

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,

Electronically Filed  
NO. 77780  
Aug 26 2019 04:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appellants,

vs.

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

Respondents.

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**APPENDIX TO APPELLANTS' OPENING BRIEFS**

**VOLUME 8 OF 19**

Submitted for all appellants by:

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LARRY J. WILLARD, et al.

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	Exhibit 49: Proposed <i>First Amendment to Lease Agreement</i> regarding the Virginia Property sent to the Willard Plaintiffs in October 2006		10	2249-2251

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(cont 30)	Exhibit 50: <i>Assignment of Entitlements, Contracts, Rents and Revenues</i> by and between Berry-Hinckley Industries and First National Bank of Nevada dated June 29, 2007 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3551284		10	2252-2264
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31.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	10	2284-2327
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	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		10	2335-2342
	Exhibit 3: February 12, 2015 Letter		10	2343-2345
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		10	2346-2357
	Exhibit 5: August 28, 2015, Letter		11	2358-2369
	Exhibit 6: March 3, 2016, Letter		11	2370-2458
	Exhibit 7: March 15, 2016 Letter		11	2459-2550
	Exhibit 8: April 20, 2016, Letter		11	2551-2577
	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		11	2578-2586

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	Exhibit 11: December 9, 2016 Email		11	2594-2595
	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
	Exhibit 16: April 1, 2016 Email		12	2642-2644
	Exhibit 17: May 3, 2016 Email		12	2645-2646
	Exhibit 18: June 21, 2016 Email Exchange		12	2647-2653
	Exhibit 19: July 21, 2016 Email		12	2654-2670
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		12	2671-2680
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		12	2681-2691
	Exhibit 22: Defendants' First Requests for Production on Willard		12	2692-2669
	Exhibit 23: Defendants' Second Request for Production on Willard		12	2700-2707
	Exhibit 24: Defendants' Third Request for Production on Willard		12	2708-2713
	Exhibit 25: Defendants Requests for Admission to Willard		12	2714-2719
	Exhibit 26: Willard Lease		12	2720-2755
	Exhibit 27: Willard Response to Second Set of Interrogatories		12	2756-2764



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	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
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	Exhibit 3: December 5, 2016 Email		12	2821-2827
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	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

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	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
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	Exhibit 3: January 2015 Email Exchange		13	3077-3082
	Exhibit 4: February 12, 2015 Letter		13	3083-3085
	Exhibit 5: Willard July 2015 Interrogatory Responses		14	3086-3097
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	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
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	Exhibit 18: Wooley Deposition Excerpts		15	3392-3397
	Exhibit 19: Highway 50 Lease		15	3398-3441
	Exhibit 20: April 1, 2016 Email		15	3442-3444
	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
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	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		15	3472-3480
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		15	3481-3490
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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

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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
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	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

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	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 Brian 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

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(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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<b><u>TRANSCRIPTS</u></b>				
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
<b><u>ADDITIONAL DOCUMENTS</u></b>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] <sup>1</sup>	01/04/18	19	4353-4357

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

## INTRODUCTION

### PROPERTY IDENTIFICATION

The subject is located at 7695 & 7699 South Virginia Street in Reno, NV.

### OWNERSHIP AND PROPERTY HISTORY

Title to the property is currently vested in the name of Overland Development Corporation, who acquired title to the property in February 2006, as improved for \$17,750,000, cash, as recorded in Washoe County Deed Records. This most recent sale transaction of the subject appears to have been arm's length. The subject is 100% leased to Berry-Hinckley Industries (BHI) with expenses based on an absolute net lease structure with the tenant responsible for all operating expenses. The lease expires in July 2023 and includes 2% annual increases. Since acquisition in 2006 net operating income has increased; thus, the 2006 sale is no longer a good indication of value for the subject.

To the best of our knowledge, there has been no other ownership transfer of the property during the previous three years. Based upon discussions with Dan Gluhaich of Sperry Van Ness, the subject was listed for sale in 2008 at a price of \$23,950,000 for several months; however, no offers to purchase came in at this price. According to Mr. Gluhaich the listing has since been pulled and the subject is not being listed as for sale as of the date of this report.

### PREMISE OF THE APPRAISAL/RELEVANT DATES

The following table illustrates the various dates associated with the valuation of the subject and the valuation premise(s):

PREMISE OF THE APPRAISAL/RELEVANT DATES	
Date of Report:	October 16, 2008
Date of Inspection:	October 1, 2008
Date of Value As Is:	October 1, 2008
Compiled by CBRE	

### PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the subject property. The current economic definition of market value agreed upon by agencies that regulate federal financial institutions in the U.S. (and used herein) is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and

assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their own best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.<sup>1</sup>

### **TERMS AND DEFINITIONS**

The Glossary of Terms in the addenda provides definitions for additional terms that are, and may be used in this appraisal.

### **INTENDED USE AND USER OF REPORT**

This appraisal is to be used by the client for internal decisions.

### **PROPERTY RIGHTS APPRAISED**

The interest appraised represents the leased fee interest.

### **SCOPE OF WORK**

The scope of the assignment relates to the extent and manner in which research is conducted, data is gathered and analysis is applied, all based upon the following problem-identifying factors stated elsewhere in this report:

- Client
- Intended use
- Intended user
- Type of opinion
- Effective date of opinion
- Relevant characteristics about the subject
- Assignment conditions

This appraisal of the subject has been presented in the form of a Self-Contained Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of USPAP. That is, this report incorporates, to the fullest extent possible, practical explanation of the data, reasoning and analysis that were used to develop the opinion of value. This report also includes

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<sup>1</sup> Office of Comptroller of the Currency (OCC), 12 CFR Part 34, Subpart C – Appraisals, 34.42 (g); Office of Thrift Supervision (OTS), 12 CFR 564.2 (g); Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> ed. (Chicago: Appraisal



thorough descriptions of the subject and the market for the property type. CBRE completed the following steps for this assignment:

***Extent to Which the Property is Identified***

CBRE collected the relevant information about the subject from the owner (or representatives), public records and through an inspection of the subject property. The property was legally identified through its postal address, assessor's records, and legal description. Economic characteristics of the subject were identified via an analysis of the lease and recent rent roll.

***Extent to Which the Property is Inspected***

CBRE inspected both the interior and exterior of the subject, as well as its surrounding environs on the effective date of appraisal.

***Type and Extent of the Data Researched***

CBRE reviewed the micro and/or macro market environments with respect to physical and economic factors relevant to the valuation process. This process included interviews with regional and/or local market participants, available published data, and other various resources. CBRE also conducted regional and/or local research with respect to applicable tax data, zoning requirements, flood zone status, demographics, income and expense data, and comparable listing, sale and rental information.

***Type and Extent of Analysis Applied***

CBRE analyzed the data gathered through the use of appropriate and accepted appraisal methodology to arrive at a probable value indication via each applicable approach to value. Approaches to value used include only the sales comparison and income approaches. The steps required to complete each approach are discussed in the methodology section. CBRE then correlated and reconciled the results into a reasonable and defensible value conclusion, as defined herein. A reasonable exposure time and marketing time associated with the value estimate presented has also been concluded.

**SPECIAL APPRAISAL INSTRUCTIONS**

There have been no special appraisal instructions for this assignment.

**EXPOSURE/MARKETING TIME**

Current appraisal guidelines require an estimate of a reasonable time period in which the subject could be brought to market and sold. This reasonable time frame can either be examined historically

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Institute, 2002), 177-178. This is also compatible with the RTC, FDIC, FRS and NCUA definitions of market value as well as the example referenced in the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

or prospectively. In a historical analysis, this is referred to as exposure time. Exposure time always precedes the date of value, with the underlying premise being the time a property would have been on the market prior to the date of value, such that it would sell at its appraised value as of the date of value. On a prospective basis, the term marketing time is most often used. The exposure/marketing time is a function of price, time, and use. It is not an isolated estimate of time alone. In consideration of these factors, we have analyzed the following:

- exposure periods for comparable sales used in this appraisal;
- marketing time information from the *CBRE National Investor Survey*; and
- the opinions of market participants.

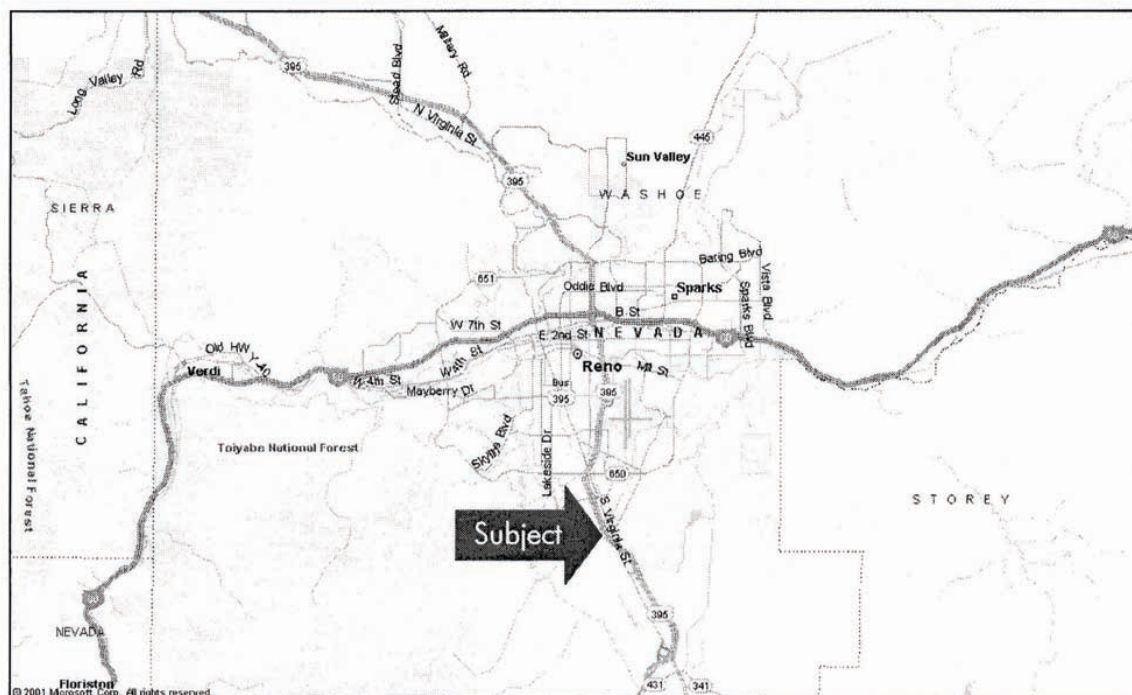
The following table presents the information derived from these sources.

EXPOSURE TIME INFORMATION		
Investment Type	Exposure Time (Months)	
	Range	Average
Comparable Sales Data	3.0 - 9.0	6.0
<i>CBRE Net Leased Investments</i>		
Class A	1.0 - 6.0	2.8
Class B	1.0 - 6.0	2.8
Class C	1.0 - 6.0	4.2
<i>CBRE Strip Centers</i>		
Class A	1.0 - 12.0	6.7
Class B	1.0 - 9.0	5.2
Class C	2.0 - 12.0	7.0
<i>Korpacez Net Lease</i>		
National Data	1.0 - 6.0	3.6
Local Market Professionals	6.0 - 12.0	9.0
<b>CBRE Estimate</b>	<b>12 Months</b>	
Source: CBRE National Investor Survey & Korpacez Real Estate Investor Survey		

In general, the improved sales indicate exposure times in the lower to middle portion of the range indicated by the investor survey. In addition to the sales and survey data, we have also reviewed the assumptions and conclusions reached, particularly the income estimates and rates of return and there potential impact on exposure/marketing time. Based on these analyses, we have concluded an exposure/marketing time of 12 months is considered reasonable for the subject.

This exposure/marketing time reflects current economic conditions, current real estate investment market conditions, the terms and availability of financing for real estate acquisitions, and property and market-specific factors. It assumes that the subject is (or has been) actively and professionally marketed. The marketing/exposure time would apply to all valuation premises included in this report.



**AREA ANALYSIS****RENO METRO AREA OVERVIEW**

Located in Washoe Valley at an elevation of 4,500 feet, Reno lies a few miles east of the Sierra Nevada Mountains and only 40 miles from Lake Tahoe, 140 miles east of Sacramento and 231 miles east of San Francisco. Called the "Hub of the West" the area is easily reached by highway travelers year round and offers overnight delivery service to nearly every major city in the west.

Moody's Economy.com provides the following Reno metro area economic summary as of August 2008. The full Moody's Economy.com report is presented in the Addenda.

## WINNERS CORNER -- SOUTH VIRGINIA

## AREA ANALYSIS

RENO ECONOMIC ANALYSIS												
Indicators	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Gross Metro Product, C\$B	14.6	14.7	15.4	16.9	17.7	18.3	18.3	18.1	18.4	19.2	19.8	20.4
% Change	2.9	1.0	4.9	9.4	5.1	3.2	-0.2	-1.0	2.0	3.9	3.2	3.0
Total Employment (000)	199.4	196.7	200.1	208.4	215.4	223.4	224.2	221.7	220.5	225.1	229.8	233.2
% Change	2.7	-1.3	1.7	4.2	3.3	3.7	0.4	-1.1	-0.5	2.1	2.1	1.5
Unemployment Rate	4.5	4.9	4.6	4.2	4.1	4.0	4.6	6.4	7.2	6.8	6.2	5.9
Personal Income Growth	6.6	1.0	4.7	11.8	6.5	7.0	7.9	4.7	4.0	6.0	6.1	5.4
Population (000)	355.2	365.4	374.8	385.1	394.8	402.2	410.3	416.2	422.8	432.0	441.9	450.7
Single-Family Permits	3,878	3,801	4,265	5,009	5,158	3,345	2,022	1,293	1,804	2,389	2,733	2,866
Multifamily Permits	1,076	915	768	734	1,171	325	88	100	152	354	446	468
Existing Home Price (\$Ths)	165.7	182.1	204.7	270.6	345.7	346.7	319.2	270.0	242.3	244.1	253.2	264.0
Mortgage Originations (\$Mil)	4,229	5,552	8,951	7,562	8,899	6,951	4,708	3,492	1,874	1,435	1,857	1,984
Net Migration (000)	8.1	7.9	7.1	8.1	7.4	4.8	5.2	3.5	4.1	6.7	7.3	6.2
Personal Bankruptcies	2,377	2,591	2,600	2,333	2,995	592	1,081	1,543	1,516	1,851	1,894	1,660

Source: Moody's Economy.com

**RECENT PERFORMANCE**

Reno's economy is firmly entrenched in recession, with overall job losses in each of the past six months and industrial production falling. Construction, financial activities, professional services and leisure/hospitality were all drivers of the recent expansion, but are now all in decline. The rest of the economy is stagnant. Yet new residents continue to arrive in the area and the labor force is still expanding, aiding the upward push in the unemployment rate to 6.6%, well above the national rate. The housing market is showing signs that it might be at its bottom as sales of existing homes have moved upward in the past two quarters. However, they are still at anemic levels and prices remain in free fall.

**TOURISM**

Cyclical factors will be a drag on Reno's leisure/hospitality industry until the national and regional economies recover. The speculation about whether the national recession would result in reduced tourism or whether it would result in increased visits to Reno as a less expensive regional destination seems to have been settled. Data through June indicate that there are far fewer passengers arriving at Reno-Tahoe International Airport and less traffic coming into the area from California via I-80. In June, gross gaming win fell 20% from a year earlier. In addition to declining leisure/hospitality employment each month since January, retail is beginning to see cuts. Not only are jobs in the industry edging down in recent months, but indications are that some merchants are closing as retail vacancy rates have edged up from 7.9% in January to 9% recently. Because the outlook for Northern California areas remains bleak, expect gaming and downstream industries to struggle into 2009.

**DIVERSITY**

Gaming will become a less important anchor for Reno's economy. In 1990, the area's leisure/hospitality industry had tripled the average concentration. Last year, it had less than twice the national concentration in employment, primarily a result of long-term growth in other industries, not



declines in gaming. Other industries have increased significantly, broadening the local economy and giving it less exposure to trends affecting tourism. The diversity index has more than doubled since 1990, now standing at 0.49, indicating typical breadth in Reno's industrial structure. A variety of consumer and business services, specialized manufacturing and transportation/distribution will contribute more substantially to long-term area growth.

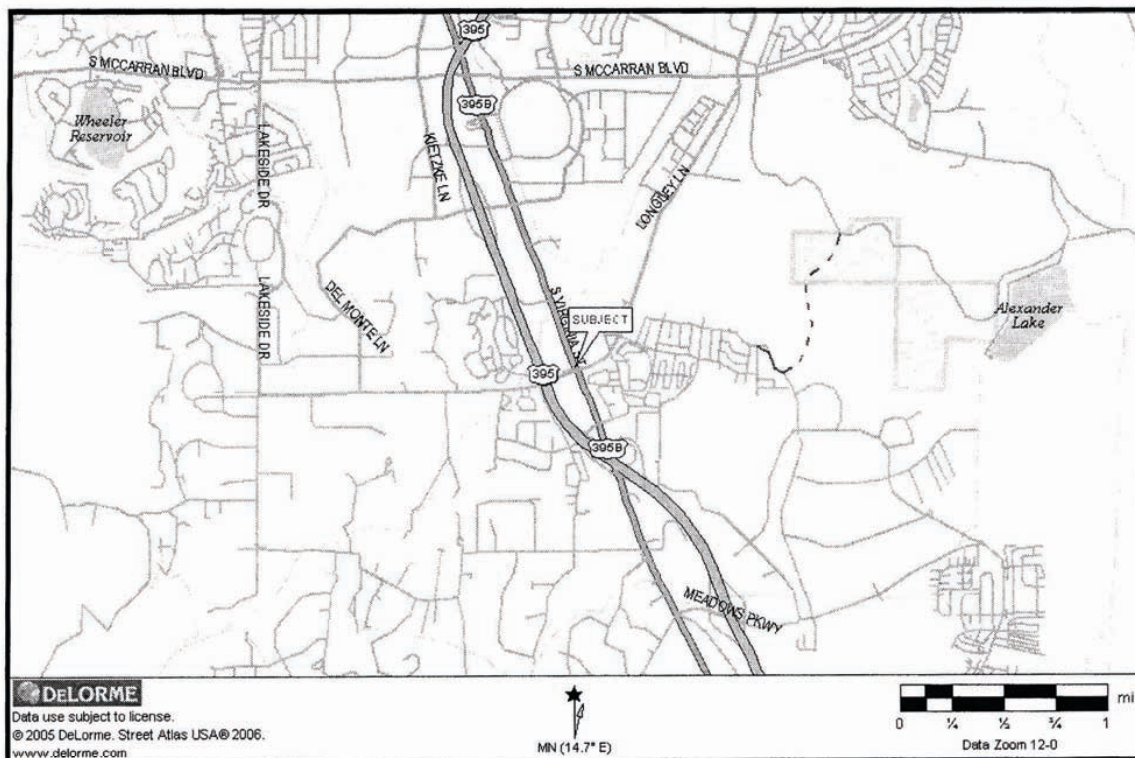
### **ERODING CREDIT**

Reno's recovery from the recession will require overcoming credit conditions that are eroding more rapidly than average. Despite high per capita incomes even after factoring in a higher than average cost of living, and less than average exposure to subprime lending, delinquency rates on all types of loans now surpass the national rate. The steep rise in unemployment is hamstringing residents' ability to meet debt, which requires a substantially greater share of Nevadans' incomes than average across the country. The result has been a steep rise in mortgage delinquencies, rising from 1% two years ago to more than 5% this year. Data also reveal that area residents are loading up their credit cards and delinquencies on this debt will be a burden in the short term.

### **CONCLUSION**

In the near term, Reno will magnify the sluggishness besetting the national economy. Longer term, its key gaming industry will face challenges from increasing Indian tribal casinos in California and better facilities in Las Vegas. While Reno is offsetting its declining advantage in gaming by diversifying its industrial structure, it will need to further develop modern industries with global reach. Competitive business costs will help Reno attract companies from across the state line. The metro area will post growth above average over the long term.



**NEIGHBORHOOD ANALYSIS****LOCATION**

The neighborhood is located in the city of Reno in southwest Washoe County, about five miles south of the Reno Central Business District. Reno is the main population center within the larger Reno-Sparks area and the largest city in northern Nevada.

**BOUNDARIES**

The neighborhood boundaries are detailed as follows:

North:	McCarran Boulevard
South:	South Meadows Parkway
East:	Mira Loma Road
West:	Lakeside Lane

**LAND USE**

Developments in the immediate area along Virginia Street are generally commercial in nature. The dominant development in the neighborhood is the Meadowood Mall, an 890,000 square foot regional mall anchored by Macy's (269,000), JC Penney (211,000) and Sears (194,000) and containing approximately 313,000 square feet of shop space. Surrounding the mall are numerous

mid-rise office projects and the largest concentration of retail development in the Reno-Sparks area. The mall is about one mile north of the subject and has a daily vehicle traffic count of approximately 125,000 vehicles. Other retail in the area includes three power centers, numerous restaurants, and stand alone retail. Office development is located along Virginia Street and Neil Road, just east of the mall.

To the south and west of the subject, west of Highway 395, are established single family residential subdivisions. Older homes in that area often have sites in excess of ½ acre. There are an increasing number of newer developments with higher densities; however, those are closer to the highway. As the distance increases from the highway, so does the anticipated home price as well as the lot sizes.

To the southeast of the subject, south of Highway 395 are several newer residential developments in the South Meadows area. These are characterized mostly by detached housing in tract home developments. There is a WinCo food store near the Highway 395 and Mays Lane intersection. However, that store is stand alone with no surrounding in line shop space.

East of the subject, across from Virginia Street, are several newer business parks in various stages of completion. These are characterized by two-story, pre-cast concrete tilt-up construction with glass panels. Also in this area between Virginia Street and these business parks are several apartment complexes.

### **GROWTH PATTERNS**

Growth patterns have occurred primarily along primary commercial thoroughfares such as State Highway 395 (a controlled access highway), South Virginia Avenue and South McCarran Boulevard. Overall, Reno continues to develop on its perimeters. This is particularly evident in the South Meadows area. As new employment centers are constructed, the residential and support commercial growth continues as well. From the present growth patterns, it is anticipated that a significant amount of Reno's growth will soon extend further south of the subject.

The areas to the west of Highway 395, up to the foothills will continue to be residential. The vacant areas to the east will continue with several newer business parks and residential development.

The subject neighborhood is best characterized as a retail/office hub for the metro area. Residential development includes a clustering of middle to upper middle income subdivisions, with most residents working in the central Reno area.

### **ACCESS**

Accessibility to the neighborhood is considered excellent. Regional access to the subject neighborhood is provided by State Highway 395, a controlled access highway. Highway 395 is



primarily an eight-lane, variable width right-of-way, traversing the neighborhood in a north-south direction. This arterial connects the subject neighborhood with the City of Reno to the north, and Carson City, located about 20 miles south. The nearest interchange is at S. Virginia Street, one block south of the subject.

Virginia Street is the other primary arterial street through the neighborhood. Virginia Street is a four-lane, asphalt paved street with a center turn lane and typical traffic light controls at key intersections.

Secondary access streets are Del Monte Lane/Neil Road, Longley Lane, and Mays Lane. These streets vary from two to four lanes and connect the surrounding residential neighborhoods to the primary arterial streets and commercial corridors.

Downtown Reno, although five miles north of the subject, can be a 20 to 30 minute commute on Virginia Street at peak traffic hours. This is due to the large commercial developments north of McCarran Boulevard as, well as numerous casinos. McCarran Boulevard is 1.75 miles north of the subject. That road is the belt-route around the Reno-Sparks metro area. The Reno-Tahoe Airport is about a ten minute drive from the subject.

## DEMOGRAPHICS

Selected neighborhood demographics in a one-, three-, and five-mile radius from the subject are shown in the following table:

<b>SELECTED NEIGHBORHOOD DEMOGRAPHICS</b>			
7695 S. Virginia St. Reno, NV	Radius 1.0 Mile	Radius 3.0 Mile	Radius 5.0 Mile
<b>Population</b>			
2013 Population	10,849	69,644	125,550
2008 Population	9,820	62,026	115,201
2000 Population	8,059	49,927	99,695
1990 Population	5,858	39,289	80,535
Annual Growth 2008 - 2013	2.01%	2.34%	1.74%
Annual Growth 2000 - 2008	2.50%	2.75%	1.82%
Annual Growth 1990 - 2000	3.24%	2.43%	2.16%
<b>Households</b>			
2013 Households	5,040	29,243	53,306
2008 Households	4,507	25,961	48,825
2000 Households	3,629	20,775	42,196
1990 Households	2,739	17,275	35,900
Annual Growth 2008 - 2013	2.26%	2.41%	1.77%
Annual Growth 2000 - 2008	2.75%	2.82%	1.84%
Annual Growth 1990 - 2000	2.85%	1.86%	1.63%
<b>Income</b>			
2008 Median HH Inc	\$47,346	\$50,901	\$51,428
2008 Estimated Average Household Income	\$59,203	\$70,129	\$74,394
2008 Estimated Per Capita Income	\$27,633	\$29,378	\$31,794
Age 25+ College Graduates - 2000	1,406	8,370	19,040
Age 25+ Percent College Graduates - 2008	20.7%	20.1%	23.9%
Source: CBRE			

## CONCLUSION

The subject property is an 18,639 square foot multi use property including a convenience store, car wash, quick lube and office building and conforms well to surrounding neighborhood infrastructure and support services. Recent growth in the neighborhood has primarily been related to retail development, which appears to be supported by both neighborhood demographics and the primary traffic carriers within the neighborhood.

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.

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**APPENDIX TO APPELLANTS' OPENING BRIEFS**

**VOLUME 8 OF 19**

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

## MARKET ANALYSIS

The market analysis forms a basis for assessing market area boundaries, supply and demand factors, and indications of financial feasibility.

### NATIONAL CONVENIENCE STORE OVERVIEW

The following national convenience store industry overview is taken from the National Association of Convenience Stores (NACS) State of the Industry (SOI) report.

#### ABOUT THE SOI

Published annually by the National Association of Convenience Stores (NACS), the full NACS State of the Industry (SOI) report is widely acknowledged as the most authoritative data collection about the convenience store and petroleum marketing industries.

The SOI has several applications for industry participants. For retailers, it is the industry's premier benchmarking tool, allowing companies to gauge their performance against industry averages (see the Benchmark Worksheet). It's also useful in negotiations with lenders, fuel suppliers and other business partners that seek confirmation of a company's potential in the context of the industry's performance. Suppliers find it useful for measuring category performance and anticipating industry investments in equipment, technology and new profit centers. Retail analysts and the media use the SOI to analyze the convenience store channel's performance compared to other channels and as background for reporting on the industry.

The SOI Highlights report is a brief review of top industry data, prior to the complete SOI report's publication. The Fact Book is a historical compilation of over 30 years of SOI report data, offering a comprehensive historical view of industry performance.

### HIGHLIGHTS OF THE CONVENIENCE STORE INDUSTRY'S PERFORMANCE

The convenience store industry realized a year of record-breaking heights in sales (\$569.4 billion) in 2006. Several factors were responsible for the 15% increase in total industry sales in 2006. By far the largest contributing factor was the run-up in the cost of motor fuels in 2006, which jumped 17.9%. In addition to the increase in motor fuels, there was an 8.3% increase in in-store sales from 2005 to 2006. Convenience store pretax profits were on a roll for most of the 1990's with an all time high in 1999 at \$41,000 per store. Since then, pretax profits per store experienced a downhill slide until 2003 when pretax profit started to rebound. Pretax profits per store were up to \$36,095 in 2004, this is a 17.6% increase over \$30,700 per store in 2003. In 2005, pretax profits per store increased 16.9% to \$42,195. This increase was due in part to the modest increase in in-store sales combined with a decrease in total fuel revenues. In 2006, pretax profits per store decreased 20.9%

## WINNERS CORNER -- SOUTH VIRGINIA

## MARKET ANALYSIS

to \$33,360. This decrease was due in part to the decrease in total fuel revenues. The following table presents the most updated convenience store statistics:

**CONVENIENCE STORE INDUSTRY HIGHLIGHTS**

	2003	Change From Prior Year	2004	Change From Prior Year	2005	Change From Prior Year	2006	Change From Prior Year
<b>INDUSTRY TOTALS</b>								
Stores	130,700	-1.3%	138,205	5.7%	140,655	1.8%	145,119	3.2%
Stores Selling Motor Fuel	106,200	4.3%	110,895	4.4%	112,007	1.0%	114,974	2.6%
Total Sales (\$Billion)	\$337.0	16.0%	\$394.7	17.1%	\$495.3	25.5%	\$569.4	15.0%
Merchandise	\$101.0	5.3%	\$116.3	15.2%	\$133.2	14.5%	\$144.8	8.7%
Foodservice	\$15.2	13.4%	\$15.8	3.9%	\$17.9	13.3%	\$18.8	5.0%
In-Store Total	\$116.2	6.3%	\$132.1	13.7%	\$151.1	14.4%	\$163.6	8.3%
Motor Fuels	\$220.8	21.8%	\$262.6	18.9%	\$344.2	31.1%	\$405.8	17.9%
Profit Before Taxes	\$4.004	54.6%	\$4.989	23.4%	\$5.895	18.2%	\$4.767	-19.1%
Fuel Gallons	142.1	9.9%	143.5	1.0%	145.8	1.6%	157.8	8.2%

\* Foodservice comprises food prepared on-site; hot, cold and frozen dispensed beverages; packaged sandwiches; and all other foodservice. Under the NACS category definition, foodservice items must be made or have some value added to the product on the premise.

Source: 2007 NACS/CSNews Industry Databank

**MOTOR FUEL**

Motor fuel sales in convenience stores have surged over the last eight years. Total dollar sales of motor fuel in convenience stores are more than double of what they were eight years ago. After increasing 34.7% in 1999, motor fuel sales in convenience stores rose another 23.2% in 2000, to only 3.4% in 2001 and 6.0% in 2002. This increase was due primarily to an increase in store counts and not in actual increased sales per store. Motor fuel sales increased by 31.1% in 2005, due in part to the 30.1% increase in fuel cost. Motor fuel revenues per store declined by 7.8% to \$2.84 million in 2006 from \$3.08 million in 2005 while gallons sold per store decreased 15.4%. Motor fuel revenues now account for 71.3% of total industry sales, up from 69.5% in 2005. Today, 82% of newly developed convenience stores sell motor fuel. Increased retail prices in 2006 did not translate into increased gross margins on a cents per gallon basis. The industry averaged 13.9 cents per gallon in 2006, a 14.7% decrease from 16.3 cents per gallon in 2005. Credit card fees continue to rise during periods of rising motor fuel prices but retailers were unable to cash in due to competitive pressures. Therefore, retailer margins on a percentage basis to sales were 5.8% in 2006 versus 6.9% in 2005. This is the lowest recorded margin percentage since 1983. The following table presents the motor fuel performance over the past three years.



## WINNERS CORNER -- SOUTH VIRGINIA

## MARKET ANALYSIS

**MOTOR FUEL PERFORMANCE**

	2003	2004	2005	2006
Gallons Per Month Per Store	113,900	107,852	108,733	101,650
Average Margin Cents Per Gallon	13.7	12.7	16.3	13.9
Yearly Gross Margin Dollars Per Store	\$186,800	\$164,367	\$212,096	\$170,030
Selling Price Per Gallon	\$1.55	\$1.83	\$2.36	\$2.54

Source: 2007 NACS/CSNews Industry Databank

**IN-STORE CATEGORY PERFORMANCE**

Cigarettes continued to hold the top spot for in-store sales while packaged beverages (non-alcoholic) beat out foodservice for the number two spot for the second consecutive year. Collectively these three categories account for over half of all in-store sales dollars. The top ten in-store categories are presented in the following table.

**TOP TEN PRODUCT CATEGORIES***as a percent of in-store purchases*

	2003	2004	2005	2006
1. Cigarettes	34.5%	34.7%	34.4%	34.4%
2. Packaged Beverages (non-alcoholic)	13.1	12.2	13.3	13.8
3. Foodservice	13.0	11.9	11.9	12.1
4. Beer	10.9	11.9	11.7	12.2
5. Other Tobacco	4.5	3.5	3.8	3.8
6. Candy	3.7	3.4	3.6	3.7
7. Salty Snacks	3.1	3.3	3.2	3.2
8. Fluid Milk Products	2.8	2.5	2.2	1.9
9. General Merchandise	2.6	2.0	2.3	2.0
10. Edible Grocery	1.2	1.9	1.0	1.1

Source: 2007 NACS/CSNews Industry Databank

Total in-store sales for the convenience store industry increased 8.3% in 2006, primarily attributable to increases in store count. The industry faced a more difficult operating environment but managed to grow sales but only at a price as gross margins dropped both for in-store and motor fuel. Reduced margins, particularly on motor fuel, was the catalyst for lower pretax profitability in 2006 to 0.8% of total sales. Pretax profits declined 19.1% for the year for the industry and 20.9% per store on average.

**CONVENIENCE STORE INDUSTRY HIGHLIGHTS**

	2003	Change From Prior Year	2004	Change From Prior Year	2005	Change From Prior Year	2006	Change From Prior Year
<b>INDUSTRY AVERAGES</b>								
Sales Per Store								
Merchandise	\$767,600	2.8%	\$841,661	9.6%	\$953,500	13.3%	\$1,013,389	6.3%
Foodservice *	\$115,400	10.5%	\$114,152	-1.1%	\$128,252	12.4%	\$131,334	2.4%
In-Store Total	\$883,000	3.8%	\$955,813	8.2%	\$1,081,752	13.2%	\$1,144,723	5.8%
Motor Fuel Revenues	\$2,123,200	16.7%	\$2,368,437	11.6%	\$3,080,600	30.1%	\$2,839,839	-7.8%
Motor Fuel Gallons	1,366,500	5.3%	1,294,228	-5.3%	1,304,795	0.8%	1,104,291	-15.4%
Operating Income/Store	\$76,900	9.5%	\$83,100	8.1%	\$110,507	33.0%	\$98,990	-10.4%
In-Store GM\$ /Store	\$270,200	8.2%	\$284,140	5.2%	\$319,478	12.4%	\$320,532	0.3%
Motor Fuel GM\$ /Store	\$186,800	13.1%	\$164,367	-12.0%	\$212,096	29.0%	\$163,399	-23.0%
EBITDA /Store	\$68,900	3.9%	\$73,840	7.2%	\$80,283	8.7%	\$83,194	3.6%
Profit /Store	\$30,700	50.5%	\$36,095	17.6%	\$42,196	16.9%	\$33,360	-20.9%
<b>Gross Profit Margin</b>								
In-Store	30.8%	4.8%	29.7%	-3.6%	29.5%	-0.7%	28.0%	-5.2%
Motor Fuel	8.8%	-3.3%	6.9%	-21.6%	6.9%	0.0%	5.8%	-16.4%
Motor Fuel Cents /Gal.	13.7	7.9%	12.7	-7.3%	16.3	28.3%	14.8	-9.0%
Profit Before Taxes	1.2%	33.3%	1.1%	-8.3%	1.2%	9.1%	0.8%	-30.2%
Invest./New Urban Store	\$2,052,000	-7.2%	\$2,919,082	42.3%	\$2,854,149	-2.2%	\$2,337,387	-18.1%

\* Foodservice comprises food prepared on-site; hot, cold and frozen dispensed beverages; packaged sandwiches; and all other foodservice. Under the NACS category definition, foodservice items must be made or have some value added to the product on the premise.

2007 NACS/CSNews Industry Databank

**STORE DEVELOPMENT**

During times of declining industry profitability there is usually a period of contraction in building new stores. However, despite declining pretax profits in the convenience store industry in 2000, 2001, and 2002, there continued to be strong increases in the store count during those years. 2003 saw a fall in the industry store count. However, 2004 exhibited a 5.7% growth in store count to 138,205 stores by year end and 2005 exhibited a 1.8% growth in store count to 140,655 stores by year end. In 2006, there was an all-time high of 145,119 stores, up 3.2% from 2005. A primary reason for the strong increase in the number of stores is the evolution of existing non-convenience stores that were reclassified or remodeled to include a broader merchandise mix.

On the urban versus rural front, while more stores continued to be opened in urban areas, it was less than experienced in previous years. The steady decline in the number of stores opened in urban areas may indicate the industry is reaching urban saturation.

In addition, it remains more expensive to build new stores in urban areas compared to rural areas. In 2006, the cost to build a new urban store experienced a minor decrease from 2005, while the cost for building a new rural store experienced only a minor increase. Lower land costs and building costs contributed to the cost decrease for new urban stores.



Additionally, the average property size for new urban and rural stores increased 35.8% and 16.4%, respectively. Overall, however, the vast majority of stores (84.0%) are between 2,000 and 2,999 square feet.

## DEMOGRAPHIC ANALYSIS

Demand for additional retail property is a direct function of population change and household income. Retail properties are products of a clearly definable demand relating directly to population shifts and income patterns.

### *Housing, Population and Household Formation*

The following table illustrates the population and household changes for the subject neighborhood with primary focus on the three-mile radius.

POPULATION AND HOUSEHOLD PROJECTIONS			
	Radius 1.0 Mile	Radius 3.0 Mile	Radius 5.0 Mile
Population			
2013 Population	10,849	69,644	125,550
2008 Population	9,820	62,026	115,201
2000 Population	8,059	49,927	99,695
1990 Population	5,858	39,289	80,535
Annual Growth 2008 - 2013	2.01%	2.34%	1.74%
Annual Growth 2000 - 2008	2.50%	2.75%	1.82%
Annual Growth 1990 - 2000	3.24%	2.43%	2.16%
Households			
2013 Households	5,040	29,243	53,306
2008 Households	4,507	25,961	48,825
2000 Households	3,629	20,775	42,196
1990 Households	2,739	17,275	35,900
Annual Growth 2008 - 2013	2.26%	2.41%	1.77%
Annual Growth 2000 - 2008	2.75%	2.82%	1.84%
Annual Growth 1990 - 2000	2.85%	1.86%	1.63%

Source: CBRE

As shown, the subject's neighborhood is experiencing moderate positive increases in both population and households.

### *Income Distributions*

Household income available for expenditure on consumer items is a primary factor in determining the retail supply and demand levels in a given market area. In the case of this study, a projection of household income identifies (in gross terms) the market from which the subject submarket draws. The following table illustrates estimated household income distribution for the subject neighborhood.

<b>HOUSEHOLD INCOME DISTRIBUTION</b>			
	Radius 1.0	Radius 3.0	Radius 5.0
Households by Income Distribution - 2008	Mile	Mile	Mile
Less than \$15K	8.01%	9.73%	10.43%
\$15K - \$25K	9.12%	10.25%	10.74%
\$25K - \$35K	14.29%	12.34%	12.05%
\$35K - \$50K	22.25%	16.78%	15.47%
\$50K - \$75K	24.47%	20.49%	19.02%
\$75K - \$100K	10.94%	11.71%	11.42%
\$100K - \$150K	7.32%	11.58%	12.14%
\$150K - \$250K	2.53%	4.59%	5.39%
\$250K - \$500K	0.64%	1.81%	2.22%
\$500K or more	0.42%	0.72%	1.12%

Source: CBRE

The following table illustrates the median and average household income levels for the subject neighborhood.

<b>HOUSEHOLD INCOME LEVELS</b>			
	Radius 1.0	Radius 3.0	Radius 5.0
Income	Mile	Mile	Mile
2008 Median HH Inc	\$47,346	\$50,901	\$51,428
2008 Estimated Average Household Income	\$59,203	\$70,129	\$74,394
2008 Estimated Per Capita Income	\$27,633	\$29,378	\$31,794

Source: CBRE

An analysis of the income data indicates that the submarket is generally comprised of middle economic cohort groups, which include the target groups to which the subject is oriented.

### **Retail Sales Volumes**

The following table illustrates retail sales for the subject's market area at given radii intervals from the subject.



## WINNERS CORNER -- SOUTH VIRGINIA

## MARKET ANALYSIS

RETAIL EXPENDITURES (\$000's)									
SUBJECT'S SUBMARKET									
Product Sample	Radius 1.0 Mile			Radius 3.0 Mile			Radius 5.0 Mile		
	2008	2013	%/Yr	2008	2013	%/Yr	2008	2013	%/Yr
All Retail Stores	123,073	159,821	5.4%	784,640	1,038,271	5.8%	1,495,690	1,914,771	5.1%
Grocery Stores	26,750	32,857	4.2%	167,844	209,296	4.5%	316,129	381,913	3.9%
Eating Places	14,420	19,928	6.7%	87,981	124,346	7.2%	167,060	228,151	6.4%
Drinking Places	708	900	4.9%	4,303	5,654	5.6%	8,426	10,683	4.9%
Health and Personal Care Stores	6,880	10,463	8.7%	44,303	68,826	9.2%	86,194	129,763	8.5%
Building Material & Garden Equipment & Supplies	2,154	2,682	4.5%	17,730	22,744	5.1%	34,744	42,766	4.2%
Hardware Stores	300	387	5.2%	2,222	2,945	5.8%	4,292	5,473	5.0%
Lawn & Garden Equipment & Supplies Dealers	360	466	5.3%	2,609	3,452	5.8%	5,045	6,445	5.0%
Furniture Stores	2,510	3,236	5.2%	17,608	23,372	5.8%	34,300	43,938	5.1%
Other Home Furnishing Stores	1,562	1,961	4.7%	12,182	15,853	5.4%	24,161	30,217	4.6%
Household Appliance Stores	619	749	3.9%	4,361	5,431	4.5%	8,389	10,071	3.7%
Radio/TV/Other Electronics Stores	1,555	1,901	4.1%	9,959	12,511	4.7%	19,042	23,141	4.0%
Department Stores (Excluding Leased)	11,927	15,049	4.8%	79,474	102,921	5.3%	151,686	190,227	4.6%
Clothing and Clothing Accessory Stores	8,153	10,097	4.4%	54,485	69,615	5.0%	104,381	128,999	4.3%
Shoe Stores	953	1,144	3.7%	6,279	7,759	4.3%	11,757	14,082	3.7%
General Merchandise Stores	17,988	22,571	4.6%	118,061	151,788	5.2%	224,782	279,873	4.5%
Warehouse Clubs and Superstores	4,733	5,848	4.3%	29,923	37,675	4.7%	56,512	68,908	4.0%
Full Service Restaurants	7,707	10,633	6.6%	48,186	68,267	7.2%	93,325	127,438	6.4%
Fast Food Restaurants	6,712	9,294	6.7%	39,794	56,081	7.1%	73,729	100,711	6.4%
Jewelry Stores	1,312	1,661	4.8%	9,179	12,064	5.6%	18,394	23,238	4.8%
Book Stores	1,385	1,637	3.4%	8,558	10,611	4.4%	16,335	19,510	3.6%
Gift, Novelty, and Souvenir Shops	883	1,058	3.7%	5,650	6,942	4.2%	10,868	12,885	3.5%
Florists	149	186	4.6%	1,074	1,383	5.2%	2,093	2,597	4.4%
Hobby, Toy, and Game Shops	1,000	1,235	4.3%	6,672	8,405	4.7%	12,497	15,234	4.0%
Sporting Goods Stores	1,202	1,541	5.1%	8,430	11,137	5.7%	16,192	20,658	5.0%
Camera/Photographic Supply Stores	95	107	2.5%	629	727	2.9%	1,203	1,340	2.2%
Luggage and Leather Goods Stores	120	163	6.4%	828	1,154	6.9%	1,624	2,183	6.1%
Sew/Needlework/Piece Goods Stores	222	263	3.4%	1,438	1,731	3.8%	2,736	3,175	3.0%
Convenience Stores	1,411	1,731	4.2%	8,466	10,524	4.4%	15,903	19,133	3.8%
Home Centers	550	684	4.4%	4,499	5,781	5.1%	8,829	10,895	4.3%
Nursery and Garden Centers	320	418	5.5%	2,280	3,037	5.9%	4,406	5,668	5.2%
Computer and Software Stores	999	1,242	4.5%	6,379	8,126	5.0%	12,253	15,061	4.2%
Clothing Accessory Stores	133	164	4.4%	905	1,166	5.2%	1,777	2,209	4.4%
Auto Dealers	22,097	30,639	6.8%	133,361	187,260	7.0%	254,300	345,298	6.3%
Automotive Part, Accessories & Tire Stores	1,307	1,491	2.7%	7,675	8,872	2.9%	14,483	16,200	2.3%
Gasoline Stations with Convenience Stores	8,827	11,857	6.1%	51,623	70,228	6.3%	96,591	127,180	5.7%
Gasoline Stations without Convenience Stores	4,133	5,810	7.0%	24,054	34,307	7.4%	44,988	62,094	6.7%
Electronic Shopping and Mail Order	3,918	5,018	5.1%	25,418	33,479	5.7%	48,895	62,304	5.0%
Total Accommodation and Food Services	18,480	25,241	6.4%	114,696	160,386	6.9%	219,444	296,305	6.2%

Source: CBRE

Source: CBRE

As noted, demand for most retail products is expected to increase over the next five years. The annual rate of increase ranges from 5.1% to 5.8% for all retail sales. Demand for gas stations with convenience store is expected to increase 6.1%, 6.3% and 5.7% annually within a one-, three-, and five-mile radius of the subject.

### Outlook

Based on this analysis, the immediate area surrounding the subject is projected to experience moderate, positive growth relative to households, population, income levels and retail expenditures into the near future. Given the area demographics, it appears that demand for both comparable surrounding area retail properties and the subject will continue to be favorable.



## MARKET OVERVIEW

The following discussion illustrates some general observations in the surrounding retail market.

### Market Summary

As of First Quarter 2008, approximately 856,000 square feet of retail space is under construction including Legends at Sparks Marina, which is easily the largest retail development in the history of Sparks and will total over 1.1 million square feet upon completion. It is estimated that the development could increase the city's sales tax revenue by 50%. Deals are reportedly done with Target, Best Buy, T-Rex, I-Max 13-Screen Theater, Saddle Ranch Chop House, Road House, Brooks Brothers, Off Broadway Shoes, Olympia Gaming with 40 to 50 other retailers and restaurants in various stages of negotiations. Scheels All Sports, 248,000 square feet and advertised as "the largest sporting goods store in the world", opened September 27, 2008 with the balance of the center opening in 2009. Wal-Mart recently pulled out of the development as they cut back store expansions nationally.

Other significant retail developments under construction are comprised of Eagle Landing, Los Altos Crossing, Pioneer Meadows, Sparks Galleria Phase II, Summit Sierra Phase II and Virginia Plaza. Another 2.84 million square feet is proposed over the next few years.

Market statistics for the Reno area and South Reno submarket are shown in the following table:

<b>RETAIL MARKET STATISTICS</b>		
Category	Reno Area	South Reno
Existing Supply (SF)	14,046,877	2,069,437
New Construction (SF) (2007)	503,254	0
Under Construction (SF) (2008)	856,291	82,181
Proposed Construction (SF)	2,838,491	107,500
Absorption (SF)	600,000	0
Average Occupancy	91.8%	96.0%
Average Rent PSF	\$22.08	\$26.64
Average Rent PSF (NEW)	\$30.00 - \$42.00	---
Date of Survey	1st Qtr 2008	
Source: Colliers International 1st Qtr 2008		

There are approximately 2.8 million square feet of new retail proposed for the next two to three years with over 800,000 square feet under construction. In addition, several existing retailers are either expanding or renovating to compete with the new supply coming into the market. The following table proposed and expanding developments over 10,000 square feet.

**RETAIL PROPOSED AND UNDER CONSTRUCTION****Under Construction**

<b>Project</b>	<b>SF</b>
Spanish Springs Shopping Center	7,200
Paradise Plaza	7,400
960-970 S McCarran Blvd	10,800
Wild Creek Commerce Center	14,600
Montage	18,473
Los Altos Crossing	27,028
Galena Crossing	28,650
Summit Sierra	31,001
Standford Crossing	43,737
Towne Center at Virginia Lake	52,000
Pioneer Meadows	57,000
Eagle Landing	67,564
Sparks Galleria	87,042
Legends at Sparks Marina	248,000

**Planned/Proposed or Expansion**

<b>Project</b>	<b>SF</b>
Double R Galleria	12,000
Paradise Plaza	14,500
Sharlands Centre Point	17,000
Kiley Ranch Marketplace	24,000
Airport Gateway	24,400
Calle De La Plata	28,520
North McCarran Crossing	29,280
9720 S Virginia Street	30,928
Stead Crossing	32,500
Somerset Town Square	35,000
Summitt Sierra	52,500
Damonte Ranch Town Center	55,000
Northtowne Commons	59,432
Canyon Center	59,806
Longley Town Center	60,500
Shoppers Square	62,300
Pioneer Meadows	81,950
Village at Whites Creek	90,000
Sparks Galleria	112,272
Damonte Ranch Town Center	174,982
Super Wal-Mart	225,000
Reno Design District	255,848
Kiley Ranch Marketplace	516,000
Legends at Sparks Marina	876,413

Source: Colliers Retail Market Report 1st Qtr. 2008

Summit Sierra, Double R Galleria and Damonte Ranch Town Center, are located in the subject's submarket.

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.

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**APPENDIX TO APPELLANTS' OPENING BRIEFS**

**VOLUME 8 OF 19**

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## **CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
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	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
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	Exhibit 7: February 3, 2017 Letter		13	2838-2865
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34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
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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
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39.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	16	3585-3589
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41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	16	3595-3598

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54.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	17	3942-3950

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	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
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	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
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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
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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
<b><u>ADDITIONAL DOCUMENTS</u></b>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] <sup>1</sup>	01/04/18	19	4353-4357

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

**Market Trends**

The table below presents the annual average vacancy over the past seven years for the Reno/Sparks market area.

<b>RETAIL MARKET TRENDS</b>		
Date	<b>Reno</b>	<b>South Reno</b>
	Vacancy	Vacancy
Oct-01	4.4%	---
Oct-02	6.2%	---
Oct-03	5.3%	---
Oct-04	4.6%	---
Dec-05	5.3%	---
Jan-07	8.2%	---
Jan-08	8.2%	4.0%

Source: Colliers International 1st Qtr 2008

Occupancy has remained generally stable through the Reno market over the past several years. Rental rates should remain stable or show a gradual increase in the foreseeable future. Concessions have been virtually non-existent for the past several years. Attributing to the current vacancy are older centers, which have lost their major anchor tenants and have not yet been reabsorbed. The following table illustrates vacancy by submarket as of the 1<sup>st</sup> Quarter 2008:

<b>VACANCY RATES BY SUBMARKET</b>	
Submarket	Vacancy
Airport	9.4%
Kietzke	15.7%
Meadowood	4.5%
North Valleys	10.1%
NE Reno	54.8%
NE Sparks	71.2%
NW Reno	8.5%
Park Lane	16.3%
Reno Redev	60.6%
<b>South Reno</b>	<b>4.0%</b>
S Virginia	0.0%
SW Reno	6.2%
Spanish Springs	0.0%
Sparks Indust	3.8%
Sparks Redev	75.2%
West Sparks	8.7%

Source: Colliers Retail Market Report 1st Qtr. 2008



## WINNERS CORNER -- SOUTH VIRGINIA

## MARKET ANALYSIS

The subject is located in the South Reno submarket. As indicated in the previous table, NE Reno, NE Sparks and the two redevelopment areas have the highest vacancy rates, which are attributed to the older ages of the existing centers. Conversely new areas such as Spanish Springs and South Reno, vacancy is nearly non-existent.

In addition to the local real estate reports prepared by local brokers, Real Capital Analytics Reports the following trends as of the 2<sup>nd</sup> Quarter 2008:

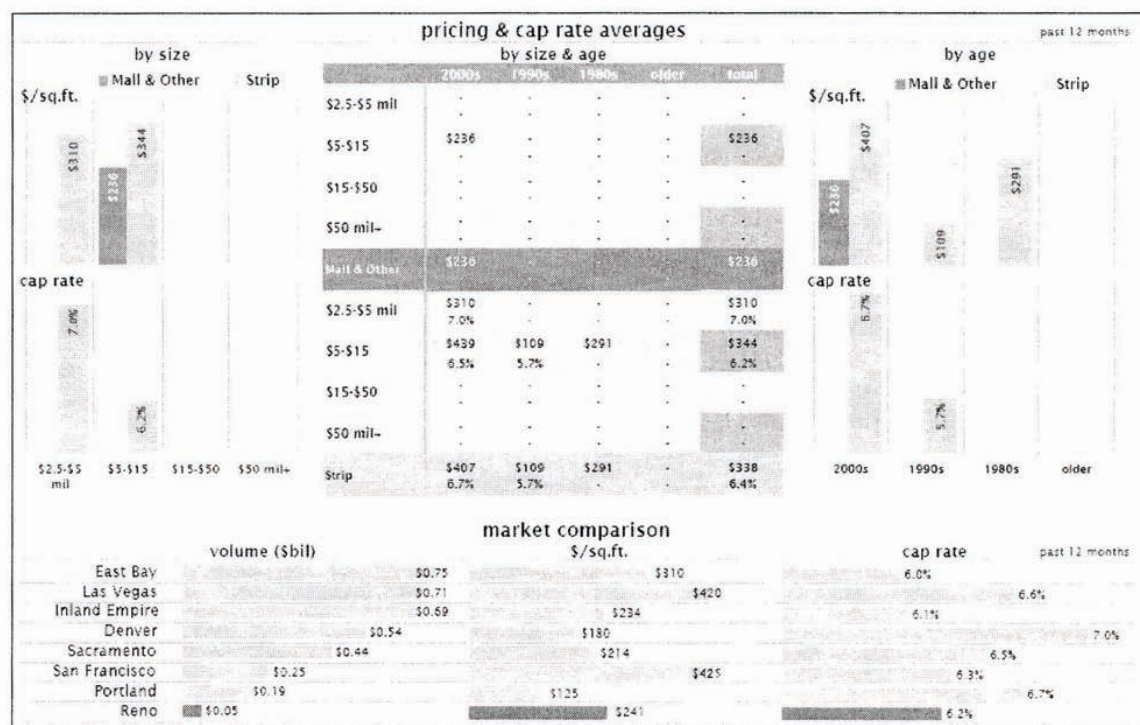
past 12 months	Mall & Other		Strip		Reno		US Total	
	chng <sup>+</sup>		chng <sup>+</sup>		chng <sup>+</sup>		chng <sup>+</sup>	
volume (\$ mil)	\$8	-95%	\$42	-88%	\$50	-90%	\$41,637	-47%
properties sold	1	-67%	5	-72%	6	-71%	2,796	-36%
avg \$/sq.ft.	\$236	241%	\$242	6%	\$241	25%	\$191	2%
top quartile	\$236	23%	\$470	61%	\$445	36%	\$397	-100%
median	\$236	62%	\$369	67%	\$330	49%	\$234	18%
bottom quartile	\$236	136%	\$291	71%	\$250	47%	\$136	8%
wtd avg cap rate	-	-	6.2%	-10	6.2%	-14	6.3%	-1
top quartile	-	-	6.1%	-3	6.1%	-4	6.1%	3
median	-	-	6.5%	10	6.5%	0	6.6%	0
bottom quartile	-	-	6.5%	-52	6.5%	-74	7.1%	-4
mtg interest <sup>†</sup>	-	-	6.06%	-	6.06%	-	6.27%	-
	-	-	-	-	-	-	70% ltv/1.4x dscr	-
% ask achieved	98%	-	98%	-	98%	-	94%	-
% chng offerings	16%	-	11%	-	12%	-	23%	-

<sup>+</sup>percent or bps change vs. prior 12 mos.

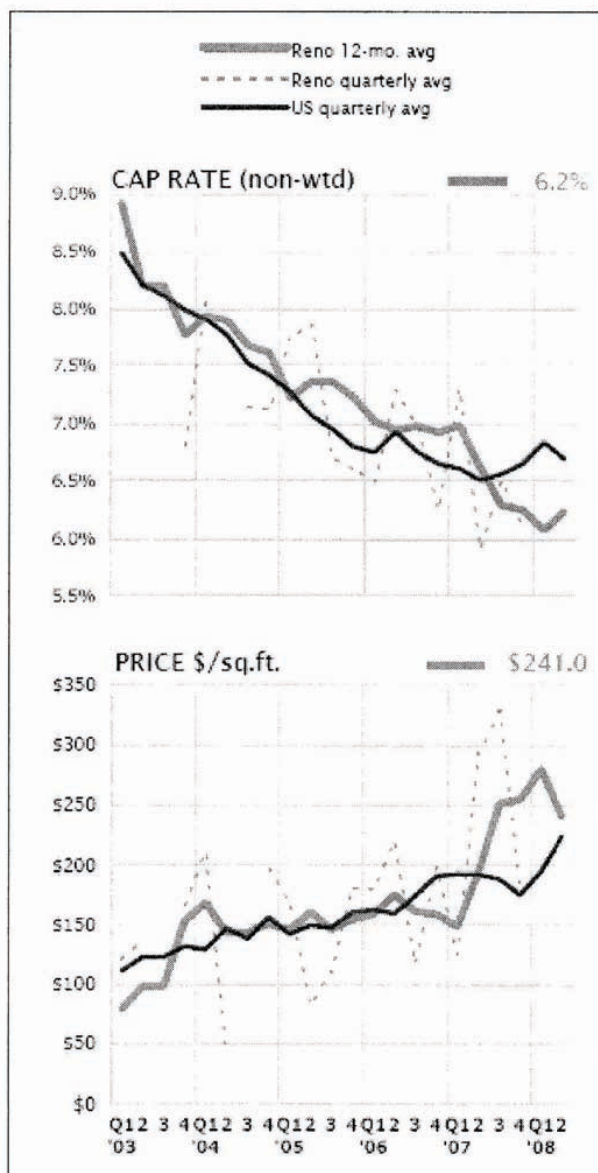
<sup>†</sup>for 5-10yr fixed rate conduit mortgages

## WINNERS CORNER -- SOUTH VIRGINIA

## MARKET ANALYSIS



As indicated above retail properties continue to trade at sub seven capitalization rates with an average price per square foot of \$241.00 per square foot.



### Barriers to Entry

Barriers to entry for the retail market include typical barriers, such as the number of households and the household income required in support of the retail market. The number of new households in the Reno area and the subject's sub-market continues to increase at a moderate pace. The area's per capita and per household income also continues to increase at moderate levels. Retailers and developers carefully watch these two indicators, in addition to the market rents received. These increases show gradual, positive growth in the subject's sub-market as well as the Reno area.



The zoning and city authorities have continually demonstrated a pro-growth attitude. Retail space is generally confined to the commercial corridors. There was nothing noted to suggest adverse governmental land restrictions for the entire area. There are no extraordinary or adverse barriers to entry concluded.

**Demand Generators**

Job growth, housing starts, and the steady increase income and tourism have all contributed to the increase in demand. As previously stated, there is significant residential development in the Reno Market. This has contributed to the continued demand on retail trade and services. All of the local retail and service industries have reported positive growth and an increase in demand for workers in these related fields. Currently, supply of retail space has not outpaced demand. Demand and absorption are anticipated to increase until the submarket equals the overall market occupancy rate.

Demand for the subject's retail component will be the surrounding office and residential base in the neighborhood coupled with the demand created by the subject's proposed office and residential components.

**SINGLE TENANT INVESTMENTS**

The subject is a single tenant retail investment subject to an absolute net lease with the tenant responsible for all operating expenses for the property sometimes referred to as a passive investment similar to a bond since ownership typically requires minimal effort or management.

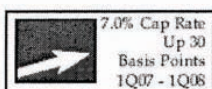
The outlook for single-tenant retail properties should improve through the rest of 2008, as the economy is expected to gain some momentum in the second half. During the second quarter, however, the University of Michigan consumer sentiment index reached a 26-year low, as employment losses, record-high energy prices and tighter lending standards are suppressing consumer confidence and spending. Department stores, furniture outlets and apparel retailers are already feeling the effects of more modest spending, and while the government's economic stimulus package may help somewhat, growth in same-store retail sales is expected to remain limited. Better-performing asset classes will be those that sell necessities at bargain prices. Wholesalers, discount retailers and drugstores should weather the downturn best. Higher fuel costs are allowing big-box stores with gas stations, such as Wal-Mart, Sam's Club and Costco, to capture market share from traditional gas stations, where prices are typically higher.

The investment outlook for single-tenant properties is expected to be mixed throughout the rest of the year, with buyers becoming increasingly selective. The impact of slower economic growth, tighter underwriting and fewer apartment owners crossing over into single-tenant retail properties is causing a slowdown in sales velocity, trends that are expected to continue during the next few quarters. The uncertain climate is resulting in investors pursuing safe choices, with buyers typically targeting

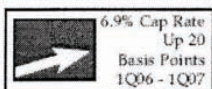
national-credit tenants in primary markets. As such, well-located, necessity-based retail properties such as drugstores and gas stations have continued to change hands while other assets are receiving few offers. Cap rates have edged higher, but the deep discounting that some opportunistic buyers have been hoping for are not expected to materialize this year.

The following are some general observations for single tenant retail:

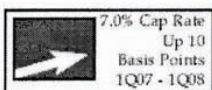
#### SINGLE-TENANT RETAIL MARKET OVERVIEW



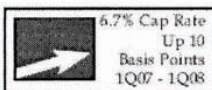
**Quick Service Restaurants:** McDonald's will install coffee bars at all of its U.S. locations over the next two years, a move that is the biggest addition to the company's menu in 30 years.



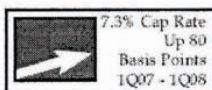
**Discounters/Big-Box:** Costco reported a 7 percent gain in U.S. same-store sales growth for the four weeks ending on May 4, 2008, compared to the same period a year earlier. The increase in sales was spurred by a 17 percent spike in gasoline prices.



**Casual Dining:** Year-over-year sales at Chipotle rose 37 percent in the first quarter of 2008, due partially to new store openings. The company opened 28 new restaurants during the first quarter and had comparable sales growth of 10.2 percent. Revenue for the first quarter of 2008 increased 29.3 percent to \$305.3 million from \$236.1 million one year earlier.



**Drugstores:** Major drugstores such as Walgreens and CVS continue to attract buyers, but they are facing greater competition from discounters. Wal-Mart's \$4 generic prescription drug program has been effective in capturing market share from drugstores.



**Grocery Stores:** Sales velocity for grocery stores has fallen by nearly 20 percent over the last 12 months; however, supermarkets may be one of the few segments to register any strength in sales going forward as consumers change their spending habits and decide to prepare more meals at home.

Generally speaking capitalization rates are trending upward by 10 to 80 basis points from the 1<sup>st</sup> Quarter 2007 depending on the product type. The subject is a mixed use freestanding retail product that includes fuel, carwash, quick lube with a convenience store that includes a quick service restaurant leased to Port of Subs; however, the entire property is master leased by BHI. The following are some general observation specific to the subject's product type;





## QUICK SERVICE RESTAURANTS

### Innovation and Mergers Driving Growth

In an effort to weather the recent slowdown in consumer spending, fast-food franchises are turning to innovation and mergers to ignite future sales growth. McDonald's, which experienced its first same-store sales decline in five years last March, plans to install coffee bars at all of its U.S. locations within the next two years. It is the biggest addition to the company's menu in 30 years, with forecasts calling for \$1 billion in annual sales. In an effort to capture greater market share, Wendy's International Inc. will be acquired by Arby's parent, Triarc, in a stock deal valued at about \$2.3 billion, excluding debt. When completed, Wendy's and Arby's will combine to form the third-largest fast-food company in the world.

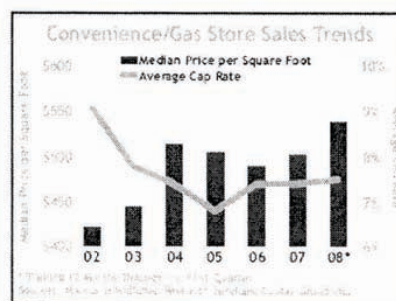
The investment outlook for quick-service restaurant properties remains healthy, despite fewer properties changing hands. Sales velocity has declined by 9 percent over the last 12 months, due in large part to fewer investors allocating 1031-exchange proceeds from apartment sales into fast-food properties. With fewer buyers in the market, the median price has dropped 3.7 percent to \$439 per square foot year over year, and cap rates have climbed 30 basis points to 7 percent during that time.

## CONVENIENCE STORES/GAS STATIONS

### Operators Under Close Observation as Oil Prices Surge Higher

With gas prices approaching \$4 per gallon, convenience stores and gas station properties will be under greater scrutiny from investors. Traditionally, operators of these businesses have been slow to pass along higher gas prices to the public for fear of driving away customers. Business owners will want to pay particular attention to the rapid changes in fuel prices that have been occurring in recent months. In the current climate, thousands of dollars can be left in the underground storage tanks if operators focus solely on volume and are lax about margins.

While single-tenant sales velocity has slowed in recent quarters, convenience stores and gas stations continue to attract buyers. Over the last 12 months, velocity has ticked up by 1 percent, as buyers have been attracted to cap rates in the mid-7 percent range. The increased buying activity, along with more properties changing hands in primary markets, has driven the median sales price for assets in this segment nearly 12 percent higher to \$539 per square foot over the past year.



## REGIONAL SALES TRENDS

Triple net leased investments typically trade based on a desired return on the investment. Many factors such as location, tenancy, industry and length of term remaining on the lease have an effect on the OAR. The following are regional NNN leased investment sales that are either being marketed as for sale or have closed in the past six months.

## WINNERS CORNER -- SOUTH VIRGINIA

## MARKET ANALYSIS

**NATIONAL SALES TRENDS**

Tenant	Location	Sale Date	Sale Price	Size (SF)	Price/SF	OAR
Terrible Herbst	NV	Listing	\$1,780,364	2,346	\$758.89	8.25%
Jiffy Lube	NV	Listing	\$1,703,704	3,500	\$486.77	8.10%
Jiffy Lube	NV	Listing	\$970,569	2,300	\$421.99	6.50%
Jiffy Lube	NV	Listing	\$2,100,000	2,000	\$1,050.00	7.50%
Jiffy Lube	NV	Listing	\$700,000	1,936	\$361.57	8.00%
Walgreens	CA	Listing	\$10,400,000	14,820	\$701.75	6.01%
Walgreens	AZ	Listing	\$3,400,000	13,905	\$244.52	7.28%
Rite Aid	CA	Listing	\$6,875,000	17,340	\$396.48	7.91%
Rite Aid	CA	Listing	\$4,700,000	16,320	\$287.99	6.23%
Rite Aid	AZ	Listing	\$5,350,000	17,340	\$308.54	7.20%
Winners Corner	NV	Sale	\$1,560,000	2,400	\$650.00	6.50%
Walgreens	CO	Sale	\$3,679,500	13,905	\$264.62	7.00%
KFC/Taco Bell	CA	Sale	\$1,275,000	3,200	\$398.44	6.27%
Auto Plaza	AZ	Sale	\$2,400,000	10,500	\$228.57	7.11%
Big O Tires	AZ	Sale	\$945,000	5,350	\$176.64	7.01%
EZ Lube	AZ	Sale	\$1,629,000	3,108	\$524.13	7.00%
CVS	AZ	Sale	\$6,241,000	13,824	\$451.46	6.50%
Buffalo Wild Wings	AZ	Sale	\$3,725,000	6,121	\$608.56	6.75%
Big O Tires	CO	Sale	\$3,400,000	8,696	\$391.00	7.35%
Brake Master	CO	Sale	\$1,200,000	3,140	\$382.17	7.65%
EZ Lube	AZ	Sale	\$1,650,000	2,539	\$649.86	6.98%

Compiled by CB Richard Ellis

The comparables indicate a range in OARs from 6.00% to 8.25% with most sales falling in the range of 6.5% to 7.5% while national tenants typically indicate the low end of the range with auto service centers indicative of the upper end of the range. Given the range in OARs presented, active real estate brokers were also interviewed.

**OVERALL CAPITALIZATION RATES - RETAIL**

Respondent	Company	OAR	Income	Date of Survey
Phil Tripoli	39 Commercial Realty, Inc	6.50%-7.25%	Current w/bump	Oct-06
Aimon Noursoultanova	CBRE, Inc	7.50%-8.50%	Current w/bump	Oct-06
Dan Gluhaich	Sperry Van Ness	Near 7.00%	Current w/bump	Oct-06
Bernard Haddigan	Marcus & Millichap	Near 7.50%	Current w/bump	Oct-06
<b>Indicated OAR:</b>				<b>7.50%</b>

Compiled by: CBRE



## SUBJECT TRENDS AND PROJECTIONS

### Occupancy

Occupancy rate is the relationship between the actual income received from a property and the income that would be received if the entire space were occupied. Consequently, the occupancy rate is a product of both (1) the relationship between the amount of occupied space in a building or market (physical) and (2) the relationship between the contract rent for the occupied building or market space and the total rent estimated for all space in the building or market (economic).

### Subject's Historical Trends

The subject is 100% occupied under a single tenant lease extending through 2023.

### Conclusion

Based on the foregoing analysis, CBRE's conclusion of stabilized occupancy for the subject is illustrated in the following table. This estimate considers both the physical and economic factors of the market.

OCCUPANCY CONCLUSIONS	
Reno Area	91.8%
Submarket	96.0%
Rent Comparables	100.0%
Subject's Current Occupancy	100.0%
Subject's Stabilized Occupancy	98.0%
Compiled by CBRE	

### Tenant Analysis

The subject is fully occupied by a single-tenant, Winner's Corner Convenience Store, under a long-term lease. The tenant is a subsidiary of Berry-Hinckley Industries.

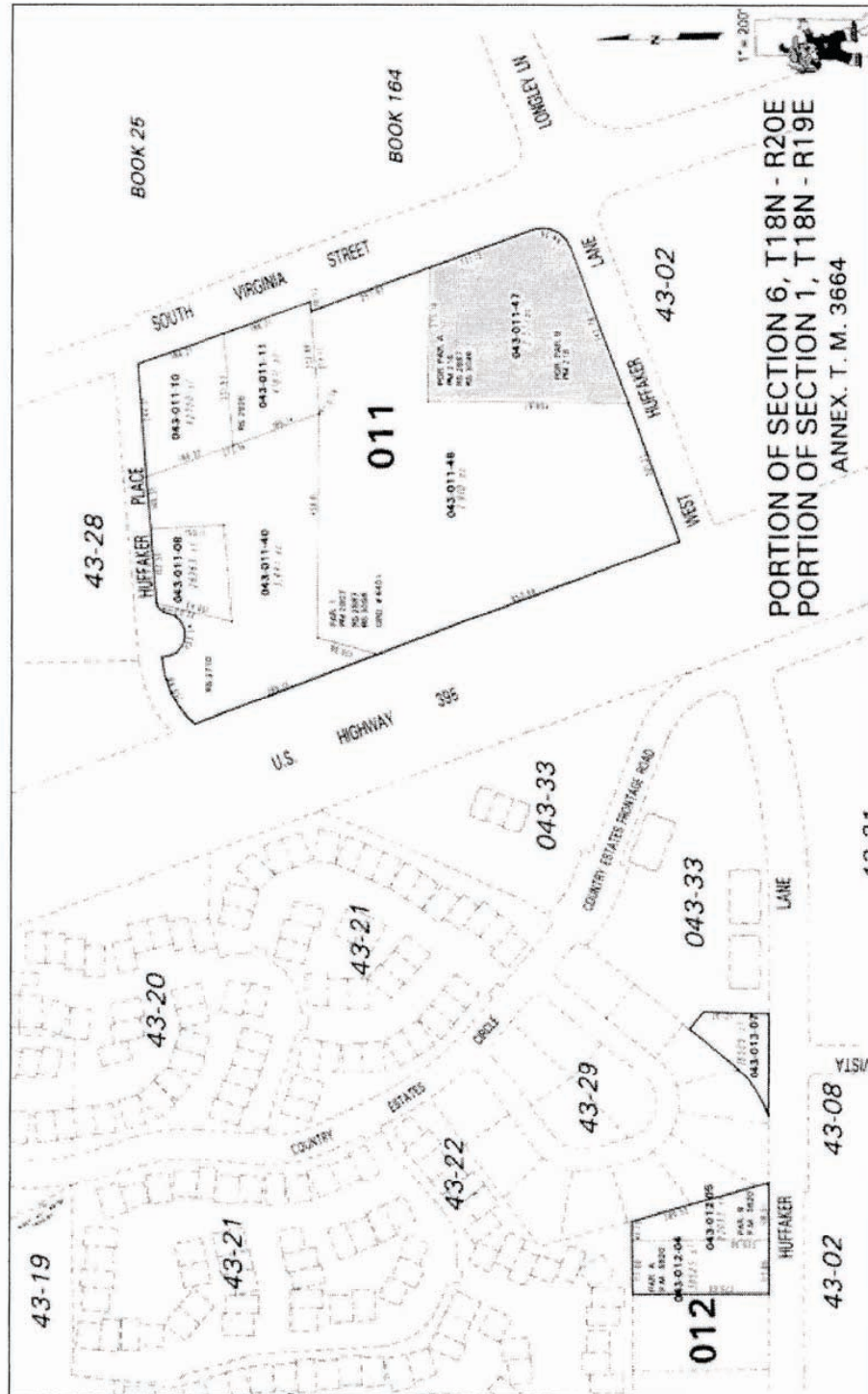
Berry-Hinckley Industries opened its first station in 1928 in Reno, Nevada. In April 1998, Western Energetic, Winner's Corner Convenience Stores, Berry-Hinckley Terminals, and Bi-State Petroleum combined to create Berry-Hinckley Industries. The company is headquartered in Nevada and now has 1,300 cardlock facilities nationwide, more than 30 convenience stores, and over 10 bulk facilities. The company is not publicly traded or credit rated. However, in 2005 Herbst Inc/Herbst Gaming purchased Berry-Hinckley Industries. Terrible Herbst Oil Company started in 1959 and currently operates five casinos, over 80 gas stations as well as a slot route that covers more than 600 locations. Terrible Herbst Oil and Gaming companies are privately held.



**CONCLUSION**

With respect to the subject property in particular, we believe the subject is reasonably well located for a retail project. The site is conveniently located with respect to employment centers and major roadways, and the surrounding commercial developments are experiencing average to above average levels of demand. Based upon our analysis, the subject property should continue to enjoy good market acceptance.

PLAT MAP



### SITE ANALYSIS

The following chart summarizes the salient characteristics of the subject site.

SITE SUMMARY		
Physical Description		
Gross Site Area	2.57 Acres	111,920 Sq. Ft.
Net Site Area	2.57 Acres	111,920 Sq. Ft.
Primary Road Frontage	S. Virginia Street	316 Feet
Secondary Road Frontage	Longley Lane	388 Feet
Excess Land Area	None	
Surplus Land Area	None	
Primary Traffic Counts (24 hrs.)	S. Virginia Street	31,000
Secondary Traffic Counts (24 hrs.)	Longley Lane	16,000
Zoning District	MU/SVTC, Mixed Use/South Virginia Tourist Commercial	
Flood Map Panel No. & Date	32031C3159E	30-Sep-94
Flood Zone	X500	
Source: Various sources compiled by CBRE		

### LOCATION

The subject is on the northwest corner of South Virginia Street and Longley Lane. The street address is 7695 & 7699 S. Virginia Street.

### ASSESSOR'S PARCEL NUMBER

The Washoe County Tax Assessor's parcel number is 043-011-47.

### LAND AREA

The land area of the site is according to assessor's records. It is considered adequate in terms of size and utility. There is no unusable, excess or surplus land area.

### SHAPE AND FRONTAGE

The site has an irregular shape with frontage along two primary thoroughfares within the neighborhood.

**INGRESS/EGRESS**

Ingress and egress is available to the site from one curb cut on South Virginia Street and two curb cuts along Longley Lane. The intersection of those two streets is controlled by a traffic signal.

Please refer to the prior site/plat exhibit for the layout of the streets that provide access to the subject property.

**TOPOGRAPHY AND DRAINAGE**

The site is generally level and at street grade. The topography of the site is not seen as an impediment to the development of the property. During our inspection of the site, we observed no drainage problems and assume that none exist.

**SOILS**

A soil analysis for the site has not been provided for the preparation of this appraisal. In the absence of a soil report, it is a specific assumption that the site has adequate soils to support the highest and best use.

**EASEMENTS AND ENCROACHMENTS**

A title policy for the property has not been provided for the preparation of this appraisal. Based on our visual inspection and review of the site plan, the property does not appear to be adversely affected by any easements or encroachments. It is recommended that the client/reader obtain a current title policy outlining all easements and encroachments on the property, if any, prior to making a business decision.

**ACCESS AGREEMENTS**

There are no known access agreements that affect the subject's marketability.

**COVENANTS, CONDITIONS AND RESTRICTIONS**

There are no known covenants, conditions and restrictions impacting the site that are considered to affect the marketability or highest and best use, other than zoning restrictions.

**UTILITIES AND SERVICES**

The site is within the jurisdiction of the city of Reno and is provided all municipal services, including police, fire and refuse garbage collection. All utilities are available to the site in adequate quality and quantity to service the highest and best use as if vacant and as improved.

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.

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**APPENDIX TO APPELLANTS' OPENING BRIEFS**

**VOLUME 8 OF 19**

Submitted for all appellants by:

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ATTORNEYS FOR APPELLANTS  
LARRY J. WILLARD, et al.



## **CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX**

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	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
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<sup>1</sup> This document was inadvertently omitted earlier. It was added here because all of the other papers in the 19-volume appendix had already been numbered.

**FLOOD ZONE**

According to flood hazard maps published by the Federal Emergency Management Agency (FEMA), the site is within Zone X 500, as indicated on the indicated Community Map Panel No. 32031C 3159E, dated 9/30/1994.

FEMA Zone X (Shaded): Areas of 500-year flood; areas if 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.

**ENVIRONMENTAL ISSUES**

CBRE has not observed, yet is not qualified to detect, the existence of potentially hazardous material or underground storage tanks present on or near the site. The existence of hazardous materials or underground storage tanks may have an affect on the value of the property. For this appraisal, CBRE has specifically assumed that the property is not affected by any hazardous materials and/or underground storage tanks on or near the property.

**ADJACENT PROPERTIES**

The adjacent land uses are as follows:

<i>North:</i>	Commercial uses
<i>South:</i>	Across Longley Land, retail uses
<i>East:</i>	Across South Virginia Street, vacant land, commercial uses
<i>West:</i>	Retail/commercial, followed by Highway 395

**CONCLUSION**

The site is well located and afforded average access and visibility from roadway frontage. The size of the site is typical for the area and use, and there are no known detrimental uses in the immediate vicinity. Overall, there are no known factors considered to prevent the site from development to its highest and best use, as if vacant, or adverse to the existing use of the site.

**IMPROVEMENTS LAYOUT****AERIAL VIEW OF IMPROVEMENTS**

**IMPROVEMENTS ANALYSIS**

The following chart depicts a summary of the improvements.

IMPROVEMENTS SUMMARY				
Property Type	Retail	(Convenience Store/Gas Station)		
Number of Buildings	2			
Number of Stories	1			
Gross Leasable Area	18,639 SF			
Major Tenants				
Barry Hinkley Industries	18,639 SF			
Site Coverage	16.7%			
Land-to-Building Ratio	6 : 1			
Parking Improvements	Open			
Total Spaces:	61			
Parking Ratio (per 1,000 SF GLA )	3.27			
Component	GBA (SF)			
C/Store/Car Wash/ Office	16,132			
Quick Lube	2,507			
Total	18,639			
Year Built	1989			
Actual Age	19 Years			
Effective Age	6 Years			
Total Economic Life	45 Years			
Age/Life Depreciation	13.3%			
Functional Utility	Typical			
		Comparative Rating		
Improvement Summary	Description	Good      Avg.      Fair      Poor		
Foundation	Reinforced concrete	X		
Frame	Steel/Wood	X		
Exterior Walls	Painted masonry/wood frame	X		
Interior Walls	Textured and painted drywall	X		
Roof	Built-up composition	X		
Ceiling	Suspended acoustical tile/ drywall	X		
HVAC System	Roof mounted HVAC units	X		
Exterior Lighting	Mercury Vapor Fixtures	X		
Interior Lighting	Recessed flourescent fixtures	X		
Flooring	Carpet, ceramic tile and vinyl	X		
Plumbing	Assumed adequate	X		
Fire Protection	Sprinklered and smoke detectors	X		
Furnishings	Personal property excluded	N/A		
Parking	Asphalt paved open parking	X		
Landscaping	Minimal grass and planting beds	X		
Source: Various sources compiled by CBRE				

The improvements include two masonry and wood frame buildings. The primary building contains a convenience store and fast food restaurant facing South Virginia Street, with an office building along



the rear. The office portion has a separate entry from the west side of the building. The building also has a drive through car wash tunnel running between the convenience store/fast food portion and the office building. The interior of the convenience store is typical for this type of property, with vinyl tile flooring, acoustic tile ceiling, service counter and reach-in coolers along parts of two walls. The transition area between the convenience store and the fast food restaurant contains a number of gaming machines and a cashier's booth. The fast food portion has a tile floor, exterior glass wall, service counter with food prep area and seating for approximately 35- 40 people.

The second building is a quick lube facility with four drive through bays, two of which contain lube pits. This building also has a small waiting/office area.

Site improvements include asphalt paving, 61 parking spaces, two metal canopies covering a total of eight dual sided pumps with three dispensers per side, plus two diesel pumps.

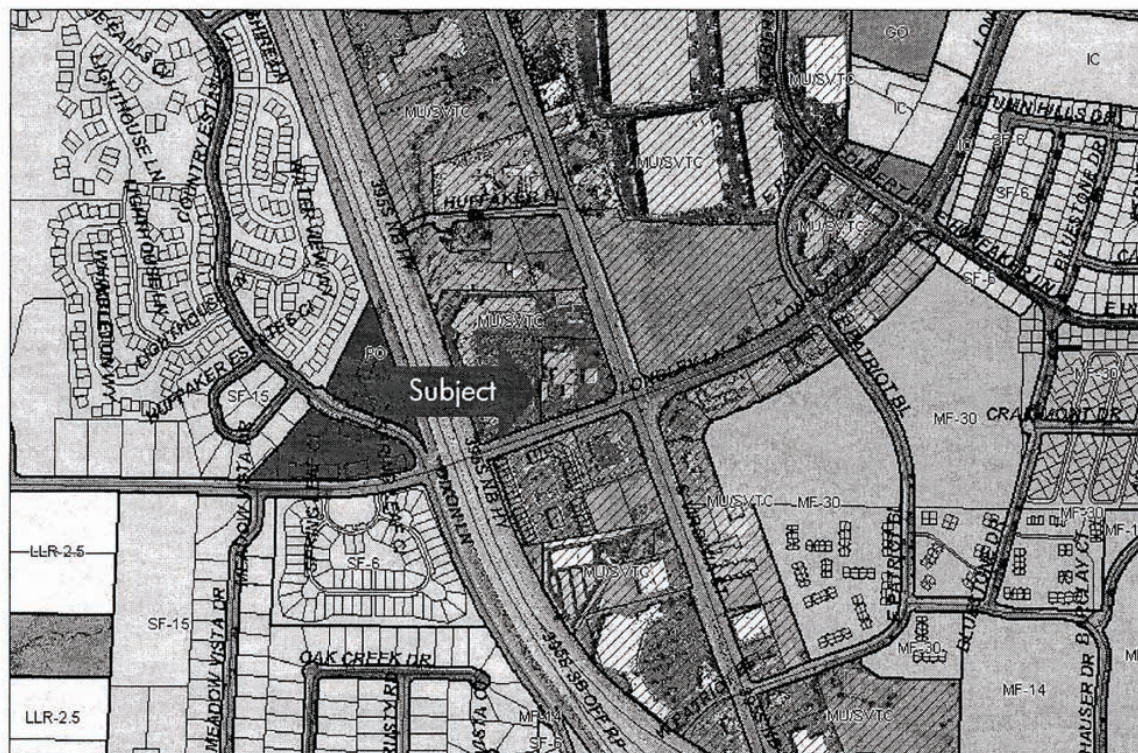
### **CONDITION ANALYSIS**

Our inspection of the property indicated no apparent deferred maintenance.

### **CONCLUSION**

The improvements are considered to be in average overall condition and are considered to be typical for the age and location in regard to improvement design and layout, as well as interior and exterior amenities. Overall, there are no known factors considered to adversely impact the marketability of the improvements.

# ZONING MAP



## ZONING

The following chart summarizes the subject's zoning requirements.

<b>ZONING SUMMARY</b>	
Current Zoning	MU/SVTC, Mixed Use/South Virginia Tourist Commercial
Legally Conforming	Yes
Uses Permitted	Retail, hotel, commercial uses & services generating large amounts of traffic and dependent on access to major transportation arterials
Zoning Change	Not likely
Source: Planning & Zoning Dept.	

## ANALYSIS AND CONCLUSION

The improvements represent a legally-conforming use and, if damaged, may be restored without special permit application. If additional information is required, please contact the local planning and/or zoning office.



**TAX AND ASSESSMENT DATA**

The following summarizes the subject's market value, assessed value, and taxes, and does not include any furniture, fixtures and equipment.

<b>AD VALOREM TAX INFORMATION</b>			
Assessor's Market Value	2007-2008	2008-2009	Pro Forma
043-011-47	\$3,556,171	\$3,694,537	
Subtotal	\$3,556,171	\$3,694,537	\$3,694,537
Assessed Value @	35%	35%	35%
	\$1,244,660	\$1,293,088	\$1,293,088
General Tax Rate (per \$100 A.V.)	3.646200	3.646300	3.646300
<b>Total Taxes</b>	<b>\$45,383</b>	<b>\$47,150</b>	<b>\$47,150</b>
Source: Assessor's Office			

The subject was re-assessed for the 2008-2009 tax year (July 1, 2008 through June 30, 2009). The corresponding tax rate has been established. The Washoe County Tax Assessors parcel numbers are 027-520-01 through 08.

The new tax laws implemented in 2005 stipulate that an increase in annual taxes of 8% per year is the maximum allowable for commercial properties. Based on conversations with the Washoe County Assessor's office, their reasoning for the increase in property values for the 2008-2009 tax year was an attempt to lessen the gap between market value and assessed value, which had been quite substantial in the past. The total re-assessed value does not affect taxes, even if sold, over and above the 8% increase. If the property is subdivided the assessed value at that time becomes the new base year value for taxes. The Assessor's Office has reported that this substantial increase in property values is going to be done on a limited basis and they cannot predict when the next one will occur.

It should be mentioned that the Washoe County Tax Assessor's office utilizes only the replacement cost method in establishing market value for commercial properties. Improved sales of similar facilities are not utilized. In addition, even if the subject property were to sell in the open market, the subsequent sales price would not have an affect on the tax assessor's market value estimate. In addition, the Tax Assessor's office analyzes commercial real estate on a mass appraisal system. In the appraiser's experience, the Tax Assessor's estimate of market value for most commercial property types has been less than the true market value based on comparisons of the appraiser's value estimates or by comparing market transactions of improved properties in the open market. Therefore, the best



## WINNERS CORNER -- SOUTH VIRGINIA

## TAX AND ASSESSMENT DATA

estimate of an appropriate taxable value for the subject property is a comparison of competing facilities in the immediate area. This comparison is presented as follows.

**TAX COMPARABLES**

As a crosscheck to the subject's applicable real estate taxes, CBRE has reviewed the real estate tax information according to the Washoe County for comparable properties in the market area. The following table summarizes the comparables employed for this analysis:

<b>AD VALOREM TAX COMPARABLES</b>						
Comparable Rental	187 E. Greg St. Sparks, NV	1600 Victorian Ave Sparks, NV	10585 Stead Blvd Reno, NV	600 N. Wells Reno, NV	910 Robb Drive	Subject
Year Built	2007	1984	1988	1991	1998	1989
GLA (SF)	3,410	2,346	3,224	6,950	3,542	18,639
Tax Year	2008-2009	2008-2009	2008-2009	2008-2009	2008-2009	2008-2009
<b>Total Assessed Value</b>	\$425,618	\$114,497	\$303,408	\$547,213	\$551,768	\$1,293,088
<b>AV Per SF (GLA)</b>	\$124.81	\$48.81	\$94.11	\$78.74	\$155.78	\$69.38
Combined Tax Rate (per \$100 A.V.)	3.6168	3.6168	3.6458	3.6463	3.6463	3.6463
<b>Total Taxes</b>	\$15,394	\$4,141	\$11,062	\$19,953	\$20,119	\$47,150
<b>Per SF (GLA)</b>	\$4.51	\$1.77	\$3.43	\$2.87	\$5.68	\$2.53
Source: Assessor's Office						

**CONCLUSION**

Based on the foregoing information, the subject's current assessment is well supported by both its historical trend and by the comparable properties shown.

Based on the foregoing, the total taxes for the subject have been estimated as \$47,150 for the base year of our analysis, based upon an assessed value of \$1,293,088, or \$69 per square foot. This is at the current assessment. According to public records all real estate taxes are current.

### HIGHEST AND BEST USE

In appraisal practice, the concept of highest and best use represents the premise upon which value is based. The four criteria the highest and best use must meet are:

- legal permissibility;
- physical possibility;
- financial feasibility; and
- maximum profitability.

Highest and best use analysis involves assessing the subject both as if vacant and as improved.

#### AS VACANT

##### ***Legal Permissibility***

The legally permissible uses were discussed in detail in the Site Analysis and Zoning Sections.

##### ***Physical Possibility***

The subject is adequately served by utilities, has an adequate shape and size, sufficient access, etc., to be a separately developable site. The subject site would reasonably accept a site layout for any of the legally probable uses. There are no known physical reasons why the subject site would not support any legally probable development. The existence of the present development on the site provides additional evidence for the physical possibility of development.

##### ***Financial Feasibility***

The determination of financial feasibility is dependent primarily on the relationship of supply and demand for the legally probable land uses versus the cost to create the uses. As discussed in the market analysis of this report, the subject retail market is generally stabilized. Development of new retail properties has occurred in the past few years. Further, within the subject market, there are multiple proposed or under construction retail projects in the competitive market. These factors indicate that it would be financially feasible to complete a new retail project if the site acquisition cost was low enough to provide an adequate developer's profit.

##### ***Maximum Profitability***

The final test of highest and best use of the site as though vacant is that the use be maximally productive, yielding the highest return to the land. In the case of the subject as if vacant, the analysis has indicated that a new retail project would be most appropriate.



**CONCLUSION: HIGHEST AND BEST USE AS VACANT**

Based on the information presented above and upon information contained in the market and neighborhood analysis, we conclude that the highest and best use of the subject as if vacant, would be the development a retail property. Our analysis of the subject and its respective market characteristics indicate the most likely buyer, as if vacant, would be an investor (land speculation) or a developer.

**AS IMPROVED*****Legal Permissibility***

As discussed, the subject site's zoning and legal restrictions permit a variety of land uses. The site has been improved with a retail development that is a legal, conforming use.

***Physical Possibility***

The physical characteristics of the subject improvements were discussed in detail in the improvements analysis. Both the layout and positioning of the improvements are considered functional for retail use. While it would be physically possible for a wide variety of uses, based on the legal restrictions and the design of the improvements, the continued use of the property for retail users would be the most functional use.

***Financial Feasibility***

The financial feasibility of a retail property is based on the amount of rent which can be generated, less operating expenses required to generate that income; if a residual amount exists, then the land is being put to a productive use. As will be indicated in the income capitalization approach, the subject is producing a positive net cash flow and continued utilization of the improvements for retail purposes is considered financially feasible.

***Maximum Profitability***

The maximally profitable use of the subject as improved should conform to neighborhood trends and be consistent with existing land uses. Although several uses may generate sufficient revenue to satisfy the required rate of return on investment and provide a return on the land, the single use that produces the highest price or value is typically the highest and best use. As shown in the applicable valuation sections, buildings that are similar to the subject have been acquired or continue to be used by retail owners/tenants. None of the comparable buildings have been acquired for conversion to an alternative use. These comparables would indicate that the maximally productive use of the property is consistent with the existing use as a retail property.

**CONCLUSION: HIGHEST AND BEST USE AS IMPROVED**

Based on the foregoing, the highest and best use of the property, as improved, is consistent with the existing use as a retail development.

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.

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**APPENDIX TO APPELLANTS' OPENING BRIEFS**

**VOLUME 8 OF 19**

Submitted for all appellants by:

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ATTORNEYS FOR APPELLANTS  
LARRY J. WILLARD, et al.

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	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



<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
<b><u>TRANSCRIPTS</u></b>				
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
<b><u>ADDITIONAL DOCUMENTS</u></b>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] <sup>1</sup>	01/04/18	19	4353-4357

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

## **APPRAISAL METHODOLOGY**

In appraisal practice, an approach to value is included or omitted based on its applicability to the property type being valued and the quality and quantity of information available.

### **COST APPROACH**

The cost approach is based upon the proposition that the informed purchaser would pay no more for the subject than the cost to produce a substitute property with equivalent utility. This approach is particularly applicable when the property being appraised involves relatively new improvements that represent the highest and best use of the land, or when it is improved with relatively unique or specialized improvements for which there exist few sales or leases of comparable properties.

### **SALES COMPARISON APPROACH**

The sales comparison approach utilizes sales of comparable properties, adjusted for differences, to indicate a value for the subject. Valuation is typically accomplished using physical units of comparison such as price per square foot, price per unit, price per floor, etc., or economic units of comparison such as gross rent multiplier. Adjustments are applied to the physical units of comparison derived from the comparable sale. The unit of comparison chosen for the subject is then used to yield a total value. Economic units of comparison are not adjusted, but rather analyzed as to relevant differences, with the final estimate derived based on the general comparisons.

### **INCOME CAPITALIZATION APPROACH**

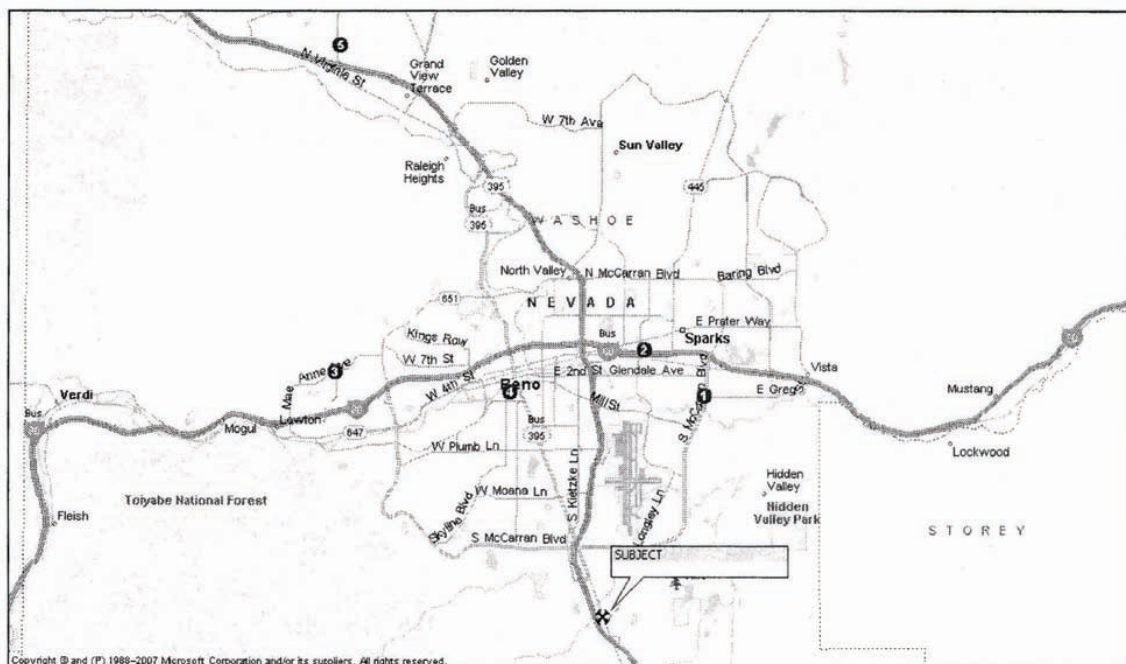
The income capitalization approach reflects the subject's income-producing capabilities. This approach is based on the assumption that value is created by the expectation of benefits to be derived in the future. Specifically estimated is the amount an investor would be willing to pay to receive an income stream plus reversion value from a property over a period of time. The two common valuation techniques associated with the income capitalization approach are direct capitalization and the discounted cash flow (DCF) analysis.

### **METHODOLOGY APPLICABLE TO THE SUBJECT**

In valuing the subject, only the sales comparison and income capitalization approaches are applicable and have been used. The cost approach is not applicable in the estimation of market value due to age of the improvements and the mixed construction, both of which make an estimate of depreciation more subjective.

### SALES COMPARISON APPROACH

The following map and table summarize the comparable data used in the valuation of the subject. A detailed description of each transaction is included in the addenda.



#### SUMMARY OF COMPARABLE RETAIL SALES

No.	Name	Transaction Type	Date	Year Built	GLA (SF)	Actual Sale Price	Price Per SF <sup>1</sup>	Occ.	NOI Per SF	OAR
1	Winners Corner -- Greg Street, Sparks, NV	Listing	Oct-08	2007	3,410	\$5,999,000	\$1,759.20	100%	\$109.95	6.25%
2	Terrible Herbst, Sparks, NV	Sale	May-07	1984	2,346	\$1,694,117	\$722.13	100%	\$58.93	8.16%
3	Jiffy Lube, Reno, NV	Sale	Apr-07	2005	1,803	\$1,900,000	\$1,053.80	100%	\$74.16	7.04%
4	Winners Corner, Reno, NV	Sale	Jun-06	1964	1,905	\$1,729,053	\$907.64	100%	\$66.37	7.31%
5	Winners Corner, Reno, NV	Sale	Feb-06	1988	3,224	\$5,000,000	\$1,550.90	100%	\$104.33	6.73%
Subj.	Winners Corner -- South Virginia, Reno, Nevada	---	---	1989	18,639	---	---	100%	\$79.30	---

Compiled by CBRE



The sales utilized represent the best data available for comparison with the subject. They were selected from our research of comparable improved sales within a 12-mile radius of the subject. These sales were chosen based upon their location, transaction date and use.

## **DISCUSSION/ANALYSIS OF IMPROVED SALES**

### ***Improved Sale One***

This comparable represents a 3,410-square-foot gas/convenience store retail property and is situated on a 0.81-acre parcel at 187 E. Greg Street, Sparks, NV. The improvements were originally constructed in 2007 and were considered in good condition at the time of sale. The exterior walls depict stucco construction components. As of October 2008 the property is being marketed as for sale for \$5,999,000, or \$1,759.20 per square foot. Existing net operating income is reported as \$374,938, or \$109.95 per square foot, for an overall capitalization rate of 6.25%. The property is 100% leased to Berry-Hinckley Industries now owned by Terrible Herbst. The lease is absolute net and has approximately 17 years remaining on the initial lease term.

The property is a current listing and a downward conditions of sale adjustment is given. The comparable is smaller in size, thus superior and a modest downward adjustment is made. The project was completed in 2007; thus, superior to the subject in age and a downward adjustment was made. Overall, the comparable is deemed superior to the subject.

### ***Improved Sale Two***

This comparable represents a 2,346-square-foot gas/convenience store retail property and is situated on a 0.41-acre parcel at 1600 Victorian Avenue, Sparks, NV. The improvements were originally constructed in 1984 and were considered in average condition at the time of sale. The exterior walls depict concrete block construction components. The property sold in May 2007 for \$1,694,117, or \$722.13 per square foot. Existing net operating income at the time of sale was \$138,243, or \$58.93 per square foot, for an overall capitalization rate of 8.16%. Occupancy at the time of sale was 100%.

As compared to the subject the location, size and age/condition are deemed inferior to the subject and upward adjustments were made. Overall, the comparable is deemed inferior to the subject.

### ***Improved Sale Three***

This comparable represents a 1,803-square-foot auto lube retail property located at 6100 Mae Anne, Reno, NV. The improvements were originally constructed in 2005 and were considered in good condition at the time of sale. The property sold in April 2007 for \$1,900,000, or \$1,053.80 per square foot. Existing net operating income at the time of sale was \$133,710, or \$74.16 per square foot, for an overall capitalization rate of 7.04%. Occupancy at the time of sale was 100%.

As compared to the subject the location is deemed inferior while the age of the improvement is superior to the subject. The comparable is smaller in size, thus superior and a modest downward adjustment is made. Overall, the comparable is deemed superior to the subject.

***Improved Sale Four***

This comparable represents a 1,905-square-foot gas/convenience store retail property and is situated on a 0.25-acre parcel at 350 S. Arlington Avenue, Reno, NV. The improvements were originally constructed in 1964 and were considered in average condition at the time of sale. The property sold in June 2006 for \$1,729,053, or \$907.64 per square foot. Existing net operating income at the time of sale was \$126,437, or \$66.37 per square foot, for an overall capitalization rate of 7.31%. Occupancy at the time of sale was 100%.

As compared to the subject the location and age/condition are deemed inferior to the subject and upward adjustments were made. The comparable is smaller in size, thus superior and a modest downward adjustment is made. Overall, the comparable is deemed inferior as compared to the subject.

***Improved Sale Five***

This comparable represents a 3,224-square-foot gas/convenience store retail property and is situated on a 1.0-acre parcel at 10585 Stead Boulevard, Reno, NV. The improvements were originally constructed in 1988 and were considered in average condition at the time of sale. The property sold in February 2006 for \$5,000,000, or \$1,550.90 per square foot. Existing net operating income at the time of sale was \$336,375, or \$104.33 per square foot, for an overall capitalization rate of 6.73%. Occupancy at the time of sale was 100%.

The comparable is smaller in size, thus superior and a modest downward adjustment is made. Overall, the comparable is deemed superior to the subject.

**SUMMARY OF ADJUSTMENTS**

Based on our comparative analysis, the following chart summarizes the adjustments warranted to each comparable.



## WINNERS CORNER -- SOUTH VIRGINIA

## SALES COMPARISON APPROACH

RETAIL SALES ADJUSTMENT GRID						
Comparable Number	1	2	3	4	5	Subj. Pro Forma Sale
Transaction Type	Listing	Sale	Sale	Sale	Sale	Sale
Transaction Date	Oct-08	May-07	Apr-07	Jun-06	Feb-06	Feb-06
Year Built	2007	1984	2005	1964	1988	1989
GLA (SF)	3,410	2,346	1,803	1,905	3,224	18,639
Actual Sale Price	\$5,999,000	\$1,694,117	\$1,900,000	\$1,729,053	\$5,000,000	\$17,750,000
Adjusted Sale Price <sup>1</sup>	\$5,999,000	\$1,694,117	\$1,900,000	\$1,729,053	\$5,000,000	\$17,750,000
Price Per SF <sup>1</sup>	\$1,759.20	\$722.13	\$1,053.80	\$907.64	\$1,550.90	\$952.30
Occupancy	100%	100%	100%	100%	100%	100%
NOI Per SF	\$109.95	\$58.93	\$74.16	\$66.37	\$104.33	\$79.30
OAR	6.25%	8.16%	7.04%	7.31%	6.73%	---
Adj. Price Per SF	\$1,759.20	\$722.13	\$1,053.80	\$907.64	\$1,550.90	
Property Rights Conveyed	0%	0%	0%	0%	0%	
Financing Terms <sup>1</sup>	0%	0%	0%	0%	0%	
Conditions of Sale	-10%	0%	0%	0%	0%	
Market Conditions (Time)	0%	0%	0%	0%	0%	
Subtotal - Price Per SF	\$1,583.28	\$722.13	\$1,053.80	\$907.64	\$1,550.90	
Location	0%	10%	10%	10%	0%	
Size	-5%	-7%	-7%	-7%	-5%	
Age/Condition	-15%	5%	-10%	10%	0%	
Quality of Construction	0%	0%	0%	0%	0%	
Traffic Counts/Exposure	0%	0%	0%	0%	0%	
Parking	0%	0%	0%	0%	0%	
Tenancy	0%	0%	0%	0%	0%	
Other	0%	0%	0%	0%	0%	
Total Other Adjustments	-20%	8%	-7%	13%	-5%	
<b>Indicated Value Per SF</b>	<b>\$1,266.62</b>	<b>\$779.90</b>	<b>\$980.03</b>	<b>\$1,025.63</b>	<b>\$1,473.36</b>	

<sup>1</sup> Transaction amount adjusted for cash equivalency and/or deferred maintenance (where applicable)

Compiled by CBRE

**SALE PRICE PER SQUARE FOOT CONCLUSION**

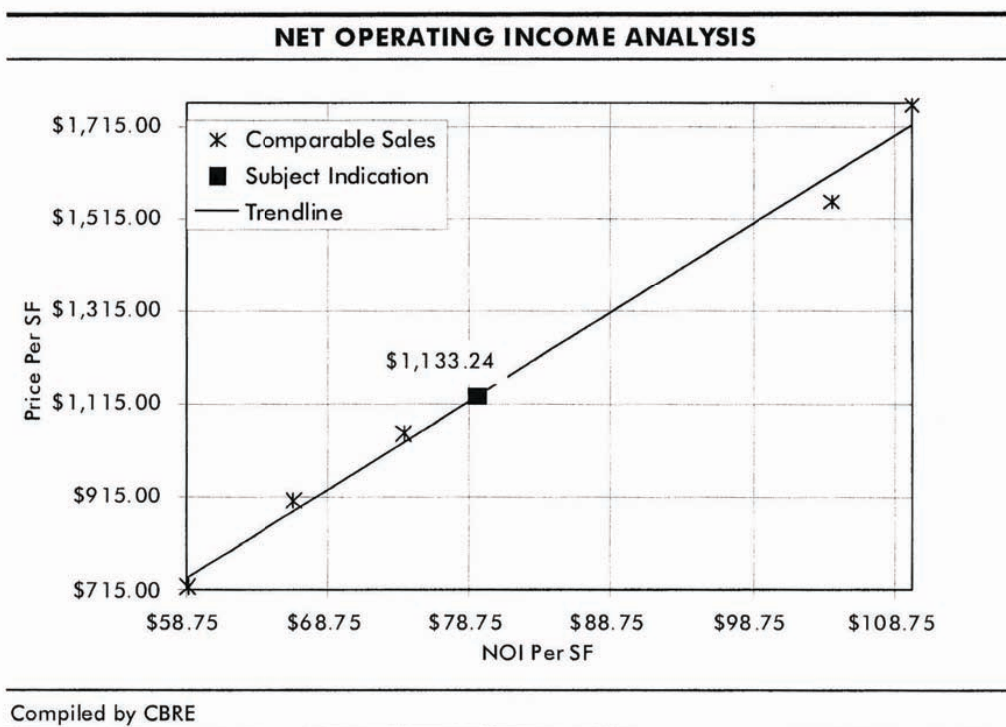
After adjustments the comparables indicate a range in price of \$779.90 to \$1,473.360 per square foot. Comparables 2 and 5 are clearly outside the range of all other comparables and were given minimal consideration. The remaining comparables indicate a range in value of \$980 to \$1,267 per square foot. Given the subject's large size and mix use inclusive of office, retail, gas and car wash facilities we have concluded a value near the lower end of the range. The subject is also a fairly recent sale in the amount of \$952.30 per square foot; however, NOI has increased by approximately 4% since acquisition. Thus, the 2006 sale is no longer a good indication of value for the subject. The following chart presents the valuation conclusion:

<b>SALES COMPARISON APPROACH</b>				
<b>GLA/GBA (SF)</b>	<b>X</b>	<b>Value Per SF</b>	<b>=</b>	<b>Value</b>
18,639	X	\$980.00	=	\$18,300,000
18,639	X	\$1,265.00	=	\$23,600,000
<b>VALUE CONCLUSION</b>				
<b>Indicated Stabilized Value</b>				<b>\$20,000,000</b>
<b>Value Per SF</b>				<b>\$1,073.02</b>
Compiled by CBRE				

### NET OPERATING INCOME ANALYSIS

As a cross check to the foregoing analysis, the net operating income (NOI) being generated by the comparable sales as compared to the subject's pro forma NOI estimated in the following income capitalization approach has been analyzed. In general, it is a fundamental assumption that the physical characteristics of a property (e.g., location, access, design/ appeal, condition, etc.) are reflected in the net operating income being generated, and the resultant price per square foot paid for a property has a direct relationship to the NOI being generated.

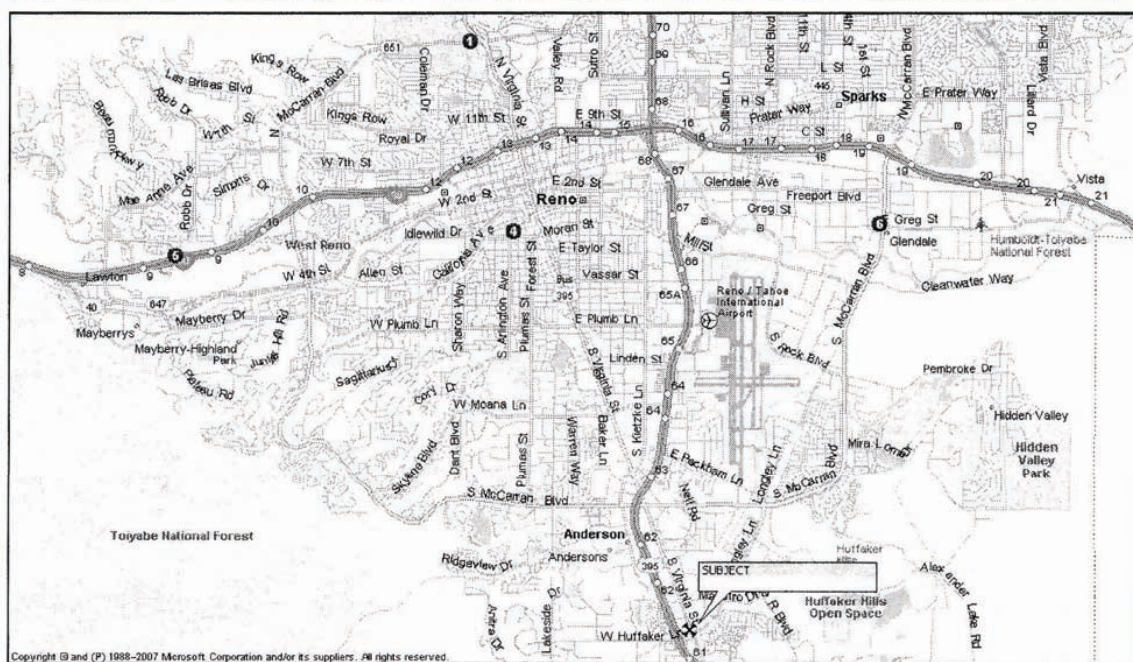
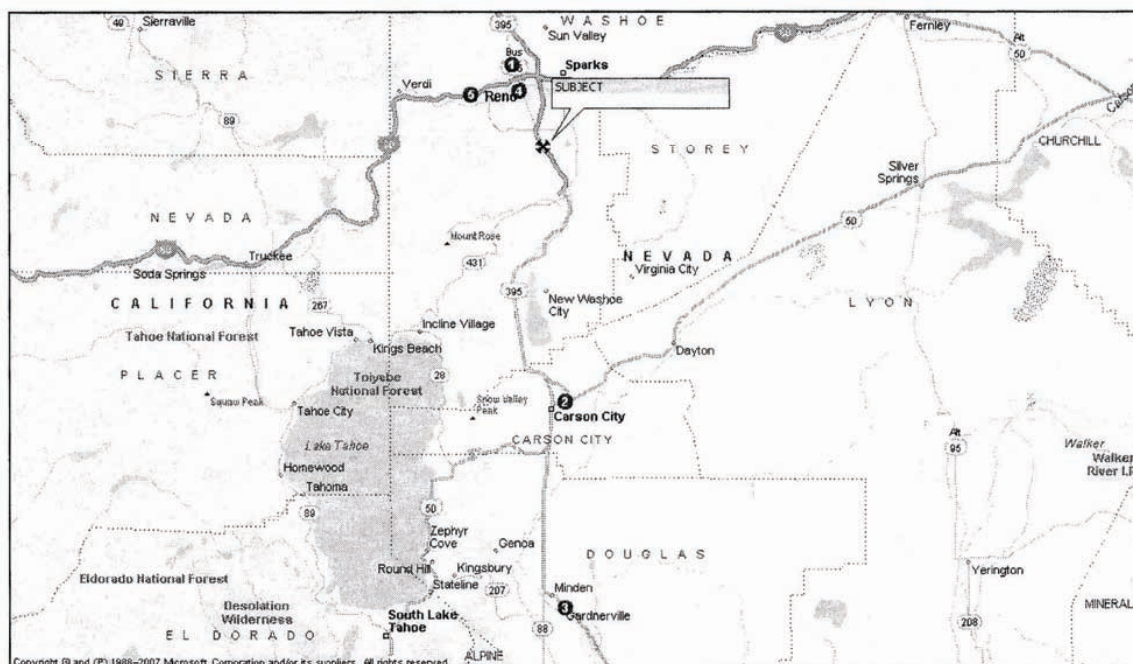
The following NOI analysis chart illustrates the sale prices (after adjustments for conditions of sale and market conditions) of the individual sales plotted in comparison to their NOIs. In addition, a trend line has been plotted based on a linear regression analysis of the comparables. The subject's indicated value has been plotted along this trend line at its pro forma stabilized NOI.





### INCOME CAPITALIZATION APPROACH

The following map and table summarize the comparable data used in the valuation of the subject. A detailed description of each transaction is included in the addenda.



## WINNERS CORNER -- SOUTH VIRGINIA

## INCOME CAPITALIZATION APPROACH

SUMMARY OF COMPARABLE RETAIL RENTALS										
Comp. No.	Property Name and Location	Year Built	Occ.	GLA (SF)	Tenant Name	Lease Area (SF)	Lease Date	Lease Term	Base Rent	Escalations
1	Winner's Corner 205 N. McCarran Blvd, Sparks, NV	1982	100%	2,924	Winner's Corner	2,924	Oct-05	17.5 Yrs.	\$92.34 PSF	2% Ann
2	Winners Corner 1400 Rand Avenue, Carson City, NV	1990	100%	2,222	Barry Hinkley	2,222	Oct-05	17.5 Yrs.	\$89.56 PSF	2% Ann
3	Winners Corner 1357 US Highway 395, Gardnerville, NV	1991	100%	1,971	Barry Hinkley	1,971	Oct-05	17.5 Yrs.	\$85.93 PSF	2% Ann
4	Winners Corner 350 S. Arlington Avenue, Reno, NV	1964	100%	1,905	Barry Hinkley	1,905	Oct-05	17.5 Yrs.	\$68.07 PSF	2% Ann
5	Winners Corner 910 Robb Drive, Reno, NV	1998	100%	3,542	Barry Hinkley	3,542	Oct-05	17.5 Yrs.	\$116.05 PSF	2% Ann
6	Winners Corner -- Greg Street 187 E. Greg Street, Sparks, NV	2007	100%	3,410	BHI	3,410	Jun-05	17.0 Yrs.	\$109.67 PSF	1.5% Ann
Subj.	Winners Corner -- South Virginia 7695 & 7699 South Virginia Street,	1989	100%	18,639			Jan-06	20.0 Yrs.	---	
Compiled by CBRE										

**ANALYSIS OF RENT COMPARABLES**

The comparables are all automotive oriented properties in the Northern Nevada metro area. All of the comparables feature the same tenant (Berry-Hinckley Industries now owned by Terrible Herbst). Rental 6 is the most recent. Comparables 1, 5 and 6 feature similar locations along busy thoroughfares. All of the comparables represent absolute net leases with the tenant responsible for all operating expenses similar to the subject. Comparables 1 and 4 are older facilities while Comparables 5 and 6 are newer facilities indicative of rents near the upper end of the range.



**LEASE ANALYSIS**

The subject's lease is illustrated as follows:

LEASE ABSTRACT - BARRY HINKLEY INDUSTRIES		
Lessor	Overland Development Corporation	
Lessee	Barry-Hinkley industries	
Guarantor	None	
Building Size (SF)	18,639	
Lease Date	January 19, 2006	
Expiration Date (Base Lease)	July 19, 2023	
Remaining Lease Term (Base Lease)	178 Months	
Assignment/Subletting	Allowed	
Termination Clause	Yes	
Contract Rental Rate	\$/SF/Yr.	Total \$/Yr.
Base Lease Term -- 1/2006	\$78.57	\$1,464,375
Current Rent --- 10/2008	\$81.74	\$1,523,536
Next Rent Adjustment -- 1/2009	\$83.37	\$1,554,007
Rent Increases	2% Annual	
Lessor Expenses	None	
Lessee Expenses	All - Absolute Net	
Expense Cap	None	
% Rent Clause:	None	
Source: Lease		

**RENT ROLL ANALYSIS**

The subject's rent roll is illustrated as follows:

<b>RENT ROLL ANALYSIS</b>								
Suite No.	Tenant	Lease Start	Lease Expiration	Term (Mos.)	Size (GLA) SF	% Total	Contract Rental Rate \$/SF/Yr.	\$/Yr.
A	Barry Hinkley Industries	Jan-06	Jul-23	2011	18,639	100.0%	\$81.74	\$1,523,536
Property Totals - Contract Rent					18,639	100.0%	\$81.74	\$1,523,536
Compiled by CBRE								

**Anticipated Changes/Rollover to Rent Roll**

The property is under a twenty year lease with no anticipated changes to the rent roll.