that such amendments do not materially and negatively impact Lessee's obligations hereunder.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

Edward Wooley, Trustee
EDWARD WOOLEY

Judith Wooley, Trustee
JUDITH WOOLEY

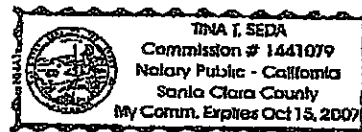
Tax Identification or Social Security No.
[REDACTED]

STATE OF California)
COUNTY OF Santa Clara) ss

The foregoing instrument was acknowledged before me on June 12, 2006 by
Edward Wooley and Judith Wooley an individual with an address of
41 ROSALBA AVE LOS GATOS, CA 95030.

Tina J. Seda
Notary Public

My Commission Expires: 10-15-07



Wooley Sista/BHI
Carson City
5/31/2006
000160/09959 GBOCS 576954-1

STATE OF CALIFORNIA
COUNTY OF Santa Clara

} S.S.

On June 6, 2006 before me,

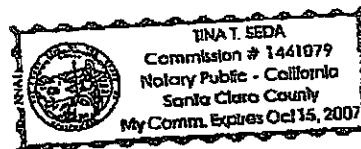
Tina T. Seda
a Notary Public, personally appeared

Edward Woolley
Judith Woolley

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

Signature Tina T. Seda



(This area for official notarial seal)

notyack rev. (12/28/05)

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporationBy: STATE OF ~~NEVADA~~ California)
COUNTY OF ~~WASHOE~~ Orange)ssThe foregoing instrument was acknowledged before me on July 14, 2007 by
Paul Mahabadi as Chairman of BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation.My Commission Expires: Sept 20, 2009 Notary Public 

EXHIBIT A**DEFINED TERMS**

The following terms shall have the following meanings for all purposes of this Lease:

"Additional Rental" has the meaning set forth in Section 4.C.

"Adjustment Date" means the first anniversary of the Effective Date, and every anniversary thereafter during the Initial Term, and any Extension Term.

"Affiliate" means any Person which directly or indirectly controls, is under common control with or is controlled by any other Person. For purposes of this definition, "controls", "under common control with", and "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

"Base Annual Rental" means \$238,275.

"Base Monthly Rental" means an amount equal to 1/12 of the applicable Base Annual Rental.

"Business Day" means Monday through Friday, except those days on which the United States Postal Service does not deliver regular first-class mail.

"Casualty" means any loss of or damage to any property included within or related to any Property or arising from an adjoining property caused by fire, flood or other casualty.

"Condemnation" means a Taking and/or a Requisition.

"Costs" means all reasonable costs and expenses incurred by a Person, including without limitation, reasonable attorneys' fees and expenses, court costs, expert witness fees, costs of tests and analyses, repair and maintenance, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, brokerage fees, escrow fees, title insurance and other insurance premiums, appraisal fees, stamp taxes, recording fees and transfer taxes or fees, as the circumstances require.

"Dealer" means any Person that supplies gasoline and/or diesel fuel to Lessee at the Property for sale to third parties, or its successor or assigns.

"Dealer Agreement" means a written agreement or other document granting Lessee the right to operate a gas station operation under the flag, brand or trade name of a Dealer.

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Sparks, Nevada
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"Default Rate" means 18% per annum or the highest rate permitted by law, whichever is less.

"Deed of Trust" means any and all deeds of trust, mortgages or other liens to secure debts or other security instruments here and after placed by Lessor on the Property or any part thereof (except the Lessee's personal property or trade fixtures), and to any and all renewals, modifications, consolidations, replacements, extensions or substitutions of any such instruments.

"Effective Date" has the meaning set forth in Section 3 of this Lease.

"Environmental Laws" means federal, state and local laws, ordinances, common law requirements and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees having the effect of law in effect now or in the future and including all amendments, that relate to Hazardous Materials, Regulated Substances, USTs, and/or the protection of human health or the environment, or relating to liability for or Costs of Remediation or prevention of Releases, and apply to Lessee and/or the Property.

"Environmental Liens" means liens that may be imposed pursuant to Environmental Laws, including but not limited to Nevada Revised Statutes Chapters 459 and 618.

"Event of Default" has the meaning set forth in Section 20.A.

"Expiration Date" has the meaning set forth in Section 3.

"Extension Option" has the meaning set forth in Section 3.

"Extension Term" has the meaning set forth in Section 3.

"Force Majeure Event" has the meaning set forth in Section 29.

"Governmental Authority" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, any state or any political subdivision thereof (including but not limited to the Nevada Department of Environmental Protection, the Nevada Gaming Control Board and the Nevada Gaming Commission) with authority to adopt, modify, amend, interpret, give effect to or enforce any federal, state and local laws, statutes, ordinances, rules or regulations, including common law, or to issue court orders.

"Hazardous Materials" includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants which pose a hazard to the Property or to Persons on or about the Property, cause the Property to be in violation of any local, state or federal law or regulation, (including without limitation, any Environmental Law), or are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", "pollutants", or words of similar import under any applicable local, state or federal law or under the regulations adopted, orders issued, or publications promulgated

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pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; and (iv) regulations adopted and publications promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) underground storage tanks; and (d) any other Regulated Substances, chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of any adjoining property.

"Indemnified Parties" means Lessor, any Lessor's Lenders and their members, managers, officers, directors, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns, including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Lessor or any Lessor's Lenders, as applicable.

"Initial Term" has the meaning set forth in Section 3.

"Insolvency Event" means (a) Lessee's (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against Lessee (i) seeking to adjudicate it a bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against Lessee, either such proceeding shall remain undismissed for a period of one hundred twenty (120) days or any of the actions sought in such proceeding shall occur; or (c) Lessee taking any corporate action to authorize any of the actions set forth above in this definition.

"Law(s)" means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted Governmental Authority, court or agency, now or hereafter enacted or in effect.

"Lease Term" shall have the meaning described in Section 3.

"Legal Requirements" means the requirements of all present and future Laws (including without limitation, Environmental Laws and Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all judicial and administrative interpretations thereof, including any judicial order, consent, decree or judgment, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Lessee or to the Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or

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restoration of to the Property, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of the Property.

"Lessor's Lender" means any lender of Lessor that has a lien on the Property, including any lenders named in any Deed of Trust.

"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, diminutions in value, fines, penalties, interest, charges, fees, judgments, awards, amounts paid in settlement and damages of whatever kind or nature, inclusive of bodily injury and property damage to third parties (including, without limitation, attorneys' fees and other Costs of defense).

"Monetary Obligations" means all Rental and all other sums payable or reimbursable by Lessee under this Lease to Lessor, to any third party on behalf of Lessor, or to any Indemnified Party.

"Notices" has the meaning set forth in Section 24.

"Permitted Amounts" shall mean, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Laws and is customarily employed in, or associated with, similar businesses located in the states where the Property is located.

"Permitted Encumbrances" shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements, survey exceptions, parties in possession and other matters of title that affect the Property as of the date of Lessor's acquisition thereof and those items which hereafter affect title as permitted under this Lease, including but not limited to those identified in the owner's policy of title insurance issued to Lessor by First American Title Insurance Company or an agent thereof in conjunction with Lessor's acquisition of the Property.

"Permitted Facility" means a gas station with convenience store (and restaurant and postal unit operations within a convenience store), and uses incidental or related thereto including but not limited to a car wash, quick lube/oil change facility, the operation of gaming devices within the convenience store and offices for Lessee's operations, together with uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances.

"Permitted Sublease" has the meaning set forth in Section 23.

"Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

Woolley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160709959 GBDACS 576954v2

"Property" means, that parcel or parcels of real estate located at the address set forth in Exhibit B and legally described on Exhibit B attached hereto (which parcels may be fee estates or easement estates), together with all rights, privileges, and appurtenances associated therewith, all buildings, fixtures and other improvements now or hereafter located on such parcels of real estate (whether or not affixed to such real estate).

"Regulated Substances" means "petroleum" and "petroleum-based substances" or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

"Release" means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs.

"Remediation" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

"Rental" means, collectively, the Base Annual Rental and the Additional Rental.

"Rent Adjustment" has the meaning set forth in Section 4.B.

"Successor Lessor" has the meaning set forth in Section 21.

"Taking" means (a) any taking or damaging of all or a portion of the Property (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special, or (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means, or (b) any de facto condemnation that constitutes a compensable taking under applicable law. The Taking shall be considered to have taken place as of the later of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the law applicable to the Property.

"Threatened Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding any Property which may result from such Release.

"USTs" means any one or combination of tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

"WGI" means Winner's Gaming, Inc.

Woolley/BHJ
1365 Baring Blvd/BHJ
Sparks, Nevada
7/6/2006
000160709959 GRDOCS 576954/2

"WGI Agreement" means any and all agreements of Lessee with WGI pursuant to which WGI currently operates gaming machines or devices and related equipment (or the technological evolution thereof) on the Property and any Substitute WGI Agreement (as defined in Section 12.F).

Woolley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160/09959 GBDOS 576954v2

EXHIBIT B

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY

PROPERTY ADDRESS:

PROPERTY LEGAL DESCRIPTION:

Woolley/BH1
1365 Baring Blvd/BH1
Sparks, Nevada
7/6/2006
000160409950 GBD0CS 576854v2

EXHIBIT 8

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, trustees of the Edward C. Wooley and Judith A. Wooley Inter vivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Barry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for property located on U.S. Highway 50 in Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Lessor to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the

provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.


JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.


EDWARD C. WOOLEY


JUDITH A. WOOLEY

Harris Loan Guaranty - US Hwy 50 (Wooley).DOC

EXHIBIT 9

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 12 day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Inter vivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 1363 Baring Boulevard, Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstances or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCO. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the


provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

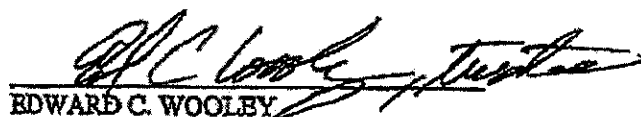
7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.


JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.


EDWARD C. WOOLEY


JUDITH A. WOOLEY

Herbst Lease Guaranty - 1365 Haring.DOC

EXHIBIT 10

MS Hwy 50

First Amendment to Lease Agreement

March 12, 2007

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of ~~December 1, 2006~~ by and between **EDWARD C. WOOLEY AND JUDITH A. WOOLEY**, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of November 10, 2005 (the "Lease") with respect to real property and improvements located at 1820 U.S. Highway 50, Carson City, Nevada and as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **Lessor's Change of Name.** The name of the Lessor is hereby changed, effective as of the date of the Lease listed above, to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

3. **Default, Conditional Limitations, Remedies and Measure of Damages.**

(a) The first paragraph of Section 20.B is hereby deleted in its entirety and replaced as follows:

"**Remedies.** Upon occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect

to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion."

(b) The following language is deleted in its entirety from the second paragraph:

"If WGI does not elect either such option, then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

and replaced with the following:

"If lender does not elect such option to cure, then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or

its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("~~Herbst~~") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

9. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on
the date first above written.

LESSOR:

**EDWARD C. WOOLEY AND JUDITH A.
WOOLEY**

*Judith A. Wooley
Judith A. Wooley
Trustee*

By: *Ed C. Wooley*
Printed Name: *EDWARD C. WOOLEY*
Title: *TRUSTEE*

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____
Printed Name: _____
Title: _____

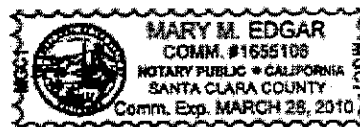
STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Edward C. Woolley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Woolley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD C. WOOLEY AND JUDITH A. WOOLEY

Judith A. Wooley
Judith A. Wooley
Trustee

By: *EDC Wooley*Printed Name: EDWARD E. WOOLEYTitle: TRUSTEE

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: *[Signature]*Printed Name: Treas LloydTitle: Corporate Secretary

STATE OF NEVADA

)
) SS:
)

COUNTY OF WASHOE

On June 19, 2007, before me Marguerite Benson-Straun, a Notary Public in and for said State, personally appeared Richard Lloyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Marguerite Benson-Straun

(SEAL)



EXHIBIT 11

1365 Baring Blvd

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of March 12, 2007 by and between Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of May __, 2006, (the "Lease") with respect to real property and improvements as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **Lessor's Change of Name.** The name of the Lessor is hereby changed to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

3. **Winner's Corner.** Section 12.H is deleted in its entirety.

4. **Default, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.B:

"**Remedies.** Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option,

concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

and replaced with the following:

"Remedies. Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

5. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

6. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

7. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

8. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

9. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

10. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD WOOLEY AND JUDITH WOOLEY

Judith A. Wooley
Judith A. Wooley
 Trustee

By: *E. C. Wooley*Printed Name: EDWARD C. WOOLEYTitle: TRUSTEE

LESSEE:

BERRY-HINCKLEY INDUSTRIES

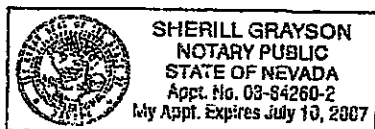
By: _____

Printed Name: _____

Title: _____

AGREED AND ACKNOWLEDGED:

WINNER'S GAMING, INC.

By: *Robert G. King*Printed Name: Robert G. KingTitle: Pres

Sherill Grayson

STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Edward C. Woolley, personally known ~~to me~~ for proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Woolley, personally known ~~to me~~ for proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:**EDWARD WOOLEY AND JUDITH WOOLEY**

Judith A. Wooley
Judith A. Wooley
Trustee

By: *E. C. Wooley*Printed Name: EDWARD C. WOOLEYTitle: TRUSTEE**LESSEE:****BERRY-HINCKLEY INDUSTRIES**By: *[Signature]*Printed Name: Irene LloydTitle: Secretary**AGREED AND ACKNOWLEDGED:****WINNER'S GAMING, INC.**By: *Robert G. King*Printed Name: Robert G. KingTitle: Pres

STATE OF NEVADA)
) SS:
 COUNTY OF WASHOE)

On June 28, 2007, before me, Sandra Shinault, a Notary Public in and for said State, personally appeared Trevor Dwyer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sandra Shinault

(SEAL)



EXHIBIT 12

GORDON SILVER

March 18, 2013

VIA EMAIL & CERTIFIED MAIL:

The Goldblatt Law Firm
Attn: L. Steven Goldblatt, Esq.
22 Martin Street
Gilroy, California 95037

Re: Obligations of Berry-Hinkley Industries Inc. ("BHI") and Jerry Herbst ("Mr. Herbst") with regard to 7695 South Virginia St., Reno, Nevada 89511 (the "Leased Premises")

Dear Mr. Goldblatt:

This office has been retained by Mr. Herbst and BHI with regard to certain outstanding obligations due regarding the Leased Premises. I am in receipt of your letter of March 12, 2013, on behalf of Overland Development Corporation, Inc., dba LJW Enterprises, Inc. and Larry J. Willard, Trustee of Larry James Willard Trust Privilege. According to the records and documents provided to us, BHI is the lessee of the Leased Premises pursuant to a Lease Agreement entered into on November 18, 2005 (together with all amendments and modifications, the "Lease"), and Mr. Herbst is the guarantor of the Lease obligations pursuant to a Guaranty Agreement dated as of the 9th day of March, 2007 (the "Guaranty").

It is my understanding that several years ago BHI and Mr. Herbst approached your clients with regard to compromise and settle the obligations due under the Lease and Guaranty. For various reasons, no agreements were agreed upon in this regard. Over the intervening time the financial and economic situations for both BHI and Mr. Herbst have worsened. BHI is simply not in the position to continue to operate the business located on the Leased Premises and maintain the Lease. As such, there are two options available; (i) an agreement for the orderly turnover of the Leased Premises to your clients and a termination of the Lease on terms acceptable to BHI together with an agreement limiting Mr. Herbst's continued exposure on the Guaranty, or (ii) BHI will seek liquidation under Chapter 7 of the Bankruptcy Code with an immediate termination of business at the Leased Premises, and your clients can pursue a claim in the Chapter 7 case. To the extent that your clients seek to enforce the Guaranty, in light of Mr. Herbst's other outstanding obligations and financial condition, he will have no other option but to seek protection under Chapter 11 of the Bankruptcy Code, and your clients can pursue a claim for damages under the Guaranty.

I believe that you are aware of the limitations on the payment of future lease obligations under Section 502 of the Bankruptcy Code, which limitation is applicable to your clients' claims under the Guaranty. I also believe that you are aware of the provisions for payment of allowed

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR : LAS VEGAS, NEVADA 89169

T: 702.796.5555 : F: 702.369.2666

gordonsilver.com

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Gordon Silver

Attorneys and Counselors at Law

March 18, 2013

Page 2

unsecured claims against an individual debtor in Chapter 11. As such, your clients' recoveries in the event that Mr. Herbst must seek protection under the Bankruptcy Code will be materially impaired.

Given the outcome in the event of no resolution; no recovery from BHI, a limited recovery under the Guaranty payable over time, and repossession of non-operating locations, BHI is prepared to assist in a coordinated turnover of the Leased Premises, which affords your clients the opportunity to maintain operations and preserve value. Mr. Herbst will agree to amend the Guaranty to provide for a total payment over sixty (60) months of the allowed claim that your clients will have under Section 502(b)(6) of the Bankruptcy Code for future amounts due under the Lease, together with interest at 3% per annum. We believe that this amount will be significantly greater than the amount your clients will receive under Chapter 11.

If your clients are interested in pursuing this alternative resolution, please contact me no later than close of business on March 25, 2013. We will provide you with calculations of the amount which Mr. Herbst will agree to pay and discuss the process for the turnover of the Leased Premises. All negotiations must be concluded by April 1, 2013.

Let me be very clear on two points. First, given the amount of moneys involved, agreements must be reached with each holder of a guaranty by Mr. Herbst of a BHI lease or other obligation. Second, the agreements with each landlord will be on the same monetary formula and terms; no agreement will be reached with your clients that is better or worse than the agreements reached with the others lessors.

I have not responded to each of the points you have raised in your letter. However, BHI and Mr. Herbst categorically deny the allegations set forth in the letter regarding the conduct of BHI and Mr. Herbst and any claim for damages associated with such alleged conduct.

Very truly yours,

GORDON SILVER


For GERALD M. GORDON, ESQ.

MMW/

10500-001/1842200_2

EXHIBIT 13

GORDON SILVER

March 28, 2013

VIA EMAIL & REGULAR MAIL:

Email: l.steven.goldblatt@gmail.com

The Goldblatt Law Firm
Attn: L. Steven Goldblatt, Esq.
22 Martin Street
Gilroy, California 95037

Re: Proposed settlement offer regarding the obligations of Berry-Hinkley Industries Inc. ("BHI") and Jerry Herbst ("Mr. Herbst") with regard to 7695 South Virginia St., Reno, Nevada 89511 (the "Leased Premises")

Dear Mr. Goldblatt:

As indicated in our March 18, 2013 letter, BHI is prepared to assist in a coordinated turnover of the Leased Premises, which affords your clients the opportunity to maintain operations and preserve value. Mr. Herbst will agree to amend his guaranty to provide for a total payment over sixty (60) months equal to the allowed claim that your clients would have under Section 502(b)(6) of the Bankruptcy Code for future amounts due under the lease in the event Mr. Herbst is required to file a petition under Chapter 11, together with interest at 3% per annum.

The amount allowed pursuant to Section 502(b)(6) with regard to the Leased Premises is \$2,921,180 from March 1, 2013, to August 23, 2023. Subject to the conditions set forth in the March 18, 2013 letter, Mr. Herbst is prepared to pay your clients \$3,149,387 over 60 months, which amount includes the \$2,921,180 amount under Section 502(b)(6), together with interest at 3% per annum. The proposed monthly settlement payment is \$52,490.

These calculations of allowed amounts include all scheduled rent increases pursuant to the lease and, as noted, are calculated from March 1, 2013, to expiration of the lease.

I look forward to hearing from you in regard to this proposal.

Very truly yours,

GORDON SILVER



GERALD M. GORDON, ESQ.

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR | LAS VEGAS, NEVADA 89169
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EXHIBIT 13 - PAGE 1 OF 2

Gordon Silver

Attorneys and Counselors at Law

March 28, 2013

Page 2

cc: Jerry Herbst (via email)
Brigid M. Higgins, Esq. (via email)
Marc Berger (via email)
Mark M. Weisenmiller, Esq. (via email)

1 CODE NO.
2 THE O'MARA LAW FIRM, P.C.
3 WILLIAM M. O'MARA, State Bar No. 00837
4 DAVID C. O'MARA, State Bar No. 8599
5 311 E. Liberty Street
6 Reno, NV 89501
7 Telephone (775) 323-1321
8 Facsimile: (775) 323-4082

9 LAW OFFICES OF BRIAN P. MOQUIN
10 BRIAN P. MOQUIN, ESQ.
11 Pro Hac Vice Application Pending
12 California Bar No. 247583
13 3506 La Castellet Court
14 San Jose, CA 95148
15 Telephone: 408.300.0022
16 Fax: 408.843.1678
17 bmoquin@lawprism.com

18 Attorneys for Plaintiffs

19 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

20 **IN AND FOR THE COUNTY OF WASHOE**

21 LARRY J. WILLARD, individually and as) Case No. CV14-01712
22 trustee of the Larry James Willard Trust Fund;)

23 OVERLAND DEVELOPMENT) Dept. No. 6
24 CORPORATION, a California corporation;)

25 EDWARD C. WOOLEY AND JUDITH A.) **ACCEPTANCE OF SERVICE OF**
26 WOOLEY, individually and as trustees of the) **SUMMONS AND COMPLAINT ON**
27 Edward C. Wooley and Judith A. Wooley) **BEHALF OF DEFENDANTS, BERRY-**
28 Intervivos Revocable Trust 2000,) **HINCKLEY INDUSTRIES, JERRY**
Plaintiffs,) **HERBST, and JH, INC.**

29 vs.

30 BERRY-HINCKLEY INDUSTRIES, a)
31 Nevada corporation; JERRY HERBST, an)
32 individual; and JH, INC., a Nevada)
33 corporation,)

34 Defendants.)

1 I, John Desmond, of Gordon Silver, do hereby accept service of the Summons and
2 Complaint in the above-entitled case on behalf of the Defendants, Berry-Hinckley Industries,
3 Jerry Herbst, and JH, Inc., this 5th September day of ~~August~~, 2014.
4

5 **AFFIRMATION**

(Pursuant to NRS 239B.030)

6 The undersigned does hereby affirm that the preceding document filed in the above
7 referenced matter does not contain the social security number of any person
8

9 Dated: September 5, 2014

GORDON SILVER

10 

11 for JOHN DESMOND, ESQ.
12 100 W. Liberty St., Ste. 940
13 Reno, NV 89501
14 Telephone: 775.343.7500
15 Fax: 775.786.0131
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1130
GORDON SILVER
JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
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Email: jdesmond@gordonsilver.com
Email: birvine@gordonsilver.com
Email: kbrady@gordonsilver.com

*Attorneys for Defendants
Berry Hinckley Industries, and
Jerry Herbst*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation;
EDWARD E. WOOLEY AND JUDITH A.
WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,

CASE NO.: CV14-01712

Plaintiff,

DEPT. NO.: 6

vs.

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; JERRY HERBST, an
individual; and JH, INC., a Nevada
corporation,

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

1 DEFENDANTS BERRY HINCKLEY INDUSTRIES and JERRY HERBST
2 (collectively, "Defendants"), by and through their attorneys of record, GORDON SILVER,
3 answer Plaintiffs' Complaint as follows:

4 **JURISDICTION**

5 1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs'
6 Complaint.

7 2. To the extent Plaintiffs purport to quote or paraphrase from a document, the
8 document speaks for itself. Defendants deny any statements inconsistent with the document.
9 Defendants admit the remaining allegations contained in Paragraph 2 of Plaintiffs' Complaint.

10 **PARTIES**

11 3. Defendants are without knowledge or information sufficient to form a belief as to
12 the truthfulness of the allegations contained in Paragraph 3 of Plaintiffs' Complaint, and thus
13 deny the same.

14 4. Defendants are without knowledge or information sufficient to form a belief as to
15 the truthfulness of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and thus
16 deny the same.

17 5. Defendants are without knowledge or information sufficient to form a belief as to
18 the truthfulness of the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and thus
19 deny the same.

20 6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs'
21 Complaint.

22 7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs'
23 Complaint.

24 8. Defendants deny the allegations contained in Paragraph 8 of Plaintiffs'
25 Complaint.

26 9. Defendants deny the allegations contained in Paragraph 9 of Plaintiffs'
27 Complaint.

28 ///

FIRST CAUSE OF ACTION
(Breach of Lease Agreement)

10. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set forth at this point.

11. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint, and thus deny the same.

12. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 12 of the Complaint.

13. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and thus deny the same.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 15 of Plaintiffs' Complaint, and thus deny the same.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)

21. Paragraphs 1 through 20 above are hereby incorporated by reference as if fully set forth at this point.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 23 of the Complaint.

24. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

THIRD CAUSE OF ACTION
(Breach of Lease Agreement)

29. Paragraphs 1 through 28 above are hereby incorporated by reference as if fully set forth at this point.

30. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and thus deny the same.

31. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint, and thus deny the same.

1 32. To the extent Plaintiffs purport to quote or paraphrase from a document, the
2 document speaks for itself. Defendants deny any statements inconsistent with the document.
3 Additionally, Defendants are without knowledge or information sufficient to form a belief as to
4 the truthfulness of the remaining allegations contained in Paragraph 32 of Plaintiffs' Complaint,
5 and thus deny the same.

6 33. To the extent Plaintiffs purport to quote or paraphrase from a document, the
7 document speaks for itself. Defendants deny any statements inconsistent with the document.
8 Additionally, Defendants are without knowledge or information sufficient to form a belief as to
9 the truthfulness of the remaining allegations contained in Paragraph 33 of Plaintiffs' Complaint,
10 and thus deny the same.

11 34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

12 35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

13 36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

14 37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

15 38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

16 39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

17 40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

18 41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

19 42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

20 43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

21 44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

22 45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

23 **FOURTH CAUSE OF ACTION**
24 **(Breach of Personal Guaranty)**

25 46. Paragraphs 1 through 45 above are hereby incorporated by reference as if fully set
26 forth at this point.

27 47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.
28

1 48. To the extent Plaintiffs purport to quote or paraphrase from a document, the
2 document speaks for itself. Defendants deny any statements inconsistent with the document and
3 deny any remaining allegations contained in Paragraph 48 of the Complaint.

4 49. To the extent Plaintiffs purport to quote or paraphrase from a document, the
5 document speaks for itself. Defendants deny any statements inconsistent with the document and
6 deny any remaining allegations contained in Paragraph 49 of the Complaint.

7 50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

8 51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

9 52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

10 53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

11 54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

12 55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

13 56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

14 57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

15 58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

16 59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

17 **FIFTH CAUSE OF ACTION**
18 **(Breach of Fiduciary Duty)**

19 60. Paragraphs 1 through 59 above are hereby incorporated by reference as if fully set
20 forth at this point.

21 61. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action,
22 and therefore, no response to the allegations contained in paragraph 61 is required. To the extent
23 a response is required, Defendant Jerry Herbst denies the allegations in paragraph 61.

24 62. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action,
25 and therefore, no response to the allegations contained in paragraph 62 is required. To the extent
26 a response is required, Defendant Jerry Herbst denies the allegations in paragraph 62.

1 63. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action,
2 and therefore, no response to the allegations contained in paragraph 63 is required. To the extent
3 a response is required, Defendant Jerry Herbst denies the allegations in paragraph 63.

4 **SIXTH CAUSE OF ACTION**
5 **(Breach of Fiduciary Duty)**

6 64. Paragraphs 1 through 63 above are hereby incorporated by reference as if fully set
7 forth at this point.

8 65. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action,
9 and therefore, no response to the allegations contained in paragraph 65 is required. To the extent
10 a response is required, Defendant Jerry Herbst denies the allegations in paragraph 65.

11 66. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action,
12 and therefore, no response to the allegations contained in paragraph 66 is required. To the extent
13 a response is required, Defendant Jerry Herbst denies the allegations in paragraph 66.

14 67. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action,
15 and therefore, no response to the allegations contained in paragraph 67 is required. To the extent
16 a response is required, Defendant Jerry Herbst denies the allegations in paragraph 67.

17 **SEVENTH CAUSE OF ACTION**
18 **(Attachment)**

19 68. Paragraphs 1 through 67 above are hereby incorporated by reference as if fully set
20 forth at this point.

21 69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

22 70. Defendants deny the allegations contained in Paragraph 70 of the Complaint.

23 71. To the extent Plaintiffs purport to quote or paraphrase from a document, the
24 document speaks for itself. Defendants deny any statements inconsistent with the document.
25 Additionally, Defendants are without knowledge or information sufficient to form a belief as to
26 the truthfulness of the remaining allegations contained in Paragraph 71 of Plaintiffs' Complaint,
27 and thus deny the same.

28 72. To the extent Plaintiffs purport to quote or paraphrase from a document, the
document speaks for itself. Defendants deny any statements inconsistent with the document.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

EIGHTH CAUSE OF ACTION
(Temporary Restraining Order)

76. Paragraphs 1 through 75 above are hereby incorporated by reference as if fully set forth at this point.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

AFFIRMATIVE DEFENSES

In accordance with Nevada Rule of Civil Procedure 11, all possible affirmative defenses may or may not have been asserted herein insofar as sufficient facts were not available to Defendants after reasonable inquiry upon the filing of this pleading and therefore Defendants assert the following defenses based in fact or upon reasonable belief and hereby reserve the right to amend this Answer to allege appropriate or additional defenses, if subsequent investigation or discovery so warrants:

FIRST AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

///

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendants did not owe any legal duty to Plaintiffs or, if Defendants owed any such legal duty, Defendants did not breach that duty.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are contrary to the terms of the agreement(s) between the parties.

FIFTH AFFIRMATIVE DEFENSE

Defendants are excused from performance.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches, waiver, equitable estoppel, and ratification.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiff failed to adequately mitigate any injuries and damages that it allegedly suffered.

EIGHTH AFFIRMATIVE DEFENSE

Defendants are entitled to set-off, should any damages be awarded against them.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on the claims pled in the Complaint because the damages sought are too speculative and remote.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has contractually waived the right to seek consequential, special, and indirect damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to provide reasonable and adequate notice of any claimed breach.

///

THIRTEENTH AFFIRMATIVE DEFENSE

It has been necessary for Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together with their costs expended in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state sufficient facts or claims to support punitive damages against Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not contractually entitled to accelerated rent.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorney's fees, costs, or interest.

PRAYER FOR RELIEF

WHEREFORE, Defendants BERRY HINCKLEY INDUSTRIES and JERRY HERBST hereby pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of their Complaint and that the same be dismissed with prejudice.
2. For costs of suit and reasonable attorneys' fees; and
3. For such other and further relief as the Court deems just and proper in the circumstances.

///

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AFFIRMATION**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6th day of October, 2014.

GORDON SILVER

By: /s/ Kathleen M. Brady

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

KATHLEEN M. BRADY

Nevada Bar No. 11525

100 West Liberty Street, Suite 940

Reno, Nevada 89501

Tel: (775) 343-7500

Fax: (775) 786-0131

Email: jdesmond@gordonsilver.com

Email: birvine@gordonsilver.com

Email: kbrady@gordonsilver.com

*Attorneys for Defendants,
Berry Hinckley Industries, and
Jerry Herbst*

CERTIFICATE OF SERVICE

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT** on the parties as set forth below:

XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Via E-Mail

_____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

_____ Federal Express (or other overnight delivery)

_____ Electronic Notification

addressed as follows:

David C. O'Mara
THE O'MARA LAW FIRM, P.C.
311 E. Liberty Street
Reno, Nevada 89501

DATED this 6th day of October, 2014.

/s/ Cindy S. Grinstead
An Employee of GORDON SILVER

1 CODE NO.
2 THE O'MARA LAW FIRM, P.C.
3 WILLIAM M. O'MARA, State Bar No. 00837
4 DAVID C. O'MARA, State Bar No. 8599
5 311 E. Liberty Street
6 Reno, NV 89501
7 Telephone (775) 323-1321
8 Facsimile: (775) 323-4082

9 LAW OFFICES OF BRIAN P. MOQUIN
10 BRIAN P. MOQUIN, ESQ.
11 Pro Hac Vice Application Pending
12 California Bar No. 247583
13 3506 La Castellet Court
14 San Jose, CA 95148
15 Telephone: 408.300.0022
16 Fax: 408.843.1678
17 bmoquin@lawprism.com

18 Attorneys for Plaintiffs

19 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
20 **IN AND FOR THE COUNTY OF WASHOE**

21 LARRY J. WILLARD, individually and as) Case No. CV14-01712
22 trustee of the Larry James Willard Trust Fund;)
23 OVERLAND DEVELOPMENT) Dept. No. 6
24 CORPORATION, a California corporation;)
25 EDWARD C. WOOLEY AND JUDITH A.)
26 WOOLEY, individually and as trustees of the)
27 Edward C. Wooley and Judith A. Wooley)
28 Intervivos Revocable Trust 2000,)

Plaintiffs,)

vs.)

29 BERRY-HINCKLEY INDUSTRIES, a)
30 Nevada corporation; JERRY HERBST, an)
31 individual; and JH, INC., a Nevada)
32 corporation,)

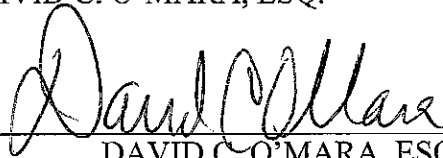
Defendants.)

MOTION TO ASSOCIATE COUNSEL

1
2 Plaintiffs, Larry J. Willard, individually and as trustee of the Larry James Willard Trust
3 Fund, Overland Development Corporation, a California corporation, Edward C. Wooley and
4 Judith A. Wooley, individually and as trustees of the Edward C. Wooley and Judith A. Wooley
5 Intervivos Revocable Trust 2000, by and through their counsel David C. O'Mara, Esq., of The
6 O'Mara Law Firm, P.C., hereby moves this Court for an order permitting Brian P. Moquin,
7 Esq. to practice in Nevada pursuant to Nevada Supreme Court Rule 42 (SCR 42). This Motion
8 is supported by the attached "Verified Application for Association of Counsel" (Exhibit "1"),
9 "Certificate of Good Standing" from California (Exhibit "2"), and the State Bar of Nevada
10 Statement (Exhibit "3").
11

12 DATED: October 28, 2014

THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, ESQ.
DAVID C. O'MARA, ESQ.

13
14
15 
16 DAVID C. O'MARA, ESQ.
17
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NOTICE OF MOTION

TO: All Interested Parties; and

TO: All Counsel of Record

PLEASE TAKE NOTICE that Plaintiffs, Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, Overland Development Corporation, a California corporation, Edward C. Wooley and Judith A. Wooley, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000, by and through their counsel David C. O'Mara, Esq., of The O'Mara Law Firm, P.C. will bring the foregoing Motion to Associate Counsel on for decision on the _____ day of _____, 2014, in Department 6 of the above-entitled Court.

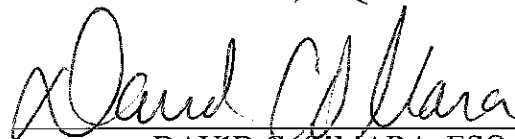
AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

DATED: October 28, 2014

THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, ESQ.
DAVID C. O'MARA, ESQ.


DAVID C. O'MARA, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

X Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

_____ Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

_____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

John Desmond, Esq.
100 W. Liberty St., Ste. 940
Reno, NV 89501
Telephone: 775.343.7500
Fax: 775.786.0131

DATED: October 28, 2014.



INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1.	Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42	6
2.	The State Bar of California's Certificate of Standing	1
3.	State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)	2

EXHIBIT 1

EXHIBIT 1

VAPP

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Larry J. Willard, et al.)	
)	
Plaintiff,)	
)	Case No. CV14-01712
vs.)	Dept. No. 6
Berry-Hinckley Industries, Inc., et al.)	
Defendant.)	
_____)	

**VERIFIED APPLICATION FOR ASSOCIATION
OF COUNSEL UNDER NEVADA SUPREME COURT RULE 42**

 Brian P. Moquin, Petitioner, respectfully represents:
 First Middle Name Last

1. Petitioner resides at _____
 Street Address

 San Jose Santa Clara CA 95148
 City County State Zip Code

(408) 300-0022
 Telephone

2. Petitioner is an attorney at law and a member of the law firm of: Law Offices of Brian P. Moquin

with offices at _____
 Street Address

 San Jose Santa Clara CA 95148
 City County State Zip Code

(408) 300-0022 bmoquin@lawprism.com
 Telephone Email

3. Petitioner has been retained personally or as a member of the above named law firm by _____
 (See Exhibit 1(A)) _____ to provide legal representation in
 connection with the above-entitled matter now pending before the above referenced court.

4. Since November of 2008, petitioner has been, and presently is, a member of good standing of
 the bar of the highest court of the State of California where petitioner regularly practices
 law.

5. Petitioner was admitted to practice before the following United States District Courts, United
 States Circuit Courts of Appeal, the Supreme Court of the United States, and/or courts of other states
 on the dates indicated for each, and is presently a member in good standing of the bars of said Courts:

	<u>DATE ADMITTED</u>
Supreme Court of California	11/3/2008
U.S. District Court for the Eastern District of California	7/08/2011
U.S. Bankruptcy Court for the Eastern District of California	7/08/2011
U.S. District Court for the Central District of California	2/09/2011
U.S. District Court for the Northern District of California	2/22/2013

6. Is Petitioner currently suspended or disbarred in any court? You must answer yes or no. If yes,
 give particulars; e.g., court, jurisdiction, date: No.

7. Is Petitioner currently subject to any disciplinary proceedings by any organization with authority
 at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date,
 status: No.

8. Has Petitioner ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No.

9. Has Petitioner ever had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked? You must answer yes or no. If yes, give particulars, e.g. date, administrative body, date of suspension or reinstatement: No.

10. Has Petitioner, either by resignation, withdrawal, or otherwise, ever terminated or attempted to terminate Petitioner's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings? You must answer yes or no. If yes, give particulars: No.

11. Petitioner has filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matters, if none, indicate so: *(do not include Federal Pro Hacs)*

<u>Date of Application</u>	<u>Cause</u>	<u>Title of Court Administrative Body or Arbitrator</u>	<u>Was Application Granted or Denied?</u>
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None.

(If necessary, please attach a statement of additional applications)

12. Nevada Counsel of Record for Petition in this matter is:

(must be the same as the signature on the Nevada Counsel consent page)

David	C.	O'Mara	8599
First Name	Middle Name	Last Name	NV Bar #

who has offices at The O'Mara Law Firm, P.C.
 Firm Name/Company

311 E. Liberty Street	Reno	Washoe
Street Address	City	County

89501	(775)	323-1321
Zip Code	Phone Number	

13. The following accurately represents the names and addresses of each party in this matter, WHETHER OR NOT REPRESENTED BY COUNSEL, and the names and addresses of each counsel of record who appeared for said parties: (You may attach as an Exhibit if necessary.)

NAME

MAILING ADDRESS

See Exhibit 1(B).

14. Petitioner agrees to comply with the provisions of Nevada Supreme Court Rule 42(3) and (13) and Petitioner consents to the jurisdiction of the courts and disciplinary boards of the State of Nevada in accordance with provisions as set forth in SCR 42(3) and (13). Petitioner respectfully requests that Petitioner be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

15. Petitioner has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation.

I, Brian P. Moquin, do hereby swear/affirm under penalty of perjury that the assertions of this application are true:

That I am the Petitioner in the above entitled matter; that I have read the foregoing and know the contents thereof; that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to the matter I believe them to be true.

That I further certify that I am subject to the jurisdiction of the Courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada; that I understand and shall comply with the standards of professional conduct required by members of the State Bar of Nevada; and that I am subject to the disciplinary jurisdiction to the State Bar of Nevada with respect to any of my actions occurring in the course of such appearance.

DATED this 6th day of October, 2014

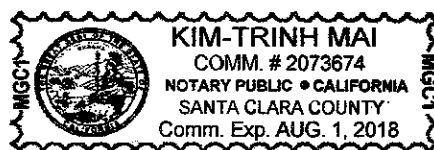
[Signature]
Petitioner/Affiant
If this signature is not in blue ink, you have a copy.

STATE OF California)
COUNTY OF Santa Clara) ss

Subscribed and sworn to before me

this 06 day of Oct., 20 14

[Signature]
Notary Public



I David C. O'Mara hereby consent as Nevada Counsel of Record to the
Print NV Counsel name
 designation of Petitioner to associate in this cause pursuant to SCR 42.

DATED this 8th day of October, 2014

David C. O'Mara

Counsel of Record

If this signature is not in blue ink, you have a copy.

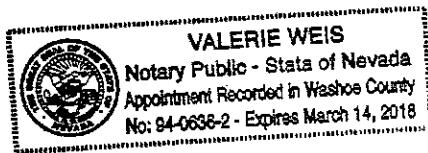
STATE OF Nevada)
) ss
 COUNTY OF Washoe)

Subscribed and sworn to before me

this 8 day of October, 2014

Valerie Weis

Notary Public



VERIFIED APPLICATION FOR ASSOCIATION
OF COUNSEL UNDER NEVADA SUPREME COURT RULE 42

Exhibit 1

A. List of Clients

1. Larry J. Willard
2. The Larry James Willard Family Trust
3. Overland Development Corp.
4. Edward C. Wooley
5. Judith A. Wooley
6. The Edward C. and Judith A. Wooley Intervivos Revocable Trust

B. Names and Addresses of Parties and Counsel of Record

<u>NAME</u>	<u>MAILING ADDRESS</u>
Larry J. Willard	826 Vanderbilt Place, San Diego, CA 92103
The Larry James Willard Family Trust	826 Vanderbilt Place San Diego, CA 92103
Overland Development Corp.	826 Vanderbilt Place San Diego, CA 92103
Edward C. Wooley	68-1025 N. Kaniku Dr. # 516 Kamueca, HI 96743
Judith A. Wooley	68-1025 N. Kaniku Dr. # 516 Kamueca, HI 96743
The Edward C. and Judith A. Wooley Intervivos Revocable Trust	68-1025 N. Kaniku Dr. # 516 Kamueca, HI 96743
David C. O'Mara, Esq.	The O'Mara Law Firm, P.C. 311 East Liberty Street Reno, NV 89501

EXHIBIT 2

EXHIBIT 2



THE STATE BAR OF CALIFORNIA

MEMBER RECORDS & COMPLIANCE

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: 888-800-3400

CERTIFICATE OF STANDING

September 15, 2014

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, BRIAN P. MOQUIN, #257583 was admitted to the practice of law in this state by the Supreme Court of California on November 3, 2008; and has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

A handwritten signature in cursive script, appearing to read "Louise Turner".

Louise Turner
Custodian of Membership Records

EXHIBIT 3

EXHIBIT 3

1 STAT

2 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF WASHOE

4 Case No. CV14-01712
5 Dept. No. 6

6 Larry J. Willard

7 vs.

8 Berry-Hinckley
9 Industries, Inc.

10 _____/
11 STATE BAR OF NEVADA STATEMENT PURSUANT TO SUPREME COURT RULE
12 42 (3) (b)

13 THE STATE BAR OF NEVADA, in response to the application of
14 Petitioner, submits the following statement pursuant to SCR42(3):

15 SCR42(6)Discretion. The granting or denial of a motion to associate
16 counsel pursuant to this rule by the court is discretionary. The
17 court, arbitrator, mediator, or administrative or governmental
18 hearing officer may revoke the authority of the person permitted to
19 appear under this rule. Absent special circumstances, repeated
20 appearances by any person or firm of attorneys pursuant to this rule
21 shall be cause for denial of the motion to associate such person.

22 (a) **Limitation.** It shall be presumed, absent special
23 circumstances, and only upon showing of good cause, that
24 more than 5 appearances by any attorney granted under
25 this rule in a 3-year period is excessive use of this
26 rule.

27 (b) **Burden on applicant.** The applicant shall have the
28 burden to establish special circumstances and good cause
for an appearance in excess of the limitation set forth
in subsection 6(a) of this rule. The applicant shall set
forth the special circumstances and good cause in an
affidavit attached to the original verified application.

1. DATE OF APPLICATION: October 10, 2014

2. APPLYING ATTORNEY: Brian P. Moquin, Esq.

1 3. FIRM NAME AND ADDRESS: Law Offices of Brian P. Moquin, 3506 La
2 Castellet Court, San Jose, CA 95148

3 4. NEVADA COUNSEL OF RECORD: David C. O'Mara, Esq., The O'Mara Law
4 Firm, P.C., 311 E. Liberty Street, Reno, NV 89501

5 5. There is no record of previous applications for appearance by
6 petitioner within the past three (3) years.

7 DATED this October 22, 2014

8
9 

10 Mary Jorgensen
11 Member Services Manager
12 Pro Hac Vice Processor
13 STATE BAR OF NEVADA
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3 CODE NO. 3696
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 LARRY J. WILLARD, individually and as trustee
10 of the Larry James Willard Trust Fund; et al.,

11 Plaintiffs,

Case No. CV14-01712

12 vs.

Dept. No. 6

13 BERRY-HINCKLEY INDUSTRIES, a Nevada
14 corporation; JERRY HERBST, an individual and
JH, INC., a Nevada corporation,

15 Defendants.
16 _____/

17 **PRETRIAL ORDER**

18 The procedures described in this pretrial order are designed to secure a just, speedy, and
19 inexpensive determination of the issues. If any party believes that a procedure described below will
20 not achieve these ends in this case, that party should seek an immediate conference among all parties
21 and the Court so that alternative possibilities may be discussed. Otherwise, failure of either party to
22 comply with the provisions in this order may result in the imposition of sanctions, including dismissal
23 of the action or entry of a default. All references to "counsel" include self-represented litigants.
24
25
26

1
2
3 **I. TRIAL SETTING AND PRETRIAL CONFERENCES**

4 **A. Trial Setting.** Within 30 days of the date of this Order, Counsel for Plaintiff(s) must
5 notice counsel for Defendant(s) and set this matter for trial. Said trial setting may be via telephone
6 conference with all parties conferenced first before calling the Court.
7

8 **B. Interim Pretrial Conferences.** The Court is available to meet with the parties whenever
9 the parties agree that a meeting would be beneficial in facilitating this litigation. The Court also may
10 order one or more pretrial conferences sua sponte or upon motion by any party.

11 **C. Final Pretrial Conference.** When this case is initially scheduled for trial, the parties shall
12 also arrange for a final pretrial conference, to be held no later than 60 calendar days prior to trial.

13 1. Purpose—The conference is intended to develop a plan for trial, including a
14 protocol for facilitating the admission of evidence, and to address any trial-related disputes, needs, or
15 requests.

16 2. Required Attendance—This conference must be attended by (a) the attorneys who
17 will try the case; (b) the parties, which includes an authorized representative of any party that is an
18 entity; and (c) any unrepresented parties.

19 3. Use of Equipment at Trial—At this conference, counsel must advise the Court fully
20 with respect to the following matters:
21

22 (a) the equipment to be used during trial;

23 (b) the presentation software to be used during trial, and whether each party is able to
24 receive and use digital files of presentation materials prepared by another;

25 (c) any expected use of videoconferencing; and
26

1 (d) the testing, inspection, compatibility, reliability, positioning, and backup for any
2 equipment to be brought to the courtroom.

3 **D. Personal Appearance Required.** Except upon prior approval otherwise, counsel must
4 appear at all conferences in person.

5 **II. DISCOVERY**

6 **A. Explanation and Support for Objections.** A party objecting to a discovery request
7 must, in the original response, specifically state the grounds for any objection asserted, including (a)
8 an explanation supporting the stated objection, and (b) affidavits, declarations, or other evidence to
9 support any factual assertions upon which the objection is based. The Court will disregard general
10 objections used to assert objections that might exist to unspecified portions of a discovery request.
11

12 **B. Consultation Before Motion Practice.** Prior to filing any discovery motion, the attorney
13 for the moving party must consult with opposing counsel about the disputed issues. Counsel for each
14 side must present to each other the merits of their respective positions with the same candor,
15 specificity, and supporting material as would be used in connection with a discovery motion.

16 **C. Dilatory Motions.** Notwithstanding the deadline for submitting pretrial motions, all
17 discovery motions must be filed and submitted in a reasonably prompt manner with respect to the
18 request or response giving rise to the motion.
19

20 **D. Discovery Hearings.** Discovery motions typically are resolved without the need for oral
21 argument. However, if both sides desire a dispute resolution conference pursuant to NRCP 16.l(d),
22 counsel must contact the Discovery Commissioner's office, at (775) 328-3293, to obtain a date and
23 time for the conference that is convenient to all parties and the Discovery Commissioner. If the
24 parties cannot agree upon the need for a conference, the party seeking the conference must file and
25 submit a motion in that regard.
26

1 **E. Effect of Trial Continuance.** A continuance of trial does not extend the deadline for
2 completing discovery. A request for an extension of the discovery deadline, if needed, must be made
3 separately or included as part of any motion for continuance of trial.

4 **F. Electronically Stored Information.** Electronically stored information (“ESI”) is any
5 information created, stored, or best utilized with computer technology of any type. ESI generally is
6 discoverable to the same extent as other information.

7 1. Notice of ESI Discovery—If any party intends to seek the production of ESI in this
8 case, that fact should be communicated as soon as possible to counsel for the party in possession,
9 custody, or control of that ESI, and the categories or types of information to be sought should be
10 clearly identified.

11 2. Consultation About ESI—If discovery of ESI will be sought or is likely to be
12 sought, the parties must meet and confer about the issues, problems, and disputes that might
13 reasonably arise from such a request.

14 3. Knowledge of Systems—To the extent that discovery of a party’s ESI is or
15 reasonably may be an issue in the case, counsel for that party (either personally or through a
16 representative) must become appropriately familiar with the operation of the client’s relevant
17 information management systems, including the manner in which information is stored and retrieved.
18 The degree of familiarity necessary will depend upon the nature of the case, the information systems,
19 the discovery requests, and other relevant factors.

20 **G. Computer Animations.** If any party intends to offer a computer-generated animation
21 either as an evidentiary exhibit or an illustrative aid, that party must disclose that intention when
22 expert disclosures are made pursuant to NRCP 16.1(a)(2). A copy of the animation must be
23 furnished to all other parties no later than 30 calendar days prior to trial. Disclosure of the animation
24
25
26

1 includes copies of the underlying digital files as well as the completed animation.

2 **III. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

3 A. **Notice of Settlement.** In the event that this case is settled prior to trial, the parties must
4 promptly notify the presiding judge's judicial assistant.

5 B. **Settlement Conference or Alternative Dispute Resolution.** The court may order, upon
6 a party's request or sua sponte, that the parties and their attorneys (a) meet in person with a judge
7 other than the presiding judge in this case and attempt to settle the case, or (b) participate in
8 mediation or some other appropriate form of alternative dispute resolution in an effort to resolve this
9 case prior to trial.

10 **IV. TRIAL-RELATED PROCEDURES**

11
12 A. **All Motions and Motions in Limine.** All motions, except for motions in limine, must be
13 fully briefed and submitted for decision no later than 30 calendar days before trial. Motions in limine
14 must be fully briefed and submitted for decision no later than 15 calendar days before trial. Any
15 party filing a motion in limine, or any other paper stating a party's position in connection with a
16 motion in limine, must deliver to chambers a copy of that party's filing. The parties are relieved of
17 the requirement that motions in limine be attached to a party's trial statement.

18 B. **Page Limits.** Legal memoranda submitted in support of any motion may not exceed
19 fifteen pages in length; opposition memoranda may not exceed fifteen pages in length; and reply
20 memoranda may not exceed five pages in length. These limitations are exclusive of exhibits. A party
21 may file memoranda that exceed these limits only with prior approval of the Court, upon a showing
22 of extraordinary circumstances. Said approval will only be considered upon the party filing a Motion
23 to Exceed Page Limits. Absent a Motion to Exceed Page Limits and the Court's approval of said
24 motion, any motion, opposition or reply submitted to Department Six that exceeds the page limits
25
26

1 listed above, will be rejected.

2 **C. Exhibits.** The Court Clerk(s) for Department 6, will contact trial counsel, no later than
3 seven calendar days prior to trial, to arrange a date and time to mark trial exhibits.

4 1. Marking and Objections—All exhibits shall be marked in one numbered series
5 (Exhibit 1, 2, 3, etc.) and placed in one or more binders provided by counsel, unless the Court permits
6 a different procedure. When marking the exhibits with the clerk, counsel shall advise the clerk of all
7 exhibits which may be admitted without objection, and those that may be admissible subject to
8 objections.

9 2. Copies—Counsel must cooperate to insure that three identical sets of exhibits—one
10 for the Court, one for the clerk to be used for trial, and one for the testifying witnesses—are provided
11 to the Court.

12 3. Custody of Exhibits—After trial exhibits are marked by the clerk, they will remain
13 in the custody of the clerk.

14 4. Unmarked Exhibits—Any exhibits not timely submitted to opposing counsel and
15 the clerk in full compliance with these procedures will not be marked by the clerk, and may not be
16 offered or referenced during the trial.

17 5. Illustrative Aids—No later than seven judicial days before trial, the parties must
18 exchange any illustrative aids that they may use at trial. These exhibits must be exchanged in the
19 form and format in which they may be used at trial.

20 **D. Trial Statements.** The trial statement required by WDCR 5 must be filed and served no
21 later than 5:00 p.m. five judicial days before trial. It must be served upon other parties by personal
22 delivery, fax, or email, and a copy must be delivered to the chambers of the presiding judge.

23 **E. Jury Instructions and Verdict Forms.** All proposed jury instructions and verdict forms
24
25
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1 must be submitted to the Court no later than five judicial days prior to trial.

2 1. Format—All original jury instructions must be accompanied by a separate copy of
3 each instruction containing a citation to the form instruction or to the authority supporting that
4 instruction. All modifications made to instructions taken from statutory authority, Nevada Pattern
5 Jury Instructions, Devitt and Blackmar, CACI, BAJI, or other form instructions must be separately
6 underscored on the citation page.

7 2. Exchange—The parties must exchange all proposed jury instructions and verdict
8 forms no later than seven judicial days before trial.

9 3. Agreement and Submission—The parties must confer regarding the proposed jury
10 instructions and verdict forms before they are submitted to the Court. All undisputed instructions and
11 verdict forms must be submitted jointly to the Court; the parties must separately submit any disputed
12 instructions and verdict forms.

13 4. Disputes and Additional Instructions—After commencement of the trial, the Court
14 will meet with counsel to determine the jury instructions and verdict forms that will actually be used.
15 At that time, the Court will resolve all disputes over instructions and verdict forms, and consider the
16 need for any additional instructions which could not reasonably have been foreseen prior to trial.

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18 **F. Juror Notes and Questions.** Jurors will be permitted to take notes during trial. Jurors
19 will be permitted to submit questions in writing during trial; however, juror questions will be asked
20 only after the questions are reviewed by counsel and approved by the Court. Any objection to this
21 procedure must be set forth in the trial statement.

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23 **G. Use of Electronically Recorded Depositions.** No depositions that were recorded by
24 other than stenographic means may be edited until the Court rules on objections. If such a recording
25 is to be used at trial, it must be edited to eliminate cumulative testimony and to present only those
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1 matters that are relevant and material. All extended silent passages and objections/exchanges
2 between counsel must be omitted.

3 **H. Evidentiary Rulings.** Every witness that counsel intends to call at trial must be informed
4 about any rulings that restrict or limit testimony or evidence (e.g., rulings on motions in limine), and
5 to further inform them that they may not offer or mention any evidence that is subject to that ruling.

6 **I. Examination Limits.** Absent extraordinary circumstances, counsel will be given the
7 opportunity for one re-direct and one re-cross examination.

8 **V. MISCELLANEOUS**

9
10 **A. Communication with Department.** In addition to communication by telephone, letter, or
11 facsimile, counsel may communicate with Department 6 via electronic mail to the Judicial Assistant
12 at: heidi.boe@washoecourts.us. All written communications must be copied to all opposing counsel
13 and unrepresented litigants.

14 **B. Request for Accommodation or Interpreter.** Counsel must notify the Court as early as
15 possible of any reasonable accommodation needed because of a disability or the need for an
16 interpreter.

17 **C. Audio Visual Equipment.** Attorneys requesting the use of audio visual equipment in the
18 courtroom must complete the “audio visual equipment request form” and fax the completed form to
19 Court Administration at the number provided thereon. Please note that significant lead time is
20 needed for the request as Court equipment is limited. The form is available on the Second Judicial
21 District Court’s web site at:

22 [http://washoecourts.com/filing_office/PDF/Audio%20Visual%20Equipment%20Request%20](http://washoecourts.com/filing_office/PDF/Audio%20Visual%20Equipment%20Request%20Form.pdf)
23 [Form.pdf](http://washoecourts.com/filing_office/PDF/Audio%20Visual%20Equipment%20Request%20Form.pdf)
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25 **D. Etiquette and Decorum.** Counsel must adhere to professional standards of courtroom
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1 etiquette and decorum. In addition, direct attacks on the character or ethics of other counsel which the
2 Court deems unwarranted—whether occurring in a writing submitted to the Court, at a deposition, or
3 in connection with a trial, hearing, or meeting with the Court—may result in the imposition of
4 sanctions.

5 **IT IS SO ORDERED.**

6 DATED this 10 day of November, 2014.

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10 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 10th day of November, 2014, I electronically filed the foregoing with the
clerk of the Court:

JOHN DESMOND, ESQ.

DAVID O'MARA, ESQ.

KATHLEEN BRADY, ESQ.

BRIAN IRVINE, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:



Judicial Assistant

1 CODE NO.
2 THE O'MARA LAW FIRM, P.C.
3 WILLIAM M. O'MARA, State Bar No. 00837
4 DAVID C. O'MARA, State Bar No. 8599
5 311 E. Liberty Street
6 Reno, NV 89501
7 Telephone (775) 323-1321
8 Facsimile: (775) 323-4082

9 LAW OFFICES OF BRIAN P. MOQUIN
10 BRIAN P. MOQUIN, ESQ.
11 Pro Hac Vice Application Pending
12 California Bar No. 247583
13 3506 La Castellet Court
14 San Jose, CA 95148
15 Telephone: 408.300.0022
16 Fax: 408.843.1678
17 bmoquin@lawprism.com

18 Attorneys for Plaintiffs

19 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
20 **IN AND FOR THE COUNTY OF WASHOE**

21 LARRY J. WILLARD, individually and as) Case No. CV14-01712
22 trustee of the Larry James Willard Trust Fund;)
23 OVERLAND DEVELOPMENT) Dept. No. 6
24 CORPORATION, a California corporation;)
25 EDWARD C. WOOLEY AND JUDITH A.) **ORDER ADMITTING BRIAN P.**
26 WOOLEY, individually and as trustees of the) **MOQUIN, ESQ. TO PRACTICE**
27 Edward C. Wooley and Judith A. Wooley)
28 Intervivos Revocable Trust 2000,)

Plaintiffs,)

vs.)

29 BERRY-HINCKLEY INDUSTRIES, a)
30 Nevada corporation; JERRY HERBST, an)
31 individual; and JH, INC., a Nevada)
32 corporation,)

Defendants.)

1 Brian P. Moquin, Esq. having filed his Motion to Associate Counsel under Nevada
2 Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a
3 Certificate of Good Standing for the State of California, and the State Bar of Nevada Statement;
4 said application having been noticed, no objections having been made, and the Court being
5 fully apprised in the premises, and good cause appearing, it is hereby

6 **ORDERED**, that said application is hereby granted, and Brian P. Moquin, Esq. is
7 hereby admitted to practice in the above-entitled Court for the purposes of the above-entitled
8 matter only.

9 DATED: 11/12/, 2014.

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12 DISTRICT COURT JUDGE
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