

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

vs.

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

Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 8 OF 19

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868

RICHARD D. WILLIAMSON (SBN 1001)
JONATHAN TEW (SBN 9932)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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

MARKET RENT ESTIMATE

The following chart depicts the market rent conclusions for the subject:

MARKET RENT CONCLUSIONS	
Category	Retail Space
GLA (SF)	18,639
Percent of Total SF	100.0%
Market Rent (\$/SF/Yr.)	\$80.00-\$86.00
Concessions	None
Reimbursements	NNN
Annual Escalation	2.0%
Average Lease Term	5 Years
Compiled by CBRE	

POTENTIAL RENTAL INCOME CONCLUSION

Within this analysis, potential rental income is estimated based upon the actual income in-place as supported by market rental rates. This method of calculating rental income is most prevalent in the local market and is consistent with the method used to derive overall capitalization rates from the comparable sales data.

VACANCY

The subject's estimated stabilized vacancy rate was previously discussed in the Market Analysis section of this report and estimated at 2.0%.

CREDIT LOSS

The credit loss estimate is an allowance for nonpayment of rent or other income. The subject's vacancy estimate implicitly includes an allowance for credit loss.

OTHER INCOME

The subject has no historical or anticipated ancillary income.

EXPENSE REIMBURSEMENTS

The subject's lease is based on an absolute net basis with the tenant directly responsible for all property related expenses, including exterior building and parking lot maintenance.

EFFECTIVE GROSS INCOME

The subject's effective gross income is detailed as follows:

EFFECTIVE GROSS INCOME		
	Total	\$/SF
CBRE Estimate	\$1,493,065	\$80.10
Compiled by CBRE		

OPERATING EXPENSE ANALYSIS

The subject is on an absolute net lease with the tenant responsible for all operating expenses, including property taxes and insurance, as well as capital improvements. The owner's expense is limited to property management.

Management Fee

Management expenses are typically negotiated as a percentage of collected revenues (effective gross income). Professional management fees in the local market range from 2.0% to 5.0% for most commercial properties. Given the subject's single tenant status, absolute net lease structure and the competitiveness of the local market area, we believe that management expense for the subject would be minimal. We have included management at 1.0% of effective gross income.

NET OPERATING INCOME CONCLUSION

The subject's net operating income is detailed as follows:

NET OPERATING INCOME		
Year	Total	\$/SF
CBRE Estimate	\$1,478,135	\$79.30
Compiled by CBRE		

DIRECT CAPITALIZATION

Direct capitalization is a method used to convert a single year's estimated stabilized net operating income into a value indication. The following subsections represent different techniques for deriving an overall capitalization rate for direct capitalization.

Comparable Sales

The overall capitalization rates (OARs) confirmed for the comparable sales analyzed in the sales comparison approach are as follows:

COMPARABLE CAPITALIZATION RATES				
Sale	Sale Date	Sale Price \$/SF	Occupancy	OAR
1	Oct-08	\$1,759.20	100%	6.25%
2	May-07	\$722.13	100%	8.16%
3	Apr-07	\$1,053.80	100%	7.04%
4	Jun-06	\$907.64	100%	7.31%
5	Feb-06	\$1,550.90	100%	6.73%
Indicated OAR:			98%	7.00%-8.00%
Compiled by: CBRE				

The overall capitalization rates for these sales were derived based upon the actual income characteristics of the property. Comparable 1 is a current listing however it is unlikely the comparable will sell at this price point. Thus, the indicated OAR is deemed low. The remaining sales are all gas and convenience store properties. Each of these sales depicts a similar tenancy structure with regard to stability and credit rating, whereby little if any adjustment adjustments are required when compared with the subject. Overall, an OAR in the middle portion of the range indicated by the comparables is considered appropriate for the subject due to the subject's strong location and size. In addition to the local sale we have also surveyed regional sales of NNN leased investment properties.

REGIONAL SALES TRENDS

Triple net leased investments typically trade based on a desired return on the investment. Many factors such as location, tenancy, industry, 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

INCOME CAPITALIZATION APPROACH

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. 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
Indicated OAR:				7.50%
Compiled by: CBRE				

Published Investor Surveys

The results of the most recent *National Investor Survey*, published by CBRE, are summarized in the following chart.

OVERALL CAPITALIZATION RATES		
Investment Type	OAR Range	Average
<i>CBRE Net Leased Investments</i>		
Class A	4.00% - 7.50%	5.75%
Class B	5.00% - 7.75%	6.38%
Class C	6.00% - 8.25%	6.96%
<i>CBRE Strip Centers</i>		
Class A	6.00% - 7.75%	6.88%
Class B	7.00% - 8.25%	7.54%
Class C	8.00% - 10.00%	8.82%
<i>Korpacz Net Lease</i>		
National Data	6.00% - 10.00%	7.54%
Indicated OAR:		6.50%-7.50%
Source: CBRE National Investor Survey & Korpacz Real Estate Investor Survey		

The subject is considered to be a Class B property.

Band of Investment

The band of the investment technique has been utilized as a crosscheck to the foregoing techniques. The analysis is shown in the following table.

BAND OF INVESTMENT				
Mortgage Interest Rate	6.25%			
Mortgage Term (Amortization Period)	30 Years			
Mortgage Ratio (Loan-to-Value)	70%			
Mortgage Constant	0.07389			
Equity Dividend Rate (EDR)	8%			
Mortgage Requirement	70%	x	0.07389	= 0.05172
Equity Requirement	30%	x	0.08000	= 0.02400
	100%			0.07572
Indicated OAR:				7.60%
Compiled by: CBRE				

Capitalization Rate Conclusion

The following chart summarizes the OAR conclusions.

OVERALL CAPITALIZATION RATE - CONCLUSION	
Source	Indicated OAR
Comparable Sales	7.00%-7.25%
National Investor Survey	6.50%-7.50%
Market Participants	7.25%
Band of Investment	7.60%
CBRE Estimate	7.50%
Compiled by: CBRE	

In concluding an overall capitalization rate for the subject, primary reliance has been placed upon the data obtained from the comparable sales and interviews with active market participants. This data tends to provide the most accurate depiction of both buyer's and seller's expectations within the market and the ranges indicated are relatively tight. Further secondary support for our conclusion is noted via both the CBRE National Investor Survey and the band of investment methodology. Considering the data presented, the concluded overall capitalization rate appears to be well supported in the local market.

Direct Capitalization Summary

A summary of the direct capitalization at stabilized occupancy is illustrated in the following chart.

WINNERS CORNER -- SOUTH VIRGINIA

INCOME CAPITALIZATION APPROACH

DIRECT CAPITALIZATION SUMMARY

Income		\$/SF/Yr	Total
Potential Rental Income		\$81.74	\$1,523,536
Vacancy	2.00%	(1.63)	(30,471)
Net Rental Income		\$80.10	\$1,493,065
Effective Gross Income		\$80.10	\$1,493,065
Expenses			
Management Fee	1.00%	0.80	14,931
Operating Expenses		\$0.80	\$14,931
Operating Expense Ratio			1.00%
Net Operating Income		\$79.30	\$1,478,135
OAR			/ 7.50%
Indicated Stabilized Value			\$19,708,462
Rounded			\$19,700,000
Value Per SF			\$1,056.92
Matrix Analysis		Cap Rate	Value
		7.25%	\$20,388,100
		7.50%	\$19,708,500
		7.75%	\$19,072,700

Compiled by CBRE

RECONCILIATION OF VALUE

The value indications from the approaches to value are summarized as follows:

SUMMARY OF VALUE CONCLUSIONS	
Sales Comparison Approach	\$20,000,000
Income Capitalization Approach	\$19,700,000
Reconciled Value	\$19,700,000
Compiled by CBRE	

In valuing the subject, the Income Capitalization Approach is considered most reliable and has been given primary emphasis, with secondary emphasis placed on the Sales Comparison Approach. Based on the foregoing, the market value of the subject has been concluded as follows:

MARKET VALUE CONCLUSION			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
As Is	Leased Fee Interest	October 1, 2008	\$19,700,000
Compiled by CBRE			

ASSUMPTIONS AND LIMITING CONDITIONS

1. Unless otherwise specifically noted in the body of the report, it is assumed that title to the property or properties appraised is clear and marketable and that there are no recorded or unrecorded matters or exceptions to title that would adversely affect marketability or value. CBRE is not aware of any title defects nor has it been advised of any unless such is specifically noted in the report. CBRE, however, has not examined title and makes no representations relative to the condition thereof. Documents dealing with liens, encumbrances, easements, deed restrictions, clouds and other conditions that may affect the quality of title have not been reviewed. Insurance against financial loss resulting in claims that may arise out of defects in the subject's title should be sought from a qualified title company that issues or insures title to real property.
2. Unless otherwise specifically noted in the body of this report, it is assumed: that the existing improvements on the property or properties being appraised are structurally sound, seismically safe and code conforming; that all building systems (mechanical/electrical, HVAC, elevator, plumbing, etc.) are in good working order with no major deferred maintenance or repair required; that the roof and exterior are in good condition and free from intrusion by the elements; that the property or properties have been engineered in such a manner that the improvements, as currently constituted, conform to all applicable local, state, and federal building codes and ordinances. CBRE professionals are not engineers and are not competent to judge matters of an engineering nature. CBRE has not retained independent structural, mechanical, electrical, or civil engineers in connection with this appraisal and, therefore, makes no representations relative to the condition of improvements. Unless otherwise specifically noted in the body of the report: no problems were brought to the attention of CBRE by ownership or management; CBRE inspected less than 100% of the entire interior and exterior portions of the improvements; and CBRE was not furnished any engineering studies by the owners or by the party requesting this appraisal. If questions in these areas are critical to the decision process of the reader, the advice of competent engineering consultants should be obtained and relied upon. It is specifically assumed that any knowledgeable and prudent purchaser would, as a precondition to closing a sale, obtain a satisfactory engineering report relative to the structural integrity of the property and the integrity of building systems. Structural problems and/or building system problems may not be visually detectable. If engineering consultants retained should report negative factors of a material nature, or if such are later discovered, relative to the condition of improvements, such information could have a substantial negative impact on the conclusions reported in this appraisal. Accordingly, if negative findings are reported by engineering consultants, CBRE reserves the right to amend the appraisal conclusions reported herein.
3. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property was not observed by the appraisers. CBRE has no knowledge of the existence of such materials on or in the property. CBRE, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, contaminated groundwater or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

We have inspected, as thoroughly as possible by observation, the land; however, it was impossible to personally inspect conditions beneath the soil. Therefore, no representation is made as to these matters unless specifically considered in the appraisal.

4. All furnishings, equipment and business operations, except as specifically stated and typically considered as part of real property, have been disregarded with only real property being considered in the report unless otherwise stated. Any existing or proposed improvements, on or off-site, as well as any alterations or repairs considered, are assumed to be completed in a workmanlike manner according to standard practices based upon the information submitted to CBRE. This report may be subject to amendment upon re-inspection of the subject subsequent to repairs, modifications, alterations and completed new construction. Any estimate of Market Value is as of the date indicated; based upon the information, conditions and projected levels of operation.
5. It is assumed that all factual data furnished by the client, property owner, owner's representative, or persons designated by the client or owner to supply said data are accurate and correct unless otherwise specifically noted in the appraisal report. Unless otherwise specifically noted in the appraisal report, CBRE has no reason to believe that any of the data furnished contain any material error. Information and data referred to in this paragraph include, without being limited to, numerical street addresses, lot and block numbers, Assessor's Parcel Numbers, land dimensions, square footage area of the land, dimensions of the improvements, gross building areas, net rentable areas, usable areas, unit count, room count, rent schedules, income data, historical operating expenses, budgets, and related data. Any material error in any of the above data could have a substantial impact on the conclusions reported. Thus, CBRE reserves the right to amend conclusions reported if made aware of any such error. Accordingly, the client-addressee should carefully review

all assumptions, data, relevant calculations, and conclusions within 30 days after the date of delivery of this report and should immediately notify CBRE of any questions or errors.

6. The date of value to which any of the conclusions and opinions expressed in this report apply, is set forth in the Letter of Transmittal. Further, that the dollar amount of any value opinion herein rendered is based upon the purchasing power of the American Dollar on that date. This appraisal is based on market conditions existing as of the date of this appraisal. Under the terms of the engagement, we will have no obligation to revise this report to reflect events or conditions which occur subsequent to the date of the appraisal. However, CBRE will be available to discuss the necessity for revision resulting from changes in economic or market factors affecting the subject.
7. CBRE assumes no private deed restrictions, limiting the use of the subject in any way.
8. Unless otherwise noted in the body of the report, it is assumed that there are no mineral deposit or subsurface rights of value involved in this appraisal, whether they be gas, liquid, or solid. Nor are the rights associated with extraction or exploration of such elements considered unless otherwise stated in this appraisal report. Unless otherwise stated it is also assumed that there are no air or development rights of value that may be transferred.
9. CBRE is not aware of any contemplated public initiatives, governmental development controls, or rent controls that would significantly affect the value of the subject.
10. The estimate of Market Value, which may be defined within the body of this report, is subject to change with market fluctuations over time. Market value is highly related to exposure, time promotion effort, terms, motivation, and conclusions surrounding the offering. The value estimate(s) consider the productivity and relative attractiveness of the property, both physically and economically, on the open market.
11. Any cash flows included in the analysis are forecasts of estimated future operating characteristics are predicated on the information and assumptions contained within the report. Any projections of income, expenses and economic conditions utilized in this report are not predictions of the future. Rather, they are estimates of current market expectations of future income and expenses. The achievement of the financial projections will be affected by fluctuating economic conditions and is dependent upon other future occurrences that cannot be assured. Actual results may vary from the projections considered herein. CBRE does not warrant these forecasts will occur. Projections may be affected by circumstances beyond the current realm of knowledge or control of CBRE.
12. Unless specifically set forth in the body of the report, nothing contained herein shall be construed to represent any direct or indirect recommendation of CBRE to buy, sell, or hold the properties at the value stated. Such decisions involve substantial investment strategy questions and must be specifically addressed in consultation form.
13. Also, unless otherwise noted in the body of this report, it is assumed that no changes in the present zoning ordinances or regulations governing use, density, or shape are being considered. The property is appraised assuming that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, nor national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report is based, unless otherwise stated.
14. This study may not be duplicated in whole or in part without the specific written consent of CBRE nor may this report or copies hereof be transmitted to third parties without said consent, which consent CBRE reserves the right to deny. Exempt from this restriction is duplication for the internal use of the client-addressee and/or transmission to attorneys, accountants, or advisors of the client-addressee. Also exempt from this restriction is transmission of the report to any court, governmental authority, or regulatory agency having jurisdiction over the party/parties for whom this appraisal was prepared, provided that this report and/or its contents shall not be published, in whole or in part, in any public document without the express written consent of CBRE which consent CBRE reserves the right to deny. Finally, this report shall not be advertised to the public or otherwise used to induce a third party to purchase the property or to make a "sale" or "offer for sale" of any "security", as such terms are defined and used in the Securities Act of 1933, as amended. Any third party, not covered by the exemptions herein, who may possess this report, is advised that they should rely on their own independently secured advice for any decision in connection with this property. CBRE shall have no accountability or responsibility to any such third party.
15. Any value estimate provided in the report applies to the entire property, and any pro ration or division of the title into fractional interests will invalidate the value estimate, unless such pro ration or division of interests has been set forth in the report.
16. The distribution of the total valuation in this report between land and improvements applies only under the existing program of utilization. Component values for land and/or buildings are not intended to be used in conjunction with any other property or appraisal and are invalid if so used.

17. The maps, plats, sketches, graphs, photographs and exhibits included in this report are for illustration purposes only and are to be utilized only to assist in visualizing matters discussed within this report. Except as specifically stated, data relative to size or area of the subject and comparable properties has been obtained from sources deemed accurate and reliable. None of the exhibits are to be removed, reproduced, or used apart from this report.
18. No opinion is intended to be expressed on matters which may require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. Values and opinions expressed presume that environmental and other governmental restrictions/conditions by applicable agencies have been met, including but not limited to seismic hazards, flight patterns, decibel levels/noise envelopes, fire hazards, hillside ordinances, density, allowable uses, building codes, permits, licenses, etc. No survey, engineering study or architectural analysis has been made known to CBRE unless otherwise stated within the body of this report. If the Consultant has not been supplied with a termite inspection, survey or occupancy permit, no responsibility or representation is assumed or made for any costs associated with obtaining same or for any deficiencies discovered before or after they are obtained. No representation or warranty is made concerning obtaining these items. CBRE assumes no responsibility for any costs or consequences arising due to the need, or the lack of need, for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard Insurance.
19. Acceptance and/or use of this report constitutes full acceptance of the Contingent and Limiting Conditions and special assumptions set forth in this report. It is the responsibility of the Client, or client's designees, to read in full, comprehend and thus become aware of the aforementioned contingencies and limiting conditions. Neither the Appraiser nor CBRE assumes responsibility for any situation arising out of the Client's failure to become familiar with and understand the same. The Client is advised to retain experts in areas that fall outside the scope of the real estate appraisal/consulting profession if so desired.
20. CBRE assumes that the subject analyzed herein will be under prudent and competent management and ownership; neither inefficient or super-efficient.
21. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report.
22. No survey of the boundaries of the property was undertaken. All areas and dimensions furnished are presumed to be correct. It is further assumed that no encroachments to the realty exist.
23. The Americans with Disabilities Act (ADA) became effective January 26, 1992. Notwithstanding any discussion of possible readily achievable barrier removal construction items in this report, CBRE has not made a specific compliance survey and analysis of this property to determine whether it is in conformance with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the ADA. If so, this fact could have a negative effect on the value estimated herein. Since CBRE has no specific information relating to this issue, nor is CBRE qualified to make such an assessment, the effect of any possible non-compliance with the requirements of the ADA was not considered in estimating the value of the subject.
24. Client shall not indemnify Appraiser or hold Appraiser harmless unless and only to the extent that the Client misrepresents, distorts, or provides incomplete or inaccurate appraisal results to others, which acts of the Client proximately result in damage to Appraiser. The Client shall indemnify and hold Appraiser harmless from any claims, expenses, judgments or other items or costs arising as a result of the Client's failure or the failure of any of the Client's agents to provide a complete copy of the appraisal report to any third party. In the event of any litigation between the parties, the prevailing party to such litigation shall be entitled to recover from the other reasonable attorney fees and costs.
25. The report is for the sole use of the client; however, client may provide only complete, final copies of the appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. Appraiser is not required to explain or testify as to appraisal results other than to respond to the client for routine and customary questions. Please note that our consent to allow an appraisal report prepared by CBRE or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.
26. As part of the client's requested scope of work, an estimate of insurable value is provided herein. CBRE has followed traditional appraisal standards to develop a reasonable calculation based upon industry practices and industry accepted publications such as the Marshall Valuation Service handbook. The methodology employed is a derivation of the cost

approach which is primarily used as an academic exercise to help support the market value estimate and therefore is not reliable for Insurable Value estimates. Actual construction costs and related estimates can vary greatly from this estimate.

This analysis should not be relied upon to determine proper insurance coverage which can only be properly estimated by consultants considered experts in cost estimation and insurance underwriting. It is provided to aid the client/reader/user as part of their overall decision making process and no representations or warranties are made by CBRE regarding the accuracy of this estimate and it is strongly recommend that other sources be utilized to develop any estimate of insurable value.

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

NO. 77780

Appellants,

vs.

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

Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 8 OF 19

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868

RICHARD D. WILLIAMSON (SBN 1001)
JONATHAN TEW (SBN 9932)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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

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

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDA

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM A
GLOSSARY OF TERMS

WINNERS CORNER -- SOUTH VIRGINIA

assessed value Assessed value applies in ad valorem taxation and refers to the value of a property according to the tax rolls. Assessed value may not conform to market value, but it is usually calculated in relation to a market value base.[†]

cash equivalency The procedure in which the sale prices of comparable properties sold with atypical financing are adjusted to reflect typical market terms.

contract rent The actual rental income specified in a lease.[‡]

effective rent The rental rate net of financial concessions such as periods of no rent during the lease term; may be calculated on a discounted basis, reflecting the time value of money, or on a simple, straight-line basis.[‡]

excess land In regard to an improved site, the land not needed to serve or support the existing improvement. In regard to a vacant site or a site considered as though vacant, the land not needed to accommodate the site's primary highest and best use. Such land may be separated from the larger site and have its own highest and best use, or it may allow for future expansion of the existing or anticipated improvement. See also surplus land.[‡]

extraordinary assumption An assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. See also hypothetical condition.[‡]

fee simple estate Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.[‡]

floor area ratio (FAR) The relationship between the above-ground floor area of a building, as described by the building code, and the area of the plot on which it stands; in planning and zoning, often expressed as a decimal, e.g., a ratio of 2.0 indicates that the permissible floor area of a building is twice the total land area; also called *building-to-land ratio*.[‡]

full service lease A lease in which rent covers all operating expenses. Typically, full service leases are combined with an expense stop, the expense level covered by the contract lease payment. Increases in expenses above the expense stop level are passed

through to the tenant and are known as expense pass-throughs.

going concern value Going concern value is the value of a proven property operation. It includes the incremental value associated with the business concern, which is distinct from the value of the real estate only. Going concern value includes an intangible enhancement of the value of an operating business enterprise which is produced by the assemblage of the land, building, labor, equipment, and marketing operation. This process creates an economically viable business that is expected to continue. Going concern value refers to the total value of a property, including both real property and intangible personal property attributed to the business value.[†]

gross building area (GBA) The total floor area of a building, including below-grade space but excluding unenclosed areas, measured from the exterior of the walls. Gross building area for office buildings is computed by measuring to the outside finished surface of permanent outer building walls without any deductions. All enclosed floors of the building including basements, mechanical equipment floors, penthouses, and the like are included in the measurement. Parking spaces and parking garages are excluded.[‡]

hypothetical condition That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. See also extraordinary assumption.[‡]

insurable value Insurable Value is based on the replacement and/or reproduction cost of physical items that are subject to loss from hazards. Insurable value is that portion of the value of an asset or asset group that is acknowledged or recognized under the provisions of an applicable loss insurance policy. This value is often controlled by state law and varies from state to state.[†]

investment value Investment value is the value of an investment to a particular investor based on his or her investment requirements. In contrast to market value, investment value is value to an individual, not value in the marketplace. Investment value reflects the subjective relationship between a particular investor and a given investment. When measured in dollars, investment value is the price an investor would pay for an investment in light of its perceived capacity to satisfy his or her desires, needs, or investment goals. To estimate investment value, specific investment criteria must be known. Criteria to evaluate a real estate

WINNERS CORNER -- SOUTH VIRGINIA

investment are not necessarily set down by the individual investor; they may be established by an expert on real estate and its value, that is, an appraiser.[†]

leased fee

See leased fee estate

leased fee estate An ownership interest held by a landlord with the right of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.[‡]

leasehold

See leasehold estate

leasehold estate The interest held by the lessee (the tenant or renter) through a lease conveying the rights of use and occupancy for a stated term under certain conditions.[‡]

market rent The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations.[‡]

market value Market value is one of the central concepts of the appraisal practice. Market value is differentiated from other types of value in that it is created by the collective patterns of the market. Market value means 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) A reasonable time is allowed for exposure in the open market; 2) Both parties are well informed or well advised, and acting in what they consider their own best interests; 3) Buyer and seller are typically motivated; 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.[§]

marketing period The time it takes an interest in real property to sell on the market subsequent to the date of an appraisal.[‡]

net lease Lease in which all or some of the operating expenses are paid directly by the tenant. The landlord

never takes possession of the expense payment. In a *Triple Net Lease* all operating expenses are the responsibility of the tenant, including property taxes, insurance, interior maintenance, and other miscellaneous expenses. However, management fees and exterior maintenance are often the responsibility of the lessor in a triple net lease. A *modified net lease* is one in which some expenses are paid separately by the tenant and some are included in the rent.

net rentable area (NRA) 1) The area on which rent is computed. 2) The Rentable Area of a floor shall be computed by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor. No deductions shall be made for columns and projections necessary to the building. Include space such as mechanical room, janitorial room, restrooms, and lobby of the floor.[†]

occupancy rate The relationship or ratio between the income received from the rented units in a property and the income that would be received if all the units were occupied.[‡]

prospective value opinion A forecast of the value expected at a specified future date. A prospective value opinion is most frequently sought in connection with real estate projects that are proposed, under construction, or under conversion to a new use, or those that have not achieved sellout or a stabilized level of long-term occupancy at the time the appraisal report is written.[‡]

reasonable exposure time The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based upon an analysis of past events assuming a competitive and open market.^{††}

rent

See
full service lease
net lease
market rent
contract, coupon, face, or nominal rent
effective rent

shell rent The typical rent paid for retail, office, or industrial tenant space based on minimal "shell" interior finishes (called plain vanilla finish in some areas). Usually the landlord delivers the main building shell space or some minimum level of interior build-out, and the tenant completes the interior finish, which can include wall, ceiling, and floor finishes; mechanical systems, interior electric, and plumbing. Typically these

WINNERS CORNER -- SOUTH VIRGINIA

are long-term leases with tenants paying all or most property expenses.[†]

surplus land Land not necessary to support the highest and best use of the existing improvement but, because of physical limitations, building placement, or neighborhood norms, cannot be sold off separately. Such land may or may not contribute positively to value and may or may not accommodate future expansion of an existing or anticipated improvement. See also excess land.[‡]

usable area 1) The area actually used by individual tenants. 2) The Usable Area of an office building is computed by measuring to the finished surface of the office side of corridor and other permanent walls, to the center of partitions that separate the office from adjoining usable areas, and to the inside finished surface of the dominant portion of the permanent outer

building walls. Excludes areas such as mechanical rooms, janitorial room, restrooms, lobby, and any major vertical penetrations of a multi-tenant floor.^{*}

use value Use value is a concept based on the productivity of an economic good. Use value is the value a specific property has for a specific use. Use value focuses on the value the real estate contributes to the enterprise of which it is a part, without regard to the property's highest and best use or the monetary amount that might be realized upon its sale.[†]

value indication An opinion of value derived through application of the appraisal process.[‡]

[†] *The Appraisal of Real Estate*, Twelfth Edition, Appraisal Institute, 2001.

[‡] *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, 2002.

[§] 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*, 4th ed. (Chicago: Appraisal 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)*.

^{*} 2000 BOMA Experience Exchange Report, Income/Expense Analysis for Office Buildings (Building Owners and Managers Association, 2000)

^{††} *Statement on Appraisal Standard No. 6*, Appraisal Standards Board of The Appraisal Foundation, September 16, 1993, revised June 15, 2004.

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM B
IMPROVED SALE DATA SHEETS

RETAIL SALE No. 1**Winners Corner -- Greg Street****Location Data**

Location: **187 E. Greg Street
Sparks, NV 89431**
 County: **Washoe**
 Assessor's Parcel No: **034-145-09**
 Atlas Ref: **N/A**

Physical Data

Type: **Convenience Store/Gas Station**
 Land Area: **0.81 Acres**
 Excess Land: **N/A**
 Gross Leasable Area:

**Financial Data**

Source: **Broker**
 Occupancy at Sale: **100%**
 Existing or ProForma Inc: **Existing**

	Total	Per SF
Potential Gross Income:	\$374,938	\$109.95
Vacancy and Credit Loss:	N/A	N/A
Effective Gross Income:	\$374,938	\$109.95
Expenses and Reserves:	N/A	N/A
Net Operating Income:	\$374,938	\$109.95

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **3,410 SF**

Total GLA: **3,410 SF**

GLA Purchased: **3,410 SF**

Year Built: **2007**

Parking: **Adequate**

Condition: **Good**

Exterior Walls: **Stucco**

Analysis

Buyers Underwriting Criteria.: **Direct Cap**
 Overall Cap. Rate (OAR): **6.25 %**
 Projected IRR: **N/A %**
 Eff. Gross Multiplier (EGIM): **16.00**
 Oper. Expense Ratio (OER): **N/A %**
 Price Per Square Foot: **\$1759.20**

Sale Data

Transaction Type: **Listing**
 Date: **10/2008**
 Marketing Time: **4 months**
 Grantor: **Latala Family Trust**
 Grantee: **N/A**
 Document No.: **N/A**
 Sale Price: **\$5,999,000**
 Financing: **Cash to Seller**
 Cash Eq. Price: **\$5,999,000**
 Req. Capital Cost: **\$0**
 Adj. Sale Price: **\$5,999,000**
 Verification: **D. Gluhaich**

Comments

The project represents an absolute net leased investment. The project is comprised of gas pumps and a convenience store. The property is 100% leased to Berry-Hinckley Industries now Terrible Herbst due to the 2007 acquisition of BHI. The lease expires on January 5, 2025 and includes 1.5% annual increases.

RETAIL SALE No. 2**Terrible Herbst****Location Data**

Location: **1600 Victorian Avenue
Sparks, NV 89431**

County: **Washoe**

Assessor's Parcel No: **032-122-18**

Atlas Ref: **N/A**

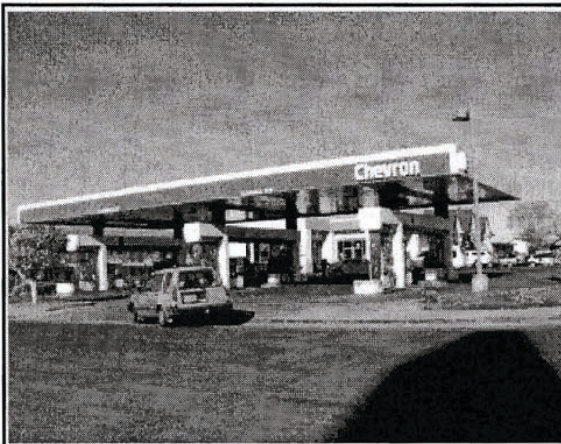
Physical Data

Type: **Convenience Store/Gas Station**

Land Area: **0.41 Acres**

Excess Land: **N/A**

Gross Leasable Area:

**Financial Data**

Source: **Broker**

Occupancy at Sale: **100%**

Existing or ProForma Inc: **Existing**

	Total	Per SF
Potential Gross Income:	\$141,064	\$60.13
Vacancy and Credit Loss:	\$2,821	\$1.20
Effective Gross Income:	\$138,243	\$58.93
Expenses and Reserves:	N/A	N/A
Net Operating Income:	\$138,243	\$58.93

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **2,346 SF**

Total GLA: **2,346 SF**

GLA Purchased: **2,346 SF**

Year Built: **1984**

Parking: **Adequate**

Condition: **Average**

Exterior Walls: **Concrete Block**

Analysis

Buyers Underwriting Criteria.: **Direct Cap**

Overall Cap. Rate (OAR): **8.16 %**

Projected IRR: **N/A %**

Eff. Gross Multiplier (EGIM): **12.25**

Oper. Expense Ratio (OER): **N/A %**

Price Per Square Foot: **\$722.13**

Sale Data

Transaction Type: **Sale**

Date: **5/2007**

Marketing Time: **N/A**

Grantor: **Spirit SPE Portfolio**

Grantee: **Park Avenue Realty**

Document No.: **03533756**

Sale Price: **\$1,694,117**

Financing: **Cash to Seller**

Cash Eq. Price: **\$1,694,117**

Req. Capital Cost: **\$0**

Adj. Sale Price: **\$1,694,117**

Verification: **Assessor**

Comments

The project is a NNN leased gas/convenience store located in Sparks, NV. The property is 100% leased to Berry-Hinkley Industries now owned by Terrible Herbst selling Chevron brand gasoline. At the time of sale the lease had 17 years remaining and includes 2% annual increases. The lease is personally guaranteed by Jerry Herbst.

As of October 2008 the project is being marketed as for sale in the amount of \$1,780,364 which equates to a 8.25% OAR based on actual income.

RETAIL SALE No. 3**Jiffy Lube****Location Data**

Location: **6100 Mae Anne
Reno, NV 89523**

County: **Washoe**

Assessor's Parcel No: **200-590-09**

Atlas Ref: **N/A**

Physical Data

Type: **Auto Repair/Service**

Land Area: **N/A**

Excess Land: **N/A**

Gross Leasable Area:

**Financial Data**

Source: **Seller**

Occupancy at Sale: **100%**

Existing or ProForma Inc: **Existing**

	Total	Per SF
Potential Gross Income:	\$134,382	\$74.53
Vacancy and Credit Loss:	\$672	\$0.37
Effective Gross Income:	\$133,710	\$74.16
Expenses and Reserves:	N/A	N/A
Net Operating Income:	\$133,710	\$74.16

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **1,803 SF**

Total GLA: **1,803 SF**

GLA Purchased: **1,803 SF**

Year Built: **2005**

Parking: **Adequate**

Condition: **Good**

Exterior Walls: **Stucco**

Analysis

Buyers Underwriting Criteria.:	Direct Cap
Overall Cap. Rate (OAR):	7.04 %
Projected IRR:	N/A %
Eff. Gross Multiplier (EGIM):	14.21
Oper. Expense Ratio (OER):	N/A %
Price Per Square Foot:	\$1053.80

Sale Data

Transaction Type: **Sale**

Date: **4/2007**

Marketing Time: **3 months**

Grantor: **Tibarom, Inc**

Grantee: **JNM Properties**

Document No.: **03521835**

Sale Price: **\$1,900,000**

Financing: **Cash to Seller**

Cash Eq. Price: **\$1,900,000**

Req. Capital Cost: **\$0**

Adj. Sale Price: **\$1,900,000**

Verification: **Washoe County Assessor**

Comments

The property is located in Quail Northwest Business Park. The building has limited Mae Ann Boulevard street exposure and does not have direct access from Mae Ann Blvd. Access is obtained to the building via common access to the business park. The site area is recorded as 2,000 SF; however, the project is part of a PUD with common area parking and drives.

The improvement has two bays and a reported 1,023 SF basement not included in the GLA. The lease rate is reported as \$134,382 annually which is reported to represent 10% of the gross revenue estimated for the project.

The project also sold in December 2004 for \$1,550,000 or \$859.68/SF. As of May 1, 2007 the project is also listed as "for sale" in the amount of \$2,068,000 or \$1,147/SF which equates to a 6.5% cap based on reported income.

RETAIL SALE No. 4**Winners Corner****Location Data**

Location: **350 S. Arlington Avenue**
Reno, NV
 County: **Washoe**
 Assessor's Parcel No: **011-156-25**
 Atlas Ref: **N/A**

Physical Data

Type: **Convenience Store/Gas Station**
 Land Area: **0.25 Acres**
 Excess Land: **N/A**
 Gross Leasable Area:

**Financial Data**

Source: **Appraiser**
 Occupancy at Sale: **100%**
 Existing or ProForma Inc: **Existing**

	Total	Per SF
Potential Gross Income:	\$129,679	\$68.07
Vacancy and Credit Loss:	\$3,242	\$1.70
Effective Gross Income:	\$126,437	\$66.37
Expenses and Reserves:	N/A	N/A
Net Operating Income:	\$126,437	\$66.37

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **1,905 SF**

Total GLA: **1,905 SF**

GLA Purchased: **1,905 SF**

Year Built: **1964**

Parking: **Adequate**

Condition: **Average**

Exterior Walls: **Concrete block**

Analysis

	Direct Cap
Buyers Underwriting Criteria.:	
Overall Cap. Rate (OAR):	7.31 %
Projected IRR:	N/A %
Eff. Gross Multiplier (EGIM):	13.68
Oper. Expense Ratio (OER):	N/A %
Price Per Square Foot:	\$907.64

Sale Data

Transaction Type: **Sale**
 Date: **6/2006**
 Marketing Time: **2 months**
 Grantor: **OPPIO Ranch, LLC**
 Grantee: **Spirit SPE**
 Document No.: **N/A**
 Sale Price: **\$1,729,053**
 Financing: **Cash to Seller**
 Cash Eq. Price: **\$1,729,053**
 Req. Capital Cost: **\$0**
 Adj. Sale Price: **\$1,729,053**
 Verification: **Phil Tripoli**

Comments

The project represents a convenience/gas store located in Downtown Reno. The property was marketed at a 7% cap rate; however, the seller discounted the price to a 7.5% cap rate since the buyer was an all cash buyer who purchased two cardlock locations as well.

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

NO. 77780

Appellants,

vs.

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

Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 8 OF 19

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868

RICHARD D. WILLIAMSON (SBN 1001)
JONATHAN TEW (SBN 9932)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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	Exhibit 30: Defendants' First Set of Interrogatories on Willard		15	3519-3528
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		15	3529-3539
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		15	3540-3547

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 52)	Exhibit 4: Operation and Management Agreement dated 5/1/13		16	3742-3746
	Exhibit 5: 13 Symptoms of Bipolar Disorder		16	3747-3749
	Exhibit 6: Emergency Protective Order dated 1/23/18		16	3750-3752
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		16	3753-3755
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		16	3756-3769
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		16	3770-3798
53.	Opposition to Rule 60(b) Motion for Relief	05/18/18	17	3799-3819
	Exhibit 1: Declaration of 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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

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

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

RETAIL SALE No. 5**Winners Corner****Location Data**

Location: **10585 Stead Boulevard**
Reno, NV
 County: **Washoe**
 Assessor's Parcel No: **090-150-09**
 Atlas Ref: **N/A**

Physical Data

Type: **Convenience Store/Gas Station**
 Land Area: **1.00 Acres**
 Excess Land: **N/A**
 Gross Leasable Area:

**Financial Data**

Source: **Appraiser**
 Occupancy at Sale: **100%**
 Existing or ProForma Inc: **Existing**

	Total	Per SF
Potential Gross Income:	\$345,000	\$107.01
Vacancy and Credit Loss:	\$8,625	\$2.68
Effective Gross Income:	\$336,375	\$104.33
Expenses and Reserves:	N/A	N/A
Net Operating Income:	\$336,375	\$104.33

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **3,224 SF**

Total GLA: **3,224 SF**

GLA Purchased: **3,224 SF**

Year Built: **1988**

Parking: **Adequate**

Condition: **Average**

Exterior Walls: **Concrete block**

Analysis

	Direct Cap
Buyers Underwriting Criteria.:	
Overall Cap. Rate (OAR):	6.73 %
Projected IRR:	N/A %
Eff. Gross Multiplier (EGIM):	14.86
Oper. Expense Ratio (OER):	N/A %
Price Per Square Foot:	\$1550.90

Sale Data

Transaction Type: **Sale**
 Date: **2/2006**
 Marketing Time: **1 months**
 Grantor: **Lohf**
 Grantee: **Spirit SPE**
 Document No.: **N/A**
 Sale Price: **\$5,000,000**
 Financing: **Cash to Seller**
 Cash Eq.Price: **\$5,000,000**
 Req.Capital Cost: **\$0**
 Adj. Sale Price: **\$5,000,000**
 Verification: **Phil Tripoli**

Comments

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM C
RENT COMPARABLE DATA SHEETS

RETAIL COMPARABLE No. 1

Winner's Corner**Location Data**

Location: 205 N. McCarran Blvd
Sparks, NV
County: Washoe
Assessor's Parcel No: 037-012-05
Atlas Ref: N/A

Physical Data

Type: Convenience Store/Gas Station
Gross Leaseable Area: 2,924 SF
Year Built: 1982
Exterior Walls: Masonry
Condition: Average
Parking: Open

Anchor Tenant GLA: N/A
Local Tenant GLA: 2,924 SF
Total GLA: 2,924 SF

**Lease Data**

Occupancy:
Local: 100%
Overall: 100%
Typical Size: 2,924 SF
Term: N/A
Base Rent PSF: \$92.34 PSF
Rent Escalations: N/A
Basis: NNN
Expense Pass-Thru: NNN
Free Rent (months): N/A
Tenant Improvement: N/A
Leasing Agent: N/A
Phone No.: N/A
Survey Date: 01/2006

Recent Leases

Date	Size (SF)	Tenant	Rent (PSF)	TI (PSF)	Free Rent (Months)	Escalations	Term (Yrs)
10/2005	2,924	Winner's Corner	\$92.34	\$0.00			

Comments

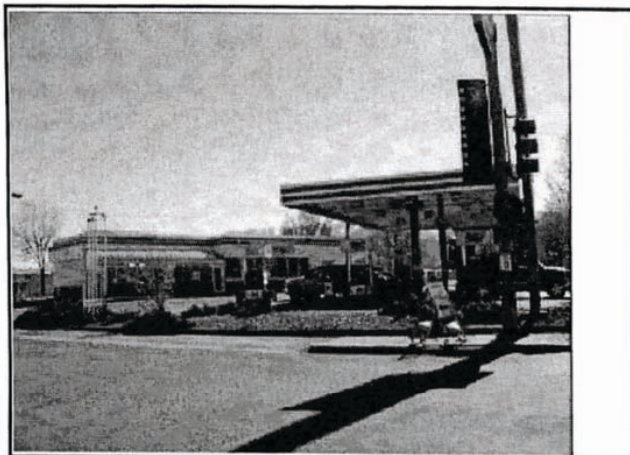
RETAIL COMPARABLE No. 2**Winners Corner****Location Data**

Location: **1400 Rand Avenue
Carson City, NV 89706**

County: **Carson City**

Assessor's Parcel No: **002-244-02**

Atlas Ref: **N/A**

**Physical Data**

Type: **Convenience Store/Gas Station**

Gross Leaseable Area: **2,222 SF**

Year Built: **1990**

Exterior Walls: **Concrete Block**

Condition: **Average**

Parking: **Adequate**

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **2,222 SF**

Total GLA: **2,222 SF**

Lease Data

Occupancy:

Local: **100%**

Overall: **100%**

Typical Size: **2,222 SF**

Term: **17.5 Yrs**

Base Rent PSF: **N/A**

Rent Escalations: **2% Ann**

Basis: **NNN**

Expense Pass-Thru: **NNN**

Free Rent (months): **N/A**

Tenant Improvement: **N/A**

Leasing Agent: **N/A**

Phone No.: **N/A**

Survey Date: **6/2006**

Recent Leases

Date	Size (SF)	Tenant	Rent (PSF)	TI (PSF)	Free Rent (Months)	Escalations	Term (Yrs)
10/2005	2,222	Barry Hinkley	\$89.56	\$0.00		2% Ann	17.50

Comments

RETAIL COMPARABLE No. 3

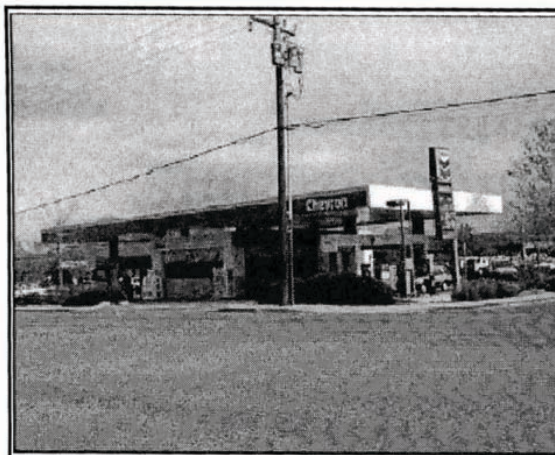
Winners Corner**Location Data**

Location: 1357 US Highway 395
Gardnerville, NV
County: Douglas
Assessor's Parcel No: 1220-04-501-004
Atlas Ref: N/A

Physical Data

Type: Convenience Store/Gas Station
Gross Leaseable Area: 1,971 SF
Year Built: 1991
Exterior Walls: Concrete Block
Condition: Average
Parking: Adequate

Anchor Tenant GLA: N/A
Local Tenant GLA: 1,971 SF
Total GLA: 1,971 SF

**Lease Data**

Occupancy:
Local: 100%
Overall: 100%
Typical Size: 1,971 SF
Term: 17.5 Yrs
Base Rent PSF: N/A
Rent Escalations: 2% Ann
Basis: NNN
Expense Pass-Thru: NNN
Free Rent (months): N/A
Tenant Improvement: N/A
Leasing Agent: N/A
Phone No.: N/A
Survey Date: 6/2006

Recent Leases

Date	Size (SF)	Tenant	Rent (PSF)	TI (PSF)	Free Rent (Months)	Escalations	Term (Yrs)
10/2005	1,971	Barry Hinkley	\$85.93	\$0.00		2% Ann	17.50

Comments

RETAIL COMPARABLE No. 4

Winners Corner**Location Data**

Location: 350 S. Arlington Avenue
 Reno, NV
 County: Washoe
 Assessor's Parcel No: 011-156-25
 Atlas Ref: N/A

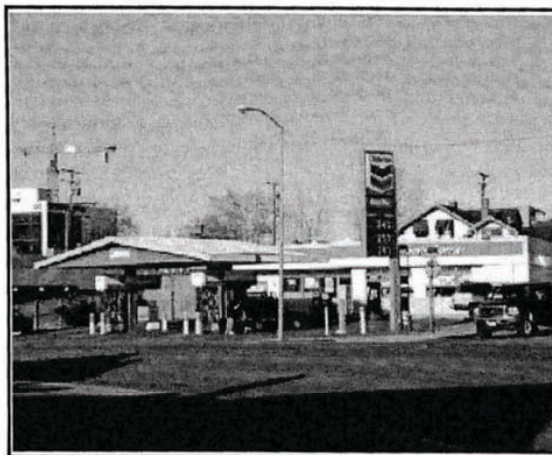
Physical Data

Type: Convenience Store/Gas Station
 Gross Leaseable Area: 1,905 SF
 Year Built: 1964
 Exterior Walls: Concrete Block
 Condition: Average
 Parking: Adequate

Anchor Tenant GLA: N/A

Local Tenant GLA: 1,905 SF

Total GLA: 1,905 SF

**Lease Data**

Occupancy:
 Local: 100%
 Overall: 100%
 Typical Size: 1,905 SF
 Term: 17.5 Yrs
 Base Rent PSF: N/A
 Rent Escalations: 2% Ann
 Basis: NNN
 Expense Pass-Thru: NNN
 Free Rent (months): N/A
 Tenant Improvement: N/A
 Leasing Agent: N/A
 Phone No.: N/A
 Survey Date: 6/2006

Recent Leases

Date	Size (SF)	Tenant	Rent (PSF)	TI (PSF)	Free Rent (Months)	Escalations	Term (Yrs)
10/2005	1,905	Barry Hinkley	\$68.07	\$0.00		2% Ann	17.50

Comments

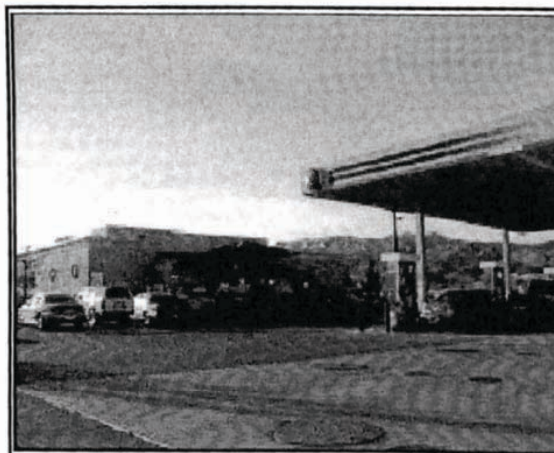
RETAIL COMPARABLE No. 5**Winners Corner****Location Data**

Location: **910 Robb Drive**
Reno, NV
 County: **Washoe**
 Assessor's Parcel No: **039-113-03**
 Atlas Ref: **N/A**

Physical Data

Type: **Convenience Store/Gas Station**
 Gross Leaseable Area: **3,542 SF**
 Year Built: **1998**
 Exterior Walls: **Stucco**
 Condition: **Average**
 Parking: **Adequate**

Anchor Tenant GLA: **N/A**
 Local Tenant GLA: **3,542 SF**
 Total GLA: **3,542 SF**

**Lease Data**

Occupancy:
 Local: **100%**
 Overall: **100%**
 Typical Size: **3,542 SF**
 Term: **17.5 Yrs**
 Base Rent PSF: **N/A**
 Rent Escalations: **2% Ann**
 Basis: **NNN**
 Expense Pass-Thru: **NNN**
 Free Rent (months): **N/A**
 Tenant Improvement: **N/A**
 Leasing Agent: **N/A**
 Phone No.: **N/A**
 Survey Date: **6/2006**

Recent Leases

Date	Size (SF)	Tenant	Rent (PSF)	TI (PSF)	Free Rent (Months)	Escalations	Term (Yrs)
10/2005	3,542	Barry Hinkley	\$116.05	\$0.00		2% Ann	17.50

Comments

RETAIL COMPARABLE No. 6

Winners Corner -- Greg Street**Location Data**

Location: **187 E. Greg Street
Sparks, NV 89413**

County: **Washoe**

Assessor's Parcel No: **034-145-09**

Atlas Ref: **N/A**

**Physical Data**

Type: **Convenience Store/Gas Station**

Gross Leaseable Area: **3,410 SF**

Year Built: **2007**

Exterior Walls: **stucco**

Condition: **Good**

Parking: **adequate**

Anchor Tenant GLA: **N/A**

Local Tenant GLA: **3,410 SF**

Total GLA: **3,410 SF**

Lease Data

Occupancy:

Local: **100%**

Overall: **100%**

Typical Size: **3,410 SF**

Term: **17**

Base Rent PSF: **109.67**

Rent Escalations: **1.5% Ann**

Basis: **NNN**

Expense Pass-Thru: **NNN**

Free Rent (months): **N/A**

Tenant Improvement: **N/A**

Leasing Agent: **N/A**

Phone No.: **N/A**

Survey Date: **10/2008**

Recent Leases

Date	Size (SF)	Tenant	Rent (PSF)	TI (PSF)	Free Rent (Months)	Escalations	Term (Yrs)
2007	3,410	BHI	\$109.67	\$0.00		1.5% Ann	17.00

Comments

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM D
LEGAL DESCRIPTION

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM E
PRÉCIS METRO REPORT - ECONOMY.COM, INC.

EMPLOYMENT & INDUSTRY**TOP EMPLOYERS**

University of Nevada - Reno	3,500 - 3,999
Integrity Staffing Solution	3,000 - 3,499
Naval Air Station Fallon	2,930
International Game Technology	2,500 - 2,999
Washoe Medical Center, Inc.	2,500 - 2,999
Silver Legacy Resort Casino	2,000 - 2,499
Peppermill Hotel Casino - Reno	2,000 - 2,499
Atlantis Casino Resort	1,500 - 1,999
Circus Circus Casinos, Inc. - Reno	1,500 - 1,999
Eldorado Hotel & Casino	1,500 - 1,999
Sparks Nugget, Inc.	1,500 - 1,999
St. Mary's Health Network	1,500 - 1,999
United Parcel Service, Inc.	1,000 - 1,499
Harrah's Entertainment, Inc.	1,000 - 1,499
Hire Dynamics LLC	1,000 - 1,499
Grand Sienna Hotel & Casino	1,000 - 1,499
James A. Haley Veterans Hospital	900 - 999
Sierra Pacific Power Company	900 - 999
Truckee Meadows Community College	800 - 899
Cal-Neva Club	800 - 899

Source: NV Department of Employment, Training and Rehabilitation, 2Q 2007

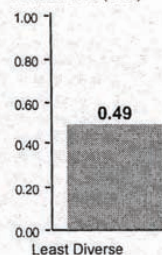
Public

Federal	3,400
State	9,551
Local	16,368

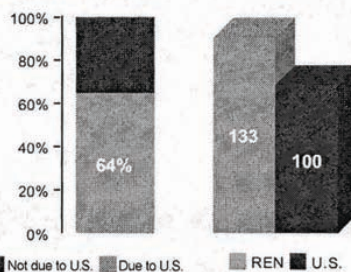
2007

INDUSTRIAL DIVERSITY

Most Diverse (U.S.)

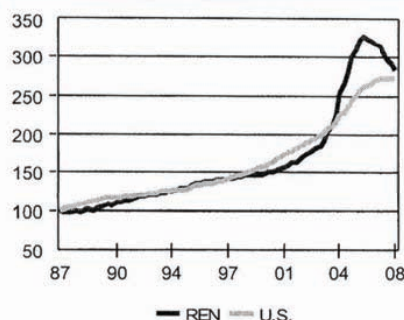


Least Diverse

EMPLOYMENT VOLATILITY DUE TO U.S. FLUCTUATIONS RELATIVE TO U.S.**COMPARATIVE EMPLOYMENT AND INCOME**

Sector	% of Total Employment			Average Annual Earnings		
	REN	NV	US	REN	NV	US
Construction	9.4%	10.4%	5.5%	\$52,301	\$56,098	\$47,439
Manufacturing	6.6%	3.9%	10.1%	\$63,517	\$60,411	\$70,956
Durable	68.8%	68.8%	63.5%	nd	\$62,172	\$71,424
Nondurable	31.2%	31.2%	36.5%	nd	\$56,428	\$70,069
Transportation/Utilities	5.9%	4.1%	3.7%	nd	\$50,445	\$58,157
Wholesale Trade	4.8%	3.1%	4.4%	nd	\$64,053	\$67,687
Retail Trade	10.9%	10.8%	11.3%	\$30,427	\$31,209	\$27,715
Information	1.2%	1.2%	2.2%	\$51,045	\$58,062	\$82,715
Financial Activities	4.5%	5.0%	6.0%	\$29,188	\$34,845	\$53,019
Prof. and Bus. Services	12.9%	12.2%	13.1%	\$43,562	\$49,746	\$54,002
Educ. and Health Services	9.2%	7.1%	13.3%	\$48,396	\$48,917	\$42,114
Leisure and Hosp. Services	17.9%	26.2%	9.8%	\$27,078	\$35,324	\$20,625
Other Services	3.3%	2.8%	4.0%	\$24,521	\$25,712	\$23,807
Government	13.1%	12.1%	16.1%	\$64,739	\$64,589	\$57,889

Sources: Percent of total employment - Moody's Economy.com & BLS, 2007; Average annual earnings - BEA, 2006

HOUSE PRICES

Source: OFHEO, 1987Q1= 100, NSA

CREDIT QUALITY

MOODY'S
RATING

County **Aa2**

LEADING INDUSTRIES

NAICS Industry	Employees (000)
GVSL State & Local Government	25.9
7211 Traveler Accommodation	20.0
5613 Employment Services	6.7
7221 Full-Service Restaurants	6.2
7222 Limited-Service Eating Places	6.1
6221 General Medical and Surgical Hospitals	5.4
2382 Building Equipment Contractors	4.5
5617 Services to Buildings and Dwellings	4.4
2383 Building Finishing Contractors	4.3
4931 Warehousing and Storage	4.2
2381 Foundation, Structure & Bldg. Ext. Contract.	4.0
7132 Gambling Industries	3.6
3399 Other Miscellaneous Manufacturing	3.4
6211 Offices of Physicians	3.4
GVF Federal Government	3.4
High-tech employment	5.4
As % of total employment	2.4

Sources: BLS, Moody's Economy.com, 2007

MIGRATION FLOWS**Into Reno, NV**

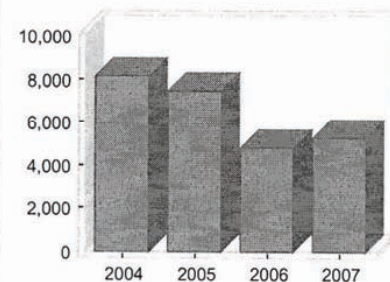
Number
of Migrants

Sacramento, CA	1,298
Las Vegas, NV	1,106
Los Angeles, CA	855
Carson City, NV	801
Oakland, CA	670
Riverside, CA	445
San Jose, CA	439
Santa Ana, CA	386
San Diego, CA	369
Phoenix, AZ	366
Total Immigration	19,139

From Reno, NV

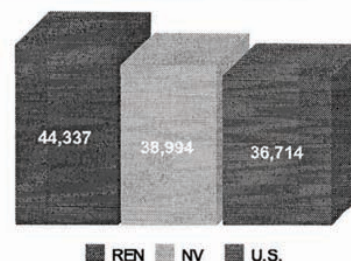
Las Vegas, NV	1,119
Sacramento, CA	990
Carson City, NV	616
Phoenix, AZ	430
Oakland, CA	401
Los Angeles, CA	396
Portland, OR	281
Seattle, WA	271
Riverside, CA	266
San Diego, CA	253
Total Outmigration	16,867

Net Migration 2,272

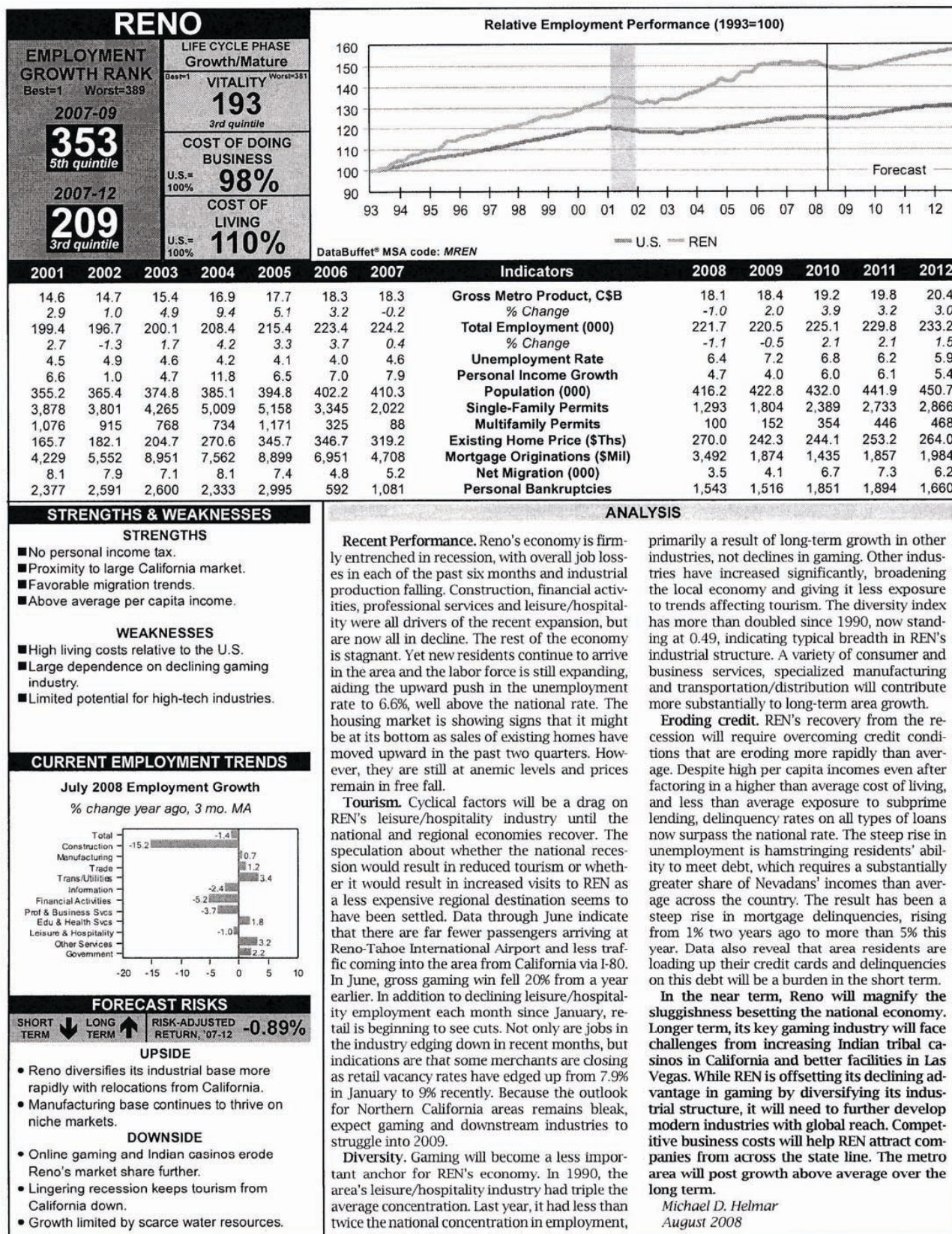
Net Migration, REN

	2004	2005	2006	2007
Domestic	6,532	5,830	3,134	3,598
Foreign	1,580	1,591	1,649	1,636
Total	8,112	7,421	4,783	5,234

Sources: IRS (top), 2007; Census Bureau, 2007

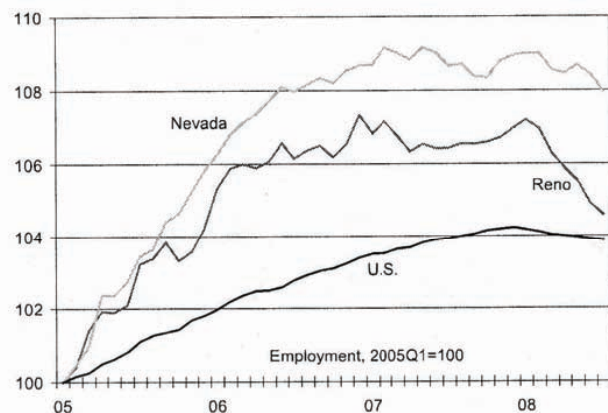
PER CAPITA INCOME

Source: Bureau of Economic Analysis, 2006

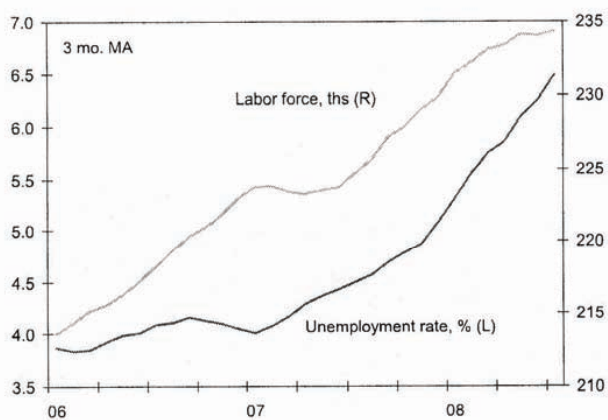


Reno

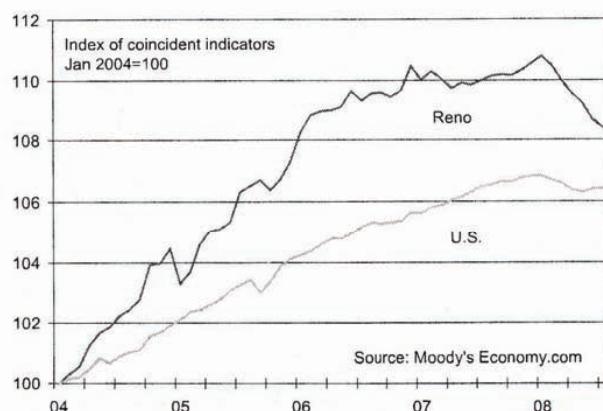
Gaming & Construction: Reno's Building Blocks Are Tumbling



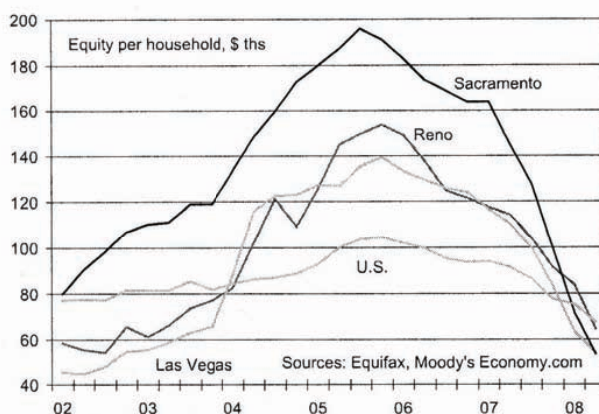
Job Losses, New Workers Push Unemployment



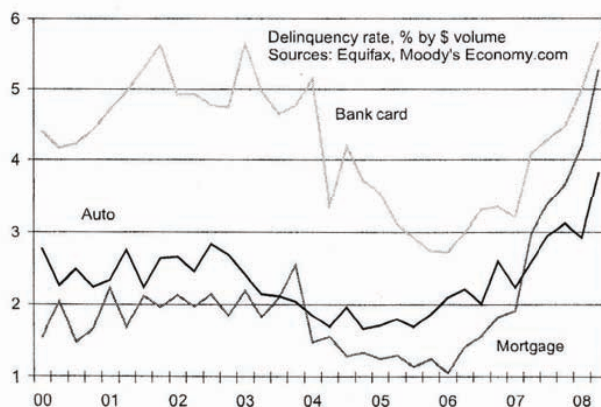
Mild National Recession Is Pretty Deep in Reno



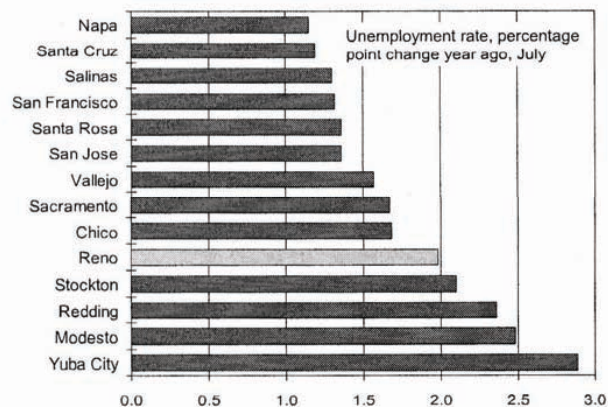
Rapid Gains Completely Gone



Debt Is Becoming Overwhelming



Tied to a Weak Regional Economy



WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM F
REQUIRED CLIENT INFORMATION

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

NO. 77780

Appellants,

vs.

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

Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 8 OF 19

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868

RICHARD D. WILLIAMSON (SBN 1001)
JONATHAN TEW (SBN 9932)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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	Exhibit 43: <i>Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate</i> by and between Land Venture Partners, LLC, Berry-Hinckley Industries, and M&I Marshall & Isley Bank dated October 3, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc No. 3291766		10	2199-2209
	Exhibit 44: <i>Memorandum of Lease with Options to Extend</i> dated December 1, 2005 by Winner's Gaming, Inc. regarding the Virginia Property, recorded December 14, 2005 in the Washoe County Recorder's Office as Doc. No. 3323645		10	2210-2213

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(cont 30)	Exhibit 45: <i>Lease Termination Agreement</i> dated January 25, 2006 by Land Venture Partners, LLC and Berry-Hinckley Industries regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353288		10	2214-2218
	Exhibit 46: <i>Grant, Bargain and Sale Deed</i> by and between Land Venture Partners, LLC and P.A. Morabito & Co., Limited dated February 23, 2006 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353289		10	2219-2224
	Exhibit 47: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and the Willard Plaintiffs dated January 20, 2006 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353290		10	2225-2230
	Exhibit 48: <i>Deed of Trust, Fixture Filing and Security Agreement</i> by and between the Willard Plaintiffs and South Valley National Bank dated February 21, 2006 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353292		10	2231-2248
	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
	Exhibit 51: <i>UCC Financing Statement</i> regarding the Virginia Property, recorded July 5, 2007 in the Washoe County Recorder's Office as Doc. No 3551285		10	2265-2272
	Exhibit 52: Sales brochure for the Virginia Property prepared by Daniel Gluhaich for marketing purposes in 2012		10	2273-2283
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
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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
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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
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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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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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64.	Transcript of Proceedings – Status Hearing	08/17/15	18	4217-4234
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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
<u>ADDITIONAL DOCUMENTS</u>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] ¹	01/04/18	19	4353-4357

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

VALUATION & ADVISORY SERVICES

CBRE
 CB RICHARD ELLIS

 6980 Sierra Center Parkway, Suite 160
 Reno, Nevada 89511

 T (775) 823-6931
 F (775) 356-6181

www.cbre.com

September 16, 2008

 Mr. Larry Lillard
 175 E. Main Avenue, Suite 130
 Morgan Hill, CA 95037

 C/O Mr. Gluhaich
 Phone: 408-461-0262
 Fax:

 RE: Appraisal Agreement
 Appraisal of Winners Corner
 7695 & 7699 S. Virginia Street
 Reno, Washoe County, NV

Dear Mr. Lillard:

We are pleased to submit this proposal and our Terms and Conditions for the appraisal of the referenced real estate.

PROPOSAL SPECIFICATIONS

Purpose:	Market Value
Premise:	"As Is"
Rights Appraised:	Leased Fee
Intended Use:	The report is to be used by the client for internal decisions
Scope of Work:	See description of scope below.
Report Type:	Self contained
Appraisal Standards:	USPAP
Fee:	\$5,000
Expenses:	Included
Retainer:	\$2,500
Payment Terms:	Final payment is due and payable upon delivery of the final report or within thirty (30) days of your receipt of our draft report, whichever is sooner. If a draft report is requested, the fee is considered earned upon delivery of our draft report.
Report Copies:	Three bound final copies, and a PDF electronic copy
Delivery Date:	Delivery of the appraisal conclusions and/or report(s) will be completed according to the following Delivery Schedule.
Delivery Schedule:	
Preliminary Value:	N/A
Draft Report:	N/A
Final Report:	Three weeks from start date

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Start Date: The appraisal process will start upon receipt of your signed agreement and the property specific data.
Acceptance Date: September 22, 2008

SCOPE OF WORK

The scope of work identified for this assignment includes the following steps:

Extent to Which the Property is Identified

CBRE will collect the relevant physical characteristics about the subject via a physical identification and inspection of both the interior and exterior of the subject property. The physical property will be legally identified through its postal address, assessor's records, the provided legal description and the provided title report. Economic characteristics of the subject will be identified via an analysis of leases and/or lease briefs between the lessor and lessee, recent rent roll and historical operating statements.

Extent to Which the Property is Inspected

CBRE will conduct a physical inspection of both the interior and exterior of the subject property, as well as its surrounding environs on the effective date of appraisal.

Type and Extent of the Data Researched

CBRE will physically inspect the micro and/or macro market environments with respect to physical and economic factors relevant to the valuation process. This knowledge will be expanded through interviews with regional and/or local market participants, available published data and other various resources. CBRE will also conduct 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 will analyze 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. All three traditional approaches to value will be considered. CBRE will then correlate and reconcile the results into a reasonable and defensible value conclusion, and estimated a reasonable exposure time and marketing time associated with the value estimate presented.

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Mr. Lillard
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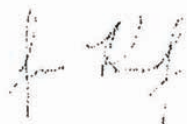
TERMS AND CONDITIONS

The attached Terms and Conditions and Specific Property Data Request are deemed a part of this agreement as though set forth in full herein.

We appreciate this opportunity to be of service to you on this assignment. If you have additional questions, please contact us.

Sincerely,

CB RICHARD ELLIS, INC.
Valuation & Advisory Services



Jason Buckholz
Senior Real Estate Analyst
NV Certified General Appraiser #A.0007369-CG

Phone: (775) 823-6931
Fax: (775) 823-6990
Email: jason.buckholz@cbre.com

AGREED AND ACCEPTED

Signature

9/21/08

Date

Name

Title

Phone Number

Fax Number

E-Mail Address

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CB RICHARD ELLIS

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TERMS AND CONDITIONS

1. These Terms and Conditions, between CB Richard Ellis, Inc.-Appraisal Services (Appraiser) and the Client for whom the referenced appraisal service will be performed, shall be deemed a part of such Agreement as though set forth in full therein. The Agreement shall be governed by the laws of the state of the CB Richard Ellis, Inc. office shown on the Agreement.
2. Client is defined as the party signing the Agreement and shall be responsible for payment of the fees stipulated in the Agreement. Payment of the appraisal fee is not contingent upon any predetermined value or on an action or event resulting from the analyses, opinions, conclusions, or use of the appraisal report.
3. Final payment is due and payable upon delivery of the final report or within thirty (30) days of your receipt of our draft report, whichever is sooner. If a draft report is requested, the fee is considered earned upon delivery of our draft report.
4. If we are requested to give court testimony, an additional fee will be charged on an hourly basis at our then-prevailing hourly rate. The hourly billings pertain to court preparation, waiting and travel time, document review and preparation (excludes appraisal report) and all meetings related to court testimony.
5. In the event Client requests additional services beyond the purpose stated in the Agreement, Client agrees to pay an additional charge for such services, plus reimbursement of expenses, whether or not the completed report has been delivered to Client at the time of the request.
6. It is understood that the Client has the right to cancel this assignment at any time prior to delivery of the completed report. In such event, the Client is obligated only for the pro rated share of the fee based upon the work completed and expenses incurred.
7. Additional copies of the appraisal reports are available at a cost of \$250 per original color copy, plus shipping costs.
8. In the event Client fails to make payments when due and payable, then from the date due and payable until paid the amount due and payable, shall bear interest at the maximum rate permitted in the state in which the office of Appraiser executing the Agreement is located. If Appraiser is required to institute legal action against Client relating to the Agreement, Appraiser shall be entitled to recover reasonable attorney's fees and costs from Client.
9. Appraiser assumes that there are no major or significant items that would require the expertise of a professional building contractor or engineer. If such items need to be considered in Appraiser's studies, such services are to be provided by others at a cost which is not a part of the fee proposal.
10. In the event of any dispute between Client and Appraiser relating to this Agreement, or Appraiser's or Client's performance hereunder, Appraiser and Client agree that such dispute shall be resolved by means of binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings in the state where the office of Appraiser executing this Agreement is located. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar type damages. The prevailing party in the arbitration proceeding shall be entitled to recover from the losing party its expenses, including the costs of arbitration proceeding, and reasonable attorney's fees.
11. Client acknowledges that Appraiser is being retained hereunder as an independent contractor to perform the services described herein and nothing in this Agreement shall be deemed to create any other relationship between Client and Appraiser. This assignment shall be deemed concluded and the services hereunder completed upon delivery to Client of the appraisal report discussed herein.
12. All statements of fact in the report which are used as the basis of the Appraiser's analyses, opinions, and conclusions will be true and correct to the best of the Appraiser's knowledge and belief. The Appraiser may rely upon the accuracy of information and material furnished to Appraiser by Client.
13. Appraiser shall have no responsibility for legal matters, questions of survey or title, soil or subsoil conditions, engineering, or other similar technical matters. The report will not constitute a survey of the property analyzed.
14. Client shall provide Appraiser with such materials with respect to the Assignment as are requested by Appraiser and in the possession or under the control of Client. Client shall provide Appraiser with sufficient access to the real property to be analyzed and hereby grants permission for entry, unless discussed in advance to the contrary.
15. The data gathered in the course of the Assignment (except data furnished by Client) and the report prepared pursuant to the Agreement are, and will remain, the property of Appraiser. With respect to data provided by Client, Appraiser shall not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential

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information furnished to Appraiser. Notwithstanding the foregoing, Appraiser is authorized by Client to disclose all or any portion of the report and the related data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable Appraiser to comply with the Bylaws and Regulations of such Institute as now or hereafter in effect.

16. Unless specifically noted in the appraisal, we will not be taking into consideration the possibility of the existence of asbestos, PCB transformers, or other toxic, hazardous, or contaminated substances and/or underground storage tanks (hazardous material), or the cost of encapsulation or removal thereof. Further, Appraiser understands that there is no major or significant deferred maintenance in the property which would require the expertise of a professional cost estimator or contractor. If such repairs are needed, the estimates are to be prepared by others, and are not a part of this fee proposal.
17. Client shall not indemnify Appraiser or hold Appraiser harmless unless and only to the extent that the Client misrepresents, distorts, or provides incomplete or inaccurate appraisal results to others, which acts of the Client approximately result in damage to Appraiser. Client shall indemnify and hold Appraiser harmless from any claims, expenses, judgments or other items or costs arising as a result of the Client's failure or the failure of any of the Client's agents to provide a complete copy of the appraisal report to any third party. In the event of any litigation between the parties, the prevailing party to such litigation shall be entitled to recover, from the other, reasonable attorney fees and costs.
18. Please note that Appraiser's consent to allow the appraisal report or portions of the report, to become part of or be referenced in, any offering or other material intended for the review of others, or to be submitted to others, will be at Appraiser's reasonable discretion and, if given, will be on condition that Appraiser will be provided with an Indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to Appraiser, by a party satisfactory to Appraiser. Appraiser does consent to Client submission of the complete final report to rating agencies, loan participants or your auditors without the need to provide us with an Indemnification Agreement and/or Non-Reliance letter.

CBRE
CB RICHARD ELLIS

Mr. Lillard
Appraisal Agreement
Page 6 of 6
September 16, 2008

SPECIFIC PROPERTY DATA REQUEST

In order to complete this assignment in the timely manner requested, CB Richard Ellis, Inc., Valuation & Advisory Services, will require the following specific information for the property:

Property contact for access
Copy of all lease documents
Three year operating history
Title report
Tax Bills
Any other information that will assist the valuation

If any of the requested data and information is not available, CB Richard Ellis, Inc., reserves the right to extend the delivery date by the amount of time it takes to receive the requested information or make other arrangements. Please have the requested information delivered to the following:

Jason Buckholz
Senior Appraiser
CB RICHARD ELLIS, INC.
Valuation & Advisory Services
6980 Sierra Center Parkway, Suite 160
Reno, Nevada 89511

CBRE
CB RICHARD ELLIS

WINNERS CORNER -- SOUTH VIRGINIA

ADDENDUM G
QUALIFICATIONS

QUALIFICATIONS OF

R. CLAY CARSON
Managing Director

CB Richard Ellis, Inc.
Valuation & Advisory Services
3753 Howard Hughes Parkway, Suite 360
Las Vegas, NV 89169-0961
Phone: (702) 933-6761
Fax: (702) 933-6766
E-Mail: clay.carson@cbre.com

EDUCATION

Bachelor of Science Degree, Agricultural Economics, Texas A & M University, 1985

LICENSE(S)/CERTIFICATION(S)

Certified General Real Estate Appraiser: State of Nevada (A.0003310-CG)

PROFESSIONAL

Associate Member – MAI Designation: Appraisal Institute

EMPLOYMENT EXPERIENCE

1985-1988	Independent Fee Appraiser	Woody Nelson & Co., Inc.	Houston, TX
1988-1990	Staff Appraiser / Reviewer	Bank One, Texas	Houston, TX
1990-1996	Senior Manager	The Gerald A. Teel Co., Inc.	Houston, TX
1996-1997	Commercial Analyst	Harris County Appraisal District	Houston, TX
1998-1999	Senior Real Estate Analyst	CB Richard Ellis, Inc.	Houston, TX
1999-2004	Senior Real Estate Analyst	CB Richard Ellis, Inc.	Las Vegas, NV
2005-Present	Managing Director	CB Richard Ellis, Inc.	Las Vegas, NV

Professional experience has been in the preparation and review of real estate appraisals, feasibility studies, rent analyses and market studies of commercial and multi-family residential properties. Primary experience encompasses a wide variety of property types including office, retail, industrial, multifamily, medical office, restaurant, low-income housing, branch banks, and special purpose properties.

Experience includes assignments in Arizona, Nevada, Texas, Florida, Alabama, Louisiana, Massachusetts, Pennsylvania, Iowa, Ohio, Michigan, Kentucky, Missouri, Kansas, Oklahoma, New Mexico and Idaho.

The Intermountain Region of CB Richard Ellis, Inc. Appraisal Services covers the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, Nevada, New Mexico, North and South Dakota, Utah, and Wyoming. The regional office is based in Phoenix, Arizona, with satellite offices in the cities of Colorado Springs, Denver, Des Moines, Las Vegas, Omaha, Minneapolis, Salt Lake City, and Tucson.

APPRAISER CERTIFICATE**STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY****NOT TRANSFERABLE****REAL ESTATE DIVISION****NOT TRANSFERABLE**This is to Certify That : **ROBERT CLAY CARSON**Certificate Number: **A.0003310-CG**

Is duly authorized to act as a **CERTIFIED GENERAL APPRAISER** from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: **June 05, 2007**Expire Date: **June 30, 2009**

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: **CB RICHARD ELLIS**
3753 HOWARD HUGHES PKWY STE 360
LAS VEGAS, NV 89109

REAL ESTATE DIVISION

GAIL J. ANDERSON
Administrator



QUALIFICATIONS OF

Jason R. Buckholz
Senior Real Estate Analyst
Intermountain Region – Reno Office

CB Richard Ellis, Inc.
Valuation and Advisory Services
6980 Sierra Center Parkway, Suite 160
Reno, Nevada 89511
Tel: (775) 356-6118
Fax: (775) 356-6181
Direct: (775) 823-6931
E-Mail: Jason.Buckholz@cbre.com

LICENSE(S)/CERTIFICATION(S)

Certified General Real Estate Appraiser: State of California (No. AG036024)
Certified General Real Estate Appraiser: State of Nevada (No. A.0007369-CG)

EMPLOYMENT EXPERIENCE

1999-2000	Site Acquisition Specialist, LCC International, Chico, California
2000-2003	Leasing Manager, Site-Com Inc., Sacramento, California
2003-2006	Real Estate Analyst/Appraiser, CB Richard Ellis, Sacramento, California
2006-2007	Real Estate Analyst/Appraiser, CB Richard Ellis, Las Vegas, Nevada
2007-Present	Senior Real Estate Analyst/Appraiser, CB Richard Ellis, Las Vegas, Nevada


Professional experience has been in the fee preparation of real estate appraisals, feasibility studies, rent analyses and market studies of commercial and residential properties. Primary experience encompasses a wide variety of property types including office, retail, industrial, multifamily, self-storage, mobile home parks, and restaurants.

Assignments completed in California and Nevada

The Intermountain Region of CB Richard Ellis, Inc. Appraisal Services covers the states of Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North and South Dakota, Utah, and Wyoming. The regional office is based in Phoenix, Arizona, with satellite offices in the cities of Denver, Las Vegas, Salt Lake City, and Tucson.

Appraisal experience includes the following types of assignments throughout Northern California:

<i>Office Buildings</i>	<i>Commercial Land</i>	<i>Industrial Land</i>
<i>Industrial Buildings</i>	<i>Medical Office Buildings</i>	<i>Rent Surveys</i>
<i>Apartment Complexes</i>	<i>Net Leased Investments</i>	<i>Shopping Centers</i>
<i>Gas Stations</i>	<i>Development Projects</i>	<i>Residential Land</i>
<i>Auto Dealerships</i>	<i>Mini-Storage</i>	<i>Special Use Facilities</i>

		STATE OF CALIFORNIA Business, Transportation & Housing Agency	
OFFICE OF REAL ESTATE APPRAISERS			
REAL ESTATE APPRAISER LICENSE			
OREA APPRAISER IDENTIFICATION NUMBER		AG036024	
JASON R. BUCKHOLZ			
has successfully met the requirements for a license as a general real estate appraiser in the State of California and is, therefore, entitled to use the title "Certified General Real Estate Appraiser".			
This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.			
Audit No. 095779		OFFICE OF REAL ESTATE APPRAISERS <i>Anthony J. Majewski</i> Date Issued: May 23, 2007 Date Expires: December 30, 2008	
THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD UP TO LIGHT TO SEE "SAFE" AND "VERIFY FIRST"			

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY REAL ESTATE DIVISION

Change A change in the name of the business or the location of an office must be made to the Division within **ten days** after any change has been made. Attach this certificate, pocket card and original intern registrations, if any, to a completed change form (536) and location of records form (512).

Renewal As a courtesy, the Real Estate Division will send a renewal notice to your business address approximately 45 days prior to your renewal date. Renewal information is online at www.reid.state.nv.us.

		Nevada Department of Business and Industry Real Estate Division CERTIFIED GENERAL APPRAISER JASON R BUCKHOLZ
Certificate Number A.0007369-CG	Expiration Date June 30, 2009	
Certificate Location CBRE 6980 SIERRA CENTER PKWY STE 160 RENO, NV 89511		
		
<small>Void if Stolen Stolen in full</small>		

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That : JASON R BUCKHOLZ

Certificate Number: A.0007369-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: June 12, 2007

Expire Date: June 30, 2009

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: CBRE
 6980 SIERRA CENTER PKWY STE 160
 RENO, NV 89511

REAL ESTATE DIVISION

GAIL J. ANDERSON
 Administrator

