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,

Appellants,

vs.

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

Respondents.
_____/

Electronically Filed
Aug 26 2019 04:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 77780

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 3 OF 19

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(cont 31)	Exhibit 28: Deposition of L. Willard Excerpt		12	2765-2770
	Exhibit 29: April 12, 2013 Letter		12	2771-2773
	Exhibit 30: Declaration of G. Gordon		12	2774-2776
	Exhibit 31: Declaration of C. Kemper		12	2777-2780
32.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	12	2781-2803
	Exhibit 1: Plaintiffs' Initial Disclosures		12	2804-2811
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		12	2812-2820
	Exhibit 3: December 5, 2016 Email		12	2821-2827
	Exhibit 4: December 9, 2016 Email		12	2828-2829
	Exhibit 5: December 23, 2016 Email		12	2830-2833
	Exhibit 6: December 27, 2016 Email		12	2834-2837
	Exhibit 7: February 3, 2017 Letter		13	2838-2865
	Exhibit 8: Deposition Excerpts of D. Gluhaich		13	2866-2875
	Exhibit 9: Declaration of Brain Irvine		13	2876-2879
33.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	13	2880-2896
	Exhibit 1: Highway 50 Lease		13	2897-2940
	Exhibit 2: Declaration of Chris Kemper		13	2941-2943
	Exhibit 3: Wooley Deposition at 41		13	2944-2949
	Exhibit 4: Virginia Lease		13	2950-2985

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
	Exhibit 7: Willard Deposition at 89		13	3015-3020
34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
	Exhibit 1: Plaintiffs' Initial Disclosures		13	3059-3066
	Exhibit 2: November 2014 Email Exchange		13	3067-3076
	Exhibit 3: January 2015 Email Exchange		13	3077-3082
	Exhibit 4: February 12, 2015 Letter		13	3083-3085
	Exhibit 5: Willard July 2015 Interrogatory Reponses		14	3086-3097
	Exhibit 6: Wooley July 2015 Interrogatory Responses		14	3098-3107
	Exhibit 7: August 28, 2015 Letter		14	3108-3119
	Exhibit 8: March 3, 2016 Letter		14	3120-3208
	Exhibit 9: March 15, 2016 Letter		14	3209-3300
	Exhibit 10: April 20, 2016 Letter		14	3301-3327
	Exhibit 11: December 2, 2016 Expert Disclosure		15	3328-3336
	Exhibit 12: December 5, 2016 Email		15	3337-3343
	Exhibit 13: December 9, 2016 Email		15	3344-3345
	Exhibit 14: December 23, 2016 Email		15	3346-3349
	Exhibit 15: December 27, 2016 Email		15	3350-3353
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NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 34)	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		15	3382-3391
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	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
	Exhibit 22: June 21, 2016 Email Exchange		15	3447-3453
	Exhibit 23: July 21, 2016 Letter		15	3454-3471
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		15	3472-3480
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		15	3481-3490
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		15	3491-3498
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		15	3499-3506
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		15	3507-3512
	Exhibit 29: Defendants' Requests for Admission on Wooley		15	3513-3518
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		15	3519-3528
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		15	3529-3539
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		15	3540-3547

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(cont 34)	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		15	3548-3555
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		15	3556-3561
	Exhibit 35: Defendants' Requests for Admission on Willard		15	3562-3567
35.	Plaintiffs' Request for a Brief Extension of Time to Respond to Defendants' Three Pending Motions and to Extend the Deadline for Submissions of Dispositive Motions	12/06/17	15	3568-3572
36.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	16	3573-3576
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	12/07/17	16	3577-3580
38.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	16	3581-3584
39.	Order Granting Defendants/ Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	16	3585-3589
40.	Order Granting Defendants/ Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	16	3590-3594
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	16	3595-3598

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
42.	Notice of Entry of Order re Defendants' Motion for Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	16	3599-3602
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	16	3603-3606
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	16	3607-3640
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	16	3641-3644
46.	Request for Entry of Judgment	03/09/18	16	3645-3649
	Exhibit 1: Judgment		16	3650-3653
47.	Notice of Withdrawal of Local Counsel	03/15/18	16	3654-3656
48.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	16	3657-3659
49.	Opposition to Request for Entry of Judgment	03/26/18	16	3660-3665
50.	Reply in Support of Request for Entry of Judgment	03/27/18	16	3666-3671
51.	Order Granting Defendant/ Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	16	3672-3674
52.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	16	3675-3692
	Exhibit 1: Declaration of Larry J. Willard		16	3693-3702
	Exhibit 2: Lease Agreement dated 11/18/05		16	3703-3738
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		16	3739-3741

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 52)	Exhibit 4: Operation and Management Agreement dated 5/1/13		16	3742-3746
	Exhibit 5: 13 Symptoms of Bipolar Disorder		16	3747-3749
	Exhibit 6: Emergency Protective Order dated 1/23/18		16	3750-3752
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		16	3753-3755
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		16	3756-3769
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		16	3770-3798
53.	Opposition to Rule 60(b) Motion for Relief	05/18/18	17	3799-3819
	Exhibit 1: Declaration of Brain R. Irvine		17	3820-3823
	Exhibit 2: Transfer of Hearing, January 10, 2017		17	3824-3893
	Exhibit 3: Transfer of Hearing, December 12, 2017		17	3894-3922
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		17	3923-3924
	Exhibit 5: Attorney status according to the California Bar		17	3925-3933
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		17	3934-3941
54.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	17	3942-3950

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 54)	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		17	3951-3958
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		17	3959-3962
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		17	3963-3965
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		17	3966-3975
	Exhibit 5: Receipt		17	3976-3977
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018			3978-3982
	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		17	3983-3989
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		17	3990-3994
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		17	3995-3997
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		17	3998-4000
	Exhibit 11: Notice of Withdrawal of Local Counsel		17	4001-4004
55.	Order re Request for Entry of Judgment	06/04/18	17	4005-4009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
56.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	17	4010-4018
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		17	4019-4036
57.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	18	4037-4053
58.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	18	4054-4060
59.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	18	4061-4092
60.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	18	4093-4096
	Exhibit 1: Order Denying Plaintiffs' Rule 60(b) Motion for Relief		18	4097-4129
61.	Judgment	12/11/18	18	4130-4132
62.	Notice of Entry of Order re Judgment	12/11/18	18	4133-4136
	Exhibit 1: December 11, 2018 Judgment		18	4137-4140
63.	Notice of Appeal	12/28/18	18	4141-4144
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		18	4145-4179
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		18	4180-4212
	Exhibit 3: Judgment, entered December 11, 2018		18	4213-4216

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
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64.	Transcript of Proceedings – Status Hearing	08/17/15	18	4217-4234
65.	Transcript of Proceedings - Hearing on Motion for Partial Summary Judgment	01/10/17	19	4235-4303
66.	Transcript of Proceedings - Pre-Trial Conference	12/12/17	19	4304-4331
67.	Transcript of Proceedings - Oral Arguments – Plaintiffs' Rule 60(b) Motion (condensed)	09/04/18	19	4332-4352
ADDITIONAL DOCUMENTS				
68.	Order Granting Defendants' Motion for Partial Summary Judgment [Oral Argument Requested][1]	01/04/18	19	4353-4357

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

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 4

EXHIBIT 4

2013-1-CV-245021 - L. Willard, et al vs J. Herbst, et al

Case Number: 2013-1-CV-245021
File Date: 04/19/2013
Case Status: Closed/Inactive

Court: Superior Court of Santa Clara - Civil
Case Type: Breach of Contract/Warranty Unlimited (06)

Plaintiff : Willard, Larry J.
Aliases:
TRF The Larry James Willard Trust Fund

Active Attorneys
Lead Attorney:
Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Plaintiff : Overland Development Corporation, Inc.

Active Attorneys
Lead Attorney:
Zlotoff, Stanley A.
Retained
Work Phone: 408-287-5087

Attorney: Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Plaintiff : Wooley, Edward C.
Aliases:
TRF The Wooley Intervivos Revocable Trust 2000

Active Attorneys
Lead Attorney:
Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Plaintiff : Wooley, Judith A.
Aliases:
TRF The Wooley Intervivos Revocable Trust 2000

Active Attorneys
Lead Attorney:
Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Defendant : Herbst, Jerry

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Herbst, Maryanne

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Herbst, Timothy

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : JH, Inc.

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : BHI (Berry-Hinkley, Inc.)

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Terrible Herbst, Inc.

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Berger, Marc

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : X-Roads Solutions Group, LLC

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Business Partners, LLC

Aliases:
SCO In Interest To Santa Barbara Bank & Trust, AKA SBB&T

Defendant : Union Bank
Aliases:
SCO By Merger To Santa Barbara Bank & Trust Aka SBB&T

Active Attorneys
Lead Attorney:
Pearson, Stephen W.
Retained
Work Phone: 831-424-1414

07/09/2013 Judgment

Judgment Type: Dismissal - No ADR (CV)

Party
Name: Business Partners, LLC

01/23/2014 Judgment

Judgment Type: Dismissal - No ADR (CV)

Party
Name: Union Bank

05/19/2014 Judgment

Judgment Type: Dismissal - No ADR (CV)

Party
Name: X-Roads Solutions Group, LLC

Party
Name: Berger, Marc

Party
Name: Terrible Herbst, Inc.

Party
Name: BHI (Berry-Hinkley, Inc.)

Party
Name: JH, Inc.

Party

Name: Herbst, Timothy

Party
Name: Herbst, Maryanne

Party
Name: Herbst, Jerry

Party
Name: Wooley, Judith A.

Party
Name: Wooley, Edward C.

Party
Name: Overland Development Corporation, Inc.

Party
Name: Willard, Larry J.

04/19/2013 Civil Case Cover Sheet
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Case Cover Sheet Decision = M Closed = 04/19/2013

04/19/2013 Complaint (Unlimited) (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = Atty: Goldblatt, (408) 848-4396 Legacy Name = CV Complaint Filed/Summs Issued Decision = M Closed = 04/19/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/19/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/19/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed

Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

05/10/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/10/2013

05/10/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/10/2013

05/14/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/14/2013

05/22/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/22/2013

05/22/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/22/2013

05/24/2013 Declaration: Non-Service
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl:Non-Service Decision = M Closed = 05/24/2013

05/24/2013 Declaration: Non-Service
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl:Non-Service Decision = M Closed = 05/24/2013

05/24/2013 Declaration: Non-Service
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl:Non-Service Decision = M Closed = 05/24/2013

05/29/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/31/2013

07/09/2013 Request: Dismissal
Judicial Officer: Kirwan, Peter
Comment: Text = with prejudice as to def Business Partners LLC only by atty Steven Goldblatt Legacy Name = CV Req:Dismissal, Partial Decision = M Closed = 07/10/2013

07/18/2013 Answer (Unlimited) (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = Atty: Desmond Legacy Name = CV Answer, Unltd, w/fees Decision = M Closed = 07/18/2013

07/18/2013 Motion: Quash
Judicial Officer: Kirwan, Peter
Comment: Text = service of summons & complt and/or dismiss or stay Complt Atty: Desmond 10/10/13, 9am, d8 Legacy Name = CV Ntc:Mtn to Quash Decision = M Closed = 07/18/2013

07/18/2013 Motion: Other
Judicial Officer: Kirwan, Peter
Comment: Text = service of summons & complt and/or dismiss or stay Complt Atty: Desmond 10/10/13, 9am, d8 Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 07/18/2013

07/18/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 07/18/2013

07/19/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = **DENIED BY JUDGE KIRWAN WITHOUT SINGING AN ORDER** for an Order to exceed page limits on Memo ofo P's & A's by Def (John P. Desmond) Legacy Name = CV Ex Parte Appl Decision = M Closed = 07/19/2013

07/23/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = for ost for mtn for sum jgmt; decl of Wooley An Willard in sup thereof; memo p&as, L. Steven Goldblatt Legacy Name = CV Ex Parte Appl Decision = M Closed = 07/23/2013

07/23/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Text = ex parte appl for ost for mtn for sum jgmt L. Steven Goldblatt Legacy Name = CV Memo:Ps & As/Suppt of Mtn Decision = M Closed = 07/23/2013

07/23/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Text = of shorten time for ost for mtn for sum jgmt L. Steven Goldblatt Legacy Name = CV Memo:Ps & As/Suppt of Mtn

Decision = M Closed = 07/23/2013

07/24/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = Denied not a proper basis for Ex Parte Rrequest by Judge Kirwan Legacy Name = CV Ex Parte Order Decision = M Closed = 07/24/2013

07/29/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = order re: ex parte application to exceed the page limit - Denied, no good cause shown; signed by Judge Kirwan Legacy Name = CV Ex Parte Order Decision = D Closed = 07/29/2013

08/01/2013 Motion: to be Relieved as Counsel
Judicial Officer: Kirwan, Peter
Comment: Text = 8/27/13 at 9am, dept 8; atty Goldblatt Legacy Name = CV Ntc:Mtn/Relieve as Counsel Decision = M Closed = 08/01/2013

08/01/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 08/01/2013

08/06/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = atty Goldblatt Legacy Name = CV Case Mgmt Statement Decision = M Closed = 08/06/2013

08/07/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = J. Desmond Legacy Name = CV Case Mgmt Statement Decision = M Closed = 08/07/2013

08/07/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = telephonic appearance Legacy Name = CV Ntc of... Decision = M Closed = 08/07/2013

08/08/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = for cont cmc (John Desmond) Legacy Name = CV Ex Parte Appl Decision = M Closed = 08/08/2013

08/08/2013 Answer (Unlimited) (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = (JOHN P. DESMOND) Legacy Name = CV First Paper Def - Unltd Decision = M Closed = 08/08/2013

08/08/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = request for cont. of cmc is DENIED Legacy Name = CV Ex Parte Order Decision = D Closed = 08/08/2013

08/08/2013 Notice: Appearance
Judicial Officer: Kirwan, Peter
Comment: Text = atty Stephen Pearson Legacy Name = CV Ntc of Appearance Decision = M Closed = 08/08/2013

08/09/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = for an Order to Continue CMC by Def (John P. Desmond) Legacy Name = CV Ex Parte Appl Decision = M Closed = 08/09/2013

08/09/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = to reschedule cmc: CMC is cont'd to 9-24-13, 10am, dept. 8, granted by Judge Kirwan Legacy Name = CV Ex Parte Order Decision = G Closed = 08/09/2013

08/12/2013 Motion: to be Relieved as Counsel
Judicial Officer: Kirwan, Peter
Comment: Text = 8-27-13, 9am, dept. 8, L. Steven Goldblatt Legacy Name = CV Ntc:Mtn/Relieve as Counsel Decision = M Closed = 08/12/2013

08/12/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = telephonic appearance of Defs Counsel for Motion to be Relieved as Counsel (John P. Desmond) 8-27-13 @9am in d8 Legacy Name = CV Ntc of... Decision = M Closed = 08/12/2013

08/12/2013 Request: Telephonic Appearance
Judicial Officer: Kirwan, Peter
Comment: Text = for mtn to quash Legacy Name = CV Ntc:Intent/Appear by Phone Decision = M Closed = 08/12/2013

08/13/2013 Conference: Case Management
Original Type: Conference: Case Management
Judicial Officer: Kirwan, Peter
Hearing Time: 3:00 PM
Result: Set for: further CMC
Comment: Result By = K Result Judge = PK - Kirwan, Peter Result Date = 08/09/2013

08/27/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter

08/27/2013 Motion: Withdraw as attorney
Original Type: Motion: Withdraw as attorney
Judicial Officer: Arand, Mary E
Hearing Time: 9:00 AM
Result: Heard: Denied
Comment: Text = Plf Edward C. Wooley (L. Steven Goldblatt) Result By = C Result Judge = PK - Kirwan, Peter Result Date = 08/27/2013

08/27/2013 Motion: Withdraw as attorney
Original Type: Motion: Withdraw as attorney
Judicial Officer: Arand, Mary E
Hearing Time: 9:00 AM
Result: Heard: Denied
Comment: Text = Larry J. Willard (L. Steven Goldblatt) *Court Reporter Fee Due* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 08/27/2013

09/04/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 09/04/2013

09/04/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 09/04/2013

09/04/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 09/04/2013

09/04/2013 Motion: Strike
Judicial Officer: Kirwan, Peter
Comment: Text = 10-10-13, 9am, d.8; atty goldblatt Legacy Name = CV Ntc:Mtn to Strike Decision = M Closed = 09/04/2013

09/04/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 09/04/2013

09/04/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Memo:Ps & As/Suppt of Mtn Decision = M Closed = 09/04/2013

09/04/2013 Declaration
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Declaration Decision = M Closed = 09/04/2013

09/17/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = atty goldblatt Legacy Name = CV Case Mgmt Statement Decision = M Closed = 09/17/2013

09/18/2013 Motion: Leave
Judicial Officer: Kirwan, Peter
Comment: Text = complaint; 10-10-13, 9am, d.8; atty goldblatt Legacy Name = CV Ntc:Mtn for Leave to Amend Decision = M Closed = 09/18/2013

09/18/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 09/18/2013

09/18/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Memo:Ps & As/Suppt of Mtn Decision = M Closed = 09/18/2013

09/18/2013 Declaration: In Support
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl in Support Decision = M Closed = 09/18/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = to dismiss or stay cmplt J. Desmond 10/10/13, 9a, D-8 Legacy Name = CV Amended Pleading Decision = M Closed = 09/20/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = to quash service of summons & cmplt J. Desmond 10/10/13, 9a, D8 Legacy Name = CV Amended Pleading Decision = M Closed = 09/20/2013

09/20/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = of telephonic appearance Legacy Name = CV Ntc of... Decision = M Closed = 09/20/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = amended mtn to quash summons & cmplt Legacy Name = CV Amended Pleading Decision = M Closed =

09/20/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = mtn to dismiss or stay cmplt Legacy Name = CV Amended Pleading Decision = M Closed = 09/20/2013

09/24/2013 Opposition/Objections
Judicial Officer: Kirwan, Peter
Comment: Text = to mtn to quash; 10-10-13, 9a, d.8; atty goldblatt Legacy Name = CV Opposition Decision = M Closed = 09/24/2013

09/24/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Memo:Ps & As/Opposn to Mtn Decision = M Closed = 09/24/2013

09/24/2013 Declaration: In Support
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl in Support Decision = M Closed = 09/24/2013

09/24/2013 Declaration: In Support
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl in Support Decision = M Closed = 09/24/2013

09/24/2013 Substitution: Attorney
Judicial Officer: Kirwan, Peter
Comment: Text = old goldblatt new zlotoff Legacy Name = CV Substitution of Attorney Decision = M Closed = 09/24/2013

09/24/2013 Conference: Further Case Management
Original Type: Conference: Further Case Management
Judicial Officer: Kirwan, Peter
Hearing Time: 10:00 AM
Result: Referral: Mediation
Comment: Text = Set per 8-09-13 Order *Telephonic Appearance by John P. Desmond for Def Barry-Hinckley Industries; and Stephen W. Pearson for Def Union Bank, Successor in Interest to Santa Barbara Bank & Trust* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 09/24/2013

09/25/2013 Errata
Judicial Officer: Kirwan, Peter
Comment: Text = To answer to complt; Atty Desmond Legacy Name = CV Errata Decision = M Closed = 09/25/2013

09/25/2013 Objection: Evidence
Judicial Officer: Kirwan, Peter
Comment: Text = in sup of mtn to strike, John P. Demond Legacy Name = CV Obj:Evidence Decision = M Closed = 09/25/2013

09/25/2013 Opposition/Objections
Judicial Officer: Kirwan, Peter
Comment: Text = to mtn to strike answer & enter def's default, J. Desmond Legacy Name = CV Opposition Decision = M Closed = 09/25/2013

09/26/2013 Notice of Hearing (no fee)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = ARB-Ntc of Mediation Status Conf Decision = M Closed = 09/26/2013

09/26/2013 Motion: Strike
Original Type: Motion: Strike
Judicial Officer: Kirwan, Peter
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = Answer by Plts Larry J. Willard and Judith Wooley (L. Steven Goldblatt) *Off Calendar by Moving Party, moved to 10/10/13--rta)* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 09/09/2013

10/01/2013 Notice of Hearing (no fee)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = ARB-Ntc of Mediation Status Conf Decision = M Closed = 10/01/2013

10/01/2013 Notice of Hearing (no fee)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = ARB-Ntc of Mediation Status Conf Decision = M Closed = 10/01/2013

10/03/2013 Response/Reply
Judicial Officer: Kirwan, Peter
Comment: Text = to Plt's Opposition to Def's Motion to Quash Service of Summons and Complaint by Def (John P. Dessmond) 10-10-13 29am in D-8 Legacy Name = CV Reply Decision = M Closed = 10/03/2013

10/10/2013 Stipulation and Order
Judicial Officer: Kirwan, Peter
Comment: Text = stip and order for leave to file 1st amended complaint; Granted by Judge Kirwan Legacy Name = CV Stip & Order/$20 fee Decision = G Closed = 10/10/2013

10/10/2013 Motion: Quash
Original Type: Motion: Quash

Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = Service of Summons and/or to Dismiss or Stay Complaint by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond) *Off Calendar by Moving Party Per Cindy/rta 10/7/13* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 10/07/2013

10/10/2013 Motion: Strike
Original Type: Motion: Strike
Judicial Officer: Kirwan, Peter
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = Defendant's Answer and Enter Default by Plts Larry J. Willard and Judith Wooley (L. Steven Goldblatt) *Off Calendar per Stanley Zlotoff for Steven Goldblatt - md 10/7/13* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 10/07/2013

10/10/2013 Motion: Leave to File
Original Type: Motion: Leave to File
Judicial Officer: Kirwan, Peter
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = a First Amended Complaint by Plts Larry J. Willard and Judith Wooley (L. Steven Goldblatt) *Off Calendar per Stanley Zlotoff for Steven Goldblatt - md 10/7/13* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 10/07/2013

10/21/2013 Substitution: Attorney
Judicial Officer: Kirwan, Peter
Comment: Text = old: goldblatt new: zlotoff Legacy Name = CV Substitution of Attorney Decision = M Closed = 10/21/2013

10/24/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = of telephonic appearance. atty Desmond Legacy Name = CV Ntc of... Decision = M Closed = 10/24/2013

01/16/2014 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = atty pearson Legacy Name = CV Case Mgmt Statement Decision = M Closed = 01/16/2014

01/23/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old atty zlotoff, new atty Goldblatt Legacy Name = CV Substitution of Attorney Decision = M Closed = 01/23/2014

01/23/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old atty zlotoff, new atty Goldblatt Legacy Name = CV Substitution of Attorney Decision = M Closed = 01/23/2014

01/23/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old pro per , new atty Goldblatt Legacy Name = CV Substitution of Attorney Decision = M Closed = 01/23/2014

01/23/2014 Notice: Association/Co-Counsel
Judicial Officer: Lucas, Patricia M
Comment: Text = Associating counsel Tim W. English 408-605-8068 Legacy Name = CV Association of Attys Decision = M Closed = 01/23/2014

01/23/2014 Statement: Case Management Conference
Judicial Officer: Lucas, Patricia M
Comment: Text = atty goldblatt Legacy Name = CV Case Mgmt Statement Decision = M Closed = 01/23/2014

01/23/2014 Request: Dismissal
Judicial Officer: Lucas, Patricia M
Comment: Text = as to all causes of action as to Def Union Bank/only filed by Attorney L. Steven Goldblatt Legacy Name = CV Req:Dismissal, Partial Decision = M Closed = 01/24/2014

01/24/2014 Statement: Case Management Conference
Judicial Officer: Lucas, Patricia M
Comment: Text = Atty Desmond. Legacy Name = CV Case Mgmt Statement Decision = M Closed = 01/24/2014

01/24/2014 Proof of Service: Mail
Judicial Officer: Lucas, Patricia M
Comment: Text = req/dismiss Legacy Name = CV Proof of Svc/Regular Mail Decision = M Closed = 01/24/2014

01/30/2014 Review: Mediation Status
Original Type: Review: Mediation Status
Judicial Officer: Lucas, Patricia M
Hearing Time: 10:30 AM
Result: Mediated: not settled
Comment: Text = Court Call by John P. Desmond For Defendant(s), Barry-Hinckley Industries and Stephen W. Pearson Defendant(s), Union Bank (successor in interest to Santa Barbara Bank & Trust) Result By = C Result Judge = PML - Lucas,

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second amended motion to quash service of summons and complaint, 03/18/14 at 9am dept 2 atty desmond Legacy Name = CV Ntc:Motion/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second amended motion to quash service of summons and complaint, 03/18/14 at 9am dept 2 atty desmond Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded ntc of motion to dismiss, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Ntc:Motion/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded motion to dismiss, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded ntc of motion to quash, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Ntc:Motion/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded of motion to quash, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 02/11/2014

02/13/2014 Disassociation of Counsel
Judicial Officer: Lucas, Patricia M
Comment: Text = Disassociating Atty English Legacy Name = CV Disassociation of Counsel Decision = M Closed = 02/19/2014

02/13/2014 Proof of Service
Judicial Officer: Lucas, Patricia M
Comment: Legacy Name = CV Proof of Svc Decision = M Closed = 02/19/2014

02/21/2014 Request: Telephonic Appearance
Judicial Officer: Lucas, Patricia M
Comment: Text = 03/18/14 @ 9am Legacy Name = CV Ntc:Intent/Appear by Phone Decision = M Closed = 02/21/2014

02/21/2014 Request: Telephonic Appearance
Judicial Officer: Lucas, Patricia M
Comment: Text = 04/29/14 @ 10am Legacy Name = CV Ntc:Intent/Appear by Phone Decision = M Closed = 02/21/2014

02/24/2014 Application: Ex Parte (Fee Applies)
Judicial Officer: Lucas, Patricia M
Comment: Text = to reschedule the hearing on the motion to stay discovery or, alternatively motion for protective order and sanctions Legacy Name = CV Ex Parte Appl Decision = M Closed = 02/24/2014

02/24/2014 Motion: Stay
Judicial Officer: Lucas, Patricia M
Comment: Text = discovery or mtn for protective Order and sanctions Atty: Desmond 4/4/14, 9am, D19 Legacy Name = CV Mtn to Stay Decision = M Closed = 02/24/2014

02/24/2014 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Lucas, Patricia M
Comment: Legacy Name = CV Court Reporter Fee < 1 Hour Decision = M Closed = 02/24/2014

02/24/2014 Notice
Judicial Officer: Lucas, Patricia M
Comment: Text = telephonic appearance for hrg on mtn to stay discovery Legacy Name = CV Ntc of... Decision = M Closed = 02/24/2014

03/06/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/06/2014

03/06/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/06/2014

03/06/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/06/2014

03/13/2014 Request: Telephonic Appearance

Comment: Legacy Name = CV Req:Appear Telephonically Decision = M Closed = 03/13/2014

03/13/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/13/2014

03/13/2014 Stipulation
Judicial Officer: Lucas, Patricia M
Comment: Text = to take pending hrgs off cal Legacy Name = CV Stipulation Decision = M Closed = 03/13/2014

03/18/2014 Motion: Quash
Original Type: Motion: Quash
Judicial Officer: Lucas, Patricia M
Hearing Time: 9:00 AM
Result: Moot
Comment: Text = Service of Summons and Complaint by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond) Result By = C Result Judge = PML - Lucas, Patricia Result Date = 03/18/2014

03/18/2014 Hearing: Dismissal
Original Type: Hearing: Dismissal
Judicial Officer: Lucas, Patricia M
Hearing Time: 9:00 AM
Result: Heard: Granted
Comment: Text = Pursuant to CCP 418.10 by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond) Result By = C Result Judge = PML - Lucas, Patricia Result Date = 03/18/2014

04/04/2014 Motion: Stay
Original Type: Motion: Stay
Judicial Officer: Manoukian, Socrates P
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = for Discovery Pending Resolution of Certain Defs' Second Amended Motions to Quash Serivce of Summons and Second Amended Motion to Dismiss, Alternatively, Motion for Protective Order by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH, Inc., Berry-Hinckley Industries, Terrible Herbst, Inc. Marc Berger, and X-Roads Solutions Group (John Desmond) *Off Calendar by Moving Party/Cindy Grisntead ms 3/14/14* Result By = C Result Judge = SPM - Manoukian, Socrates Result Date = 03/14/2014

05/01/2014 Review: Case Status
Original Type: Review: Case Status
Judicial Officer: Stoelker, James L
Hearing Time: 10:00 AM
Result: Continued: Court
Comment: Text = Re: Status *Court Call by John P. Desmond For Defendant(s), Barry-Hinckley Industries* Result By = C Result Judge = JLS - Stoelker, James Result Date = 05/01/2014

05/08/2014 Notice
Judicial Officer: Lucas, Patricia M
Comment: Text = telephonic appearance of defendants counsel for hearing on status of case. Atty John Desmond Legacy Name = CV Ntc of... Decision = M Closed = 05/08/2014

05/19/2014 Dismissal
Judicial Officer: Lucas, Patricia M
Comment: Text = as to the Complaint/filed by Attorney Brian P. Moquin *This closes the Case* Legacy Name = CV Req:Dismissal, Partial W/O Prej Decision = M Closed = 05/21/2014

06/12/2014 Review: Case Status
Original Type: Review: Case Status
Judicial Officer: Lucas, Patricia M
Hearing Time: 10:00 AM
Result: Vacated; dismissal filed
Comment: Text = Re: Status *Continued from 5/01/14* Result By = C Result Judge = PML - Lucas, Patricia Result Date = 05/19/2014

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CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 5

EXHIBIT 5

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Attorneys for Defendants

FILED
2014 FEB 11 P 3:50
By: Gagliardi

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA, SAN JOSE DIVISION

LARRY J. WILLARD, Trustee of the LARRY JAMES WILLARD TRUST FUND, OVERLAND DEVELOPMENT CORPORATION, INC., EDWARD C. WOOLEY and JUDITH A. WOLLEY, Trustees of the EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTERVIVOS REVOCABLE TRUST 2000,

Plaintiff,

vs.

JERRY HERBST, MARYANNE HERBST, TIMOTHY HERBST, JH, INC., and its wholly owned subsidiary, BHI (BERRY-HINCKLEY, INC.), TERRIBLE HERBST, INC., MARC BERGER, X-ROADS SOLUTIONS GROUP, LLC, BUSINESS PARTNERS, LLC, UNION BANK (successor in interest to SANTA BARBARA BANK & TRUST, *aka* SBB&T),

Defendants.

Case No. 113CV245021

Dept. 2

SECOND AMENDED MOTION TO DISMISS

Defendants Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH, Inc., Berry-Hinkley Industries, Terrible Herbst, Inc., Marc Berger, and X-Roads Solutions Group (collectively "Defendants"), by and through their counsel of record, Gordon Silver, move this Court to dismiss or stay the Complaint. This Motion to Quash is being re-filed with the Court at this time because of Plaintiffs' failure to file a first amended complaint despite a court order permitting them to do so.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This is an action for breach of lease agreements and guaranty agreements that were entered into by Jerry Herbst and Berry-Hinckley Industries ("BHI") and two separate and distinct groups of Plaintiffs. In 2007, JH, a Nevada holding corporation, entered into a transaction to purchase all of the issued and outstanding stock of BHI, a Nevada corporation operating gas stations and convenience stores in Northern Nevada. At the time, BHI was the lessee of the property at issue in this case. Specifically, BHI leased one parcel of Nevada real property from Overland Development Corporations Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (the "Willard Plaintiffs"). BHI also leased two parcels of Nevada real property from Edward C. Wooley and Judith A. Wooley (the "Wooley Plaintiffs").

The three lease agreements contain an identical forum selection clause identifying Nevada as the proper forum for any action or proceeding arising out of the lease. Section 38(H) of the lease agreements contains a general consent to Nevada jurisdiction and provides the Plaintiffs with the right 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." As all of the real property at issue in this case is located in Nevada, the contract requires any lawsuit to be maintained in Nevada.

At the time JH purchased the stock of BHI, BHI entered into amended lease agreements with the Willard Plaintiffs and the Wooley Plaintiffs. BHI negotiated and entered into these agreements in Nevada. The amended lease agreements all expressly incorporate the forum selection provisions contained in Section 38(H) of the original contracts, thus designating Nevada as the proper forum for litigation.

In or around the same time, Jerry Herbst, a Nevada resident and domiciliary, negotiated and entered into a guaranty agreement with the Willard Plaintiffs in Nevada. Mr. Herbst also negotiated and entered into two guarantees with the Wooley Plaintiffs in Nevada. Each of the three guarantees contains a choice of law provision providing that the contracts are governed by Nevada law.

The Willard and Wooley Plaintiffs, claiming that the guarantees and lease agreements were breached, have now joined forces to sue numerous defendants that have nothing to do with the allegations in the Complaint and who are not parties to the underlying lease agreements. The Court should dismiss this case in order to enforce the forum selection clauses contained in the Lease Agreements. Alternatively, in light of the fact this is a Nevada action involving Nevada individuals and entities and the lease of Nevada real property, this action should be stayed or dismissed pursuant to the doctrine of forum non conveniens.

II. FACTUAL BACKGROUND

The allegations in the Complaint refer to two separate and distinct transactions. The only similarity between the transactions is that they involve the same defendants. The Plaintiffs are wholly separate as are the referenced leaseholds.

A. Procedural History

Plaintiffs originally filed the Complaint in this matter on April 19, 2013 (the "Complaint"). On July 18, 2013, prior to filing an answer or making a general appearance, certain Defendants filed a Motion to Quash Service of Summons and/or to Dismiss or Stay Complaint (the "Consolidated Motion"). The Consolidated Motion exceeded the maximum allowable page limit. Therefore, on September 20, 2013, the moving Defendants bifurcated the Consolidated Motion and filed an Amended Motion to Dismiss or Stay Complaint and an Amended Motion to Quash Service of Summons and Complaint (collectively, the "Amended Motions"). Prior to a hearing on the Amended Motions, on October 9, 2013, Defendants and Plaintiffs entered into a Stipulation and [Proposed] Order for Leave to File First Amended Complaint (the "Stipulation"). The Stipulation expressly provided that Plaintiffs were permitted to file a First Amended and Verified Complaint (the "First Amended Complaint"), in the form attached as an exhibit to the Stipulation, adding additional claims and parties. The Stipulation also provided that the Amended Motions were to be deemed withdrawn upon the filing of the First Amended Complaint, without prejudice to Defendants' ability to re-file them and challenge the jurisdiction of this Court and the sufficiency of the Plaintiffs claims by renewing the Amended Motions. Thereafter, on October 9, 2013, the Court entered an order

affirming the terms of the Stipulation, and expressly permitting the filing of the First Amended Complaint (the "Order").

The Order was entered by the Court nearly four (4) months ago on October 9, 2013. Notwithstanding this Court's Order, and repeated requests by Defendants (See Order, **Exhibit 1**), Plaintiffs have failed to file the First Amended Complaint. Even though Plaintiffs have failed to file the First Amended Complaint, Plaintiffs have recently sought written discovery from Defendants (See Discovery dated February 3, 2014 [unsigned], **Exhibit 2**), are seeking to engage in mediation (See **Exhibit 3**) and have recently informed Defendants that they intend to commence certain motion practice (See **Exhibit 4**) relating to claims and parties who are included in the unfiled first amended complaint. As such, Defendants hereby renew the previously filed Amended Motions. Because the only operative complaint on file is the original Complaint filed on April 19, 2013, this Motion attacks jurisdiction based on the allegations contained therein.

B. Parties

Plaintiff Larry J. Willard ("Willard") is the trustee of the Larry James Willard Trust. (Compl. ¶ 3, on file herein.) Mr. Willard is the co-owner and lessor of 7695 – 7699 South Virginia Street, Reno, Nevada. *Id.* ¶ 4. Mr. Willard is also the president of Overland Development Corporation, Inc. *Id.* ¶ 4. Mr. Willard is a resident of Santa Clara County. *Id.* ¶ 3.

Plaintiffs Edward C. Wooley and Judith A. Wooley (the "Wooleys") are the trustees of the Wooley Intervivos Revocable Trust 2000, which is the co-owner and lessor of 1365 Baring Blvd, Sparks, Nevada. *Id.* ¶ 7. The current residence of the Wooleys is unknown. *Id.* However, the Wooleys do not reside in Santa Clara County and their connection to the State of California is unknown. *Id.*

Defendant Jerry Herbst is a resident and domicillary of the State of Nevada and resides in Las Vegas, Nevada. (Decl. of J. Herbst ¶ 2, **Exhibit 5**.) Mr. Herbst is the president, treasurer, secretary, director and sole shareholder of JH, Inc. ("JH"). *Id.* ¶ 3. Mr. Herbst is also the President of Berry-Hinckley Industries ("BHI"), a wholly-owned subsidiary of JH. *Id.* ¶ 4. Finally, Mr. Herbst is the President and sole shareholder of Terrible Herbst, Inc. ("THI"). *Id.* ¶

10.

Defendant Maryanne Herbst is the wife of Jerry Herbst. (Decl. of M. Herbst ¶ 3, **Exhibit 6.**) Mrs. Herbst is a resident and domiciliary of the State of Nevada and resides in Las Vegas, Nevada. Contrary to the allegations in the Complaint, Mrs. Herbst does not reside in the State of California. *Id.* ¶ 2. Mrs. Herbst is not an officer, director or employee of JH, Inc. or Berry-Hinckley Industries. *Id.* ¶ 4.

Defendant Tim Herbst is one of sons of Jerry Herbst. (Decl. of T. Herbst ¶ 3, **Exhibit 7.**) Tim Herbst is a resident and domiciliary of the State of Nevada and resides in Las Vegas, Nevada. *Id.* ¶ 2. Mr. Tim Herbst is the Treasurer of BHI. *Id.* ¶ 5.

Defendant JH is a Nevada corporation headquartered in Reno, Nevada. (Decl. of J. Herbst ¶ 5, **Exhibit 5.**) JH is a holding company and does not own any other assets nor does it engage in any independent business activity of any kind. *Id.* ¶ 5. All of JH's business activity associated with owning BHI occurs in Nevada. *Id.* ¶ 5.

JH does not maintain an office in California. *Id.* ¶ 6. JH does not advertise or solicit business in California and does not make any business decisions in California. *Id.* ¶ 6. JH does not lease or own any property in California. *Id.* ¶ 6.

BHI is a Nevada corporation headquartered in Reno, Nevada. *Id.* ¶ 4. BHI is the owner and operator of gas stations and convenience stores in Northern Nevada. *Id.* ¶ 7. BHI does not engage in any business in California. *Id.* ¶ 7. BHI does not maintain an office in California, and does not have any officer, director or employees within the State of California. *Id.* ¶ 7. BHI does not advertise or solicit business in California and does not make any business decisions in California. *Id.* ¶ 8. BHI does not lease or own any property in California. *Id.* ¶ 9.

C. <u>The Willard Transaction</u>

On or about November 18, 2005, BHI entered into a Lease Agreement with Overland Development Corporation Inc. *dba* LJW Enterprises Trust for the lease of 7695-7699 South Virginia, Reno, Nevada. (S. Virginia Lease Agreement, **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5.**) The Lease Agreement explicitly provides that any action or proceeding arising out of the Lease must be commenced in the State of Nevada. *Id.* § 38(H).

///

At the time the Lease Agreement was entered into, the Chief Executive Officer of BHI was Paul Morabito and the stock of BHI was owned by P.A. Morabito & Co., Limited ("PAMCO"). *Id.* at 28; (ARSPA, **Exhibit 8.**) On or about June 28, 2007, JH entered into an Amended and Restated Stock Purchase Agreement ("ARSPA") with PAMCO, whereby JH purchased all of the issued and outstanding stock of BHI. (ARSPA, **Exhibit 8**)

On or about March 9, 2007, Mr. Herbst entered into a Guaranty Agreement (the "Willard Guaranty Agreement") with Willard and Overland (collectively, the "Willard Plaintiffs") to amend the Lease to reflect the transaction that led to the ARSPA. (Compl. ¶ 6, Guaranty Agreement, Exhibit 1 to the Compl.) Pursuant to the Agreement, Mr. Herbst agreed to guaranty certain obligations of BHI under the lease with the Willard Plaintiffs. (Guaranty Agreement, Exhibit 1 to the Compl.) The Willard Guaranty Agreement contains the following choice of law provision: "This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles." *Id.* ¶ 7.

On or about March 9, 2007, BHI entered into an Amendment to Lease Agreement with Overland Development Corp., *dba* LJW Enterprises Inc. and Larry Willard, Trustee of the Larry James Willard Trust. (Amendment to Lease Agreement, **Exhibit B** to the Declaration of J. Herbst, **Exhibit 5.**) Mr. Willard claims to have executed the agreement in on or about March 9, 2007, in Santa Clara, California. *Id.* BHI, through Trevor Lloyd, its Corporate Secretary at the time, signed the lease in Washoe County, Nevada, on June 19, 2007, more than three months after it was signed by Larry Willard. *Id.*

D. <u>The Wooley Transactions</u>

On or about January of 2006, BHI entered into a Lease Agreement with Edward C. Wooley and Judith A. Wooley, for the property located at U.S. Highway 50 in Sparks, Nevada. (US Highway 50 Lease Agreement, **Exhibit E** to the Declaration of J. Herbst, **Exhibit 5.**) In 2006, BHI also entered into a Lease Agreement with the Wooley Plaintiffs for the property located at 1365 Baring Blvd., Sparks, Nevada. (Baring Lease Agreement, **Exhibit C** to the Declaration of J. Herbst, **Exhibit 5.**) Both agreements expressly provide that any action or

proceeding arising out of the Lease must be commenced in the State of Nevada. (US Highway 50 Lease Agreement § 38(H), **Exhibit E** to the Declaration of J. Herbst, **Exhibit 5**; Baring Lease Agreement § 38(H), **Exhibit C** to the Declaration of J. Herbst, **Exhibit 5.**)

At the time the Lease Agreements were executed, the Chief Executive Officer of BHI was Paul Morabito and the stock of BHI was owned by P.A. Morabito & Co., Limited ("PAMCO"). *Id.* at 28; (ARSPA, **Exhibit 8.**) On or about June 28, 2007, JH entered into an Amended and Restated Stock Purchase Agreement ("ARSPA") with PAMCO, whereby JH purchased all of the issued and outstanding stock of BHI. (ARSPA, **Exhibit 8.**)

Jerry Herbst also entered into two Guaranty Agreements (the "Wooley Guaranty Agreements") with the Wooley Plaintiffs. (Wooley Guaranty Agreement, Exhibit 2 to the Compl.) Pursuant to the Agreements, Mr. Herbst agreed to guaranty certain obligations of BHI under the leases with Mr. and Mrs. Wooley. *Id.* The Wooley Guaranty Agreements each contain the following choice of law provision: "This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles." *Id.* ¶ 7.

D. Plaintiffs Improperly Filed This Action in California

Despite the unequivocal choice of law and venue provisions, along with the nature of this dispute regarding real property located in Nevada, Plaintiffs inexplicably filed this action in the Superior Court of the State of California on or about April 17, 2013. (Compl.) The gravamen of the actions consists of Plaintiffs' allegations that BHI and Mr. Herbst breached the three leases and the three guaranty agreements by failing to remit the March 1, 2013 payments due under the leases. (Compl. ¶ 19.) The Complaint sets forth eleven (11) claims for relief. *Id.*

III. DISCUSSION

In the event this Court denies Defendants' Motion to Quash and finds the existence of personal jurisdiction, the Court should still dismiss all or part of this case for the following reasons: (1) the contracts at issues contain Nevada choice of law and venue provisions; (2) the doctrine of forum non conveniens; and (3) Plaintiffs' claim for tortious interference with contract fails to state a claim upon which relief can be granted.

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A. **The Court Should Dismiss this Action Pursuant to the Nevada Choice of Law and Venue Provisions in the Relevant Contracts**

The Court should dismiss this action as the underlying Lease Agreements **require** Plaintiffs to file suit in Nevada. Specifically, both the Lease Agreements and their amendments provide that any action to enforce any rights under such agreement must be brought in Nevada.

California courts may dismiss a complaint in order to enforce a forum selection clause. *Miller-Leigh LLC v. Henson*, 152 Cal. App. 4th 1143, 1146, 62 Cal. Rptr. 3d 83, 85 (2007); Code of Civil Procedure 410.30. "A forum selection clause is valid in the absence of the resisting party meeting a heavy burden of proving enforcement of the clause would be unreasonable under the circumstances of the case." *Bancomer, S. A. v. Superior Court*, 44 Cal. App. 4th 1450, 1457, 52 Cal. Rptr. 2d 435 (1996) (citing *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal.3d 491, 496, 131 Cal.Rptr. 374, 551 P.2d 1206 (1976)). A party opposing enforcement of a forum selection clause bears the burden of showing it "will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court. Absent that, there is no basis for concluding that it would be unfair, unjust, or unreasonable to hold that party to his bargain." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972).

In this case, each of the Lease Agreements contains the following identical choice of forum provision:

> 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 the Lease.**

(S. Virginia Lease Agreement § 38(H), **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5**; US Highway 50 Lease Agreement § 38(H), **Exhibit E** to the Declaration of J. Herbst, **Exhibit 5**; Baring Lease Agreement § 38(H), **Exhibit C to the Declaration of J. Herbst, Exhibit 5**) (emphasis added). This provision was expressly adopted by each of the amendments to the Lease Agreements. (Amendments to Lease Agreements § 6, **Exhibits B, D,** and **F** to the Declaration of J. Herbst, **Exhibit 5.**)

"It is a general rule governing the construction of contracts that unless a contract is ambiguous, its meaning must be determined from the words used." *S. California Gas Co. v. Ventura Pipe Line Const.Co.*, 150 Cal. App. 2d 253, 257, 309 P.2d 849, 852 (1957). Contracts must not be construed to add new terms that do not otherwise exist. *Id.* (citing *Westinghouse Electric Elevator Co. v. La Salle Monroe Bldg. Corp.*, 395 Ill. 429, 70 N.E.2d 604, 606, 607 (1946)). Moreover, "[c]ourts must interpret contractual language in a manner which gives force and effect to *every* provision, and not in a way which renders some clauses nugatory, inoperative or meaningless." *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal. App. 4th 445, 473, 80 Cal. Rptr. 2d 329, 349 (1998) (citing *New York Life Ins. Co. v. Hollender*, 38 Cal.2d 73, 81–82, 237 P.2d 510 (1951)).

Here, the forum selection provisions, by their plain terms, select the State of Nevada as the proper forum for any action or proceeding arising out of the lease. Pursuant to Section 38(H), the parties first consented to the jurisdiction of the State of Nevada. *See, e.g.*, (S. Virginia Lease Agreement § 38(H), **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5.**) BHI further agreed that it would not challenge jurisdiction in Nevada, assert Nevada as an inconvenient forum, or challenge venue in Nevada. *Id.* Finally, the forum selection clauses specifically state that the Plaintiffs have the right to commence any proceeding where the property is located, which is the State of Nevada. *Id.* Thus, this action should be dismissed.

In the event the Court finds § 38(H) ambiguous, such ambiguity can be resolved by the maxim of *expressio unius est exclusio alterius*. *White v. W. Title Ins. Co.*, 40 Cal. 3d 870, 882, 710 P.2d 309, 314 (1985). Under this maxim, the specific expression of one thing is the exclusion of all others. *Id.* Because the contract specifically expresses Nevada as the venue to

decide disputes, the contract excludes all other venues.

Thus, this action should be dismissed due to the forum selection clause appearing in the Lease Agreements and amendments thereto. Plaintiffs cannot demonstrate that enforcement of the clause would be unreasonable under the circumstances of the case.

B. **The Court Should Dismiss this Action Pursuant to the Doctrine of Forum Non Conveniens**

The center of gravity of this case lies in Northern Nevada. This action concerns contracts entered into by Nevada defendants in connection with doing business in Nevada. The contracts with Plaintiffs involve the lease of real property located in Nevada. The contractual documents include Nevada choice of law and venue provisions. In contradistinction to these numerous contacts, the connection between this action and California consists entirely of Plaintiffs' decision to reside in California. Again, the unilateral act of a plaintiff cannot support the exercise or jurisdiction over a particular defendant as a matter of law. Because this is a Nevada action regarding Nevada property, the interests of justice favor dismissing or staying this action to allow Plaintiffs to pursue their case in Nevada.

Section 410.30(a) of the California Code of Civil Procedure provides for the stay or dismissal of an action on the grounds of forum non conveniens. Section 410.30(a) provides as follows: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." Cal. Code Civ. P. 410.30. "Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 751, 819 P.2d 14 (1991) (citing *Leet v. Union Pac. R. R. Co.*, 25 Cal.2d 605, 609, 155 P.2d 42 (1944)).

In considering a motion to dismiss based on forum non conveniens, the court's inquiry is twofold: (1) whether the alternate forum is a "suitable" place for trial; and (2) the private interests of the litigants and the interests of the public in retaining the action for trial in

California. *Id.* at 751, 819 P.2d 14. Defendants bear the ultimate burden of showing that California is a seriously inconvenient forum. *Morris v. AGFA Corp.*, 144 Cal. App. 4th 1452, 1464, 51 Cal. Rptr. 3d 301, 310 (2006) (citations omitted). Each prong of the forum non conveniens analysis is discussed separately below.

1. **Nevada is a Suitable Place for Trial**

As a threshold matter there is no question that Nevada is a "suitable" alternative forum. "An alternative forum is suitable if it has jurisdiction and the action in that forum will not be barred by the statute of limitations." *Guimei v. Gen. Elec. Co.*, 172 Cal. App. 4th 689, 696, 91 Cal. Rptr. 3d 178, 185 (2009).

In this case, there can be no good faith dispute that Nevada courts have jurisdiction. Jerry Herbst, Maryanne Herbst and Tim Herbst are all residents and domiciliaries of Nevada. (Decls. of J. Herbst ¶ 2, **Exhibit 5**; Decl. of M. Herbst ¶ 23, **Exhibit 6**; Decl. of T. Herbst ¶ 2, **Exhibit 7**.) JH, BHI and THI are all Nevada corporations. (Decl. of J. Herbst ¶¶ 4, 7, 11, **Exhibit 5**.) Defendants X Roads and Mr. Berger do not contest personal jurisdiction in Nevada. Thus, Nevada courts have personal jurisdiction over all defendants such that Plaintiffs can bring their action in Nevada.

It should also be noted that Plaintiffs have each expressly consented to the jurisdiction of the State of Nevada. Section 38(H) of each of the lease agreements at issue in this case provides, in part, as follows: "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." (S. Virginia Lease Agreement § 38(H), **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5**; US Highway 50 Lease Agreement § 38(H), **Exhibit E**, to the Declaration of J. Herbst, **Exhibit 5**; Baring Lease Agreement § 38(H), **Exhibit C**, to the Declaration of J. Herbst, **Exhibit 5**).

In addition, the statute of limitations in Nevada has not run. As the claims at issue are breach of contract claims, the statute of limitations in Nevada is six years. NRS 11.190. As the alleged breaches in this allegedly occurred during the 2008-2012 timeframe, the statute of limitation is no bar to Plaintiffs' ability to bring an action in Nevada.

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2. **The Private and Public Interest Factors Favor Dismissal**

Because Nevada is indisputably a suitable place for trial, the Court must analyze the private and public interest factors. "The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." *Stangvik*, 54 Cal. 3d at 751, 819 P.2d 14.

In this case, the private interest factors favor trial in Nevada. First, as this is a Nevada dispute involving a Nevada corporation's lease of real property located in Nevada, the great weight of the evidence will be located in Nevada. In fact, other than Plaintiffs themselves, all witnesses in this case will be located in Nevada. As a result, the cost of litigating this matter in California is overly burdensome on Defendants. Moreover, Defendants will have no ability to compel the attendance of witnesses located in Nevada. For these reasons, the private interest factors favor suit in Nevada.

Similarly, the public interest factors also favor suit in Nevada. Public interest factors include (1) the court's congested calendar, (2) protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and (3) weighing the competing interests of California and the alternate jurisdiction in the litigation. *Stangvik*, 54 Cal. 3d at 751.

Here, two separate and distinct sets of Plaintiffs have filed a thirty-page Complaint with eleven separate claims for relief against ten separate defendants. The gravamen of this case relates to real property located in the State of Nevada that was leased by a Nevada corporation to provide services to Nevada residents. As a result, the public interest in avoiding overburdening the local California court about a case centered in Nevada weighs in favor of a Nevada forum. For the same reasons, the public interest in protecting potential jurors from having to decide a Nevada case weighs in favor of a Nevada forum.

Similarly, an analysis of the competing interests of California and Nevada to this

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litigation favors litigation in Nevada. California's interest in this action is limited to ensuring Plaintiffs, California residents, a venue to litigate their dispute.

In contrast, Nevada has a much larger interest in the dispute. Plaintiffs have named as defendants three Nevada individuals and residents and three Nevada corporations. The real property at issue is located in Nevada. Such property was used by a Nevada corporation to operate a Nevada business. As the nature of the Nevada business was the operation of gas stations and convenience stores, the business primarily, if not exclusively, served Nevada residents. Moreover, the guarantees at issue in this case contain a Nevada choice of law provision. Nevada certainly has an interest in applying its own law. In short, Nevada has a much greater interest in this litigation than California and the case should be heard tried in Nevada.

C. **The Court Should Dismiss Plaintiffs' Seventh Claim for Relief**

Finally, the Court should sustain Defendants' general demurrer and dismiss Plaintiffs' seventh claim pursuant to Code of Civil Procedure Section 430.10 et seq. for failure to state a claim upon which relief can be granted. Plaintiffs' seventh claim for relief is for tortious interference with contract.

In California, a general demurer can be raised to challenge whether the complaint contains a claim upon which relief can be granted. *See Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 879, 6 Cal. Rptr. 2d 151 (1992). To establish a valid cause of action, a plaintiff must plead facts sufficient to establish every element of that cause of action. *Id.* In considering the allegations of a complaint, the court accepts "as true all properly pleaded allegations and do[es] not go beyond the four corners of the complaint except as to matters which are judicially noticeable." *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 837-38, 33 Cal. Rptr. 2d 438 (1994).

To state a claim for relief for intentional interference with contractual relations, Plaintiffs must allege each of the following (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the

contractual relationship; and (5) resulting damage. *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126, 791 P.2d 587, 589-90 (1990).

Here, Plaintiffs allege that Jerry Herbst and Tim Herbst instructed Marc Berger to interfere with Mr. Willard's notes and deeds of trust entered into with Business Partners, Inc. ("Business Partners.") (Compl. ¶ 106.) Mr. Berger allegedly contacted Business Partners and demanded a fifty percent reduction of Mr. Willard's principal on his loan with Business Partners. *Id.* ¶ 107. Plaintiffs further allege that Mr. Willard subsequently defaulted on his contractual obligations through his own volition. *Id.* ¶ 108.

These allegations are insufficient in that they fail to plead intentional acts designed to induce breach or disruption of a contractual relationship and that such relationship was actually disrupted. Specifically, Plaintiffs allege that Tim Herbst[1] intentionally breached the guarantees (which he was not a party to) and the lease agreements such that the Willard Plaintiffs' lender would place Willard in default. (Compl. ¶ 106.) Plaintiffs further allege that the Willard Plaintiffs breached their own agreement with their lender. *See id.* ¶ 108.

The actions of BHI in allegedly defaulting under the Lease Agreement did not, by Plaintiffs' own allegations, cause a breach their loan agreement. Rather, the Willard Plaintiffs choose to breach their loan agreement by their own conduct. The Willard Plaintiffs could have simply paid their lender regardless of BHI's alleged breach. To the extent the Willard Plaintiffs failed to meet their own contractual obligations, such failure was caused solely by the actions of the Willard Plaintiffs. The risk of a tenant defaulting was inherent in the Willard Plaintiffs' decision to borrow money to purchase property and rely upon a lessee to make the payment on said property. Thus, by Plaintiffs' own allegations, their breach of their own contract was simply not caused by any tortious actions of BHI or Tim Herbst.

V. CONCLUSION

Based on all the foregoing, Defendants respectfully request that this action be dismissed or stayed, in whole or part, to enforce the forum selection clause contained in the Lease

[1] Plaintiffs make the same allegations with respect to Jerry Herbst, Marc Berger and X Roads Solutions. The arguments raised here equally apply to these three defendants.

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Agreements and their amendments or pursuant to the doctrine of forum non conveniens. Defendants further request an order sustaining their general demurer to the seventh claim for relief for failure to state a claim upon which relief can be granted.

DATED this 11th day of February, 2014.

GORDON SILVER

JOHN P. DESMOND, ESQ.
California Bar No. 176430
100 W. Liberty Street
Suite 940
Reno, Nevada 89501
Telephone: (775) 343-7500
Facsimile: (775) 786-0131
E-Mail: jdesmond@gordonsilver.com

Attorneys for Defendants

PROOF OF SERVICE

The undersigned declares: I am over the age of 18 years and not a party to the within action. I am employed in the county where this service occurs. My business address is 100 W. Liberty Street, Suite 940, Reno, NV 89501, my facsimile number is (775) 786-0131. On the date shown below I served the following document(s) on the interested parties named herein and in the manner indicated below:

SECOND AMENDED MOTION TO DISMISS

__XX__ **FIRST CLASS U.S. MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons listed [below/above] by placing the envelope(s) for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

_____ **FACSIMILE:** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at the fax numbers listed [above\below]. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

____ **MESSENGER SERVICE:** I served the document(s) by placing them in an envelope or package

L. Steven Goldblatt. Esq.
The Goldblatt Law Firm
22 Martin St.
Gilroy, CA 95020
l.steven.goldblatt@gmail.com

Stephen W. Pearson
Noland, Hamerly, Etienne & Hoss
333 Salinas Street
Salinas, CA 93901

Tim English
The Goldblatt Law Firm
22 Martin Street
Gilroy, CA 95020

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED this 11th day of February, 2014.

Emily S. Grinstead
An employee of Gordon Silver

EXHIBITS

Exhibit	Description	Pages
1	Order, October 9, 2013	5
2	Plaintiffs' Written Discovery, February 3, 2013 [unsigned]	243
3	Plaintiffs' Attempt to Engage in Mediation	4
4	Plaintiffs' Intent to Commence Certain Motion Practice	1
5	Declaration of Jerry Herbst	147
6	Declaration of Maryanne Herbst	2
7	Declaration of Timothy Herbst	2
8	Amended and Restated Stock Agreement (ARSPA)	31

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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 6

EXHIBIT 6

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

---o0o---

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

Plaintiffs,

vs. Case No. CV14-01712

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual, Dept. No. 6

Defendants.

And Related Counterclaim.

/

DEPOSITION OF LARRY WILLARD

AUGUST 21, 2015

RENO, NEVADA

Reported by: JULIE ANN KERNAN, CCR #427, RPR

MOLEZZO REPORTERS (775) 322-3334

APPEARANCES

For the Plaintiffs: LAW OFFICES OF BRIAN P. MOQUIN
By: Brian P. Moquin, Esq.
3506 La Castellet Court
San Jose, California 95148

For the Defendants: DICKINSON WRIGHT PLLC
Attorneys at Law
By: Brian R. Irvine, Esq.
By: Katy Brady, Esq.
100 West Liberty Street
Suite 940
Reno, Nevada 89501

Q Okay.

A So that's kind of that scenario. So in answer to your question, I think it was about three seven, thereabouts, that went to the lender.

Q Okay.

A And that was --

Q You certainly didn't get any money out of this formally.

A Not a penny. Not a red cent.

Q But as a result of this sale --

A Uh-hum.

Q -- the NCUA agreed to forgive the remaining balance on your loan. Correct?

A That's right.

Q And --

A That's correct.

Q -- Ms. Khazen also agreed to get rid of that mortgage.

A The hundred 50, yeah.

Q So you don't owe any more money to anybody for debt on the South Virginia property, as you sit here today. Correct?

A No. The only liability I'm going to have is the debt forgiveness, according to my C.P.A.

Q Yeah. We'll get to that. And what was Mr.

Q Okay. Let me ask this. When you purchased this property from Berry-Hinckley when it was owned by Mr. Morabito.

A Right.

Q Did you ever have any discussions with him saying hey, I need this rent or I'm going to have to file bankruptcy?

A With Morabito?

Q Yeah.

A No.

Q And when Jerry Herbst came in and purchased BHI and signed a guarantee of this lease --

A Uh-hum.

Q -- did you ever have any discussions with him?

A With Mr. Herbst?

Q Yes.

A No.

Q Okay. If you could go back to your declaration there from the bankruptcy court? Right there. Yes. Exhibit 38.

A Okay.

Q Paragraph 9. Wait.

A Okay.

Q Actually, I've got the wrong documents.

A Now, this is this -- this is your bankruptcy.

Q Okay. And then I wanted to go to page 2 at Paragraph 9, which reads "As a direct and proximate result of Herbst breach in failing to remit the required rent of $140,175 on March 1st, 2013, or curing such default by May 1st, 2013, Jerry Herbst knew that his failure to pay the guarantee would cause and did cause me to default on my loan."

A Yes.

Q So what is the basis for your statement in this declaration that Mr. Herbst knew that his failure to pay the guarantee would cause you to default on your loan?

A I think my discussions, I had prior discussions on a couple of occasions with Ken Herbst, his son. And during those meetings, when they were trying to either restructure or trying to do something with this property, I felt somewhat intimidated, and I never will forget one of the meetings where they were talking about this type of a situation. I said look. I have -- I told Tim and I think his -- it might -- one of his brothers were there, nice guy, but I told him, I said "Tim, this is a very delicate situation. I have everything I have that I worked very hard for invested in this property. I have a blind father I'm supporting." And I was at the time paying for his assisted living. I was in the midst of going through some difficult domestic situations. And I took out a little

bottle of nitroglycerin, and I sat it down on the table. I said "This discussion that we're having is gonna cause something to happen here, I'm afraid." Because I'd had some panic type of -- that's why I had that.

So in answer to your question? They were very aware. Not Mr. Herbst. Well, I would think -- I never had the occasion to talk to Jerry. I would like to have had. In fact, I tried to appeal to him with a letter when they breached that he did not answer. So in answer to that question, they were very aware, as well as knowing the situation through Dan of what we were -- what I was going through. They knew, without a doubt. So yes. I affirmatively say yes, they knew.

Q You told Tim?

A Tim knew.

Q And whichever one of his brothers was there, Troy or Ed?

A Oh, yeah. I think it was maybe Troy. I think maybe, yeah.

Q And this was, to the best of your recollection, 2008 time frame?

A It might have been. Might have been at that time, or I think it was an occasion maybe in 2012 because -- yeah. I think there was a couple meetings -- I had a couple meetings in Las Vegas.

Q With Tim?

A So I knew -- I knew Tim and, you know, I thought he was a real upstanding guy. And, you know, we had some nice -- we had civil discussions.

Q Paragraph 17 of the same document, Mr. Willard?

A Yes, sir.

Q Sort of a similar line of questions.

A Okay.

Q Starts at the very last line on that page, it says "Jerry Herbst knew with substantial certainty that the reasonable rental value of the property would be reduced to zero dollars, knew that his breach of the lease under the interim operating agreement," I'll paraphrasing a little bit, would result in my inability pay to pay Business Partners the $87,000 plus monthly payment.

Then you go on to say "And then it would be foreclosed on." Again, same question. What's your basis for saying what Jerry Herbst knew about the rent being diminished and the consequences of nonpayment?

A I'd have to refer to the same answer that I gave you to the previous question.

Q Okay.

A He knew my situation. Unless he does not communicate with his boys, and I don't think that is the case.

Q Okay.

A And that would be -- that would be the answer that I would give you, yes.

Q Okay. And you mentioned you had a paper file at home. Right?

A Yeah. But there's just very -- I mean, it's just a lot of loose ends of --

Q Well, as you sit here today, are you confident that you've given your attorney everything you have in your possession that's relevant to that case?

A Absolutely.

Q Okay. And what about emails, are you confident that you've given your attorney all your emails that are relevant to this case?

A One hundred percent.

Q Are there any other responsive documents that you have in your possession that you haven't given to your lawyer?

A I've given him everything that I -- that he could of and I could think of.

Q Okay. Now, have you taken any steps to go get documents from people that have worked for you? And by that I mean other lawyers, accountants, brokers, anyone like that, have you personally done anything like that?

A Pertaining to this?

---o0o---

CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of _____, 2015.

_____ _____
LARRY WILLARD

STATE OF NEVADA)

COUNTY OF WASHOE)

I, JULIE ANN KERNAN, a notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That on Friday, the 21st day of August, 2015, at the hour of 9:28 a.m. of said day, at the Law Offices of Dickinson Wright, 100 West Liberty Street, Suite 940, Reno, Nevada, personally appeared LARRY WILLARD, who was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That said deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages numbered 1 through 137, is a full, true and correct transcript of my said stenotype notes of said deposition to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 24th day of August, 2015.

JULIE ANN KERNAN, CCR #427

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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 7

EXHIBIT 7

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2014 or tax year beginning 7/01 , 2014, ending 6/30 , 2015

► Information about Form 1120 and its separate instructions is at *www.irs.gov/form1120.*

OMB No. 1545-0123

2014

A Check if:
1 a Consolidated return (attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co. (attach Sch PH) ☐
3 Personal service corp (see instrs) ☐
4 Schedule M-3 attached ☐

TYPE OR PRINT

OVERLAND DEVELOPMENT, INC.
826 VANDERBILT PLACE
SAN DIEGO, CA 92103

B Employer identification number [redacted]

C Date incorporated 4/14/1971

D Total assets (see instructions) $ 88.

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

INCOME	1 a	Gross receipts or sales	1 a	
	b	Returns and allowances	1 b	
	c	Balance. Subtract line 1b from line 1a	1 c	
	2	Cost of goods sold (attach Form 1125-A)	2	
	3	Gross profit. Subtract line 2 from line 1c	3	
	4	Dividends (Schedule C, line 19)	4	
	5	Interest	5	
	6	Gross rents	6	
	7	Gross royalties	7	
	8	Capital gain net income (attach Schedule D (Form 1120))	8	
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	
	10	Other income (see instructions — attach statement)	10	
	11	**Total income.** Add lines 3 through 10 ►	11	0.
DEDUCTIONS (SEE INSTRUCTIONS FOR LIMITATIONS ON DEDUCTIONS)	12	Compensation of officers (see instructions — attach Form 1125-E) ►	12	
	13	Salaries and wages (less employment credits)	13	
	14	Repairs and maintenance	14	
	15	Bad debts	15	
	16	Rents	16	
	17	Taxes and licenses	17	800.
	18	Interest	18	
	19	Charitable contributions	19	
	20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	20	58.
	21	Depletion	21	
	22	Advertising	22	
	23	Pension, profit-sharing, etc, plans	23	
	24	Employee benefit programs	24	
	25	Domestic production activities deduction (attach Form 8903)	25	
	26	Other deductions (attach statement) See Statement 1	26	1,700.
	27	**Total deductions.** Add lines 12 through 26 ►	27	2,558.
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	-2,558.
	29 a	Net operating loss deduction (see instructions) See St 2.	29 a	0.
	b	Special deductions (Schedule C, line 20)	29 b	
	c	Add lines 29a and 29b	29 c	
TAX, REFUNDABLE CRS AND PMTS	30	**Taxable income.** Subtract line 29c from line 28 (see instructions)	30	-2,558.
	31	Total tax (Schedule J, Part I, line 11)	31	0.
	32	Total payments and refundable credits (Schedule J, Part II, line 21)	32	0.
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐	33	
	34	**Amount owed.** If line 32 is smaller than the total of lines 31 and 33, enter amount owed	34	0.
	35	**Overpayment.** If line 32 is larger than the total of lines 31 and 33, enter amount overpaid	35	
	36	Enter amount from line 35 you want: Credited to 2015 estimated tax ►	Refunded ►	36

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► Signature of officer | Date | ► President & CEO Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [X] if self-employed / PTIN
MITRA EHSANIPOUR CPA	MITRA EHSANIPOUR CPA		P00090914
Firm's name ► MITRA EHSANIPOUR CPA			Firm's EIN ► [redacted]
Firm's address ► 205 PARK RD STE 207 BURLINGAME, CA 94010-4220			Phone no. 650-348-9444

BAA For Paperwork Reduction Act Notice, see separate instructions. CPCA0205L 08/07/14 Form **1120** (2014)

Schedule C **Dividends and Special Deductions** (see instructions)

		(a) Dividends received	(b) Percentage	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	**Total.** Add lines 1 through 8. See instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members		100	
12	Dividends from certain FSCs		100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	**Total dividends.** Add lines 1 through 17. Enter here and on page 1, line 4 ►			
20	**Total special deductions.** Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ►			

Schedule J Tax Computation and Payment (see instructions)

Part I — Tax Computation

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) ► ☐			
2	Income tax. Check if a qualified personal service corporation (see instructions) ► ☐		2	0.
3	Alternative minimum tax (attach Form 4626)		3	
4	Add lines 2 and 3		4	0.
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834 (see instructions)	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d	0.	
e	Bond credits from Form 8912	5e		
6	**Total credits.** Add lines 5a through 5e		6	
7	Subtract line 6 from line 4		7	
8	Personal holding company tax (attach Schedule PH (Form 1120))		8	
9a	Recapture of investment credit (attach Form 4255)	9a		
b	Recapture of low-income housing credit (attach Form 8611)	9b		
c	Interest due under the look-back method — completed long-term contracts (attach Form 8697)	9c		
d	Interest due under the look-back method — income forecast method (attach Form 8866)	9d		
e	Alternative tax on qualifying shipping activities (attach Form 8902)	9e		
f	Other (see instructions — attach statement)	9f		
10	**Total.** Add lines 9a through 9f		10	
11	**Total tax.** Add lines 7, 8, and 10. Enter here and on page 1, line 31		11	0.

Part II — Payments and Refundable Credits

12	2013 overpayment credited to 2014		12	
13	2014 estimated tax payments		13	
14	2014 refund applied for on Form 4466		14	
15	Combine lines 12, 13, and 14		15	0.
16	Tax deposited with Form 7004		16	
17	Withholding (see instructions)		17	
18	**Total payments.** Add lines 15, 16 and 17		18	0.
19	Refundable credits from:			
a	Form 2439	19a		
b	Form 4136	19b		
c	Form 8827, line 8c	19c		
d	Other (attach statement — see instructions)	19d		
20	**Total credits.** Add lines 19a through 19d		20	
21	**Total payments and credits.** Add lines 18 and 20. Enter here and on page 1, line 32		21	0.

Schedule K Other Information (see instructions)

		Yes	No
1	Check accounting method a ☐ Cash b ☒ Accrual c ☐ Other (specify) ►		
2	See the instructions and enter the:		
a	Business activity code no. ► 531390		
b	Business activity ► REAL ESTATE		
c	Product or service ► DEVELOPMENT		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?		X
	If 'Yes,' enter name and EIN of the parent corporation ►		
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If 'Yes,' complete Part I of Schedule G (Form 1120) (attach Schedule G)		X
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If 'Yes,' complete Part II of Schedule G (Form 1120) (att Schedule G)	X	

Schedule K Other Information *continued* (see instructions)

		Yes	No
5	At the end of the tax year, did the corporation:		
a	Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on **Form 851,** Affiliations Schedule? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below.		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

b	Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below.		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

6	During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If 'Yes,' file **Form 5452,** Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary		X
7	At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of **(a)** the total voting power of all classes of the corporation's stock entitled to vote or **(b)** the total value of all classes of the corporation's stock? For rules of attribution, see section 318. If 'Yes,' enter: **(i)** Percentage owned ► _____ and **(ii)** Owner's country ► _____ **(c)** The corporation may have to file **Form 5472,** Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached ► _____		X
8	Check this box if the corporation issued publicly offered debt instruments with original issue discount ► ☐ If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
9	Enter the amount of tax-exempt interest received or accrued during the tax year ► $ None		
10	Enter the number of shareholders at the end of the tax year (if 100 or fewer) ► 1		
11	If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ► ☒ If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.		
12	Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) ► $ 3,671,800.		
13	Are the corporation's total receipts (page 1, line 1a, plus lines 4 through 10) for the tax year **and** its total assets at the end of the tax year less than $250,000? If 'Yes,' the corporation is not required to complete Schedules L, M-1, and M-2. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year ► $ None	X	
14	Is the corporation required to file Schedule UTP (Form 1120), Uncertain Tax Position Statement (see instructions)? If 'Yes,' complete and attach Schedule UTP.		X
15a	Did the corporation make any payments in 2014 that would require it to file Form(s) 1099?		X
b	If 'Yes,' did or will the corporation file required Forms 1099?		
16	During this tax year, did the corporation have an 80% or more change in ownership, including a change due to redemption of its own stock?		X
17	During or subsequent to this tax year, but before the filing of this return, did the corporation dispose of more than 65% (by value) of its assets in a taxable, non-taxable, or tax deferred transaction?		X
18	Did the corporation receive assets in a section 351 transfer in which any of the transferred assets had a fair market basis or fair market value of more than $1 million?		X

Schedule L Balance Sheets per Books	Beginning of tax year		End of tax year	
Assets	(a)	(b)	(c)	(d)
1 Cash				
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach statement)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach statement)				
15 Total assets				
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt)				
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach statement)				
22 Capital stock: a Preferred stock				
b Common stock				
23 Additional paid-in capital				
24 Retained earnings — Approp (att stmt)				
25 Retained earnings — Unappropriated				
26 Adjmt to shareholders' equity (att stmt)				
27 Less cost of treasury stock				
28 Total liabilities and shareholders' equity				

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: The corporation may be required to file Schedule M-3 (see instructions).

1 Net income (loss) per books		7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $	
2 Federal income tax per books			
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize): a Depreciation $ b Charitable contribns $	
5 Expenses recorded on books this year not deducted on this return (itemize): a Depreciation $ b Charitable contributions $ c Travel & entertainment $			
6 Add lines 1 through 5		9 Add lines 7 and 8	
		10 Income (page 1, line 28) — line 6 less line 9	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year		5 Distributions a Cash	
2 Net income (loss) per books		b Stock c Property	
3 Other increases (itemize):		6 Other decreases (itemize):	
4 Add lines 1, 2, and 3		7 Add lines 5 and 6	
		8 Balance at end of year (line 4 less line 7)	

SCHEDULE G (Form 1120)
(Rev December 2011)
Department of the Treasury
Internal Revenue Service

Information on Certain Persons Owning the Corporation's Voting Stock

► Attach to Form 1120.
► See instructions.

OMB No. 1545-0123

Name: OVERLAND DEVELOPMENT, INC.

Employer identification number (EIN): [redacted]

Part I Certain Entities Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4a).
Complete columns (i) through (v) below for any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Percentage Owned in Voting Stock

Part II Certain Individuals and Estates Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4b).
Complete columns (i) through (iv) below for any individual or estate that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Individual or Estate	(ii) Identifying Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Percentage Owned in Voting Stock
LARRY J. WILLARD	[redacted]	United States	100.00%

A.App.516

Form **982**
(Rev. July 2013)
Department of the Treasury
Internal Revenue Service

Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

► Attach this form to your income tax return.
► Information about Form 982 ad its instructions is at *www.irs.gov/form982*

OMB No. 1545-0046
Attachment Sequence No. **94**

Name shown on return: OVERLAND DEVELOPMENT, INC.
Identifying number: [redacted]

Part I General Information (see instructions)

1 Amount excluded is due to (check applicable box(es)):

a Discharge of indebtedness in a title 11 case ☐
b Discharge of indebtedness to the extent insolvent (not in a title 11 case) ☒
c Discharge of qualified farm indebtedness ☐
d Discharge of qualified real property business indebtedness ☐
e Discharge of qualified principal residence indebtedness ☐

2 Total amount of discharged indebtedness excluded from gross income — 2: 3,524,873.

3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property? ☐ Yes ☒ No

Part II Reduction of Tax Attributes

You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

Enter amount excluded from gross income:

4 For a discharge of qualified real property business indebtedness applied to reduce the basis of depreciable real property	4	
5 That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property	5	
6 Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge	6	3,524,873.
7 Applied to reduce any general business credit carryover to or from the tax year of the discharge	7	
8 Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge	8	
9 Applied to reduce any net capital loss for the tax year of the discharge, including any capital loss carryovers to the tax year of the discharge	9	
10a Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. *DO NOT use in the case of discharge of qualified farm indebtedness*	10a	
b Applied to reduce the basis of your principal residence. *Enter amount here ONLY if line 1e is checked*	10b	
11 For a discharge of qualified farm indebtedness applied to reduce the basis of:		
a Depreciable property used or held for use in a trade or business or for the production of income if not reduced on line 5	11a	
b Land used or held for use in a trade or business of farming	11b	
c Other property used or held for use in a trade or business or for the production of income	11c	
12 Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge	12	
13 Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge	13	

Part III Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded $ _____ from its gross income for the tax year beginning _____ and ending _____.

Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of _____.
(State of incorporation)

Note: *You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.*

A.App.517

Form **4562**

Department of the Treasury
Internal Revenue Service (99)

Depreciation and Amortization
(Including Information on Listed Property)

► Attach to your tax return.
► Information about Form 4562 and its separate instructions is at *www.irs.gov/form4562.*

OMB No. 1545-0172

2014

Attachment Sequence No. **179**

Name(s) shown on return

OVERLAND DEVELOPMENT, INC.

Identifying number [redacted]

Business or activity to which this form relates

Form 1120

Part I Election To Expense Certain Property Under Section 179

Note: *If you have any listed property, complete Part V before you complete Part I.*

1	Maximum amount (see instructions)	1	
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2013 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2015. Add lines 9 and 10, less line 12 ►	13	

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2014	17	58.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ► ☐		

Section B — Assets Placed in Service During 2014 Tax Year Using the General Depreciation System

	(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property						
b	5-year property						
c	7-year property						
d	10-year property						
e	15-year property						
f	20-year property						
g	25-year property			25 yrs		S/L	
h	Residential rental property			27.5 yrs	MM	S/L	
				27.5 yrs	MM	S/L	
i	Nonresidential real property			39 yrs	MM	S/L	
					MM	S/L	

Section C — Assets Placed in Service During 2014 Tax Year Using the Alternative Depreciation System

20a	Class life				S/L	
b	12-year			12 yrs	S/L	
c	40-year			40 yrs	MM	S/L

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	58.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Form **8827**

Department of the Treasury
Internal Revenue Service

Credit for Prior Year Minimum Tax — Corporations

► Attach to the corporation's tax return.
► Information about Form 8827 and its instructions is at *www.irs.gov/form8827.*

OMB No. 1545-0123

2014

Name

OVERLAND DEVELOPMENT, INC.

Employer identification number

[redacted]

1	Alternative minimum tax (AMT) for 2013. Enter the amount from line 14 of the 2013 Form 4626	1	
2	Minimum tax credit carryforward from 2013. Enter the amount from line 9 of the 2013 Form 8827	2	5,908.
3	Enter any 2013 unallowed qualified electric vehicle credit (see instructions)	3	
4	Add lines 1, 2, and 3	4	5,908.
5	Enter the corporation's 2014 regular income tax liability minus allowable tax credits (see instructions)	5	
6	Is the corporation a 'small corporation' exempt from the AMT for 2014 (see instructions)? • **Yes.** Enter 25% of the excess of line 5 over $25,000. If line 5 is $25,000 or less, enter -0- • **No.** Complete Form 4626 for 2014 and enter the tentative minimum tax from line 12	6	
7a	Subtract line 6 from line 5. If zero or less, enter -0-	7a	0.
b	For a corporation electing to accelerate the minimum tax credit, enter the bonus depreciation amount attributable to the minimum tax credit (see instructions)	7b	0.
c	Add lines 7a and 7b	7c	
8a	Enter the **smaller** of line 4 or line 7c. If the corporation had a post-1986 ownership change or has pre-acquisition excess credits, see instructions	8a	
b	**Current year minimum tax credit.** Enter the smaller of line 4 or line 7a here and on Form 1120, Schedule J, Part I, line 5d (or the applicable line of your return). If the corporation had a post-1986 ownership change or has pre-acquisition excess credits, see instructions. If you made an entry on line 7b, go to line 8c. Otherwise, skip line 8c	8b	0.
c	Subtract line 8b from line 8a. This is the refundable amount for a corporation electing to accelerate the minimum tax credit. Include this amount on Form 1120, Schedule J, Part II, line 19c (or the applicable line of your return)	8c	
9	**Minimum tax credit carryforward to 2015.** Subtract line 8a from line 4. Keep a record of this amount to carry forward and use in future years	9	5,908.

BAA

Form **8827** (2014)

CPCA2201L 07/11/14

OVERLAND DEVELOPMENT, INC.

Statement 1
Form 1120, Line 26
Other Deductions

Office Expense	$ 600.
Travel	1,100.
Total	$ 1,700.

Statement 2
Form 1120, Line 29a
Net Operating Loss Deduction

Carryover Generated From Year End	6/30/00		$ 281,264.	
Amount Utilized in 2013		183,877.		
Total Utilization			$ 183,877.	
Available for Carryover to 2014				97,387.
Carryover Generated From Year End	6/30/04		$ 55,381.	
Available for Carryover to 2014				55,381.
Carryover Generated From Year End	6/30/05		$ 1,468,972.	
Available for Carryover to 2014				1,468,972.
Carryover Generated From Year End	6/30/06		$ 950,365.	
Available for Carryover to 2014				950,365.
Carryover Generated From Year End	6/30/09		$ 46,245.	
Available for Carryover to 2014				46,245.
Carryover Generated From Year End	6/30/11		$ 594,046.	
Available for Carryover to 2014				594,046.
Carryover Generated From Year End	6/30/12		$ 459,404.	
Available for Carryover to 2014				459,404.
Net Operating Losses Available in 2014				$ 3,671,800.
Taxable Income				-2,558.
Total Net Operating Loss Deduction (Limited to Taxable Income)				0.

2014 **Federal Supplemental Information** Page 1

OVERLAND DEVELOPMENT, INC. [redacted]

NCUAB/TCCU BANK,- ACCOUNT# [redacted] FIRST LOAN ON THE PROPERTY LOCATED AT 7963 TO 7699 SOUTH VIRGINIA STREET, RENO, NEVADA 89511- HAS ISSUED FORM 1099-C DEBT CANCELLED IN THE TOTAL AMOUNT OF $8,597,250 UNDER DEBTOR'S ID# [redacted] AND DEBTOR'S NAME OVERLAND DEVELOPMENT CORP. , INC. THE PROPERTY IS 41% OWNED BY OVERLAND DEVELOPMENT INC. AND 59% OWNED BY LARRY J. WILLARD, TRUSTE OF THE LARRY JAMES WILLARD TRUST DATED 11/14/1987. THE AMOUNT OF CANCELLATION OF DEBT FOR OVERLAND DEVELOPMENT INC. IS $3,524,873. OVERLAND DEVELOPMENT INC. TOTAL OF ALL ITS LIABILITIES EXCEED THE FMV OF ALL OF ITS ASSETS IMMEDIATELY BEFORE THE CANCELLATION OF THIS DEBT. THEREFORE OVERLAND DEVELOPMENT INC. CONSIDER INSOLVENT.

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 8

EXHIBIT 8

Form **1040** Department of the Treasury — Internal Revenue Service (99)

U.S. Individual Income Tax Return

2014 OMB No. 1545-0074 | IRS Use Only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2014, or other tax year beginning , 2014, ending , 20 — See separate instructions.

Your first name and initial: LARRY J. | Last name: WILLARD | Your social security number: [redacted]

If a joint return, spouse's first name and initial | Last name | Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. | Apartment no.

826 VANDERBILT PLACE

▲ Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

SAN DIEGO, CA 92103-3819

Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign

Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse

Filing Status

Check only one box.

1 [X] Single

2 [ ] Married filing jointly (even if only one had income)

3 [ ] Married filing separately. Enter spouse's SSN above & full name here. ►

4 [ ] Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ►

5 [ ] Qualifying widow(er) with dependent child

Exemptions

6a [X] **Yourself.** If someone can claim you as a dependent, **do not** check box 6a

b [ ] **Spouse**

Boxes checked on 6a and 6b: 1

No. of children on 6c who:
- lived with you:
- did not live with you due to divorce or separation (see instrs):

Dependents on 6c not entered above:

Add numbers on lines above ►: 1

c **Dependents:**

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax cr (see instrs)

If more than four dependents, see instructions and check here ► [ ]

d Total number of exemptions claimed: 1

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	
8a	**Taxable** interest. Attach Schedule B if required	8a	13.
b	**Tax-exempt** interest. **Do not** include on line 8a (8b)		
9a	Ordinary dividends. Attach Schedule B if required	9a	235.
b	Qualified dividends (9b) 235.		
10	Taxable refunds, credits, or offsets of state and local income taxes Statement 1	10	0.
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here ► ☐	13	-3,000.
14	Other gains or (losses). Attach Form 4797	14	-912,240.
15a	IRA distributions (15a)	b Taxable amount	15b	
16a	Pensions and annuities (16a)	b Taxable amount	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	-162,829.
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits (20a) 20,339.	b Taxable amount	20b	0.
21	Other income See Statement 3 Statement 2	21	-876,188.
22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ►	22	-1,954,009.

Adjusted Gross Income

23	Educator expenses	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	Health savings account deduction. Attach Form 8889	25	
26	Moving expenses. Attach Form 3903	26	
27	Deductible part of self-employment tax. Attach Schedule SE	27	
28	Self-employed SEP, SIMPLE, and qualified plans	28	
29	Self-employed health insurance deduction	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ►	31a	
32	IRA deduction	32	
33	Student loan interest deduction	33	
34	Tuition and fees. Attach Form 8917	34	
35	Domestic production activities deduction. Attach Form 8903	35	
36	Add lines 23 through 35	36	0.
37	Subtract line 36 from line 22. This is your **adjusted gross income** ►	37	-1,954,009.

Form **1040** (2014) LARRY J. WILLARD [redacted] Page **2**

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	-1,954,009.
	39a	Check if: [X] **You** were born before January 2, 1950, [ ] Blind. [ ] **Spouse** was born before January 2, 1950, [ ] Blind. Total boxes checked ► 39a	1	
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ► 39b		
Standard Deduction for – • People who check any box on line 39a or 39b **or** who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, $6,200 Married filing jointly or Qualifying widow(er), $12,400 Head of household, $9,100	40	Itemized deductions (from Schedule A) or your **standard deduction** (see left margin)	40	8,077.
	41	Subtract line 40 from line 38	41	-1,962,086.
	42	**Exemptions.** If line 38 is $152,525 or less, multiply $3,950 by the number on line 6d. Otherwise, see instrs	42	3,950.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	0.
	44	**Tax** (see instrs). Check if any from: a [ ] Form(s) 8814 c [ ] b [ ] Form 4972	44	0.
	45	**Alternative minimum tax** (see instructions). Attach Form 6251	45	0.
	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45 and 46 ►	47	0.
	48	Foreign tax credit. Attach Form 1116 if required		
	49	Credit for child and dependent care expenses. Attach Form 2441		
	50	Education credits from Form 8863, line 19		
	51	Retirement savings contributions credit. Attach Form 8880		
	52	Child tax credit. Attach Schedule 8812, if required		
	53	Residential energy credits. Attach Form 5695		
	54	Other crs from Form: a [ ] 3800 b [ ] 8801 c [ ]		
	55	Add lines 48 through 54. These are your **total credits**	55	
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ►	56	0.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	
	58	Unreported social security and Medicare tax from Form: a [ ] 4137 b [ ] 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [ ] Form 8959 b [ ] Form 8960 c [ ] Instrs; enter code(s)	62	
	63	Add lines 56-62. This is your **total tax** ►	63	0.
Payments If you have a qualifying child, attach Schedule EIC.	64	Federal income tax withheld from Forms W-2 and 1099		
	65	2014 estimated tax payments and amount applied from 2013 return		
	66a	**Earned income credit (EIC)**		
	b	Nontaxable combat pay election ► 66b		
	67	Additional child tax credit. Attach Schedule 8812		
	68	American opportunity credit from Form 8863, line 8		
	69	Net premium tax credit. Attach Form 8962		
	70	Amount paid with request for extension to file		
	71	Excess social security and tier 1 RRTA tax withheld		
	72	Credit for federal tax on fuels. Attach Form 4136		
	73	Credits from Form: a [ ] 2439 b [ ] Reserved c [ ] Reserved d [ ]		
	74	Add lns 64, 65, 66a, & 67-73. These are your **total pmts** ►	74	0.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you **overpaid**	75	
	76a	Amount of line 75 you want **refunded to you.** If Form 8888 is attached, check here ► [ ]	76a	
Direct deposit? See instructions.	b	► Routing number ► c Type: [ ] Checking [ ] Savings		
	d	► Account number		
	77	Amount of line 75 you want **applied to your 2015 estimated tax** ►		
Amount You Owe	78	**Amount you owe.** Subtract line 74 from line 63. For details on how to pay, see instructions ►	78	0.
	79	Estimated tax penalty (see instructions)		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] **Yes.** Complete below. [ ] **No**

Designee's name ► MITRA EHSANIPOUR CPA Phone no. ► 650-348-9444 Personal identification number (PIN) ► 94065

Sign Here Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
		EXECUTIVE	408-891-7971
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see instrs)

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [X] if self-employed	PTIN
MITRA EHSANIPOUR CPA	MITRA EHSANIPOUR CPA			P00090914

Firm's name ► MITRA EHSANIPOUR CPA

Firm's address ► 205 PARK RD STE 207 BURLINGAME, CA 94010-4220

Firm's EIN ► [redacted]

Phone no. 650-348-9444

FDIA0112L 12/29/14 Form **1040** (2014)

SCHEDULE A (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Itemized Deductions

► Information about Schedule A and its separate instructions is at *www.irs.gov/scheduleа.*
► Attach to Form 1040.

OMB No. 1545-0074

2014

Attachment Sequence No. 07

Name(s) shown on Form 1040: LARRY J. WILLARD

Your social security number: [redacted]

Medical and Dental Expenses		**Caution.** Do not include expenses reimbursed or paid by others.				
	1	Medical and dental expenses (see instructions)	1	5,254.		
	2	Enter amount from Form 1040, line 38	2	-1,954,009.		
	3	Multiply line 2 by 10% (.10). But if either you or your spouse was born before January 2, 1950, multiply line 2 by 7.5% (.075) instead	3			
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4	5,254.
Taxes You Paid	5	State and local **(check only one box):** a [ ] Income taxes, **or** b [X] General sales taxes	5	596.		
	6	Real estate taxes (see instructions)	6			
	7	Personal property taxes	7	350.		
	8	Other taxes. List type and amount ►	8			
	9	Add lines 5 through 8			9	946.
Interest You Paid	10	Home mtg interest and points reported to you on Form 1098	10			
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ►	11			
Note. Your mortgage interest deduction may be limited (see instructions).	12	Points not reported to you on Form 1098. See instrs for spcl rules	12			
	13	Mortgage insurance premiums (see instructions)	13			
	14	Investment interest. Attach Form 4952 if required. (See instrs.)	14			
	15	Add lines 10 through 14			15	0.
Gifts to Charity	16	Gifts by cash or check. If you made any gift of $250 or more, see instrs	16			
If you made a gift and got a benefit for it, see instructions.	17	Other than by cash or check. If any gift of $250 or more, see instructions. You **must** attach Form 8283 if over $500	17			
	18	Carryover from prior year	18	200.		
	19	Add lines 16 through 18 ..... Disallowed contributions ..... -200.			19	0.
Casualty and Theft Losses	20	Casualty or theft loss(es). Attach Form 4684. (See instructions.)			20	0.
Job Expenses and Certain Miscellaneous Deductions	21	Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ►	21			
	22	Tax preparation fees	22	1,560.		
	23	Other expenses — investment, safe deposit box, etc. List type and amount ► KAUAI EXPENSES 317.	23	317.		
	24	Add lines 21 through 23	24	1,877.		
	25	Enter amount from Form 1040, line 38	25	-1,954,009.		
	26	Multiply line 25 by 2% (.02)	26			
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-			27	1,877.
Other Miscellaneous Deductions	28	Other — from list in instructions. List type and amount ►			28	0.
Total Itemized Deductions	29	Is Form 1040, line 38, over $152,525? [X] No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. [ ] Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.			29	8,077.
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here ► [ ]				

SCHEDULE D (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Capital Gains and Losses

► Attach to Form 1040 or Form 1040NR.

► Information about Schedule D and its separate instructions is at *www.irs.gov/scheduled.*

► Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

OMB No. 1545-0074

2014

Attachment Sequence No. 12

Name(s) shown on return: LARRY J. WILLARD

Your social security number: [redacted]

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b	76.	70.		6.
1b Totals for all transactions reported on Form(s) 8949 with **Box A** checked				
2 Totals for all transactions reported on Form(s) 8949 with **Box B** checked				
3 Totals for all transactions reported on Form(s) 8949 with **Box C** checked				

4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4	
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5	
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** in the instructions	6	-29,912.
7 **Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). If you have any long-term capital gain or losses, go to Part II below. Otherwise, go to Part III on page 2	7	-29,906.

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b	167.	154.		13.
8b Totals for all transactions reported on Form(s) 8949 with **Box D** checked				
9 Totals for all transactions reported on Form(s) 8949 with **Box E** checked	13,938.	4,650.		9,288.
10 Totals for all transactions reported on Form(s) 8949 with **Box F** checked				

11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11	
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12	
13 Capital gain distributions. See instrs.	13	
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** in the instructions	14	-1,018,200.
15 **Net long-term capital gain or (loss).** Combine lines 8a through 14 in column (h). Then go to Part III on page 2	15	-1,008,899.

Part III Summary

16 Combine lines 7 and 15 and enter the result • If line 16 is a **gain,** enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • If line 16 is a **loss,** skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • If line 16 is **zero,** skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then to go line 22.	16	-1,038,805.
17 Are lines 15 and 16 **both** gains? ☐ **Yes.** Go to line 18. ☐ **No.** Skip lines 18 through 21, and go to line 22.		
18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions ►	18	
19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions ►	19	
20 Are lines 18 and 19 **both** zero or blank? ☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below. ☐ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.		
21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of: • The loss on line 16 or • ($3,000), or if married filing separately, ($1,500) **Note.** When figuring which amount is smaller, treat both amounts as positive numbers.	21	-3,000.
22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? ☒ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). ☐ **No.** Complete the rest of Form 1040 or Form 1040NR.		

Form **8949** (2014) Attachment Sequence No. **12A** Page **2**

Name(s) shown on return. Name and SSN or taxpayer identification no. not required if shown on other side. **SSN or taxpayer identification no.**

LARRY J. WILLARD [redacted]

Before you check Box D, E, or F below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either may show your basis (usually your cost) even if your broker did not report it to the IRS. Brokers must report basis to the IRS for most stock you bought in 2011 or later (and for certain debt instruments you bought in 2014 or later).

Part II **Long-Term.** Transactions involving capital assets you held more than 1 year are long term. For short-term transactions, see page 1.

Note. You may aggregate all long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the total directly on Schedule D, line 8a; you are not required to report these transactions on Form 8949 (see instructions).

You *must* check Box D, E, *or* F below. Check only one box. If more than one box applies for your long-term transactions, complete a separate Form 8949, page 2, for each applicable box. If you have more long-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

- [ ] **(D)** Long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)
- [X] **(E)** Long-term transactions reported on Form(s) 1099-B showing basis was **not** reported to the IRS
- [ ] **(F)** Long-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 shares XYZ Co)	(b) Date acquired (Mo, day, yr)	(c) Date sold or disposed (Mo, day, yr)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the **Note** below and see *Column (e)* in the separate instructions	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). See the separate instructions. (f) Code(s) from instructions	(g) Amount of adjustment	(h) Gain or (loss). Subtract column (e) from column (d) and combine the result with column (g)
120 PHILIP MORRIS INTERNATIONAL INC	Various	1/24/14	9,773.	3,258.			6,515.
27 KRAFT	Various	1/24/14	1,400.	459.			941.
83 MONDELEZ	Various	1/29/14	2,765.	933.			1,832.
2 Totals. Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 8b** (if **Box D** above is checked), **line 9** (if **Box E** above is checked), or **line 10** (if **Box F** above is checked) ▶			13,938.	4,650.		0.	9,288.

Note. If you checked Box D above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See *Column (g)* in the separate instructions for how to figure the amount of the adjustment.

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)
► Attach to Form 1040, 1040NR, or Form 1041.
► Information about Schedule E and its separate instructions is at *www.irs.gov/schedulee*.

OMB No. 1545-0074

2014

Attachment Sequence No. 13

Name(s) shown on return: LARRY J. WILLARD

Your social security number: [redacted]

Part I (1) **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2014 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No

B If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

	1a Physical address of each property (street, city, state, ZIP code)	1b Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	Fair Rental Days	Personal Use Days	QJV
A	7693-7699 S. VIRGINA STREET, RENO, NV 89511	4	A			
B			B			
C			C			

Type of Property:
1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Income: / Properties:		A	B	C
3 Rents received	3			
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6	1,800.		
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9			
10 Legal and other professional fees	10	1,650.		
11 Management fees	11			
12 Mortgage interest paid to banks, etc (see instructions)	12			
13 Other interest	13			
14 Repairs	14			
15 Supplies	15			
16 Taxes	16	38,903.		
17 Utilities	17			
18 Depreciation expense or depletion	18	54,026.		
19 Other (list) ► See Stm 4	19	1,474.		
20 Total expenses. Add lines 5 through 19	20	97,853.		
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	-97,853.		
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	-162,829.		
23a Total of all amounts reported on line 3 for all rental properties	23a			
b Total of all amounts reported on line 4 for all royalty properties	23b			
c Total of all amounts reported on line 12 for all properties	23c			
d Total of all amounts reported on line 18 for all properties	23d		54,026.	
e Total of all amounts reported on line 20 for all properties	23e		97,853.	
24 **Income.** Add positive amounts shown on line 21. **Do not** include any losses	24			
25 **Losses.** Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25			-162,829.
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26			-162,829.

Schedule E (Form 1040) 2014 Attachment Sequence No. 13 Page 2

Name(s) shown on return. Do not enter name and social security number if shown on Page 1. Your social security number

LARRY J. WILLARD [redacted]

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which **any** amount is **not** at risk, you **must** check the box in column **(e)** on line 28 and attach **Form 6198**. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered 'Yes,' see instructions before completing this section. ☐ Yes ☒ No

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	US IMMIGRANT INVESTMENT CENTER LLC	P		[redacted]	
B					
C					
D					

	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
29a Totals	[redacted]		[redacted]		
b Totals		[redacted]			

30	Add columns (g) and (j) of line 29a	30	
31	Add columns (f), (h), and (i) of line 29b	31	
32	**Total partnership and S corporation income or (loss).** Combine lines 30 and 31. Enter the result here and include in the total on line 41 below	32	

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
34a Totals	[redacted]		[redacted]	
b Totals		[redacted]		

35	Add columns (d) and (f) of line 34a	35	
36	Add columns (c) and (e) of line 34b	36	
37	**Total estate and trust income or (loss).** Combine lines 35 and 36. Enter the result here and include in the total on line 41 below	37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) — Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below	39	

Part V Summary

40	Net farm rental income or (loss) from **Form 4835**. Also, complete line 42 below	40	
41	**Total income or (loss).** Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18 ►	41	-162,829.
42	**Reconciliation of farming and fishing income.** Enter your **gross** farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code V; and Schedule K-1 (Form 1041), box 14, code F (see instructions)	42	
43	**Reconciliation for real estate professionals.** If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

A.App.530

Form **1116**

Department of the Treasury Internal Revenue Service (99)

Foreign Tax Credit

(Individual, Estate, or Trust)

► Attach to Form 1040, 1040NR, 1041, or 990-T.

► Information about Form 1116 and its separate instructions is at *www.irs.gov/form1116.*

OMB No. 1545-0121

2014

Attachment Sequence No. **19**

Name: LARRY J. WILLARD

ID no. as shown on page 1 of your tax return: [redacted]

Use a separate Form 1116 for each category of income listed below. See **Categories of Income** in the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

a [X] Passive category income
b [ ] General category income
c [ ] Section 901(j) income
d [ ] Certain income re-sourced by treaty
e [ ] Lump-sum distributions

f Resident of (name of country) ►

Note: *If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to* ***more than one*** *foreign country or U.S. possession, use a separate column and line for each country or possession.*

Part I Taxable Income or Loss From Sources Outside the United States (for Category Checked Above)

	Foreign Country or U.S. Possession A	B	C	Total (Add columns A, B, and C.)
g Enter the name of the foreign country or U.S. possession ►	VARIOUS			
1a Gross income from sources within country shown above and of the type checked above (see instructions):				1a
b Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is $250,000 or more, and you used an alternative basis to determine its source (see instructions) ► [ ]				
Deductions and losses *(Caution: See instructions):*				
2 Expenses **definitely related** to the income on line 1a (attach statement)				
3 Pro rata share of other deductions **not definitely related:**				
a Certain itemized deductions or standard deduction (see instructions)	5,850.			
b Other deductions (attach statement)				
c Add lines 3a and 3b	5,850.			
d Gross foreign source income (see instructions)				
e Gross income from all sources (see instructions)	54,705.			
f Divide line 3d by line 3e (see instructions)				
g Multiply line 3c by line 3f				
4 Pro rata share of interest expense (see instructions):				
a Home mortgage interest (use the Worksheet for Home Mortgage Interest in the instructions)				
b Other interest expense				
5 Losses from foreign sources				
6 Add lines 2, 3g, 4a, 4b, and 5				6
7 Subtract line 6 from line 1a. Enter the result here and on line 15, page 2 ►				7

Part II Foreign Taxes Paid or Accrued (see instructions)

COUNTRY	Credit is claimed for taxes (you must check one) (h) [X] Paid (i) [ ] Accrued	Foreign taxes paid or accrued: In foreign currency — Taxes withheld at source on:			(n) Other foreign taxes paid or accrued	In U.S. dollars — Taxes withheld at source on:			(r) Other foreign taxes paid or accrued	(s) Total foreign taxes paid or accrued (add columns (o) through (r))
	(j) Date paid or accrued	(k) Dividends	(l) Rents & royalties	(m) Interest		(o) Dividends	(p) Rents & royalties	(q) Interest		
A										
B										
C										

8 **Add lines A through C, column (s). Enter the total here and on line 9, page 2** ► 8

BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2612L 09/03/14 Form **1116** (2014)

Part III Figuring the Credit

9	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I	9		
10	Carryback or carryover (attach detailed computation) See Stmt 5	10	14.	
11	Add lines 9 and 10	11	14.	
12	Reduction in foreign taxes (see instructions)	12		
13	Taxes reclassified under high tax kickout (see instructions)	13		
14	Combine lines 11, 12 and 13. This is the total amount of foreign taxes available for credit		14	14.
15	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I (see instructions)	15		
16	Adjustments to line 15 (see instructions)	16		
17	Combine the amounts on lines 15 and 16. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 18 through 22. However, if you are filing more than one Form 1116, you must complete line 20.)	17		
18	**Individuals:** Enter the amount from Form 1040, line 41, or Form 1040NR, line 39. **Estates and trusts:** Enter your taxable income without the deduction for your exemption	18		
	Caution: *If you figured your tax using the lower rates on qualified dividends or capital gains, see instructions.*			
19	Divide line 17 by line 18. If line 17 is more than line 18, enter '1'		19	
20	**Individuals:** Enter the amounts from Form 1040, lines 44 and 46. If you are a nonresident alien, enter the amounts from Form 1040NR, lines 42 and 44. **Estates and trusts:** Enter the amount from Form 1041, Schedule G, line 1a, or the total of Form 990-T, lines 36 and 37		20	
	Caution: *If you are completing line 20 for separate category* **e** *(lump-sum distributions), see instructions.*			
21	Multiply line 20 by line 19 (maximum amount of credit)		21	
22	Enter the **smaller** of line 14 or line 21. If this is the only Form 1116 you are filing, skip lines 23 through 27 and enter this amount on line 28. Otherwise, complete the appropriate line in Part IV (see instructions) ►		22	

Part IV Summary of Credits From Separate Parts III (see instructions)

23	Credit for taxes on passive category income	23		
24	Credit for taxes on general category income	24		
25	Credit for taxes on certain income re-sourced by treaty	25		
26	Credit for taxes on lump-sum distributions	26		
27	Add lines 23 through 26		27	
28	Enter the **smaller** of line 20 or line 27		28	
29	Reduction of credit for international boycott operations. See instructions for line 12		29	
30	Subtract line 29 from line 28. This is your **foreign tax credit.** Enter here and on Form 1040, line 48; Form 1040NR, line 46; Form 1041, Schedule G, line 2a; or Form 990-T, line 40a ►		30	

Form **1116**

Department of the Treasury
Internal Revenue Service (99)

Alternative Minimum Tax

Foreign Tax Credit

(Individual, Estate, or Trust)

► **Attach to Form 1040, 1040NR, 1041, or 990-T.**

► **Information about Form 1116 and its separate instructions is at *www.irs.gov/form1116.***

OMB No. 1545-0121

2014

Attachment Sequence No. **19**

Name

LARRY J. WILLARD

ID no. as shown on page 1 of your tax return

[redacted]

Use a separate Form 1116 for each category of income listed below. See **Categories of Income** in the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

a [X] Passive category income
b [ ] General category income
c [ ] Section 901(j) income
d [ ] Certain income re-sourced by treaty
e [ ] Lump-sum distributions

f Resident of (name of country) ►

Note: *If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to* ***more than one*** *foreign country or U.S. possession, use a separate column and line for each country or possession.*

Part I Taxable Income or Loss From Sources Outside the United States (for Category Checked Above)

	Foreign Country or U.S. Possession A	B	C	Total (Add columns A, B, and C.)
g Enter the name of the foreign country or U.S. possession ►	VARIOUS			
1a Gross income from sources within country shown above and of the type checked above (see instructions):				
				1a
b Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is $250,000 or more, and you used an alternative basis to determine its source (see instructions) ► [ ]				
Deductions and losses ***(Caution:*** *See instructions)*:				
2 Expenses **definitely related** to the income on line 1a (attach statement)				
3 Pro rata share of other deductions **not definitely related:**				
a Certain itemized deductions or standard deduction (see instructions)	5,254.			
b Other deductions (attach statement)				
c Add lines 3a and 3b	5,254.			
d Gross foreign source income (see instructions)				
e Gross income from all sources (see instructions)	54,705.			
f Divide line 3d by line 3e (see instructions)				
g Multiply line 3c by line 3f				
4 Pro rata share of interest expense (see instructions):				
a Home mortgage interest (use the Worksheet for Home Mortgage Interest in the instructions)				
b Other interest expense				
5 Losses from foreign sources				
6 Add lines 2, 3g, 4a, 4b, and 5				**6**
7 Subtract line 6 from line 1a. Enter the result here and on line 15, page 2 ►				**7**

Part II Foreign Taxes Paid or Accrued (see instructions)

COUNTRY	Credit is claimed for taxes (you must check one) (h) [X] Paid (i) [ ] Accrued	Foreign taxes paid or accrued: In foreign currency — Taxes withheld at source on: (k) Dividends	(l) Rents & royalties	(m) Interest	(n) Other foreign taxes paid or accrued	In U.S. dollars — Taxes withheld at source on: (o) Dividends	(p) Rents & royalties	(q) Interest	(r) Other foreign taxes paid or accrued	(s) Total foreign taxes paid or accrued (add columns (o) through (r))
	(j) Date paid or accrued									
A										
B										
C										

8 **Add lines A through C, column (s). Enter the total here and on line 9, page 2** ► **8**

BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2612L 09/03/14 Form **1116** (2014)

Alternative Minimum Tax

Form **1116** (2014) LARRY J. WILLARD [redacted]

Part III Figuring the Credit

9	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I	9			
10	Carryback or carryover (attach detailed computation) See Stmt 6	10	8.		
11	Add lines 9 and 10	11	8.		
12	Reduction in foreign taxes (see instructions)	12			
13	Taxes reclassified under high tax kickout (see instructions)	13			
14	Combine lines 11, 12 and 13. This is the total amount of foreign taxes available for credit			14	8.
15	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I (see instructions)	15			
16	Adjustments to line 15 (see instructions)	16			
17	Combine the amounts on lines 15 and 16. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 18 through 22. However, if you are filing more than one Form 1116, you must complete line 20.)	17			
18	**Individuals:** Enter the amount from Form 1040, line 41, or Form 1040NR, line 39. **Estates and trusts:** Enter your taxable income without the deduction for your exemption	18			
	Caution: *If you figured your tax using the lower rates on qualified dividends or capital gains, see instructions.*				
19	Divide line 17 by line 18. If line 17 is more than line 18, enter '1'			19	
20	**Individuals:** Enter the amounts from Form 1040, lines 44 and 46. If you are a nonresident alien, enter the amounts from Form 1040NR, lines 42 and 44. **Estates and trusts:** Enter the amount from Form 1041, Schedule G, line 1a, or the total of Form 990-T, lines 36 and 37			20	
	Caution: *If you are completing line 20 for separate category* **e** *(lump-sum distributions), see instructions.*				
21	Multiply line 20 by line 19 (maximum amount of credit)			21	
22	Enter the **smaller** of line 14 or line 21. If this is the only Form 1116 you are filing, skip lines 23 through 27 and enter this amount on line 28. Otherwise, complete the appropriate line in Part IV (see instructions) ►			22	

Part IV Summary of Credits From Separate Parts III (see instructions)

23	Credit for taxes on passive category income	23			
24	Credit for taxes on general category income	24			
25	Credit for taxes on certain income re-sourced by treaty	25			
26	Credit for taxes on lump-sum distributions	26			
27	Add lines 23 through 26			27	
28	Enter the **smaller** of line 20 or line 27			28	
29	Reduction of credit for international boycott operations. See instructions for line 12			29	
30	Subtract line 29 from line 28. This is your **foreign tax credit.** Enter here and on Form 1040, line 48; Form 1040NR, line 46; Form 1041, Schedule G, line 2a; or Form 990-T, line 40a ►			30	

Form **4797**

Department of the Treasury
Internal Revenue Service

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

► Attach to your tax return.

► Information about Form 4797 and its separate instructions is at *www.irs.gov/form4797.*

OMB No. 1545-0184

2014

Attachment Sequence No. **27**

Name(s) shown on return: LARRY J. WILLARD

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2014 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) ... 1 **2,389,709.**

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft — Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
See Statement 7						-957,390.

3	Gain, if any, from Form 4684, line 39	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	45,150.
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	-912,240.
	Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.		
	Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	-912,240.
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	
14	Net gain or (loss) from Form 4684, lines 31 and 38a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	-912,240.
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from 'Form 4797, line 18a.' See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	-912,240.

BAA For Paperwork Reduction Act Notice, see separate instructions. Form **4797** (2014)

FDIZ1001L 06/24/14

Form **4797** (2014) LARRY J. WILLARD [redacted] Page **2**

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo, day, yr)	(c) Date sold (mo, day, yr)
A EDPA BUILDING	3/04/06	3/03/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D. ►		Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** *See line 1 before completing.*)	20	2,389,709.			
21 Cost or other basis plus expense of sale	21	2,649,765.			
22 Depreciation (or depletion) allowed or allowable	22	305,206.			
23 Adjusted basis. Subtract line 22 from line 21	23	2,344,559.			
24 Total gain. Subtract line 23 from line 20	24	45,150.			
25 **If section 1245 property:**					
a Depreciation allowed or allowable from line 22	25a				
b Enter the **smaller** of line 24 or 25a	25b				
26 **If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instrs)	26a				
b Applicable percentage multiplied by the **smaller** of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 & before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g	0.			
27 **If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 **If section 1254 property:**					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions)	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 **If section 1255 property:**					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the smaller of line 24 or 29a (see instrs)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	45,150.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	0.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	45,150.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

Form **4952**

Department of the Treasury
Internal Revenue Service (99)

Investment Interest Expense Deduction

► Information about Form 4952 and its instructions is at *www.irs.gov/form4952*
► Attach to your tax return.

OMB No. 1545-0191

2014

Attachment Sequence No. **51**

Name(s) shown on return

LARRY J. WILLARD

Identifying number [redacted]

Part I Total Investment Interest Expense

1	Investment interest expense paid or accrued in 2014 (see instructions)	1	
2	Disallowed investment interest expense from 2013 Form 4952, line 7	2	782,223.
3	**Total investment interest expense.** Add lines 1 and 2	3	782,223.

Part II Net Investment Income

4a	Gross income from property held for investment (excluding any net gain from the disposition of property held for investment)	4a	248.		
b	Qualified dividends included on line 4a	4b	235.		
c	Subtract line 4b from line 4a			4c	13.
d	Net gain from the disposition of property held for investment	4d			
e	Enter the **smaller** of line 4d or your net capital gain from the disposition of property held for investment (see instructions)	4e			
f	Subtract line 4e from line 4d			4f	
g	Enter the amount from lines 4b and 4e that you elect to include in investment income (see instructions)			4g	
h	Investment income. Add lines 4c, 4f, and 4g			4h	13.
5	Investment expenses (see instructions)			5	317.
6	**Net investment income.** Subtract line 5 from line 4h. If zero or less, enter -0-			6	0.

Part III Investment Interest Expense Deduction

7	Disallowed investment interest expense to be carried forward to 2015. Subtract line 6 from line 3. If zero or less, enter -0-	7	782,223.
8	**Investment interest expense deduction.** Enter the **smaller** of line 3 or 6. See instructions	8	0.

BAA For Paperwork Reduction Act Notice, see separate instructions. Form **4952** (2014)

FDIZ1201L 06/13/14

Form **8582**

Department of the Treasury Internal Revenue Service (99)

Passive Activity Loss Limitations

► See separate instructions.
► Attach to Form 1040 or Form 1041.
► Information about Form 8582 and its instructions is available at *www.irs.gov/form8582.*

OMB No. 1545-1008

2014

Attachment Sequence No. **88**

Name(s) shown on return

LARRY J. WILLARD

Identifying number [redacted]

Part I 2014 Passive Activity Loss

Caution: *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)				
1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d	Combine lines 1a, 1b, and 1c		1d	
Commercial Revitalization Deductions From Rental Real Estate Activities				
2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c	Add lines 2a and 2b		2c	
All Other Passive Activities				
3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a		
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	-4.	
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c		
d	Combine lines 3a, 3b, and 3c		3d	-4.
4	Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used		4	-4.

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: *If your filing status is married filing separately and you lived with your spouse at any time during the year,* ***do not*** *complete Part II or Part III. Instead, go to line 15.*

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: *Enter all numbers in Part II as positive amounts. See instructions for an example.*

5	Enter the **smaller** of the loss on line 1d or the loss on line 4		5	
6	Enter $150,000. If married filing separately, see instructions	6		
7	Enter modified adjusted gross income, but not less than zero (see instrs)	7		
	Note: *If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.*			
8	Subtract line 7 from line 6	8		
9	Multiply line 8 by 50% (.5). **Do not** enter more than $25,000. If married filing separately, see instructions		9	
10	Enter the **smaller** of line 5 or line 9		10	0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: *Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.*

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the **smallest** of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2014.** Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	

Caution: *The worksheets must be filed with your tax return. Keep a copy for your records.*

Worksheet 1 — For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c ►					

Worksheet 2 — For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ►			

Worksheet 3 — For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
US IMMIGRANT INVESTMENT CENTER		4.			4.
Total. Enter on Form 8582, lines 3a, 3b, and 3c ►		4.			

Worksheet 4 — Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ►			1.00		

Worksheet 5 — Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
US IMMIGRANT INVESTMENT CENTER L	Sch E Ln 28	4.	1.000000	4.
Total ►		4.	1.00	4.

Worksheet 6 — Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
US IMMIGRANT INVESTMENT CENTER L	Sch E Ln 28	4.	4.	0.
Total ►		4.	4.	0.

Worksheet 7 — Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►		0.	1.00	0.	0.
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►		0.	1.00	0.	0.

Form **982**
(Rev. July 2013)
Department of the Treasury
Internal Revenue Service

Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

► Attach this form to your income tax return.
► Information about Form 982 ad its instructions is at *www.irs.gov/form982*

OMB No. 1545-0046
Attachment Sequence No. **94**

Name shown on return: LARRY J. WILLARD
Identifying number: [redacted]

Part I General Information (see instructions)

1 Amount excluded is due to (check applicable box(es)):

a Discharge of indebtedness in a title 11 case	
b Discharge of indebtedness to the extent insolvent (not in a title 11 case)	X
c Discharge of qualified farm indebtedness	
d Discharge of qualified real property business indebtedness	
e Discharge of qualified principal residence indebtedness	

2 Total amount of discharged indebtedness excluded from gross income — 2: 4,196,190.

3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property? [X] Yes [ ] No

Part II Reduction of Tax Attributes

You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

Enter amount excluded from gross income:

4 For a discharge of qualified real property business indebtedness applied to reduce the basis of depreciable real property	4	
5 That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property	5	
6 Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge	6	1,951,257.
7 Applied to reduce any general business credit carryover to or from the tax year of the discharge	7	
8 Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge	8	
9 Applied to reduce any net capital loss for the tax year of the discharge, including any capital loss carryovers to the tax year of the discharge	9	1,038,805.
10a Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. *DO NOT use in the case of discharge of qualified farm indebtedness*	10a	
b Applied to reduce the basis of your principal residence. *Enter amount here ONLY if line 1e is checked*	10b	
11 For a discharge of qualified farm indebtedness applied to reduce the basis of:		
a Depreciable property used or held for use in a trade or business or for the production of income if not reduced on line 5	11a	
b Land used or held for use in a trade or business of farming	11b	
c Other property used or held for use in a trade or business or for the production of income	11c	
12 Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge	12	
13 Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge	13	14.

Part III Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded $ _____ from its gross income for the tax year beginning _____ and ending _____.

Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of _____.
(State of incorporation)

Note: *You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.*

A.App.541

LARRY J. WILLARD [redacted]

Statement 1
Form 1040, Page 1, Line 10
Taxable Refunds of State and Local Income Taxes

1.	State and local income tax refunds (prior year)		$ 1,171.
2.	Refunds attributable to post 12/31/2013 payments per IRS Pub. 525		0.
3.	Net state and local income tax refunds		1,171.
4.	State and local taxes paid from prior year Sch. A, line 5		1,171.
5.	Prior year allowable sales tax deduction		574.
6.	Excess of income taxes deducted over sales taxes		597.
7.	Enter the smaller of line 3 or line 6		597.
8.	Itemized deduction from prior year Sch. A, line 29		94,001.
9.	Prior year recomputed itemized deductions (if phaseout)		0.
10.	Prior year base standard deduction	6,100.	
11.	Prior year add'l standard deduction for age/blindness	1,500.	
12.	Prior year total standard deduction (add line 10 and 11)		7,600.
13.	Enter the larger of line 9 or line 12		7,600.
14.	Subtract line 13 from line 8 (not less than 0)		86,401.
15.	Enter the smaller of line 7 or line 14		597.
16.	Negative taxable income (prior year)		-152,599.
17.	Refund with no benefit due to AMT, nonref. cred., 0% cap gain rate		0.
18.	State and local refunds taxable this year (add lines 15, 16, and 17, but not less than 0)		$ 0.

Statement 2
Form 1040, Line 21
Computation of 2014 Taxable Income for NOL Utilization

Taxable income (Form 1040, line 41)	-1,962,086.
Less: Deduction for exemptions (Form 1040, Line 42)	-3,950.
Plus: NOL carryovers from 2011 and later years	876,188.
2014 Taxable income before NOL deduction	-1,089,848.

Statement 2
Form 1040, Line 21
2011 NOL Utilization

Initial Loss	1,049,662.
NOL carryover available in 2014	851,188.
Modifed taxable income (from line 9 below)	0.
NOL absorbed this Year	0.
Taxable income after NOL deduction	0.
NOL carryover to 2015	851,188.

Worksheet for NOL carryover
Computed for first NOL that reduces taxable income below zero
Per IRS Publication 536

NOL YEAR: 2011
Use your 2014 Form 1040 or Form 1040NR to complete this worksheet

1.	NOL deduction for the NOL year entered above	851,188.
2.	Taxable income before the NOL deduction for 2011 and later years	-1,089,848.
3.	Net capital loss deduction	3,000.

Worksheet for NOL carryover (continued)
Computed for first NOL that reduces taxable income below zero
Per IRS Publication 536

4. Gain excluded on sale of small business stock	0.
5. Domestic production activities deduction	0.
6. Adjustments to adjusted gross income	0.
7. Adjustments to itemized deductions (line 35)	0.
8. Deduction for exemptions	3,950.
9. Modified taxable income	0.
10. NOL carryover to 2015	851,188.

Statement 2
Form 1040, Line 21
2013 NOL Utilization

Initial Loss	25,000.
NOL carryover available in 2014	25,000.
Taxable income before NOL deduction	0.
NOL absorbed this Year	0.
Section 1411 (Form 8960) NOL absorbed this Year	0.
Taxable income after NOL deduction	0.
NOL carryover to 2015	25,000.
Section 1411 (Form 8960) NOL carryover to 2015	25,000.

Statement 3
Form 1040, Line 21
Other Income

Cancellation of Debt	$ 4,196,190.
EXCLUDE FROM INCOME FORM 982	-4,196,190.
NOL	-876,188.
Total	$ -876,188.

Statement 4
Schedule E, Line 19 - 7693-7699 S. VIRGINA STREET
Other Rental and Royalty Expenses

Amortization	$ 1,474.
Total	$ 1,474.

Statement 5
Form 1116, Line 10
Foreign Tax Credit Carryovers

Passive Income

	Foreign Taxes Paid	Foreign Taxes Disallowed	Foreign Taxes Claimed	Foreign Tax Credit Carryover
2013 Foreign tax credit	5.	0.	0.	5.
2012 Foreign tax credit	0.	0.	0.	0.
2011 Foreign tax credit	0.	0.	0.	0.
2010 Foreign tax credit	3.	0.	0.	3.
2009 Foreign tax credit	8.	0.	8.	6.
2008 Foreign tax credit	0.	0.	0.	0.
2007 Foreign tax credit	0.	0.	0.	0.
2006 Foreign tax credit	0.	0.	0.	0.
2005 Foreign tax credit	0.	0.	0.	0.
2004 Foreign tax credit	0.	0.	0.	0.
Total Foreign Tax Credit Carryover - Form 1116, Line 10				$ 14.

Statement 6
Form 1116, Line 10
Foreign Tax Credit Carryovers

Passive Income - AMT

	Foreign Taxes Paid	Foreign Taxes Disallowed	Foreign Taxes Claimed	Foreign Tax Credit Carryover
2013 Foreign tax credit	5.	0.	0.	5.
2012 Foreign tax credit	0.	0.	0.	0.
2011 Foreign tax credit	0.	0.	0.	0.
2010 Foreign tax credit	3.	0.	0.	3.
2009 Foreign tax credit	8.	0.	8.	0.
2008 Foreign tax credit	0.	0.	0.	0.
2007 Foreign tax credit	0.	0.	0.	0.
2006 Foreign tax credit	0.	0.	0.	0.
2005 Foreign tax credit	0.	0.	0.	0.
2004 Foreign tax credit	0.	0.	0.	0.
Total Foreign Tax Credit Carryover - Form 1116, Line 10				$ 8.

Statement 7
Form 4797, Page 1, Part I
Sales or Exchanges of Certain Property Held Over One Year

Description of Property	Date Acquired	Date Sold	Sales Price	Depreciation Allowed	Cost or Basis	Gain or Loss
EDPA SVC.STATION & LAND IMPROV	3/04/06	3/03/14		1,076,606.	1,927,849.	$ -851,243.
EDPA FURNITURE & FIXTURES	3/04/06	3/03/14		6,811.	6,811.	0.
EDPA LOAN FEES	3/04/06	3/03/14		70,767.	176,914.	-106,147.

Statement 7 (continued)
Form 4797, Page 1, Part I
Sales or Exchanges of Certain Property Held Over One Year

Description of Property	Date Acquired	Date Sold	Sales Price	Depreciation Allowed	Cost or Basis	Gain or Loss
EDPA DISTRIBUTIVE TRADE & SERV	3/04/06	3/03/14		908,133.	908,133.	$ 0.
					Total	$ -957,390.

LARRY J. WILLARD [redacted]

NCUAB/TCCU BANK,- ACCOUNT [redacted] FIRST LOAN ON THE PROPERTY LOCATED AT 7963 TO 7699 SOUTH VIRGINIA STREET, RENO, NEVADA 89511- HAS ISSUED FORM 1099-C DEBT CANCELLED IN THE TOTAL AMOUNT OF $8,597,250 UNDER DEBTOR'S ID# [redacted] AND DEBTOR'S NAME OVERLAND DEVELOPMENT CORP. , INC. THE PROPERTY IS 41% OWNED BY OVERLAND DEVELOPMENT INC. AND 59% OWNED BY LARRY J. WILLARD, TRUSTE OF THE LARRY JAMES WILLARD TRUST DATED 11/14/1987. TAXPAYER'S TOTAL OF ALL HIS LIABILITIES EXCEED THE FMV OF ALL OF HIS ASSETS IMMEDIATELY BEFORE THE CANCELLATION OF THIS DEBT. THEREFORE TAXPAYER CONSIDER INSOLVENT.

LARRY J. WILLARD [redacted]

Election to Waive Net Operating Loss Carryback

Pursuant to IRC Section 172(b)(3), the Taxpayer hereby elects to relinquish the entire carryback period with respect to the net operating loss incurred for the tax year ended 12/31/14.

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CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 9

EXHIBIT 9

NorCal Escrow Solutions, Inc. (408) 842-1760

Seller's Final Closing Statement

Seller(s)	Overland Development Corporation, Inc., 826 Vanderbuilt Place, San Diego, CA 92103 Larry J. Willard, Truste of the Larry James Willard Trust dated 11/14/1987, 826 Vanderbuilt Place, San Diego, CA 92103
Buyer(s)	Longley Partners, LLC, 1200 Financial Boulevard, Reno, NV 89502
Lender	Heritage Bank of Nevada, 1401 S. Virginia Street, Reno, NV 89502
Property	7693 S Virginia St., Reno, NV 89511

Closing date	03/03/2014	Proration date	None
Bank	BOW - BANK OF THE WEST		
Escrow Unit	1 - NorCal Escrow Solutions, Inc.		
Escrow Officer	Lucinda A. Reinecclus		

	Debit	Credit
Contract Sales Price		4,000,000.00
Other Adjustments:		
Credit from Realtor for closing costs from Colliers Nevada LLC dba Colliers International		354.68
Credit from buyer to seller		50,000.00
Payoffs:		
Payoff of first mortgage loan to National Credit Union Administration Boad	3,699,802.70	
Principal Balance Good Thru $3,699,802.70		
Payoff of second mortgage loan to Vaam and Assoc	150,000.00	
Principal Balance Good Thru $150,000.00		
Commissions:		
$120,000.00 to Colliers International	120,000.00	
Title Charges:		
Settlement or closing fee to NorCal Escrow Solutions, Inc	1,750.00	
Owner's title insurance to Stewart Title of Nevada		
Liability amount $4,000,000.00	4,000.00	
Notary Fee to Notary Public	100.00	
Document Preparation to NorCal Escrow Solutions, Inc	300.00	
Courier/Mail Service Fee to NorCal Escrow Solutions, Inc	85.00	
Wire Fee to NorCal Escrow Solutions, Inc	60.00	
Recording/Filing fees for recons & UCC to NorCal Escrow Solutions, Inc	120.00	
Recording Fees/Transfer Charges:		
State tax/stamps to Stewart Title of Nevada	8,200.00	
Additional Charges:		
2012/2013 Tax Year to Washoe County Tax Collector	65,936.98	
Subtotal:	4,050,354.68	4,050,354.68
Balance due to Seller:		
Totals:	4,050,354.68	4,050,354.68

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL.

BY: _____

F I L E D
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CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 10

EXHIBIT 10

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.

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 Projection, 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 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.

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.

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 it 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 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 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 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. [redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

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

Notary Public

My Commission Expires: Apr 1, 2009

CHRIS GONZALES
Commission # 1566164
Notary Public - California
Santa Clara County
My Comm. Expires Apr 1, 2009

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

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

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

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 $272,000.00.

"*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.

"*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

(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.

"*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).

"*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).

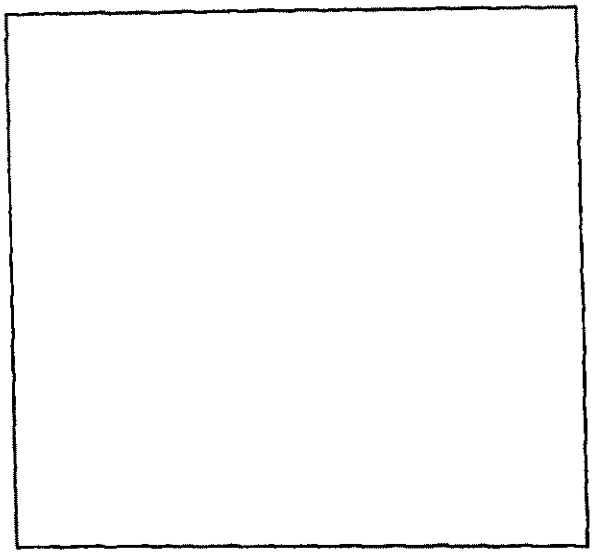
EXHIBIT B

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY

PROPERTY ADDRESS:

PROPERTY LEGAL DESCRIPTION:

EXHIBIT C



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE

THIS AGREEMENT, made effective as of _____, 2005, by and _____, having a mailing address of _____ ("Lessor"), and _____, having a mailing address of _____ ("Lessee") and _____, _____ ("Lender"), having a mailing address of _____, and/or its participants, successors or assigns.

WITNESSETH:

A. WHEREAS, by Lease Agreement dated _____, 2005 (hereinafter referred to as the "Lease"), Lessor leased and rented to Lessee the real property having a street address of _____, in _____, Nevada, a legal description of which is attached as **Exhibit A** (the "Property"), which Lease is evidenced by a Memorandum of Lease dated _____, 2005 and filed of record in the records of the County of _____, State of Nevada (the "Official Records") in Book _____, Page _____ as Document No. _____; and

B. WHEREAS, Lessor has obtained a loan from Lender secured by, among other things, a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement encumbering, among other things, the Property dated _____, 2005 and filed of record in the Official Records in Book _____, Page _____ as Document No. _____ (the "Deed of Trust"), and as a condition to making such loan, it was agreed between Lessor and Lender that Lessor would obtain from Lessee certain written agreements; and

C. WHEREAS, Lessee and Lender desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the following agreement.

NOW THEREFORE, for and in consideration of the Property and of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee and Lender agree as follows:

1. The Lease and the rights of Lessee thereunder are and shall be subject and subordinate to the lien of the Deed of Trust and to all of the terms, conditions and provisions thereof, to all advances made or to be made thereunder, to the full extent of the principal sum, interest thereon and other amounts from time to time secured thereby, and to any renewal, substitution, extension, modification or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto. In the event that Lender or any other person (the Lender, any other such person and their successors and assigns being referred to herein as the "Purchaser") acquires title to the Property pursuant to the exercise of any remedy provided for in the Deed of Trust or by reason of the acceptance of a deed in lieu of foreclosure, Lessee covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Lessor, and subject to the other terms, provisions and conditions of this Agreement, the Lease shall continue in full force and effect as a direct Lease between Lessee and Purchaser.

2. So long as the Lease is in full force and effect and Lessee shall not be in default beyond any applicable grace period under any provision of the Lease or this Agreement, and no event has occurred which has continued to exist for a period of time (after notice, if any, required by the Lease) as would entitle Lessor to terminate the Lease or would cause, without further action by Lessor, the termination of the Lease or would entitle Lessor to dispossess the Lessee thereunder:

a. the right of possession of Lessee to the Property shall not be terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its rights under the Deed of Trust; and

b. the Lease shall not be terminated or affected by said exercise of any remedy provided for in the Deed of Trust, and Lender hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Deed of Trust or otherwise, shall be made subject to the Lease and the rights of Lessee thereunder; Lessee shall not be named in any foreclosure action unless necessary, in the

reasonable judgment of Lender, to complete such foreclosure action under the laws of the state in which the Property is located.

3. In no event shall Lender or any other Purchaser be:

a. liable for any act or omission of any prior landlord;

b. liable for the return of any security deposit which has not been delivered to the Purchaser;

c. subject to any offsets or defenses which the Lessee might have against any prior landlord;

d. bound by any payment of Base Annual Rental, Base Monthly Rental or Additional Rental which the Lessee might have paid to any prior landlord for more than the current month;

e. bound by any provisions of the Lease regarding commencement or completion of construction of the Property; or

f. bound by any warranties of construction provided by Lessor under the Lease.

4. Lessee agrees to give prompt written notice to Lender of any default by the Lessor under the Lease which would entitle Lessee to cancel the Lease or abate the Rental payable thereunder, and agrees that notwithstanding any provision of Lease, no notice of cancellation thereof shall be effective unless Lender has received the notice aforesaid and has failed within 30 days of the date of receipt thereof to cure, or if the default cannot be cured within 30 days, has failed to commence and to pursue diligently the cure of the Lessor's default which gave rise to such right of cancellation or abatement. Lessee further agrees to give such notices to any successor-in-interest of Lender, provided that such successor-in-interest shall have given written notice to Lessee of its acquisition of Lender's interest in the Deed of Trust and designated the address to which such notices are to be sent.

5. Lessee acknowledges that, under the terms of the Deed of Trust, Lessor has assigned to Lender the rentals under the Lease as additional security for said loan, and Lessee hereby expressly consents to and recognizes such Deed of Trust, and agrees to pay the Rental to Lender or its nominee whenever Lender claims or requests the Rental under the terms of said Assignment.

6. Lessee agrees that it will not, without the prior written consent of Lender, do any of the following, and any such purported action without such consent shall be void as against Lender:

a. make a prepayment in excess of one month of Base Monthly Rental thereunder;

b. subordinate or permit subordination of the Lease to any lien subordinate to the Deed of Trust; or

c. make or enter into any amendment or modification to or termination of the Lease.

7. Lessee agrees to certify in writing to Lender, upon request, whether or not any default on the part of the Lessor exists under the Lease and the nature of any such default. Lessee states that as of this date, the Lease is in full force and effect, without modification. Lessee further states as follows:

a. Lessee is the tenant under the Lease for the Property. The Base Monthly Rental presently is $_____ per month.

b. The Lease term commenced or will commence on the Effective Date, as defined in the Lease. The termination date of the Lease term, excluding renewals and extensions, is March 31, 2026. Lessee has the right to extend or renew the Lease for four (4) consecutive five (5) year periods.

c. The Lease has not been assigned, modified, supplemented or amended in any way by Lessee, except as described on the attached sheet (if any). The Lease constitutes the entire agreement between the parties and there are no other agreements concerning the Property, and Lessee is not entitled to receive any concession or benefit (rental or otherwise) or other similar compensation in connection with renting the Property other than as set forth in the Lease.

d. The Lease is valid and in full force and effect, and, to the best of Lessee's knowledge, no party thereto, their successors or assigns is presently in default thereunder. Lessee has no defense, set-off or counterclaim against Lessor arising out of the Lease or in any way relating thereto, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Lease.

e. No Base Monthly Rental or other sum payable under the Lease has been paid more than one month in advance.

f. No security deposit has been given to Lessor to secure Lessee's performance under the Lease.

8. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of either party hereto. However, Lessee agrees to execute and deliver to Lender or to any person to whom Lessee herein agrees to attorn such other instruments as either shall request in order to effect said provisions in form consistent with the terms hereof and reasonably acceptable to Lender, Lessee and such party to whom Lessee has agreed to attorn.

9. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or otherwise.

10. This agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

11. This agreement may be signed in counterparts.

12. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

13. All notices, statements and other communications to be given under the terms of this agreement shall be in writing and delivered by hand against written receipt or sent by certified or registered mail, return receipt requested, postage prepaid and addressed as provided in the first paragraph of this Agreement, or at such other address as from time to time designated by the party receiving the notice.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, Lessee and Lender have caused this instrument to be executed as of the day and year first above written.

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By:_____
Its:_____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2005, by _____, the _____ of Berry-Hinckley Industries, a Nevada corporation, for and on behalf of the corporation.

_____
Notary Public

LENDER:

_____

By: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2005, by _____, the _____ of _____, a _____, for and on behalf of the _____.

_____
Notary Public

LANDLORD:

_____

By: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2005, by _____, the _____ of _____, for and on behalf of the limited liability company.

_____
Notary Public

This instrument was prepared by:

_____
_____
_____
_____

EXHIBIT A TO SNDA

(Legal Description)

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,

NO. 77780

Appellants,

vs.

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

Respondents.
_____/

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 3 OF 19

Submitted for all appellants by:

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775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

Docket 77780 Document 2019-35669

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	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
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	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
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	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
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	Exhibit 1: Declaration of Larry J. Willard		16	3693-3702
	Exhibit 2: Lease Agreement dated 11/18/05		16	3703-3738
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		16	3739-3741

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(cont 52)	Exhibit 4: Operation and Management Agreement dated 5/1/13		16	3742-3746
	Exhibit 5: 13 Symptoms of Bipolar Disorder		16	3747-3749
	Exhibit 6: Emergency Protective Order dated 1/23/18		16	3750-3752
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		16	3753-3755
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		16	3756-3769
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		16	3770-3798
53.	Opposition to Rule 60(b) Motion for Relief	05/18/18	17	3799-3819
	Exhibit 1: Declaration of Brain R. Irvine		17	3820-3823
	Exhibit 2: Transfer of Hearing, January 10, 2017		17	3824-3893
	Exhibit 3: Transfer of Hearing, December 12, 2017		17	3894-3922
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		17	3923-3924
	Exhibit 5: Attorney status according to the California Bar		17	3925-3933
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		17	3934-3941
54.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	17	3942-3950

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 54)	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		17	3951-3958
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		17	3959-3962
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		17	3963-3965
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		17	3966-3975
	Exhibit 5: Receipt		17	3976-3977
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018			3978-3982
	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		17	3983-3989
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		17	3990-3994
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		17	3995-3997
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		17	3998-4000
	Exhibit 11: Notice of Withdrawal of Local Counsel		17	4001-4004
55.	Order re Request for Entry of Judgment	06/04/18	17	4005-4009

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56.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	17	4010-4018
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		17	4019-4036
57.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	18	4037-4053
58.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	18	4054-4060
59.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	18	4061-4092
60.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	18	4093-4096
	Exhibit 1: Order Denying Plaintiffs' Rule 60(b) Motion for Relief		18	4097-4129
61.	Judgment	12/11/18	18	4130-4132
62.	Notice of Entry of Order re Judgment	12/11/18	18	4133-4136
	Exhibit 1: December 11, 2018 Judgment		18	4137-4140
63.	Notice of Appeal	12/28/18	18	4141-4144
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		18	4145-4179
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		18	4180-4212
	Exhibit 3: Judgment, entered December 11, 2018		18	4213-4216

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TRANSCRIPTS				
64.	Transcript of Proceedings – Status Hearing	08/17/15	18	4217-4234
65.	Transcript of Proceedings - Hearing on Motion for Partial Summary Judgment	01/10/17	19	4235-4303
66.	Transcript of Proceedings - Pre-Trial Conference	12/12/17	19	4304-4331
67.	Transcript of Proceedings - Oral Arguments – Plaintiffs' Rule 60(b) Motion (condensed)	09/04/18	19	4332-4352
ADDITIONAL DOCUMENTS				
68.	Order Granting Defendants' Motion for Partial Summary Judgment [Oral Argument Requested][1]	01/04/18	19	4353-4357

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

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EXHIBIT 11

EXHIBIT 11

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 Intervivos 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 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 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, 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

Herbst Lease Guaranty - US I Hwy 50 (Wooley).DOC

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EXHIBIT 12

EXHIBIT 12

THE O'MARA LAW FIRM, P.C.
DAVID C. O'MARA, ESQ.
NEVADA BAR NO. 8599
311 East Liberty Street
Reno, Nevada 89501
Telephone: 775/323-1321
Fax: 775/323-4082

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
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CALIFORNIA BAR NO. 247583
3506 La Castellet Court
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

Attorneys for Plaintiffs
LARRY J. WILLARD,
OVERLAND DEVELOPMENT CORPORATION,
EDWARD C. WOOLEY, and JUDITH A. WOOLEY

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 C. WOOLEY AND JUDITH A. 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; and JERRY HERBST, an individual,

Defendants.

AND RELATED COUNTERCLAIM

Case No. CV14-01712

Dept. No. 6

PLAINTIFF LARRY J. WILLARD'S RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Please identify and describe in detail any and all measures you have taken, if any, to re-let or sell the Property since the Lease was allegedly breached.

RESPONSE TO INTERROGATORY NO. 1:

In early March 2013, immediately upon learning that BHI was walking out on their lease of the Property, Respondent engaged Daniel Gluhaich to try to find another lessee. Respondent was never informed of and is not currently aware of all the details of measures taken by Mr. Gluhaich to re-let or sell the Property. In or around April 2013, in an attempt to maintain the value of the Property to prospective lessees or purchasers, Mr. Gluhaich and Respondent's counsel negotiated the Interim Operating Agreement with BHI, which took effect on May 1, 2013. On or about May 18, 2013, Respondent's counsel notified BHI that BHI was in default of the Interim Operating Agreement. When BHI then willfully breached the Interim Operating Agreement, Respondent contacted Mr. Gluhaich and had him redouble his efforts to re-let or sell the Property. In or around August/September 2013, Respondent began negotiating with the mortgage holder to allow the property to be sold via a short sale. Mr. Gluhaich served as my broker for the short sale. The property was sold to Longley Partners, LLC for $4,150,000.00 on February 14, 2014.

INTERROGATORY NO. 2:

Please identify any persons or entities who expressed interest in leasing or purchasing the Property since the Lease was allegedly breached.

RESPONSE TO INTERROGATORY NO. 2:

Respondent is not directly aware of the persons or entities who expressed interest in leasing or purchasing the Property since the Lease was breached by BHI. Information responsive to this request is within the knowledge of Respondent's broker, Daniel J. Gluhaich. Concurrent with these Responses, Respondent will produce documents obtained from Mr. Gluhaich responsive to this Request.

///

INTERROGATORY NO. 3:

Please identify and explain in detail any and all methods you have utilized to advertise the availability of the Property for lease or sale, including but not limited to signage, brochures, websites, newspapers, periodicals, or any other similar means since the Lease was allegedly breached.

RESPONSE TO INTERROGATORY NO. 3:

Respondent is not aware of all methods that were utilized by Respondent's broker, Daniel J. Gluhaich, to advertise the availability of the Property for lease or sale. Concurrent with these Responses, Respondent will produce documents obtained from Mr. Gluhaich responsive to this Request.

INTERROGATORY NO. 4:

Please specify the date upon which the Property was first advertised for lease or sale after the Lease was allegedly breached.

RESPONSE TO INTERROGATORY NO. 4:

The Property was already being advertised for sale at the time that the Lease was breached by BHI.

INTERROGATORY NO. 5:

Please identify any and all brokers or other real estate professionals you engaged to assist with your efforts to re-let or sell the Property.

RESPONSE TO INTERROGATORY NO. 5:

Daniel J. Gluhaich
Intero Real Estate Services
175 E. Main Ave. #130
Morgan Hill, CA 95037
Tel.: (408) 201-0120

INTERROGATORY NO. 6:

Please specify the date upon which you are claiming that BHI abandoned the Property as specified in Paragraph 13 of the Amended Complaint.

RESPONSE TO INTERROGATORY NO. 6:

May 31, 2013.

INTERROGATORY NO. 7:

Please explain in detail how the damages in Paragraphs 13-18 alleged in your Amended Complaint were calculated.

RESPONSE TO INTERROGATORY NO. 7:

Damages alleged in Paragraph 13 were calculated using the actual notices from the City of Reno forwarded by Propounding Parties to Respondent's counsel. Such damages are expressly the responsibility of Defendants under, *inter alia*, Sections 4(A), 7, 13, 15, 20(B)(i)(vi), 20(B)(v) of the Lease.

Damages alleged in Paragraph 14 were calculated by computing the Base Monthly Rental from 3/1/2013 through 8/23/2023, including the annual 2% adjustment authorized under Lease § 4(B), as follows:

RENTAL PERIOD	ANNUAL PAYMENTS	MONTHLY
3/2006 - 2/2007	1,464,375.00	122,031.25
3/2007 - 2/2008	1,493,662.50	124,471.88
3/2008 - 2/2009	1,523,535.75	126,961.31
3/2009 - 2/2010	1,554,006.47	129,500.54
3/2010 - 2/2011	1,585,086.59	132,090.55
3/2011 - 2/2012	1,616,788.33	134,732.36
3/2012 - 2/2013	1,649,124.09	137,427.01
3/2013 - 2/2014	1,682,106.57	140,175.55
3/2014 - 2/2015	1,715,748.71	142,979.06
3/2015 - 2/2016	1,750,063.68	145,838.64
3/2016 - 2/2017	1,785,064.95	148,755.41
3/2017 - 2/2018	1,820,766.25	151,730.52
3/2018 - 2/2019	1,857,181.58	154,765.13
3/2019 - 2/2020	1,894,325.21	157,860.43
3/2020 - 2/2021	1,932,211.71	161,017.64
3/2021 - 2/2022	1,970,855.95	164,238.00
3/2022 - 2/2023	2,010,273.07	167,522.76
3/2023 - 8/23/2023	1,025,239.26	170,873.21

The remaining amount of rent due under the Lease was calculated as the sum of each year's annual payments shown in red in the table above, yielding a total of $19,443,836.94. The Net Present Value as of March 1, 2013 was then calculated using the "NPV" formula in the Apple Numbers spreadsheet application, applying a 4% Discount Rate per the terms of the Lease, yielding a Net Present Value of $15,741,360.75. This figure was independently verified to be correct by Hratch Karakachian, a Certified Public Accountant and attorney-associate of

Respondent's counsel in California.

Damages alleged in Paragraph 15 were calculated using the actual value of earnest money invested by Respondent when the Property was purchased, $4,437,500.00. The tax consequences in the amount of at least $3,000,000.00 was obtained from Respondent's accountant, Mitra Ehsanipour. This figure was revised on March 1, 2015 by Ms. Ehsanipour to be $2,430,000.00 for Overland Development Corporation and $3,152,000.00 for Larry Willard. Damages for closing costs were calculated from the values appearing on the Seller's Final Closing Statement.

Damages alleged in Paragraph 16 were calculated from the actual invoices received by Respondent in the amount of $4,554.53 for insurance, $2,668.62 for installation of a security fence, and $10,393.35 from Nevada Energy.

Damages alleged in Paragraph 17 were calculated from the actual invoices received and paid by Respondent from Respondent's bankruptcy attorney and accountant.

Damages alleged in Paragraph 18 were calculated from the actual invoices received and paid by Respondent from Respondent's initial California attorney, L. Steven Goldblatt.

INTERROGATORY NO. 8:

Please identify and describe in detail your basis for stating in Paragraph 13 of the Amended Complaint that BHI had an obligation to make payments to Plaintiffs pursuant to the Interim Operating Agreement.

RESPONSE TO INTERROGATORY NO. 8:

The terms of the Interim Operating Agreement at Section 4 expressly provides that Operator, i.e., BHI, shall have fifty days from the end of each month to tender the Net Profits to Owner and provide Owner with a certified accounting of the subject month's Net Profits upon which payments owed to or by Respondent shall be calculated. The first such accounting was due from BHI on July 20, 2013, but BHI never provided Respondent with any such accounting. In addition, on or about May 18, 2013, BHI was served with a notice of default by Respondent's attorney but failed to cure the breach of their obligation under Section 5 of the Interim Operating Agreement to continuously operate the Property, instead abandoning the Property on May 31,

2013. As a result of this willful breach by BHI of the Interim Operating Agreement and BHI's failure to comply with their duties under Sections 4 and 5 thereof, both of which constitute overt misrepresentations if not outright fraud in the inducement, the Interim Operating Agreement is voidable at Respondent's election, which Respondent in fact elected. Respondent has not pled any causes of action based on BHI's breach of the Interim Operating Agreement, nor has Respondent sought damages for said breach.

INTERROGATORY NO. 9:

Please identify and describe in detail the circumstances of the short sale referred to in Paragraph 15 of the Amended Complaint, including the process by which Willard decided to short sale the Property.

RESPONSE TO INTERROGATORY NO. 9:

With Defendants having left the Property in an utterly disheveled and unpresentable condition upon abandoning the Property by virtue of which Respondent was unable to sell or re-let the Property, and Respondent, by virtue of Defendants' breach and having left Respondent with no income whatsoever but with liability to pay $87,000.00 per month in mortgage payments on the Property, Respondent had no choice but to negotiate with the mortgage holder to allow a short sale to occur. These negotiations began in or around August 2013 and the short sale was completed on February 14, 2014, with the Property being sold to Longley Partners, LLC for $4,050,354.68 with Daniel J. Gluhaich representing Respondent.

INTERROGATORY NO. 10:

Please identify and describe in detail the insurance on the Willard Property referred to in Paragraph 16 of the Amended Complaint. Please also include details of the installation of the Security Fence and charges by Nevada Energy.

RESPONSE TO INTERROGATORY NO. 10:

Respondent obtained liability insurance from Redwood Fire & Casualty on June 1, 2013, policy no. NVM500990. A true and correct copy of the Final Premium Notice on this policy was already provided to Defendants, Bates Number LJW000294. Respondent now produces the Certificate of Liability Insurance in response to Propounding Party's Request for Production.

On June 4, 2013, Respondent hired Tholl Fence to install a security fence as required by Respondent's mortgage holder. A copy of the Statement of Account as of July 31, 2013 from Tholl Fence is being produced in response to Propounding Party's Request for Production.

Propounding Party has already been provided with the invoices sent to Respondent by Nevada Energy, Bates Numbers LJW000339 through LJW000355.

INTERROGATORY NO. 11:

Please identify and explain in detail your basis for claiming that BHI is responsible for the legal fees associated with Willard's Bankruptcy filing, referred to in Paragraph 17 of the Complaint, which was subsequently dismissed voluntarily.

RESPONSE TO INTERROGATORY NO. 11:

The terms of the Lease expressly provide in Section 20(B)(i)(vi) that Propounding Parties are liable for "any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default." Section 20(B)(v) provides that Respondent is entitled "[t]o 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."

In addition, Respondent contends that it is beyond dispute that cessation of rental payments in the amount of $140,175.55 per month, with Respondent still being liable for monthly mortgage payments of $87,000.00 per month, renders Respondent's action of filing for bankruptcy protection a foreseeable consequence of Defendants' breach, thereby entitling Respondent to consequential damages for costs incurred in having sought bankruptcy protection as a direct result of Defendants' breach.

INTERROGATORY NO. 12:

Please identify and explain in detail your basis for claiming that BHI is responsible for the legal fees associated with Plaintiffs' filing of a lawsuit in Santa Clara, California.

RESPONSE TO INTERROGATORY NO. 12:

The terms of the Lease expressly provide in Section 20(B)(i)(vi) that Propounding Parties are liable for "any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default." Section 20(B)(v) provides

that Respondent is entitled "[t]o 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." Section 34 provides that "In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party [*sic*] 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."

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Larry J. Willard, being first duly sworn, under oath and under the penalties of perjury aver as follows: I am the Larry J. Willard in the above-entitled action. I am competent to testify as to the contents of the foregoing Responses to Defendants' First Set of Interrogatories of my own knowledge. I have read the foregoing Responses and know the contents thereof. The foregoing Responses are true to the best of my own knowledge, save and except for those matters therein stated upon information and belief upon which, as to those matters, I believe the same to be true.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Larry J. Willard

State of California, County of San Diego
On July 9, 2015 before me, Ashley Newnam, Notary Public personally appeared Larry J. Willard, who 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(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

ASHLEY NEWNAM
Commission # 2018035
Notary Public - California
San Diego County
My Comm. Expires Apr 6, 2017

WITNESS my hand and official seal.

Ashley Newnam
Signature of Notary Public

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.

LAW OFFICES OF BRIAN P. MOQUIN

DATED: July 8, 2015

By: _____

BRIAN P. MOQUIN
Admitted *Pro Hac Vice*
California Bar No. 257583
3506 La Castellet Court
San Jose, CA 95148
(408) 300-0022
(408) 843-1678 (facsimile)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Nevada that on this date I served a true and correct copy of the foregoing document as follows:

[X] By depositing for mailing, in a sealed envelope, U.S. postage prepaid at San Jose, California addressed as follows:

DICKINSON WRIGHT
JOHN P. DESMOND
BRIAN R. IRVINE
ANJALI D. WEBSTER
100 West Liberty Street, Suite 940
Reno, Nevada 89505

[X] By sending a true and correct copy of the foregoing document by electronic mail to jdesmond@dickinsonwright.com, birvine@dickinsonwright.com, and awebster@dickinsonwright.com.

DATED: July 9, 2015

BRIAN P. MOQUIN

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Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 13

EXHIBIT 13

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made by and between Spirit SPE Portfolio 2005-5, LLC a Delaware limited liability company ("Seller"), and Edward Wooley an individual ("Purchaser"). Except as otherwise expressly defined herein, capitalized terms will have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference.

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

ARTICLE I

PURCHASE OF PROPERTY

Section 1.01. Agreement To Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the "Transaction"), all of Seller's right, title and interest in and to (a) the real property as more particularly described on Exhibit B attached hereto, and any and all improvements thereon and appurtenances thereto (collectively, the "Real Property"); (b) the fixtures affixed thereto; (c) all leases and rental agreements relating to the Real Property or any portion thereof, including, without limitation, the Lease, and to the extent held by Seller, all rent, prepaid rent, security deposits and other tenant payments and deposits; and (d) all other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (d) above, now or hereafter existing, collectively, the "Property").

Section 1.02. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property is Three Million Two Hundred Eighty Six Thousand Five Hundred Fifty Two and 00/100 Dollars ($3,286,552) (the "Purchase Price"). The Purchase Price, as may be adjusted pursuant to requirements of this Agreement, shall be paid by Purchaser in immediately available federal funds at Closing.

Section 1.03. Earnest Money Deposit. Within three (3) Business Days after the Effective Date of this Agreement, Purchaser shall deposit with the Title Company the sum of Twenty Five Thousand and 00/100 Dollars ($25,000) (together with all interest accrued thereon, the "Initial Deposit"). Upon the expiration of the Inspection Period, as defined below, Purchaser shall deposit an additional sum of Twenty Five Thousand and 00/100 Dollars ($25,000) (together with the Initial Deposit and all interest accrued thereon, the "Earnest Money Deposit"). The Earnest Money Deposit shall be placed in an interest-bearing account by the Title Company, and shall be held by the Title Company and applied against the Purchase Price at Closing or disbursed as provided herein.

Section 1.04. Prorations. All taxes, insurance, utilities and maintenance expenses relating to the Property for the year of the Closing to be paid by the tenant pursuant to the Lease shall not be prorated; all other amounts, if any, shall be prorated as of the Closing Date. Rents

actually paid to and received by Seller with respect to the Property for the month in which the Closing occurs shall be prorated as of the Closing Date.

Section 1.05. Purchaser's Financial Contingency. Within twenty one (21) Business Days after execution of this Agreement (the "Loan Commitment Deadline"), Purchaser shall have obtained a loan commitment for market rate financing (the "Loan"). Purchaser shall diligently and timely pursue obtaining the Loan in good faith and shall execute all documents and furnish all information and documents required by the lender and shall timely pay the costs and fees of obtaining the Loan. Purchaser agrees to satisfy reasonable requirements of lender and shall not withdraw Purchaser's loan application nor intentionally cause any change in circumstances that would prejudice lender's approval of the loan application or funding of the Loan. Purchaser must provide written notice to Seller by the Loan Commitment Deadline of Purchaser's inability to obtain a loan commitment for the Loan. If Purchaser so notifies Seller, this Agreement shall terminate, in which event the Initial Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein. If Seller does not receive timely written notice to terminate and Purchaser does not close, Purchaser shall be in default under this Agreement.

Section 1.06. Condition of Property. Seller and Purchaser understand and agree that Purchaser's purchase of the Property and other rights to be conveyed, sold, transferred and/or assigned pursuant to this Agreement shall be on an "AS IS" "WHERE IS" physical basis, "WITH ALL FAULTS," without representation or warranty, express or implied, with regard to physical condition, including without limitation, any latent or patent defects, conditions of soils or groundwater, existence or nonexistence of hazardous materials, quality of construction, workmanship, merchantability or fitness for any particular purpose as to the physical measurements or useable space thereof. Purchaser hereby acknowledges that Purchaser has inspected or will inspect the Property to Purchaser's satisfaction and that Seller does not plan to conduct its own inspection and shall not be liable for any latent or patent defects in the Property. Purchaser acknowledges that neither Seller nor any representative or agent of Seller has made any representation or warranty as to any of the following: (a) the physical or environmental condition (including surface and subsurface conditions), state of repair, income, expenses, operations of the Property and surrounding property; (b) the assignability, assumability, transferability or validity of any licenses, permits, government approvals, warranties or guaranties relating to the Property or the use and operation thereof; (c) the accuracy or completeness of any information provided by Seller with respect to environmental matters; (d) compliance or noncompliance with local, state or federal statutes, ordinances, orders or regulations concerning the Property or the use thereof; (e) prior or current operations conducted on the Property; or (f) any matter or thing affecting or relating to the Property or this Agreement not expressly stated in this Section 1.06. Purchaser has not been induced by and has not relied upon any statement, representation or agreement, whether express or implied, not specifically set forth in this Agreement. Seller shall not be liable or bound in any manner by any oral or written statement, agreement or information pertaining to the Property or this Agreement furnished by any agent, employee or other Person.

ARTICLE II

DUE DILIGENCE

Section 2.01. Title Insurance.

(a) ***Title Commitment and Title Policy.*** Within five (5) days of execution of this Agreement, Seller shall order an owner's title insurance commitment ("Title Commitment") with respect to the Property issued by the Title Company, for an owner's title insurance policy (the "Title Policy"). Seller shall cause a copy of the Title Commitment and copies of the Schedule B-2 exceptions to be delivered to Purchaser. The premium related to the Title Policy shall be paid by Purchaser and costs for endorsements, if any, shall be the responsibility of Purchaser.

(b) ***Title Company.*** The Title Company is hereby employed by the parties to act as escrow agent in connection with this Transaction. This Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however,* that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail. The Title Company's receipt of this Agreement and the opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of the Title Company's agreement to be bound by the terms and conditions of this Agreement pertaining to the Title Company.

(c) ***Title Company Actions.*** The Title Company is authorized to pay, from any funds held by it for each party's respective credit and in accordance with the closing statements executed by both parties, all amounts set forth on the closing statements as necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them, respectively. Seller and Purchaser will pay all charges payable by them to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Seller and Purchaser to do so. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any such court. Deposit by the Title Company of such documents and funds, after deducting therefrom its reasonable expenses and attorneys' fees incurred in connection with any such court action, shall relieve the Title Company of all further liability and responsibility for such documents and funds.

(d) ***Title Objections.***

(i) Within three (3) days after the Purchaser's receipt of both the Title Commitment and the Survey, Purchaser shall notify Seller in writing of Purchaser's objection, if any, to any exceptions or other title matters shown on the

Title Commitment or the Survey (each, a "Title Objection"). If any Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(ii) If any supplement to the Title Commitment or the Survey discloses any additional title defects which were not created by or with the consent of Purchaser, and which are not acceptable to Purchaser, Purchaser shall notify Seller in writing of its objection thereto (each, an "Additional Title Objection") within three (3) days following receipt of such supplement or revision. If any Additional Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(iii) Purchaser's failure to timely deliver a Title Objection or an Additional Title Objection shall be deemed Purchaser's acceptance of the matters disclosed by the Title Commitment and the Survey. If Purchaser does not terminate this Agreement by reason of any Title Objection or Additional Title Objection as provided in this Section, then such Title Objection or Additional Title Objection shall be deemed waived and approved by Purchaser and shall thereafter be deemed a Permitted Encumbrance.

Section 2.02. Seller Documents. With reasonable promptness, but in no event later than five (5) days from the Effective Date, Seller shall deliver to Purchaser the following items which are in Seller's possession or under its control (collectively, the "Seller Documents"):

(a) survey related to the Property (the "Survey");

(b) environmental report related to the Property (the "Environmental Report"); and

(c) a full and complete copy of the Lease, together with all amendments, modifications and guaranties relating thereto, and to the extent that the same is not proprietary or confidential, all financial information related to the tenant under the Lease.

Section 2.03. Survey. Purchaser may, at its expense, order an update to the Survey if required by the Title Company or otherwise required by Purchaser.

Section 2.04. Environmental. Purchaser may, at its expense, order an update to the Environmental Report, if deemed necessary by Purchaser in its sole discretion.

Section 2.05. Tenant Estoppel. Seller shall use commercially reasonable efforts to obtain and deliver to Purchaser, at least three (3) days prior to Closing, a tenant estoppel certificate from the tenant under the Lease certifying (a) that the Lease is in full force and effect and that, except as otherwise stated therein, the Lease has not been amended or modified; (b) the commencement and expiration dates of the Lease; (c) the rent due and payable under the Lease; (d) the security deposits, if any, held by Seller, as landlord under the Lease; (e) except as otherwise stated therein, that no party is in default under the Lease.

Section 2.06. Inspections. From the Effective Date and for a period of ten (10) Business Days after Purchaser's receipt of the Seller Documents (the "Inspection Period"), Purchaser may perform whatever investigations, tests and inspections upon the Property during normal business hours or as otherwise requested by Seller, that Purchaser deems reasonably appropriate (collectively, the "Inspections"); *provided, however,* that prior thereto, (a) Purchaser shall give Seller at least three (3) days' prior notice thereof; and (b) Seller and any representative of Seller shall have the right to be present during any Inspection. Purchaser shall have the right to terminate this Agreement by written notice to Seller on or before the expiration of the Inspection Period if, based upon the Inspections, Purchaser determines, in its sole discretion, that the Property is not satisfactory, in which event, this Agreement shall terminate without further liability to the parties except as expressly set forth herein and the Initial Deposit shall be returned to Purchaser. In the event that Purchaser fails to provide such written notice to Seller on or before expiration of the Inspection Period, Purchaser shall be deemed to have waived any objections based upon the Inspections and subject to Sections 2.01(d), 6.02(a) and 7.01, the Initial Deposit shall be non-refundable.

ARTICLE III

CLOSING

Section 3.01. Closing Date. Subject to the provisions of Article V of this Agreement, the closing date of the Transaction contemplated by this Agreement (the "Closing") shall be set by mutual agreement within ten (10) days after the expiration of the Inspection Period, but in no event later than sixty (60) days after the Effective Date (the "Closing Date"). Pre-closing, which includes the parties' deposit with Seller's counsel (or, if directed by Seller's counsel, with the Title Company) of all documents (including without limitation, the executed Transaction Documents), all as necessary to comply with the parties' respective obligations hereunder, shall occur three (3) Business Days prior to the Closing Date or as otherwise mutually agreed upon by the parties. The parties shall deposit all funds required hereunder with the Title Company on or before the Closing Date.

Section 3.02. Possession. Possession of the Property, free and clear of all tenants or other parties in possession, except for the tenant under the Lease, shall be delivered to Purchaser upon Closing.

Section 3.03. Transaction Costs. Except as otherwise expressly provided in this Agreement, Purchaser shall pay for all costs associated with the updates of the Survey and Environmental Report, procurement of the Loan, endorsements to the Title Policy, recording

fees, transfer taxes and closing costs. Each party shall pay its own legal fees. Costs for the closing and escrow shall be split between Purchaser and Seller as usual and customary in the jurisdiction in which the Property is located. In no event shall Seller's costs for this Transaction exceed Twenty Thousand and 00/100 Dollars ($20,000).

Section 3.04. Tenant's Letter. Upon Closing, Purchaser shall deliver the Tenant Letter to the tenant under the Lease in the manner described in the Lease for the giving of notice, or if not so described, by certified or registered U.S. mail, return receipt requested, postage prepaid. The obligation of Purchaser in this Section 3.04 shall survive Closing.

ARTICLE IV

REPRESENTATIONS WARRANTIES AND COVENANTS

Section 4.01. Seller. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) ***Organization and Authority.*** Seller is duly organized or formed, validly existing and in good standing under the laws of its state of formation. Seller has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents, and to carry out the Transaction. The Person who has executed this Agreement on behalf of Seller has been duly authorized to do so.

(b) ***Enforceability of Documents.*** Upon execution by Seller, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

All representations and warranties of Seller made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Seller herein, shall survive for six (6) months following Closing.

Section 4.02. Purchaser. Purchaser represents and warrants to, and covenants with, Seller as follows:

(a) ***Organization and Authority.*** Purchaser is duly organized and formed, validly existing and in good standing under the laws of its state of formation. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents and to carry out the Transaction. The Person who has executed this Agreement on behalf of Purchaser has been duly authorized to do so.

(b) ***Enforceability of Documents.*** Upon execution by Purchaser, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) ***Litigation.*** There are no actions or proceedings pending against or involving Purchaser before any Governmental Authority which in any way adversely affect or may adversely affect Purchaser or Purchaser's ability to perform under this Agreement and the other Transaction Documents.

(d) ***OFAC List.*** Purchaser is not currently identified on the OFAC List, and is not a person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

All representations and warranties of Purchaser made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Purchaser herein, except as otherwise expressly set forth herein, shall survive Closing.

ARTICLE V

CONDITIONS PRECEDENT TO CLOSING

Section 5.01. Purchaser's Conditions to Closing. Purchaser shall not be obligated to close and fund the Transaction until Seller shall have delivered to Purchaser or the Title Company, as applicable, the following items:

(a) the Deed;

(b) documents that may be required by the Title Company for issuance of the Title Policy;

(c) fully executed originals of (i) the Assignment and Assumption of Leases and Rents substantially in the form attached as Exhibit C to this Agreement with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property; and (ii) all of the other Transaction Documents;

(d) a duly executed letter addressed to the tenant under the Lease, in form and substance satisfactory to the parties (the "Tenant Letter"), notifying the tenant of the change in ownership and providing an address for future rent payments;

(e) a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(f) all documents required to be delivered by this Agreement and the other Transaction Documents; and

(g) such further documents as reasonably may be required in order to fully and legally close this Transaction, including any required assignments and assumptions of operating agreements related to the Property.

Upon the fulfillment or Purchaser's written waiver of all of the above conditions, Purchaser shall deposit immediately available federal funds necessary to close this Transaction with the Title Company and this Transaction shall close in accordance with the terms and conditions of this Agreement. Unless otherwise dated, all of the documents to be delivered at Closing shall be dated as of the Closing Date.

Section 5.02. Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the fulfillment (or written waiver by Seller) of all of the following conditions:

(a) Purchaser shall have delivered to the Title Company the Purchase Price, as adjusted pursuant to the requirements of this Agreement in immediately available federal funds;

(b) Purchaser shall have caused to be executed and delivered to the appropriate Persons fully executed originals of (i) the Assignment and Assumption of Leases and Rents, with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property, and (ii) all of the other Transaction Documents;

(c) Purchaser shall have delivered to the Title Company a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(d) The parties shall have executed the Tenant Letter for delivery to the tenant under the Lease as described in Section 3.04; and

(e) Purchaser shall have delivered to Seller and/or the Title Company such further documents as may reasonably be required in order to fully and legally close this Transaction.

ARTICLE VI

DEFAULTS; REMEDIES

Section 6.01. Default. Each of the following shall be deemed an event of default (each, an "Event of Default"):

(a) if any representation or warranty of a party set forth in this Agreement or any other Transaction Document is false in any material respect or if a party renders any false statement; or

(b) if a party fails to keep or perform any of the terms or provisions of this Agreement or if any condition precedent is not satisfied by the other party at or prior to the Closing Date.

Section 6.02. Purchaser Remedies. In the event of any Event of Default by Seller, Purchaser shall be entitled to exercise, at its option, any one of the following:

(a) Purchaser may terminate this Agreement by giving written notice to Seller in which case the Earnest Money Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement; or

(b) Purchaser may proceed to Closing.

Section 6.03. Seller Remedies. In the event of any Event of Default by Purchaser, Seller shall be entitled to receive the Earnest Money Deposit as liquidated damages and terminate this Agreement such that neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Risk of Loss.

(a) ***Condemnation.*** If, prior to Closing, action is initiated to take the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, or (ii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority, to the extent that the amount of such award does not exceed the Purchase Price, shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.

(b) *Casualty.* Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If the Property, or any part thereof, suffers any damage prior to the Closing from fire or other casualty, which Seller, at its sole option, does not elect to repair, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or (ii) consummate the Closing, in which event all of Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expense and costs incurred by Seller to repair or restore the Property and any portion paid or to be paid on account of the loss of rents or other income from the Property for the period prior to the Closing Date, all of which shall be payable to Seller), to the extent that the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at Closing.

Section 7.02. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") shall be in writing and given by (a) hand delivery; (b) express overnight delivery service; (c) certified or registered mail, return receipt requested; or (d) electronic mail message, provided that a copy of such electronic mail message is also sent via certified or registered mail, return receipt requested, within one Business Day of the transmission of such electronic mail message, 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 electronic mail pursuant to the requirements of Section 7.03(d) above. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Purchaser: Esward Wooley
_____
_____
Telephone: _____
Facsimile: _____
E-Mail: _____

If to Seller: Spirit SPE Portfolio 2005-5, LLC
Suite 200
14631 North Scottsdale Road
Scottsdale, AZ 85254-2711
Attention: Mr. Gregg Seibert
Mr. Barry VanNorman
Telephone: (480) 606-0820
Facsimile: (480) 606-0826
E-Mail: gseibert@spiritfinance.com
E-Mail: bvannorman@spiritfinance.com

With a copy to:

Kutak Rock LLP
Suite 3100
1801 California Street
Denver, CO 80202
Attention: Michael C. Bullock, Esq.
Telephone: (303) 297-2400
Facsimile: (303) 292-7799
E-Mail: michael.bullock@kutakrock.com

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. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

Section 7.03. Assignment. Purchaser may not assign its rights under this Agreement in whole or in part without the prior written consent of Seller. No assignment of Purchaser's right and interest hereunder shall relieve Purchaser of any liability for the performance of any obligation of Purchaser contained herein.

Section 7.04. Indemnity. Purchaser shall indemnify, defend and hold harmless Seller and its directors, officers, shareholders, managers, members, officers, employees, representatives, successors, assigns, agents, lenders, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees and invitees, as applicable (collectively, the "Indemnified Parties"), from and against any and all Losses of any nature arising from or connected with (a) breach of any of the representations, warranties, covenants, agreements or obligations of Purchaser set forth in this Agreement; and (b) the ownership and operation of the Property on and after the Closing Date. Without limiting the generality of the foregoing, such indemnity shall include, without limitation, any Losses incurred by Seller with respect to any Inspections performed pursuant to Section 2.06. Purchaser's obligations under this Section 7.04 shall survive Closing or termination of this Agreement.

Section 7.05. Brokerage Commission. Each of the parties represents and warrants to the other that neither party has dealt with, negotiated through or communicated with any broker in connection with this Transaction except for Sperry Van Ness on behalf of Purchaser. Upon the Closing and funding of this Transaction, Seller agrees to pay Sperry Van Ness a commission equal to 2% of the Purchase Price paid by Purchaser under this Agreement. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against such party by any broker claiming a commission or fee by, through or under the other party. The parties' respective obligations under this Section 7.05 shall survive Closing or termination of this Agreement.

Section 7.06. Reporting Requirements. The parties agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

Section 7.07. Disclosure. Except as expressly provided in Section 7.06, in this Section 7.07 and by law or judicial action, neither Seller nor Purchaser will make any public disclosure of this Agreement or the other Transaction Documents, the Transaction or the provisions of the Transaction Documents without the prior written consent of the other party hereto. The parties also agree that, notwithstanding any provision contained in this Agreement, any party (and each employee, representative or other agent of any party) may disclose to *any and all Persons, without limitation of any kind,* any matter required under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 7.08. Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Agreement.

Section 7.09. Non-Business Days. If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which any Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 7.10. Waiver and Amendment. No provision of this Agreement 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.

Section 7.11. Personal Liability. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Seller, that (i) there shall be absolutely no personal liability on the part of any shareholder, director, officer, manager, member, officer or employee of Seller with respect to any of the terms, covenants and conditions of this Agreement; and (ii) Purchaser waives all claims, demands and causes of action against Seller's officers, directors, managers, members, employees and agents in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by the other party.

Section 7.12. Headings; Internal References. The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement. Unless stated to the contrary, any references to any section, subsection, exhibit and the like contained herein are to the respective section, subsection, exhibit and the like of this Agreement.

Section 7.13. Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction and the other Transaction Documents, is entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and 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. Seller and Purchaser were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

Section 7.14. Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

Section 7.15. Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, 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.

Section 7.16. Entire Agreement. This Agreement and all other Transaction Documents, and all other certificates, instruments or agreements to be delivered hereunder and thereunder constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of this Agreement by Seller and Purchaser, (a) this Agreement shall supersede any previous discussions, agreements and/or term or commitment letters relating to the Transaction, any and all agreements related to confidentiality, exclusivity, non-competition, non-solicitation of employees, non-solicitation or pursuit of any business opportunity represented by the Transaction, or any other term or condition which restricts any business activity of Seller or its affiliates, (b) the terms and conditions of this Agreement shall control notwithstanding that such terms are inconsistent with or vary from those set forth in any of the foregoing agreements, and (c) this Agreement may only be amended by a written agreement executed by Seller and Purchaser. The provisions of this Section shall survive the Closing.

Section 7.17. Recording. This Agreement shall not be recorded in any governmental office.

Section 7.18. Forum Selection; Jurisdiction; Venue; Choice of Law. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona, and consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Nothing contained in this section shall limit or restrict the right of Seller to commence any proceeding in the federal or state courts located in the state or states in which the Property is located to the extent Seller deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

Section 7.19. Separability; Binding Effect; Governing Law. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or

unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 7.03, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the applicable state or states in which the Property are located, without giving effect to any state's conflict of laws principles.

Section 7.20. Survival. Except for the conditions of Closing set forth in Article V, which shall be satisfied or waived in writing as of the Closing Date, and except as otherwise expressly set forth herein, all representations, warranties, agreements, obligations and indemnities of Seller and Purchaser set forth in this Agreement shall survive the Closing.

Section 7.21. Waiver of Jury Trial and Certain Damages. THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

Section 7.22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same instrument.

Section 7.23. IRC Section 1031 Exchange of Property. The parties agree that a party may elect to complete an Internal Revenue Code 1031 tax-deferred exchange that will not affect the terms and conditions of this Agreement; *provided, however,* that (a) the non-requesting party will cooperate with the requesting party to complete such exchange in a timely manner on the conditions that the non-requesting party shall not be obligated to pay, suffer or incur any additional expenses or liabilities as a result of cooperating in the requesting party's exchange and the non-requesting party shall not be obligated to acquire any other real property in connection with such exchange; (b) the non-requesting party shall not have any liability to the requesting party for failure of the exchange to qualify under the Internal Revenue Code and Treasury Regulations; (c) any assignment(s) made by the requesting party in connection with such exchange shall not relieve the requesting party of its obligations under this Agreement; (d) the requesting party shall cause all documentation necessary or appropriate in connection with such exchange to be prepared and available for execution no later than the Closing; and (e) the completion of one or more tax-deferred exchanges is not a condition to the performance by the requesting party of its obligations set forth in this Agreement.

[Remainder of page intentionally left blank; signature page(s) to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a Delaware limited liability company

By _____
Name Gregg A. Seibert
Title Senior Vice President
Date: 5/16/06

PURCHASER:

_____
Edward Wooley
Date: 5/4/06

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a Delaware limited liability company

By _____
Name _____
Title _____

Date: _____

PURCHASER:

_____
Edward Wooley

Date: 5/4/06

EXHIBIT A

DEFINED TERMS

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

"*Additional Title Objection*" has the meaning set forth in Section 2.01(d)(ii).

"*Agreement*" means this Purchase and Sale Agreement.

"*Assignment and Assumption of Leases and Rents*" means the Assignment and Assumption of Leases and Rents substantially in the form attached hereto as Exhibit C.

"*Business Day*" means a day on which banks located in Scottsdale, Arizona are not required or authorized to remain closed.

"*Closing*" shall have the meaning set forth in Section 3.01.

"*Closing Date*" means the date specified as the closing date in Section 3.01.

"*Deed*" means that special warranty deed (or its equivalent under the law of the state in which the Property is located) whereby Seller conveys to Purchaser all of Seller's right, title and interest in and to the Property.

"*Earnest Money Deposit*" has the meaning set forth in Section 1.03.

"*Effective Date*" shall be the last date that any party executes this Agreement.

"*Environmental Report*" has the meaning set forth in Section 2.02(b).

"*Event of Default*" has the meaning set forth in Section 6.01.

"*Governmental Authority*" means the United States of America, any state, local or other political subdivision thereof, any other entity exercising executive, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"*Indemnified Parties*" has the meaning set forth in Section 7.04.

"*Inspection Period*" has the meaning set forth in Section 2.06.

"*Inspections*" has the meaning set forth in Section 2.06.

"*Lease*" means that certain Lease Agreement dated _____ and between _____, as landlord, and _____, as tenant, together with all other amendments, modifications and

Assessor's Parcel Number: 01-071-02

Recording requested by and
when recorded return to:

Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

MEMORANDUM OF LEASE

On July 14, 2006, the undersigned Lessor and Lessee entered into a certain Lease, wherein Lessor leased to Lessee the real property located in the County of Washoe, State of Nevada, which is described on Exhibit "A" attached hereto and incorporated herein by reference for a term commencing on July ___, 2006 and continuing until December 31, 2023. Lessee has the option, pursuant to the Lease, to extend the initial term for four (4) additional successive periods of five (5) years each.

DATED: July 14, 2006

[SIGNATURES ARE CONTAINED ON THE NEXT PAGE]

1365 BARING BLVD

[redacted]

045451/0001 GBDOCS 576491v1

LESSOR:

EDWARD & JUDITH WOOLEY

By: Judith A. Wooley, Trustee
Name: Edward C. Wooley, Trustee
Title: Trustees

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By:
Name: Paul Moorato
Title: Chairman

STATE OF California)
) :SS
COUNTY OF Orange)

This instrument was acknowledged before me on July 14, 2006 by _____ as _____.

NOTARY PUBLIC

My Commission expires: _____

STATE OF California)
) :SS
COUNTY OF Orange)

This instrument was acknowledged before me on July 14, 2006 by Paul Moorato as Chairman of BERRY-HINCKLEY INDUSTRIES.

JEANETTE TEDER
Commission # 1600687
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2019

NOTARY PUBLIC

My Commission expires: Sept 20, 2019

04545/80021 GBDOCS 578491v1

ECW002172

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Santa Clara } ss.

On July 17, 2006 before me, Brenda Baker Notary Public
Date (Here Insert Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Edward S. and Judith Wesley
Name(s) of Signer(s)

☐ personally known to me
☑ 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.

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

WITNESS my hand and official seal.

Brenda Baker
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Lease

Document Date: July 17, 2006 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Top of thumb here

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ECW002173

EXHIBIT A

Property Address: 1365 Baring Blvd, Sparks, NV

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 14

EXHIBIT 14

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

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 teh (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

(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 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 Projection, 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

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 it 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 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.** 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.

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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

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

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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:

Ed C Wooley, Trustee
EDWARD WOOLEY

Judith Wooley Trustee
JUDITH WOOLEY

Tax Identification or Social Security No.
[redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

The foregoing instrument was acknowledged before me on June 12, 2006 by Edward Wooley and Judith Wooley - 41 Pescadero Ave Los Gatos, Ca. 95030.

Tina J. Seda
Notary Public

My Commission Expires: 10-15-07

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

wooley SmithBHI, Carson City
5/31/2006
003160/00959 GBDOCS 576954v1

STATE OF CALIFORNIA) S.S
COUNTY OF Santa Clara

On June 6, 2006 before me,

Tina T. Seda
a Notary Public, personally appeared

Edward Wooley
Judith Wooley
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.

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

WITNESS my hand and official seal.

Signature Tina T. Seda

(This area for official notorial seal)

notrypark rev. (12/18/03)

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____

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

The foregoing instrument was acknowledged before me on July 14, 2007 by Paul Moorhead as Chairman of **BERRY- HINCKLEY INDUSTRIES**, a Nevada corporation.

_____
Notary Public

My Commission Expires: Sept 20, 2009

JEANETTE TEDER
Commission # 1606087
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2009

Wesley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/5/2006
0001660/0959 OBDOCS 576934v2

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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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"*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

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

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.

"*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.

"*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).

EXHIBIT B

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY

PROPERTY ADDRESS:

PROPERTY LEGAL DESCRIPTION:

Wesley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
#DD160809959 GRDOCS 570954v2

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EXHIBIT 15

EXHIBIT 15

The Network of Preferred Community Banks℠

Loan No. 100798974

FIVE YEAR ADJUSTABLE TERM NOTE

July 18, 2006

$2,100,000.00

For value received, the undersigned **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a **California** trust, with an address of **41 Peralta Avenue, Los Gatos, California 95030** (collectively, the "Borrower"), jointly and severally, promise to pay to the order of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (together with its successors and assigns, the "Bank"), the principal amount of **Two Million One Hundred Thousand Dollars and Zero Cents ($2,100,000.00)** on or before **July 18, 2016** (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full. The Borrower shall pay consecutive monthly installments of principal and interest, as follows: **$13,971.35** on **August 18, 2006**, and the same amount (except the last installment which shall be the unpaid balance) on the 18th day of each month thereafter. The aggregate principal balance outstanding shall initially bear interest thereon at a per annum rate equal to **7.00%**. The interest rate on the aggregate principal balance shall change on **July 18, 2011** and on that day every sixtieth month thereafter (each a "Change Date") to a fixed rate equal to **Two and One-Half Percent (2.50%)** above the Treasury Index (as hereinafter defined) on each such Change Date. On each Change Date each monthly installment due and payable until the next Change Date shall be recalculated (increased or reduced) to reflect the adjusted interest rate, the outstanding principal balance at such time and the remaining term of the 360-month amortization period commencing on the date of this Note in accordance with the Bank's calculation in the Bank's sole discretion.

Notwithstanding anything to the contrary in this Note, the interest rate on this Note is limited by a floor as follows: the minimum interest rate (i.e. floor) is **5.25%**.

Treasury Index means the weekly average yield on United States Treasury securities, adjusted to a constant maturity equal to the Applicable Treasury Rate Period (as hereinafter defined), or, in the event the Treasury Index is no longer available, the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto. The Applicable Treasury Rate Period is 5 years.

Principal and interest shall be payable at the Bank's main office or at such other place as the Bank may designate in writing in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

At the option of the Bank, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower or any guarantor hereof to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor hereof under any other loan document delivered by the Borrower or any guarantor, or in connection with the loan evidenced by this Note or any other agreement by the Borrower or any guarantor with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default; (2) failure of the Borrower or any guarantor hereof to maintain aggregate collateral security value satisfactory to the

Bank continuing for 30 days; (3) default of any material liability, obligation or undertaking of the Borrower or any guarantor hereof to any other party continuing for 30 days; (4) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor hereof in connection with the loan evidenced by this Note or in any supporting financial statement of the Borrower or any guarantor hereof shall be determined by the Bank to have been false in any material respect when made; (5) if the Borrower or any guarantor hereof is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or any guarantor hereof and, if the Borrower or any guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor hereof; (9) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor hereof, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor hereof; (11) the termination or revocation of any guaranty hereof; or (12) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor hereof, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor hereof to the Bank has been or may be impaired.

Any payments received by the Bank on account of this Note shall, at the Bank's option, be applied first, to accrued and unpaid interest; second, to the unpaid principal balance hereof; third to any costs, expenses or charges then owed to the Bank by the Borrower; and the balance to escrows, if any. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Bank may determine. The Borrower hereby authorizes the Bank to charge any deposit account which the Borrower may maintain with the Bank for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. More specifically, if from any circumstances whatsoever, fulfillment of any provision of this Note or any other loan document excuted and delivered in connection with this Note, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Bank may, at its option (a) reduce the obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the obligations, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Bank had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note or any other loan document that is in excess of the applicable limit on interest. It is the intention of Borrower and Bank that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this paragraph shall control every other provision of this Note, and any provision of any other loan document in conflict with this paragraph.

The Borrower represents to the Bank that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the

Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each guarantor hereof grant to the Bank a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and each guarantor hereof and any cash, securities, instruments or other property of the Borrower and each guarantor hereof in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any guarantor hereof to the Bank or any Bank Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any guarantor hereof to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

No delay or omission on the part of the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Bank, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally, including any defense based on impairment of collateral.

The Borrower and each guarantor of this Note shall indemnify, defend and hold the Bank and the Bank Affiliates and their directors, officers, employees, agents and attorneys harmless against any claim brought or threatened against the Bank by the Borrower, by any guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower or any guarantor hereof (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's selection, but at the expense of the Borrower and any guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Bank.

The Borrower and each guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 3.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 15 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Bank's other remedies on account thereof), a late charge equal to the greater of $10.00 or 10.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Bank and its successors, endorsees and assigns.

The Borrower and each guarantor, if any, hereby waive presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of any kind, in each case that would otherwise be available in connection with this Note including, without limitation, any right (whether now or hereafter existing) to require the holder hereof to first proceed against the Borrower, or any guarantor, for any security.

The Borrower and each guarantor, if any, further waive to the extent permited by law any and all rights and defenses that each may have because the debt evidenced by this Note is secured by real property: this means, among other things, that: (1) the Bank may collect from the Borrower and any guarantor, without first foreclosing on any real or personal property, collateral pledged by the Borrower and any guarantor; and (2) if the Bank forecloses on any real property collateral pledged by the Borrower or any guarantor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Bank may collect from the Borrower even if the Bank, by foreclosing on the real property collateral, has destroyed any right the Borrower may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Borrower may have because the underlying debt is secured by real property. These rights and defenses being waived by the Borrower include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Borrower further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to the Borrower under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

In the event that at any time, a surety is liable upon only a portion of the Borrower's or any guarantor's obligations under this Note and the Borrower provides partial satisfaction of any such obligation(s), each of the Borrower and each guarantor hereof, if any, hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of this Note, be made by the Bank rather than Borrower.

The liabilities of the Borrower and any guarantor of this Note are joint and several; provided, however, the release by the Bank of the Borrower or any one or more guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Bank. Each reference in this Note to the Borrower, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Bank of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Bank of any collateral shall not release any person obligated on account of this Note.

The Borrower and each guarantor hereof each authorizes the Bank to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Bank, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

The Borrower will from time to time execute and deliver to the Bank such documents, and take or cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Note or any other loan documents related thereto (including, without limitation, to correct clerical errors) or to vest more fully in or assure to the Bank the security interest in any collateral securing this Note or to comply with applicable statute or law.

This Note is delivered to the Bank at one of its offices in California and shall be governed by the laws of the State of California.

Any notices under or pursuant to this Note shall be deemed duly received and effective if delivered in hand to any officer of agent of the Borrower or the Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Borrower or the Bank at the address set forth in this Note or as any party may from time to time designate by written notice to the other party.

The Borrower and each guarantor of this Note acknowledges that the Bank is entitled to a minimum interest charge of $75.00.

The Borrower and each guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower and each guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's or guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Borrower(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such guarantor.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND EACH GUARANTOR AND THE BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER AND EACH GUARANTOR TO THE BANK, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH GUARANTOR AND THE BANK EACH CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

Due on Sale or Transfer. Bank may, at it option, declare immediately due and payable all sums secured by one or more deed of trusts provided by Borrower to secure this Note upon the sale or transfer, without Bank's prior written consent, of all or any part of the real property covered by any such deed of trust, or any interest in such real property. A "sale or transfer" means the conveyance of the such real property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, option contract, or by sale, assignment or transfer of any beneficial interest in or to any land trust holding title to such real property, or by any other method of conveyance of a real property interest. If Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more that 20% of the voting stock, partnership interests or limited liability company interest, as the case may be, of Borrower. This option shall not be exercised by Bank if such exercise is prohibited by applicable law.

Executed as of **July 18, 2006.**

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

41 Peralta Avenue
Los Gatos, California
95030

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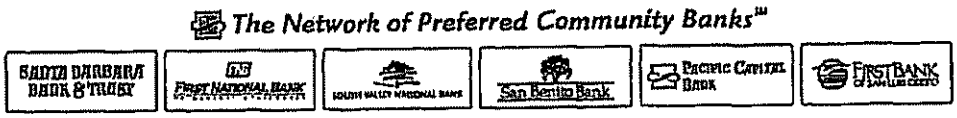

Loan No. 100798974

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") entered into as of **July 18, 2006**, between **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a **California** trust, with an address of **41 Pertalta Avenue, Los Gatos, California 95030** (the "Borrower") and Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

FOR VALUE RECEIVED, and in consideration of the granting by the Bank of financial accommodations to or for the benefit of the Borrower, including without limitation respecting the Obligations (as hereinafter defined), the Borrower represents and agrees with the Bank, as of the date hereof and as of the date of each loan, credit and/or other financial accommodation, as follows:

1. THE LOAN

1.1 Loan. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to make a loan to the Borrower in the original principal amount of **$2,100,000.00** (the "Loan"). The Loan shall be evidenced by that certain Five Year Adjustable Term Note, of even date herewith (the "Note") by Borrower in favor of the Bank in the original principal amount of **$2,100,000.00**. This Agreement, the Note, and any and all other documents, amendments or renewals executed and delivered in connection with any of the foregoing are collectively hereinafter referred to as the "Loan Documents".

1.2 Definitions. The following definitions shall apply:

(a) "Code" shall mean the Uniform Commercial Code of California as amended from time to time.

(b) "Obligation(s)" shall mean, without limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Borrower to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Bank; or are due indirectly by the Borrower to the Bank as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Bank from time to time and all costs and expenses referred to in this Agreement.

(c) "Person" or "party" shall mean individuals, partnerships, corporations, limited liability companies and all other entities.

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

2. REPRESENTATIONS AND WARRANTIES

2.1 Records. All books and records of the Borrower's business, including but not limited to its books of account, are accurate and up to date and will be so maintained.

2.2 Title to Properties; Absence of Liens. Borrower has good and clear record and marketable title to all of its properties and assets, and all of its properties and assets are free and clear of all mortgages, liens, pledges, charges, encumbrances and setoffs, except those mortgages, deeds of trust, leases of personal property and security interests previously specifically consented to in writing by the Bank.

2.3 Places of Business. Borrower shall, during the term of this Agreement, keep the Bank currently and accurately informed in writing of each of Borrower's place of residence and Borrower's places of business, and shall not open or close, move or change any existing or new place of business without giving the Bank at least thirty (30) days prior written notice thereof.

2.4 Valid Obligations. The Loan Documents represent legal, valid and binding obligations of Borrower and are fully enforceable according to their terms, except as limited by laws relating to the enforcement of creditors' rights.

2.5 Conflicts. There is no provision in any indenture, contract or agreement to which Borrower is a party which prohibits, limits or restricts the execution, delivery or performance of the Loan Documents.

2.6 Governmental Approvals. The execution, delivery and performance of the Loan Documents does not require any approval of or filing with any governmental agency or authority.

2.7 Litigation. There are no actions, suits or proceedings pending or to the knowledge of Borrower threatened against Borrower which might materially adversely affect the ability of Borrower to conduct its business or to pay or perform the Obligations.

2.8 Taxes. Borrower has filed all Federal, state and other tax returns required to be filed (except for such returns for which current and valid extensions have been filed), and all taxes, assessments and other governmental charges due from the Borrower have been fully paid. The Borrower has established on its books reserves adequate for the payment of all Federal, state and other tax liabilities (if any).

2.9 Use of Proceeds. No portion of any loan is to be used for (i) the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224 or (ii) primarily personal, family or household purposes.

2.10 Environmental. Except as heretofore disclosed to Bank in writing, as of the date hereof neither the Borrower nor any of Borrower's agents, employees or independent contractors (1) have caused or are aware of a release or threat of release of Hazardous Materials (as defined herein) on any of the premises or personal property owned or controlled by Borrower, or any abutting property, which could give rise to liability under any Environmental Law (as defined herein) or any other Federal, state or local law, rule or regulation; (2) have arranged for the transport of or transported any Hazardous Materials in a manner as to violate, or result in potential liabilities under, any Environmental Law; (3) have received any notice, order or demand from the Environmental Protection Agency or any other Federal, state or local agency under any Environmental Law; (4) have incurred any liability under any Environmental Law in connection with the mismanagement, improper disposal or release of Hazardous Materials; or (5) are aware of any inspection or investigation of any of the premises or personal property owned or controlled

by Borrower or abutting property by any Federal, state or local agency for possible violations of any Environmental Law.

To the best of Borrower's knowledge, no prior owner or tenant of any premises or property presently controlled or owned by Borrower committed or omitted any act which caused the release of Hazardous Materials on such premises or property which could give rise to a lien thereon by any Federal, state or local government. No notice or statement of claim or lien affecting any property or premises owned or controlled by Borrower has been recorded or filed in any public records by any Federal, state or local government for costs, penalties, fines or other charges as to such property.

Borrower agrees to indemnify and hold Bank harmless from all liability, loss, cost, damage and expense, including attorney fees and costs of litigation, arising from any and all of its violations of any Environmental Law (including those arising from any lien by any Federal, state or local government arising from the presence of Hazardous Materials) or from the presence of Hazardous Materials located on or emanating from any of the premises owned or controlled by the Borrower. Borrower further agrees to reimburse Bank upon demand for any costs incurred by Bank in connection with the foregoing. Borrower agrees that its obligations hereunder shall be continuous and shall survive the repayment of all debts to Bank.

The term "Hazardous Materials" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

The term "Environmental Law" means any present and future Federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to liability for or costs of remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

3. AFFIRMATIVE COVENANTS

3.1 Payments and Performance. Borrower will duly and punctually pay all Obligations becoming due to the Bank and will duly and punctually perform all Obligations on its part to be done or performed under this Agreement.

3.2 Books and Records; Inspection. Borrower will at all times keep proper books of account in which full, true and correct entries will be made of its transactions in accordance with generally accepted accounting principles, consistently applied and which are, in the opinion of a Certified Public Accountant acceptable to Bank, adequate to determine fairly the financial condition and the results of operations of Borrower. Borrower will at all reasonable times make its books and records available in its offices for inspection, examination and duplication by the Bank and the Bank's representatives and will permit inspection of all of its properties by the Bank and the Bank's representatives. Borrower will from time to

time furnish the Bank with such information and statements as the Bank may request in its sole discretion with respect to the Obligations.

3.3 Financial Statements. Borrower will furnish to Bank:

(a) as soon as available to Borrower, but in any event within 30 days after the end of the prior calendar year in any year and upon request therefor, with personal financial statements addressed to the Bank in form satisfactory to the Bank;

(b) Borrower's filed Federal tax returns, including all schedules thereto and K-1's or copy of extension, for the prior year within 30 days after the date that Borrower's tax returns are actually filed each such year or by such other date approved by the Bank;

(c) from time to time, such financial data and information about Borrower as Bank may reasonably request; and

(d) any financial data and information about any guarantors of the Obligations as Bank may reasonably request.

3.4 Conduct of Business. The Borrower will comply with all laws and regulations of the United States and of any state or states thereof and of any political subdivision thereof, and of any governmental authority which may be applicable to it or to its business; provided that this covenant shall not apply to any tax, assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.5 Taxes. Borrower will promptly pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, old age benefits, withholding, sales and other taxes assessed against it or payable by it before delinquent; provided that this covenant shall not apply to any tax assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.6 Maintenance. Borrower will keep and maintain its properties, if any, in good repair, working order and condition. The Borrower will immediately notify the Bank of any loss or damage to or any occurrence which would adversely affect the value of any such property.

3.7 Insurance. Borrower will maintain in force property and casualty insurance on any property of the Borrower, if any, against risks customarily insured against by companies engaged in businesses similar to that of the Borrower containing such terms and written by such companies as may be satisfactory to the Bank, such insurance to be payable to the Bank as its interest may appear in the event of loss and to name the Bank as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Bank's approval; and all such policies shall provide that they may not be canceled without first giving at least Thirty (30) days written notice of cancellation to the Bank. In the event that the Borrower fails to provide evidence of such insurance, the Bank may, at its option, secure such insurance and charge the cost thereof to the Borrower. At the option of the Bank, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair thereof or as a payment on account of the Obligations. From and after the occurrence of an Event of Default, the Bank is authorized to cancel any insurance maintained hereunder and apply any returned or unearned premiums, all of which are hereby assigned to the Bank, as a payment on account of the Obligations.

3.8 Notification of Default. Upon becoming aware of the existence of any condition or event which constitutes an Event of Default, or any condition or event which would upon notice or lapse of time, or both, constitute an Event of Default, Borrower shall promptly give Bank written notice thereof specifying the nature and duration thereof and the action being or proposed to be taken with respect thereto.

3.9 Notification of Material Litigation. Borrower will promptly notify the Bank in writing of any litigation or of any investigative proceedings of a governmental agency or authority commenced or threatened against it which would or might be materially adverse to the financial condition of Borrower or any guarantor of the Obligations.

3.10 Pension Plans. With respect to any pension or benefit plan maintained by Borrower, or to which Borrower contributes ("Plan"), the benefits under which are guaranteed, in whole or in part, by the Pension Benefit Guaranty Corporation created by the Employee Retirement Income Security Act of 1974, P.L. 93-406, as amended ("ERISA") or any governmental authority succeeding to any or all of the functions of the Pension Benefit Guaranty Corporation ("Pension Benefit Guaranty Corporation"), Borrower will (a) fund each Plan as required by the provisions of Section 412 of the Internal Revenue Code of 1986, as amended; (b) cause each Plan to pay all benefits when due; (c) furnish Bank (i) promptly with a copy of any notice of each Plan's termination sent to the Pension Benefit Guaranty Corporation (ii) no later than the date of submission to the Department of Labor or to the Internal Revenue Service, as the case may be, a copy of any request for waiver from the funding standards or extension of the amortization periods required by Section 412 of the Internal Revenue Code of 1986, as amended and (iii) notice of any Reportable Event as such term is defined in ERISA; and (d) subscribe to any contingent liability insurance provided by the Pension Benefit Guaranty Corporation to protect against employer liability upon termination of a guaranteed pension plan, if available to Borrower.

4. NEGATIVE COVENANTS

4.1 Limitations on Indebtedness. Borrower shall not issue any evidence of indebtedness or create, assume, guarantee, become contingently liable for, or suffer to exist indebtedness in addition to indebtedness to the Bank, except indebtedness or liabilities of Borrower, other than for money borrowed, incurred or arising in the ordinary course of business.

4.2 Loans or Advances. Borrower shall not make any loans or advances to any individual, firm or corporation, including without limitation its employees; provided, however, that Borrower may make advances to its employees, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.

4.3 Capital Expenditures. The Borrower shall not, directly or indirectly, make or commit to make capital expenditures by lease, purchase, or otherwise, except in the ordinary and usual course of business for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business.

4.4 Sale of Assets. Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary and usual course of business and except for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business, provided that fair consideration is received therefor; provided, however, in no event shall the Borrower sell, lease or otherwise dispose of any equipment purchased with the proceeds of any loans made by the Bank.

4.5 Restriction on Liens. Borrower shall not grant any security interest in, or mortgage of, any of its properties or assets. Borrower shall not agree with any person other than the Bank to not grant any security interest in, or mortgage of, any of its properties or assets.

4.6 Other Business. Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably allied thereto.

4.7 Change of Name. Borrower shall not change its legal name or his or her primary residence,

without giving the Bank at least 30 days prior written notice thereof.

5. DEFAULT

5.1 Default. "Event of Default" shall mean the occurrence of one or more of any of the following events:

(a) default of any liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

(b) failure of the Borrower or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;

(c) default of any material liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to any other party continuing for 30 days;

(d) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Borrower or any guarantor of the Obligations shall be determined by the Bank to have been false in any material respect when made;

(e) if the Borrower or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(f) the death of the Borrower or any guarantor of the Obligations and, if the Borrower or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(g) the institution by or against the Borrower or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(h) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor of the Obligations;

(i) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(j) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor of the Obligations;

(k) Borrower shall fail or neglect to perform, keep or observe any financial covenant set forth in this Agreement;

(l) Borrower shall fail or neglect to perform, keep or observe any financial reporting requirement set forth in this Agreement and the breach is not cured to Bank's satisfaction within 30 days;

(m) the termination or revocation of any guaranty of the Obligations; or

(n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor of the Obligations to the Bank has been or may be impaired.

5.2 Acceleration. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations payable on DEMAND, which shall be due and payable on DEMAND, whether or not an Event of Default has occurred.

5.3 Nonexclusive Remedies. All of the Bank's rights and remedies not only under the provisions of this Agreement but also under any other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

6. MISCELLANEOUS

6.1 Waivers. The Borrower waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof.

6.2 Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

6.3 Deposit Collateral. The Borrower hereby grants to the Bank a continuing lien and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and any cash, securities, instruments or other property of the Borrower in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower to the Bank or any Bank Affiliate and such deposits and other sums may be applied against such liabilities and obligations of the Borrower to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

6.4 Indemnification. The Borrower shall indemnify, defend and hold the Bank harmless of and from any claim brought or threatened against the Bank by the Borrower, any guarantor or endorser of the Obligations, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Borrower), except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Borrower.

6.5 Costs and Expenses. The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to any collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of any Obligation.

6.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

6.7 Complete Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

6.8 Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until terminated as to future transactions by written notice from either party to the other party of the termination hereof; provided that any such termination shall not release or affect any Obligations incurred or rights accrued hereunder prior to the effective date of such notice (as hereinafter defined) of such termination. The Bank may transfer and assign this Agreement and deliver it to the assignee, who shall thereupon have all of the rights of the Bank; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

6.9 Further Assurances. Borrower will from time to time execute and deliver to Bank such documents, and take or cause to be taken, all such other or further action, as Bank may request in order to effect and confirm or vest more securely in Bank all rights contemplated by this Agreement and the other Loan Documents (including, without limitation, to correct clerical errors) or to comply with applicable statute or law.

6.10 Amendments and Waivers. This Agreement may be amended and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if Borrower shall obtain the Bank's prior written consent to each such amendment, action or omission to act. No course of dealing and no delay or omission on the part of Bank in exercising any right hereunder shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Bank on any future occasion.

6.11 Terms of Agreement. This Agreement shall continue in full force and effect so long as any Obligations or obligation of Borrower to Bank shall be outstanding, or the Bank shall have any obligation to extend any financial accommodation hereunder, and is supplementary to each and every other agreement between Borrower and Bank and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and the Bank be construed to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower hereunder, unless such other agreement specifically refers to this Agreement and expressly so provides.

6.12 Notices. Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9 of the Code). Any such notice shall be deemed duly

received and effective (i) if delivered in hand to, or received by, any officer or agent of the Borrower or the Bank, upon such delivery or receipt, or (ii) if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the Borrower or the Bank, two (2) business days after being so mailed. A party's proper address is that set forth for such party in this Agreement or such address as that party may from time to time hereafter designate by notice to the other party.

6.13 Governing Law. This Agreement has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

6.14 Reproductions. This Agreement and all documents which have been or may be hereinafter furnished by Borrower to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

6.15 Jurisdiction and Venue. Borrower irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Agreement. Borrower irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Borrower hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's address shown in this Agreement or as notified to the Bank and (ii) by serving the same upon the Borrower in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon Borrower.

6.16 Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of Borrower's obligations under the Loan Documents and Borrower provides partial satisfaction of any such obligation(s), Borrower hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than Borrower.

6.17 **JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.**

6.18 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF

SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

Executed as of **July 18, 2006.**

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____, Trustee
Edward C. Wooley, Trustee

By: Judith A. Wooley, Trustee
Judith A. Wooley, Trustee

Accepted: Pacific Capital Bank, N.A.

By: Melinda Cabral by _____
Name: Melinda Cabral
Title: Vice President/Relationship Manager

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The Network of Preferred Community Banks℠

Loan No. 100798974

DISBURSEMENT AUTHORIZATION

DATE: July 18, 2006

BORROWER: Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000
41 Pertalta Avenue
Los Gatos, California
95030

BANK: Pacific Capital Bank, N.A.
c/o Loan Services, PO Box 60654
Santa Barbara, California
93160-0654

LOAN: $2,100,000.00 Term Loan (the "Loan")

The undersigned hereby authorizes and directs the Bank, in its discretion pursuant to the terms of the loan documents (the "Loan Documents") between the Bank and the undersigned respecting the Loan, to disburse $2,100,000.00 of the loan proceeds available respecting the Loan as set forth below.

Disbursement	Amounts Paid by Customer at Closing	Amount Paid from Loan Proceeds
1. Facility Fee	$	$21,000.00
2. Appraisal Fee	$	$7,000.00
3. Appraisal Review	$	$500.00
4. Environmental Fee	$	$300.00
5. Title Policy	$	$250.00
6. Flood Fee	$	$10.00
7. Tax Service Fee	$	$279.00
8. Payable to LandAmerica Lawyers Title	$	$2,070,661.00
Total	**$ 0.00**	**$ 2,100,000.00**

The undersigned represents and warrants to the Bank that there has been no material adverse change in the undersigned's financial condition since the date of the latest financial statements delivered by the undersigned to the Bank. In addition, the undersigned affirms that the representations and warranties contained in the Loan Documents are true and correct as of the date hereof.

The balance of the loan proceeds of $ 0.00 shall be held by the Bank pending further instruction from the undersigned pursuant to the terms of the Loan Documents.

By your signature below, you agree to the terms and acknowledge receipt of a copy of this Disbursement Authorization.

Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

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A.App.688

COPY - has not been compared with the Original Document - WCR

DOC # 3415811

Conformed Copy
07/21/2006 10:49A Fee:55.00
RPTT 0.00
BK1
Requested By
LANDAMERICA FINANCIAL GROUP INC
Washoe County Recorder
Kathryn L. Burke - Recorder

ASSESSOR'S PARCEL NUMBER: 030-041-08

UPON RECORDATION RETURN TO:

Pacific Capital Bank, N.A.

c/o Loan Services, PO Box 60654

Santa Barbara, California 93160-0654

MAIL TAX STATEMENTS TO:
Edward C. Wooley
Judith A. Wooley
41 Pertalta Avenue
Los Gatos, CA 95030

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

06-48646

This DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this "Deed of Trust") entered into as of **July 18, 2006**, among **Edward C. Wooley and Judith A. Wooley, Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000** (collectively and jointly and severally, the "Trustor"), LandAmerica Lawyers Title, with an address of **1850 North Central Avenue, Suite 300 Phoenix, AZ 85004**(the "Trustee") for the use and benefit of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es): **1365 Baring Blvd., Sparks, Nevada 89434** (the "Address(es)").

This document serves as a fixture filing under Nevada Revised Statutes Section 104.9502.

1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain **Five Year Adjustable Term Note**, dated **July 18,**

2006, by **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000** in favor of the Beneficiary in the original principal amount of **$2,100,000.00** (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

This Deed of Trust shall secure the principal amount of Obligations of up to $2,100,000.00. The maximum amount of principal secured hereby may be increased or decreased by amendment to this Deed of Trust. This Deed of Trust shall nevertheless secure payment and performance of all Obligations including, without limitation, any other liabilities and future advances, direct or indirect, absolute or contingent, now existing or hereafter arising from the Trustor to the Beneficiary. Future advances hereunder are governed by Nevada Revised Statutes Sections 106.300 to 106.400, inclusive.

1.2 Security Interest in Property. As continuing security for the Obligations the Trustor hereby pledges, assigns and grants to the Beneficiary, and its successors and assigns, a security interest in any of the Property (as hereinafter defined) constituting personal property or fixtures. This Deed of Trust is and shall be deemed to be a security agreement, fixture filing and financing statement pursuant to the terms of the Uniform Commercial Code of Nevada (the "Uniform Commercial Code") as to any and all personal property and fixtures and as to all such property the Beneficiary shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Deed of Trust constitutes a financing statement filed as a fixture filing under Section 104.9502(c) of the Uniform Commercial Code covering any Property which now is or later may become a fixture.

1.3 Collateral Assignment of Leases and Rents. The Trustor hereby irrevocably and unconditionally assigns to the Beneficiary, and its successors and assigns, as collateral security for the Obligations all of the Trustor's rights and benefits under any and all Leases (as hereinafter defined) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This collateral assignment shall be absolute and effective immediately, but the Trustor shall have a license, revocable by the Beneficiary, to continue to collect rents owing under the Leases until an Event of Default (as hereinafter defined) occurs and the Beneficiary exercises its rights and remedies to collect such rents as set forth herein.

1.4 Conditions to Grant. To have and to hold the above granted Property unto and to the use and benefit of the Trustee, IN TRUST, for the benefit and security of the Beneficiary, and to the Beneficiary, as the case may be, and their successors and assigns, forever; provided, however, the conveyances, grants and assignments contained in this Deed of Trust are upon the express condition that, if Trustor shall pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Deed of Trust, shall pay and perform all other Obligations as set forth in this Deed of Trust and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Deed of Trust shall cease, terminate and be void.

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or

business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgements, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

1.6 Obligations. The term "Obligation(s)," as used in this Deed of Trust, shall mean without limitation all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, now or hereafter owing by the Trustor to the Beneficiary at any time, of each and every kind, nature and description, whether arising under this Deed of Trust or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Trustor to the Beneficiary; or are due indirectly by the Trustor to the Beneficiary as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Beneficiary, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment of all amounts outstanding when due pursuant to the terms of any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Trustor or due from the Trustor to the Beneficiary from time to time and all advances, costs and expenses referred to in this Deed of Trust, including without limitation the costs and expenses (including reasonable attorney's fees) of enforcement of the Beneficiary's rights hereunder or pursuant to any document or instrument executed in connection herewith.

1.7 Cross-Collateral and Future Advances. It is the express intention of the Trustor that this Deed of Trust secure payment and performance of all of the Obligations, whether now existing or hereinafter incurred by reason of future advances by the Beneficiary or otherwise, and regardless of whether such Obligations are or were contemplated by the parties at the time of the granting of this Deed of Trust. Notice of the continuing grant of this Deed of Trust shall not be required to be stated on the face of any document evidencing any of the Obligations, nor shall such documents be required to otherwise specify that they are secured hereby.

2. REPRESENTATIONS, WARRANTIES, COVENANTS

2.1 Representations and Warranties. The Trustor represents and warrants that:

(a) This Deed of Trust has been duly executed and delivered by the Trustor and is the legal, valid and binding obligation of the Trustor enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;

(b) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Bank in connection with this Deed of Trust (the "Permitted Encumbrances");

(c) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;

(d) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and

(e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

2.2 Recording; Further Assurances. The Trustor covenants that it shall, at its sole cost and expense and upon the request of the Beneficiary, cause this Deed of Trust, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Beneficiary in the Property and the rights of the Beneficiary under this Deed of Trust. Trustor will from time to time execute and deliver to the Beneficiary such documents, and take or cause to be taken, all such other further action, as the Beneficiary may request in order to effect and confirm or vest more securely in the Beneficiary all rights contemplated by this Deed of Trust (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Beneficiary the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Trustor authorizes the Beneficiary to file financing statements, continuation statements or amendments without Trustor's signature appearing thereon, and any such financing statements, continuation statements or amendments may be signed or authenticated by the Beneficiary on behalf of Trustor, if necessary, and may be filed at any time in any jurisdiction. The Beneficiary may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Property as "all assets of Trustor" or words of similar effect and which contain any other information required by Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor; Trustor also authorizes the Beneficiary to file financing statements describing any agricultural liens or other statutory liens held by the Beneficiary. Trustor agrees to furnish any such information to the Beneficiary promptly upon request. In addition, Trustor shall at any time and from time to time, take such steps as the Beneficiary may reasonably request for the Beneficiary (i) to obtain an acknowledgement, in form and substance satisfactory to the Beneficiary, of any bailee having possession of any of the Property that the bailee holds such Property for the Beneficiary, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such terms are defined in Article 9 of the Uniform Commercial Code relating to what constitutes "control" for such items of Property), with any agreements establishing control to be in form and substance satisfactory to the Beneficiary, and (iii) otherwise to insure the continued perfection and priority of the Beneficiary's security interest in any of the Property and the preservation of its rights therein. Trustor hereby constitutes the Beneficiary its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Deed of Trust terminates in accordance with its terms, all Obligations are paid in full and the Property is released.

2.3 Restrictions on the Trustor. The Trustor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Beneficiary in each instance:

(a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust;

(b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or

(c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the

Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

2.4 Operation of Property. The Trustor covenants and agrees as follows:

(a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;

(b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;

(c) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;

(d) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and

(e) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

2.5 Nevada Covenants. Where not otherwise inconsistent with the other provisions of this Deed of Trust, Covenants Nos. 1; 2 (full replacement value); 3; 4 (highest rate permitted under the Note); 5; 6; 7 (a reasonable percentage); 8; and 9 of Nevada Revised Statutes Section 107.030, are hereby adopted and made a part of this Deed of Trust.

2.6 Payments. The Trustor covenants to pay when due: all Federal, state, municipal, real property and other taxes, betterment and improvement assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges on the Property, this Deed of Trust or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or on any interest therein. If and when requested by the Beneficiary, the Trustor shall deposit from time to time with the Beneficiary sums determined by the Beneficiary to be sufficient to pay when due the amounts referred to in this Section. The Trustor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Beneficiary's request, provides the Beneficiary with adequate cash security, in the Beneficiary's reasonable judgement, against the enforcement thereof. The Trustor shall furnish to the Beneficiary the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Trustor shall also furnish to the Beneficiary evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Beneficiary. If Trustor shall fail to pay such sums, the Beneficiary may, but shall not be obligated to, advance such sums. Any sums so advanced by the Beneficiary shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Deed of Trust.

2.7 Notices; Notice of Default. The Trustor will deliver to the Beneficiary, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Trustor is in default in the performance or observance of any of the terms hereof or that the Trustor or any tenant is in default of any terms of the Leases. The Trustor further agrees to deliver to the Beneficiary written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.8 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Trustor shall promptly give written notice to the Beneficiary, describing the nature and extent thereof. The Beneficiary may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Trustor shall promptly give to the Beneficiary copies of all notices, pleadings, determinations and other papers relating thereto. The Trustor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Trustor shall not settle any such claim without the Beneficiary's prior written consent. The Trustor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Beneficiary and promptly pay the same to the Beneficiary. The Trustor authorizes any award or settlement due in connection with a Taking to be paid directly to the Beneficiary in amounts not exceeding the Obligations. The Beneficiary may apply such amounts to the Obligations in such order as the Beneficiary may determine.

2.9 Insurance Proceeds. The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Beneficiary and, at the option of the Beneficiary, be applied to the Obligations in such order as the Beneficiary may determine; provided, however, that if the Beneficiary shall require repair of the Property, the Beneficiary may release all or any portion of such proceeds to the Trustor for such purpose. Any insurance proceeds paid to the Trustor shall be held in trust for the Beneficiary and promptly paid to it.

3. CERTAIN RIGHTS OF THE BENEFICIARY

3.1 Legal Proceedings. The Beneficiary shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Beneficiary's reasonable judgement, might affect the Property or any of the rights created or secured by this Deed of Trust. The Beneficiary shall have such right whether or not there shall have occurred an Event of Default hereunder.

3.2 Appraisals/Assessments. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Beneficiary deems necessary or as may be required by applicable law, or its prevailing credit or underwriting policies.

3.3 Financial Statements. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to require delivery of financial statements in form and substance acceptable to the Beneficiary from the Trustor or any guarantor of any of the Obligations and the Trustor hereby agrees to deliver such financial statements and/or cause any such guarantor to so deliver any such financial statement when required by the Beneficiary.

3.4 Substitution of Trustee. The Beneficiary may from time to time, without notice to the Trustor or Trustee and with or without cause and with or without the resignation of Trustee, substitute a successor or successors to the Trustee named herein or acting hereunder. Upon such appointment, the successor trustee shall be vested with all title, powers and duties conferred upon the Trustee named herein or acting hereunder. Each such appointment and substitution shall be made by a writing executed by Beneficiary and when duly recorded in the appropriate office shall be conclusive proof of proper appointment of such successor Trustee. The procedure herein provided for substitution of the Trustee shall be conclusive of all other provisions for substitution, statutory or otherwise.

3.5 Leases and Rent Roll. The Trustor shall deliver to the Beneficiary during each calendar year and at such other times as the Beneficiary shall request a rent roll for the Property, in form acceptable to the Beneficiary, listing all tenants and occupants and describing all of the Leases.

4. DEFAULTS AND REMEDIES

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the following events:

(a) default of any liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

(b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents continuing for 30 days;

(c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;

(d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary continuing for 30 days;

(e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party continuing for 30 days;

(f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false in any material respect when made;

(g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;

(k) a judgement or judgements for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;

(m) the termination or revocation of any guaranty of the Obligations; or

(n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Trustor or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Beneficiary, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Trustor or any guarantor of the Obligations to the Beneficiary has been or may be impaired.

4.2 Remedies. On the occurrence of any Event of Default the Beneficiary may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

(a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;

(b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;

(c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;

(d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. In the event this Deed of Trust shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Beneficiary shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Beneficiary may in its discretion subordinate this Deed of Trust to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;

(e) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Substances or otherwise cure the Trustor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Trustor shall provide the Beneficiary or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Trustor from any responsibility therefor or given the Beneficiary "control" over the Property or cause the Beneficiary to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and

(f) Take such other actions or proceedings as the Beneficiary deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Trustor hereby waives any right to object to such appointment) and exercise of any of the Beneficiary's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.

In addition, the Trustee and the Beneficiary shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof.

The Trustor agrees and acknowledges that the acceptance by the Trustee or the Beneficiary of any payments from either the Trustor or any guarantor after the occurrence of any Event of Default, the exercise by the Trustee or the Beneficiary of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Trustee's or the Beneficiary's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Trustee or the Beneficiary. The Trustor agrees and acknowledges that the Trustee or the Beneficiary, by making payments or incurring costs described herein, shall be subrogated to any right of the Trustor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Trustor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

4.3 Advances. If the Trustor fails to pay or perform any of its obligations respecting the Property, the Beneficiary may in its sole discretion do so without waiving or releasing Trustor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Beneficiary hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and shall be due and payable to the Beneficiary, on demand, together with interest thereon to the extent permitted by applicable law, at the highest rate permitted under any of the notes evidencing the Obligations.

4.4 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Beneficiary might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Trustor further agrees that the Trustee and the Beneficiary may exercise any or all of its rights or remedies set forth herein without having to pay the Trustor any sums for use or occupancy of the Property.

4.5 Trustor's Waiver of Certain Rights. To the extent permitted by applicable law, the Trustor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

4.6 Transfer of Title. Upon the completion of any sale or sales of any Property, Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed of conveyance or assignment and transfer, lawfully conveying, assigning, and transferring the Property sold, but without any covenant or warranty, express or implied.

4.7 Effect of Sale. Any sale or sales made by virtue of or under this Deed of Trust, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the property so sold, or any part thereof from, through or under Trustor, its successors and

assigns. The receipt by Trustee shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Deed of Trust, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

4.8 Reconveyance. Upon written request of the Beneficiary and surrender of this Deed of Trust and any Notes to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

5. MISCELLANEOUS

5.1 Costs and Expenses. To the extent permitted by applicable law, the Trustor shall pay to the Trustee and the Beneficiary, on demand, all reasonable expenses (including attorneys' fees and expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Trustee and the Beneficiary in connection with the Trustee's and the Beneficiary's interpretation, recordation of this Deed of Trust, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Deed of Trust and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law, until paid in full by the Trustor at the highest rate set forth in any of the notes evidencing the Obligations. Any amounts owed by the Trustor hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and the Beneficiary shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Trustor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 Indemnification Regarding Leases. The Trustor hereby agrees to defend, and does hereby indemnify and hold the Beneficiary, Trustee, and each of their respective directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnitees arising from any undertakings on the part of the Beneficiary to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Beneficiary or any Indemnitee or make them liable for performance of any of the obligations of the Trustor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

5.4 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Deed of Trust or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Trustor or other person or entity, then the Trustor shall indemnify, defend and hold

each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgement. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Beneficiary in favor of the Trustor.

5.5 Waivers. The Trustor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Beneficiary in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as "the Beneficiary's rights and remedies") hereunder shall constitute a waiver thereof; and no waiver by the Beneficiary of any default of the Trustor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Beneficiary, which consent makes explicit reference to this Deed of Trust. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Beneficiary and the Trustor at any time (whether before, during or after the effective date or term of this Deed of Trust) shall be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under this Deed of Trust (nor shall anything in this Deed of Trust be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under any such other agreement or transaction) but all the Beneficiary's rights and remedies not only under the provisions of this Deed of Trust but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Beneficiary at such time or times and in such order of preference as the Beneficiary in its sole discretion may determine.

5.6 Severability. If any provision of this Deed of Trust or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Deed of Trust (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.7 Complete Agreement. This Deed of Trust and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.8 Binding Effect of Agreement. This Deed of Trust shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Beneficiary shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Beneficiary may transfer and assign this Deed of Trust and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Beneficiary; and the Beneficiary shall then be relieved and discharged of any responsibility or liability with respect to this Deed of Trust and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Deed of Trust or the other Loan Documents.

5.9 Notices. Any notices under or pursuant to this Deed of Trust shall be deemed duly received and effective if delivered in hand to any officer of agent of the Trustor or the Beneficiary, or if mailed by registered or certified mail, return receipt requested, addressed to the Trustor or the Beneficiary at the address set forth in this Deed of Trust or as any party may from time to time designate by written notice to the other party.

5.10 Governing Law. This Deed of Trust shall be governed by Nevada law without giving effect to the conflicts of laws principles thereof.

5.11 Reproductions. This Deed of Trust and all documents which have been or may be hereinafter furnished by the Trustor to the Beneficiary may be reproduced by the Beneficiary by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.12 Jurisdiction and Venue. The Trustor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California and any Federal or state court sitting in Nevada, over any suit, action or proceeding arising out of or relating to this Deed of Trust. The Trustor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Trustor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Trustor's address set forth herein or such other address as has been provided in writing to the Beneficiary and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Trustor.

5.13 **JURY WAIVER. THE TRUSTOR AND THE BENEFICIARY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS DEED OF TRUST, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. THE TRUSTOR CERTIFIES THAT NEITHER THE BENEFICIARY NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BENEFICIARY WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.**

5.14 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

EXECUTED under seal as of the date first above written.

Trustor:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On July 17, 2009 before me, Brenda Baker Notary Public,
personally appeared **Edward C. Wooley**, ~~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 offical seal.

Signature Brenda Baker (Seal)

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On July 17, 2009 before me, Brenda Baker Notary Public,
personally appeared **Judith A. Wooley**, ~~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 offical seal.

Signature Brenda Baker (Seal)

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

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EXHIBIT "A

All that certain real property situated in the County of Washoe, State of Nevada, described as follows:

PARCEL I:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

BEGINNING at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "PARCEL MAP FOR FOOTHILL INVESTMENT CO. AND LEWIS BUILDING CO, INC." recorded January 26, 1983 in the Office of the County Recorder of Washoe County, Nevada, as Parcel Map NO. 1418, File No. 835532 and proceeding;
Thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing South 44°11'14" East 42.43 feet;
Thence South 0°48'46" West 15.00 feet;
Thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet;
Thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet;
Thence leaving Sorensen Way North 89°11'14" West 150.00 feet;
Thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard;
Thence along Baring Boulevard South 89°11'14" East 169.67 feet to the Point of Beginning.

NOTE: The above metes and bounds description appeared previously in that certain Document recorded March 3, 1997 in Book 4801, Page 0141, as Instrument No. 2076862, Washoe County Official Records.

PARCEL II:

EXHIBIT "A" - Continued

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 32, under Document No. 1248846, Official Records.

NOTE: (The above metes and bounds Legall Description was previously shown on Grant, Bargain, Sale Deed recorded October 13, 2005 Doc/Inst. No. 3291758 of Official Records.

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Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 16

EXHIBIT 16

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

-o0o-

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,

Plaintiffs,

vs.

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

Defendants.

_____/

Case No. CV14-01712
Dept. No. 6

Pages 1 to 138, inclusive.

DEPOSITION OF EDWARD C. WOOLEY

Thursday, August 20, 2015
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

A.App.707

A P P E A R A N C E S

FOR PLAINTIFF:

LAW OFFICES OF BRIAN P. MOQUIN
BY: BRIAN P. MOQUIN, ATTORNEY AT LAW
3506 La Castellet Court
San Jose, CA 95148
408.300.0022, bmoquin@BrianMoquin.com

FOR DEFENDANTS:

DICKINSON WRIGHT PLLC
BY: ANJALI D. WEBSTER, ATTORNEY AT LAW
BRIAN IRVINE, ATTORNEY AT LAW
100 W. Liberty Street, Suite 940
Reno, NV 89501
775.343.7498, awebster@dickinsonwright.com

ALSO PRESENT: Larry Willard

-o0o-

A Every email. That's a hard question.
Q Okay.
A I've kept some, yeah.
Q Okay. But not all?
A On my most recent laptop.
Q Okay. Have you kept all correspondence that would be pertinent to this case?
A I've kept a lot of it, yes.
Q Okay.
A In paper form and some of it on my hard drive in my laptop.
Q Okay. Have you kept all documents that would be pertinent to this case?
A All documents?
Q Like any leases?
A Yeah, I have all that.
Q Okay. Have you provided all that information to your attorney?
A My attorney, yes.
Q So let's talk about your ownership of properties generally. How many properties do you own at the present?
A Two.
Q And how many of those are nonresidential?
A One.

Q On the Baring property?
A Yes.
Q When did they stop paying on the Baring property?
A Okay. We discussed this 2009 they stopped payment.
Q Okay, correct. And then you said that they repaid everything.
A Yes, they did.
Q So as of May 2014 when you sold the Baring property, can you list for me every breach that BHI had committed as of that time?
MR. MOQUIN: Objection, calls for a legal conclusion.
THE WITNESS: We've already covered this ground.
BY MS. WEBSTER:
Q Could you state it for me again?
A They stopped payment somewhere in the neighborhood of 2007 to 2010. I went after them with my lawyers and they relented and they paid me. The total amount was about 190-something thousand dollars.
Then they assigned the lease for Sparks Avenue -- Baring Boulevard -- that's another

breach -- without my notification. What else? I think that's it.

Q Were those breaches cured by the time that you sold the Baring property?

A Well, I guess I got notified by this document, which I don't recognize, and it was a check from Jacksons Foods and I cashed it.

Q Correct. So were they in default when you sold the Baring property? Was BHI in default when you sold the Baring property?

A Well, I consider it to be defaulted -- well, okay. I would say no.

Q Okay. So I may have asked you this. I apologize if I'm repeating it.

When did you sell the Baring property?

A May of 2014.

Q Okay.

(Deposition Exhibit 19 marked for identification.)

(Witness reviewing document.)

THE WITNESS: Yeah, I should have sold it in 2012.

BY MS. WEBSTER:

Q Okay. So have you produced the January 21st, 2012, exclusive listing agreement to

Q Okay. Do you know if he ever adjusted the sales price?
A When I sold it, yeah, it went down.
Q You did from the time -- from what you originally listed the sales price for?
A Yes.
Q And why did you do that?
A We weren't getting any offers.
Q How long was the property on the market before you got offers?
A I don't recall.
Q When did you first decide to sell the Baring property?
A When I was forced to.
Q Okay. And can you explain the circumstances of that?
A Herbst Oil stopped payments on my leases.
Q On the Baring lease?
A No. But they stopped everything on the Highway 50 so that I was in debt on Highway 50 and way behind in my mortgage payments and I was being foreclosed on.
Q On the Highway 50 property?
A Yes.
Q Okay. And so in March of 2013, is that

when you were being foreclosed on?
A No. It took a while.
Q Okay. Approximately when?
A Oh, probably the first part of '14.
Q Okay. And so was that when you decided to sell the Baring property?
A I didn't decide. I had to.
Q Okay. But that's when you first put it on the market?
A Otherwise, I was going to lose both properties.
Q And why would that be?
A Because they were cross collateralized.
Q Can you explain that a little bit more, please?
A The properties were collateralized.
Q Can you explain that a little bit more?
A The properties are collateral for the note.
Q Correct.
A So if you've -- if you do not make your payments on either one of the properties, they can foreclose on both of the properties.
Q Okay. And is that in your agreements?
A It's in the note with the bank.
Q So once you had the property on the market,

did you receive offers on this property -- offers to buy the property?

A Yeah, I got an offer.

Q Did you only get one offer?

A I don't recall. There might have been another one. I don't recall really.

Q Who was the purchaser?

A His name was Mr. Tway or Tray, or something like that.

Q Richard Ray?

A Ray. That's it.

Q Okay. And do you remember what the purchase price was?

A Somewhere around a million-one. A million-one, something like that.

Q Okay. And so you don't know if you had multiple offers?

A Not a million-one. Three.1.

Q Okay. And you don't remember if you had more than just Mr. Ray's offer on this property?

A I had some people showing interest.

Q Okay.

A I couldn't tell you who --

Q Okay.

A -- or when.

A How much?
Q $1,308,792.85 in principal.
A For Sparks?
Q For the Carson City loan.
A This says "Sparks loan" and I don't know. You know, I paid off the loan. I took some of the proceeds and I paid off what was delinquent on Highway 50.
Q Okay. So back to the HUD 1 settlement statement, if you look at line 603, what was the total cash to seller?
A $870,844.39.
Q Okay. And what did you do with that cash?
A I put it in my bank account.
Q Okay. So how much of that went to paying off the Highway 50 or Carson property loan?
A I don't recall.
Q Did any of it?
A Absolutely.
Q Okay.
A I was being foreclosed on.
Q Okay. And then did you have any 1031 tax consequences from the sale of the Baring property?
A Sure I did. Absolutely.
Q Let's talk about those.

Q Interrogatory No. 3, "Please identify and describe in detail any and all facts demonstrating that the BHI knew at the time you and BHI entered into the Highway 50 lease that the Highway 50 property was cross-collateralized with the Baring property."

And then your response is "Respondent is presently unaware of facts responsive to this request. Respondent reserves the right to amend this response in light of future discovery."

Do you agree with that?

(Witness reviewing document.)

THE WITNESS: I don't know why they would even know.

BY MS. WEBSTER:

Q Okay.

A They're not party to getting a loan. I am. They take the check and cash it.

Q Okay. So Interrogatory No. 4, "Please identify and describe in detail any and all facts demonstrating that Jerry Herbst at the time you and BHI entered into the lease that the Highway 50 property was cross-collateralized with the Baring property."

The response on the next page is,

"Respondent is presently unaware of facts responsive to this request. Respondent reserves the right to amend this response."

A I agree with that.

Q Okay. So Interrogatory No. 5, "Please identify any documents which entitled you to the security deposit from the subtenant at the Highway 50 property in the amount of two thousand" -- and I believe it's a typo. It should be "2,485 as set forth in paragraph 39 of the First Amended Complaint."

And your answer is that "Respondent bases this contention on the fact that the propounding party breached the Highway 50 lease."

Do you see agree with that?

A Well, in my experience a deposit is something that goes with the people that are responsible for paying it back to the tenant.

So they're asking me what? Did I know that Jerry Herbst knew, no. I don't have any documentation.

Q Okay.

A It's just common sense.

Q Okay. And then we also went through Interrogatory No. 6 and you said that you do not

CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of_____, 2015.

_____

EDWARD C. WOOLEY

-o0o-

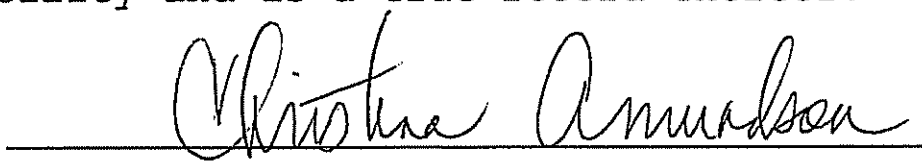
A.App.718

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CHRISTINA MARIE AMUNDSON, a Certified Court Reporter in and for the States of Nevada and California do hereby certify:

That I was personally present for the purpose of acting as Certified Court Reporter in the matter entitled herein; that the witness was by me duly sworn;

That said transcript which appears hereinbefore was taken in verbatim stenotype notes by me and thereafter transcribed into typewriting as herein appears to the best of my knowledge, skill, and ability and is a true record thereof.



Christina Amundson, CCR #641 (NV), CSR #11883 (CA)

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