

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 9 OF 19

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184
	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel - Brian P. Moquin, Esq.	10/28/14	1	202-206

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 4)	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brain P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/23/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 12)	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 15)	Exhibit 9: Seller's Final Closing Statement		3	549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669
	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		3	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Edward C. Wooley	08/30/16	4	798-803
18.	Affidavit of Larry J. Willard	08/30/16	4	804-812

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
19.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	813-843
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated July 1, 2005 for Purchase of the Highway 50 Property		4	844-857
	Exhibit 2: <i>Lease Agreement</i> dated December 2, 2005 for the Highway 50 Property		4	858-901
	Exhibit 3: <i>Three Year Adjustment Term Note</i> dated January 19, 2007 in the amount of \$2,200,00.00 for the Highway 50 Property		4	902-906
	Exhibit 4: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	907-924
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		4	925-940
	Exhibit 6: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	941-948
	Exhibit 7: <i>Guaranty Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	949-953
	Exhibit 8: <i>Second Amendment to Lease</i> dated June 29, 2011 for the Highway 50 Property		4	954-956
	Exhibit 9: <i>Purchase and Sale Agreement</i> Dated July 14, 2006 for the Baring Property		5	957-979
	Exhibit 10: <i>Lease Agreement</i> dated June 6, 2006 for the Baring Property		5	980-1015
	Exhibit 11: <i>Five Year Adjustable Term Note</i> dated July 18, 2006 in the amount of \$2,100,00.00 for the Baring Property		5	1016-1034

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 12: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1035-1052
	Exhibit 13: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Baring Property		5	1053-1060
	Exhibit 14: <i>Guaranty Agreement</i> dated March 12, 2007 for the Baring Property		5	1061-1065
	Exhibit 15: <i>Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)</i> dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1066-1077
	Exhibit 16: <i>Assignment and Assumption of Lease</i> dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1078-1085
	Exhibit 17: <i>Substitution of Attorney</i> forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1086-1090
	Exhibit 18: <i>Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs</i> filed March 13, 2014 in the California Case		5	1091-1094
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and Brian Moquin re Joint Stipulation in California Case		5	1095-1099
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court		5	1100-1106

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 21: <i>Request for Dismissal</i> without prejudice filed May 19, 2014 in the California case		5	1107-1108
	Exhibit 22: <i>Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust</i> dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1109-1117
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1118-1119
	Exhibit 24: <i>Settlement Statement (HUD-1)</i> dated May 20, 2014 for sale of the Baring Property		5	1120-1122
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1123-1158
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1159-1161
	Exhibit 27: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		5	1162-1174
	Exhibit 28: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		6	1175-1210
	Exhibit 29: <i>Buyer's and Seller's Final Settlement Statements</i> dated February 24, 2006 for the Virginia Property		6	1211-1213
	Exhibit 30: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated February 21, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1214-1231

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 31: <i>Promissory Note</i> dated February 28, 2006 for \$13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1232-1236
	Exhibit 32: <i>Subordination, Attornment And Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1237-1251
	Exhibit 33: <i>Deed of Trust, Assignment of Rents, and Security Agreement</i> dated March 16, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1252-1277
	Exhibit 34: <i>Payment Coupon</i> dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1278-1279
	Exhibit 35: <i>Substitution of Trustee and Full Reconveyance</i> dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1280-1281
	Exhibit 36: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		6	1282-1287
	Exhibit 37: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		6	1288-1292
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1293-1297
	Exhibit 39: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1298-1300

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1301-1303
	Exhibit 41: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1304-1308
	Exhibit 42: <i>Notice of Intent to Foreclose</i> dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1309-1311
	Exhibit 43: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> dated June 18, 2013		6	1312-1315
	Exhibit 44: <i>Declaration in Support of Motion to Dismiss Case</i> filed by Larry James Willard on August 9, 2013, Northern District of California Bankruptcy Court Case No. 13-53293 CN		6	1316-1320
	Exhibit 45: <i>Substitution of Attorney</i> forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1321-1325
	Exhibit 46: <i>Declaration of Arm's Length Transaction</i> dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1326-1333
	Exhibit 47: <i>Purchase and Sale Agreement</i> dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for \$4,000,000.00		6	1334-1340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 48: <i>Short Sale Agreement</i> dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1341-1360
	Exhibit 49: <i>Consent to Act</i> dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1361-1362
	Exhibit 50: <i>Seller's Final Closing Statement</i> dated March 3, 2014 re the Virginia Property		6	1363-1364
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland evidencing discharge of \$8,597,250.20 in debt and assessing the fair market value of the Virginia Property at \$3,000,000.00		6	1365-1366
20.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1367-1386
	Exhibit 1: Declaration of John P. Desmond		6	1387-1390
21.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgment	12/20/16	6	1391-1396
	Exhibit 1: Expert Report of Michelle Salazar		7	1397-1430
22.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1431-1449
23.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	02/02/17	7	1450-1457

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 23)	Exhibit 1: January 19-25, 2017 Email Exchange		7	1458-1460
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1461-1485
24.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1486-1494
25.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1495-1518
26.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1519-1522
	Exhibit 1: May 30, 2017 Order		7	1523-1547
27.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1548-1555
28.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1556-1563
29.	Affidavit of Larry Willard	10/18/17	7	1564-1580
30.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1581-1621
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		7	1622-1632
	Exhibit 2: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		8	1633-1668
	Exhibit 3: <i>Subordination, Attornment and Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		8	1669-1683
	Exhibit 4: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		8	1684-1688

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 5: <i>Landlord's Estoppel Certificate</i> regarding the Virginia Lease dated on or about March 8, 2007		8	1689-1690
	Exhibit 6: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		8	1691-1696
	Exhibit 7: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		8	1697-1701
	Exhibit 8: Berry-Hinckley Industries <i>Financial Analysis</i> on the Virginia Property dated May 2008		8	1702-1755
	Exhibit 9: Appraisal of the Virginia Property by CB Richard Ellis dated October 1, 2008		8	1756-1869
	Exhibit 10: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Lease		9	1870-1874
	Exhibit 11: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property Lease		9	1875-1877
	Exhibit 12: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		9	1878-1880
	Exhibit 13: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		9	1881-1885
	Exhibit 14: Invoice from Gregory M. Breen dated May 31, 2013		9	1886-1887

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 15: Photographs of the Virginia Property taken by Larry J. Willard on May 26-27, 2013		9	1888-1908
	Exhibit 16: Photographs of the Virginia Property in 2012 retrieved from Google Historical Street View		9	1909-1914
	Exhibit 17: Invoice from Tholl Fence dated July 31, 2013		9	1915-1916
	Exhibit 18: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> filed June 18, 2018 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1917-1920
	Exhibit 19: <i>Motion by the National Credit Union Administration Board, Acting in its Capacity as Liquidating Agent for Telesis Community Credit Union, for Order Terminating Automatic Stay or, Alternatively, Requiring Adequate Protection</i> and related declarations and declarations and exhibits thereto filed July 18, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1921-1938
	Exhibit 20: <i>Order for Relief from Stay</i> filed August 8, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1939-1943
	Exhibit 21: <i>Motion to Dismiss Case</i> and related declarations filed August 9, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1944-1953

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 22: <i>Proof of Claim</i> and exhibits thereto filed August 27, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1954-1966
	Exhibit 23: <i>Objection to Claim</i> filed September 5, 2013 by Stanley A. Zlotoff in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1967-1969
	Exhibit 24: <i>Original Preliminary Report</i> dated August 12, 2013 from Stewart Title Company re the Virginia Property		9	1970-1986
	Exhibit 25: <i>Updated Preliminary Report</i> dated January 13, 2014 from Stewart Title Company re the Virginia Property		9	1987-2001
	Exhibit 26: Berry-Hinckley Industries Financial Statement on the Virginia Property for the Twelve Months Ending December 31, 2012		9	2002-2006
	Exhibit 27: Bill Detail from the Washoe County Treasurer website re 2012 property taxes on the Virginia Property		9	2007-2008
	Exhibit 28: Bill Detail from the Washoe County Treasurer website re 2013 property taxes on the Virginia Property		9	2009-2010
	Exhibit 29: <i>Order of Case Dismissal</i> filed September 30, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	2011-2016
	Exhibit 30: Invoice from Santiago Landscape & Maintenance dated October 24, 2013		9	2017-2018

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 31: Appraisal of the Virginia Property by David A. Stefan dated February 10, 2014		9	2019-2089
	Exhibit 32: <i>Seller's Final Closing Statement</i> dated March 6, 2014 re short sale of the Virginia Property from the Willard Plaintiffs to Longley Partners, LLC		9	2090-2091
	Exhibit 33: Invoices from NV Energy for the Virginia Property		9	2092-2109
	Exhibit 34: Invoices and related insurance policy documents from Berkshire Hathaway Insurance Company re the Virginia Property		9	2110-2115
	Exhibit 35: Notice of Violation from the City of Reno re the Virginia Property and correspondence related thereto		10	2116-2152
	Exhibit 36: Willard Plaintiffs Computation of Damages spreadsheet		10	2153-2159
	Exhibit 37: E-mail message from Richard Miller to Dan Gluhaich dated August 6, 2013 re Virginia Property Car Wash		10	2160-2162
	Exhibit 38: E-mail from Rob Cashell to Dan Gluhaich dated February 28, 2014 with attached <i>Proposed and Contract</i> from L.A. Perks dated February 11, 2014 re repairing the Virginia Property		10	2163-2167
	Exhibit 39: <i>Deed</i> by and between Longley Center Partnership and Longley Center Partners, LLC dated January 1, 2004 regarding the Virginia Property, recorded April 1, 2004 in the Washoe County Recorder's Office as Doc. No. 3016371		10	2168-2181

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 40: <i>Grant, Bargain and Sale Deed</i> by and between Longley Center Partners, LLC and P.A. Morabito & Co., Limited dated October 4, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291753		10	2182-2187
	Exhibit 41: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and Land Venture Partners, LLC dated September 30, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291760		10	2188-2193
	Exhibit 42: <i>Memorandum of Lease</i> dated September 30, 2005 by Berry-Hinckley Industries regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291761		10	2194-2198
	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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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
	Exhibit 1: Declaration of Brian R. Irvine		10	2328-2334
	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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 10: December 5, 2016 Email		11	2587-2593
	Exhibit 11: December 9, 2016 Email		11	2594-2595
	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
	Exhibit 16: April 1, 2016 Email		12	2642-2644
	Exhibit 17: May 3, 2016 Email		12	2645-2646
	Exhibit 18: June 21, 2016 Email Exchange		12	2647-2653
	Exhibit 19: July 21, 2016 Email		12	2654-2670
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		12	2671-2680
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		12	2681-2691
	Exhibit 22: Defendants' First Requests for Production on Willard		12	2692-2669
	Exhibit 23: Defendants' Second Request for Production on Willard		12	2700-2707
	Exhibit 24: Defendants' Third Request for Production on Willard		12	2708-2713
	Exhibit 25: Defendants Requests for Admission to Willard		12	2714-2719
	Exhibit 26: Willard Lease		12	2720-2755
	Exhibit 27: Willard Response to Second Set of Interrogatories		12	2756-2764

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 28: Deposition of L. Willard Excerpt		12	2765-2770
	Exhibit 29: April 12, 2013 Letter		12	2771-2773
	Exhibit 30: Declaration of G. Gordon		12	2774-2776
	Exhibit 31: Declaration of C. Kemper		12	2777-2780
32.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	12	2781-2803
	Exhibit 1: Plaintiffs' Initial Disclosures		12	2804-2811
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		12	2812-2820
	Exhibit 3: December 5, 2016 Email		12	2821-2827
	Exhibit 4: December 9, 2016 Email		12	2828-2829
	Exhibit 5: December 23, 2016 Email		12	2830-2833
	Exhibit 6: December 27, 2016 Email		12	2834-2837
	Exhibit 7: February 3, 2017 Letter		13	2838-2865
	Exhibit 8: Deposition Excerpts of D. Gluhaich		13	2866-2875
	Exhibit 9: Declaration of Brain Irvine		13	2876-2879
33.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	13	2880-2896
	Exhibit 1: Highway 50 Lease		13	2897-2940
	Exhibit 2: Declaration of Chris Kemper		13	2941-2943
	Exhibit 3: Wooley Deposition at 41		13	2944-2949
	Exhibit 4: Virginia Lease		13	2950-2985

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
	Exhibit 7: Willard Deposition at 89		13	3015-3020
34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
	Exhibit 1: Plaintiffs' Initial Disclosures		13	3059-3066
	Exhibit 2: November 2014 Email Exchange		13	3067-3076
	Exhibit 3: January 2015 Email Exchange		13	3077-3082
	Exhibit 4: February 12, 2015 Letter		13	3083-3085
	Exhibit 5: Willard July 2015 Interrogatory Responses		14	3086-3097
	Exhibit 6: Wooley July 2015 Interrogatory Responses		14	3098-3107
	Exhibit 7: August 28, 2015 Letter		14	3108-3119
	Exhibit 8: March 3, 2016 Letter		14	3120-3208
	Exhibit 9: March 15, 2016 Letter		14	3209-3300
	Exhibit 10: April 20, 2016 Letter		14	3301-3327
	Exhibit 11: December 2, 2016 Expert Disclosure		15	3328-3336
	Exhibit 12: December 5, 2016 Email		15	3337-3343
	Exhibit 13: December 9, 2016 Email		15	3344-3345
	Exhibit 14: December 23, 2016 Email		15	3346-3349
	Exhibit 15: December 27, 2016 Email		15	3350-3353
	Exhibit 16: February 3, 2017 Letter		15	3354-3381

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 34)	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		15	3382-3391
	Exhibit 18: Wooley Deposition Excerpts		15	3392-3397
	Exhibit 19: Highway 50 Lease		15	3398-3441
	Exhibit 20: April 1, 2016 Email		15	3442-3444
	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
	Exhibit 22: June 21, 2016 Email Exchange		15	3447-3453
	Exhibit 23: July 21, 2016 Letter		15	3454-3471
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		15	3472-3480
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		15	3481-3490
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		15	3491-3498
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		15	3499-3506
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		15	3507-3512
	Exhibit 29: Defendants' Requests for Admission on Wooley		15	3513-3518
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		15	3519-3528
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		15	3529-3539
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		15	3540-3547

<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.

EXHIBIT 10

EXHIBIT 10

The Goldblatt Law Firm
L. STEVEN GOLDBLATT, Esquire
Attorney at Law
22 Martin Street
Gilroy, CA 95037
Telephone: 408-848-4396 Facsimile: 408-847-4174
EMAIL: l.steven.goldblatt@gmail.com

March 12, 2013

Mr. Jerry Herbst
Terrible Herbst Corporation
5195 Las Vegas Blvd.
Las Vegas, Nevada 89119

Via Facsimile 702-798-8079
Telephone 702-798-6400

Settlement Privilege

Re: Lease between Berry- Hinckley Industries, a Nevada Corporation, Lessor and Overland Development Corporation, Inc., dba LJW Enterprises, Inc. and Larry J. Willard, Trustee of Larry James Willard Trust Privilege, Lessee and the Guaranty Agreement dated March 9, 2007 by Jerry Herbst, Guarantor for the benefit of Overland Development Corporation, Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust

Sir,

I regret very much that I have to send you this letter on behalf of Mr. Willard.

Mr. Willard has asked me to represent him in this matter.

Knowing you are a true gentleman, I asked Mr. Willard to contact you directly and he did twice with no return call. I truly thought and still believe that this matter can be resolved directly between you and Mr. Willard, and I urge you to contact him.

In any event, I am extremely knowledgeable about Mr. Morabito. He has cost Mr. Willard over \$7-million to date.

I am also intimately familiar with litigation on personal guarantee litigation, having litigated successfully over \$50-million in real estate related litigation in Santa Clara County alone in 2012.

Now, whatever defenses you have with respect to Mr. Morabito, they do not apply and they are not applicable in any guaranty litigation in California or Nevada. Mr. Willard and his entities were bona-fide purchasers/ assignees of the property and leases for the property at 7693, 7695-7699 S. Virginia Street, Reno, Nevada, Washoe County APN 043-011-47 and had no knowledge of any fraud by Mr. Morabito or his sham entities

Moreover, while there has been some thought given to certain Nevada statutes with respect to the leases, these do not apply to either the lease or your guaranty to Mr. Willard under Nevada or California law. It appears that you and the Corporation believe that Nevada statutes exonerate your personal guaranty or protect the Corporation from liability for breach. Such breach will result in consequential damages to Mr. Willard. Now contracts and honoring contracts are central to the rule of law, property rights, and all rights in our country.

I have been advised by the Bank and others that Herbst, the corporate lessee is in breach of the lease, and that the funds have not been wired to Mr. Willard's account in California as of this date.

The failure to pay the March rent in the amount of \$140,175.55 plus the 5% which is \$7,008.78 or a total of \$147,184.33 has and will continue to damage Mr. Willard grievously.

Now you may have received compensation in the millions for Morabito but Mr. Willard has received not a penny.

Business Partners loan is in default and it is being assigned to the REO department effective immediately.

There has been some suggestion that you and your Company have used the non-payment of the contractually due lease payments guaranteed by you as leverage with the bank.

Quite simply sir, if we do not have adequate assurances of performance by Herbst Corporation by wiring \$140,175.55 plus 5% penalty to Mr. Willard's bank account# on file by Friday at 5:00PM, I have been instructed to file suit against the Corporation for the full amount due under the lease in the future including any reasonable mitigation efforts. Regrettably, it will be necessary to add you as defendant as you are an individual Guarantor, 30 days from the date of this letter

In addition to compensatory damages of the value of the lease, we will also be seeking consequential damages for the damage to Mr. Willard, credit, the costs of defending a foreclosure action from the bank and the grievous damages to Mr. Willard's family. Finally, this seems to be a tortious interference with Mr. Willard's contract with the bank and has no justifiable purpose other than to cause the bank to alter the terms of this contract. I do not believe that this is a legitimate business justification to breach an enforceable contract with Mr. Willard in order to obtain leverage to pressure an unrelated third party, the Bank, to modify its contract.

It amounts to a tortious with Mr. Willard's contract with the bank, a third party. The express purpose of same is to extract modifications of other legal and enforceable obligations between Mr. Willard and the Bank, a third party.

I am sensitive to the fact, that Herbst as a retailer whose revenue and pricing is exclusively determined by up-stream producers like OPEC, EXXON-Mobil, etc. I am sensitive to the fact that your company, an independent retailer, an important force for some competition at the price at the pump and Mr. Willard and I aim to support you not litigate with you.

If Mr. Willard's lease is not profitable, you personally guaranteed it and that is what contracts are about, the allocation of risk by parties at arms-length. If Herbst Corporation is free to simply breach the lease, and you attempt to default on your guarantee that specifically induced Mr. Willard to enter into the lease, because it is unprofitable would defeat our free market system.

Now, I am sure your remaining operations are quite profitable. But that is irrelevant.

If you and your Corporation are wrong about the Nevada statutes voiding your personal guaranty to Mr. Willard, then you individually potentially face millions of dollars of liability for compensatory, consequential, and punitive damages.

I believe that Herbst Corporation from its operations in California and your continuing personal presence in California in your former and current home, your sons' homes and your yacht in Newport Beach, subject you and your corporation to the general jurisdiction of the California court and California law will be applied to the guarantee agreement.

I am happy to discuss this matter with your counsel and your Corporation's counsel in a privileged settlement conversation on the telephone which is not admissible in evidence. However, law is not a science and whether California law applies to the Guaranty, as my research demonstrates or whether Nevada statutes govern is not a question that can be answered conclusively. Only a California judge or Nevada judge may make this determination and there is litigation risk for both parties. Further, our position is that we may maintain suit against you and the Corporation based upon the multiple and continuing contacts with California by you and your Corporation related to this agreement. Your counsel will contend that there is no general jurisdiction over you or the Corporation to allow any litigation to proceed in California. No one, neither your attorneys, nor me, would plausibly claim that there is a definitive answer to this issue as well.


I admire you and hope we do not end up having to meet at deposition. I wish you continued success and good health.

However, please forward this letter to your attorneys and please have them advise me in writing that the lease payment of \$140,175.55 plus 5% penalty which is now due will be received by Mr. Willard's bank Comerica Bank Friday, March 15, 2013, or I am prepared to file suit as soon as possible. **THIS IS A FORMAL NOTICE TO YOU THAT YOU ARE IN BREACH OF THE GUARANTY AGREEMENT WITH MR. WILLARD. THIS IS A FORMAL NOTICE THAT HERBST CORPORATION HAS BREACHED THE LEASE BY FAILING TO MAKE THE MARCH 2013 PAYMENT. THIS BREACH MUST BE CURED OR UNDER THE TERMS OF THE GUARANTY, YOU WILL BE IN BREACH 30 DAYS FROM TODAY.**

However, in an effort to spare you, the Corporation and Mr. Willard potentially incurring untold litigation expense, which would be awarded to the prevailing party in addition to the damages above; I urge you to contact Mr. Willard personally and advise him of your intentions. Mr. Willard's phone number is 408-891-7971. If you do not wish to contact Mr. Willard directly and resolve this to your mutual satisfaction, please have your lawyer and the Corporation lawyer advise me in writing that you

both accept service of process. Of course, acceptance of such service of process does not waive your right and the Corporation's right to file a motion to dismiss, to file a motion for change of venue or any other remedy. If I do not hear in writing from you and the Corporation's attorney, I will be forced to serve you personally and the Corporation's registered agent or president with much regret, but with ample cause.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Goldblatt', with a stylized flourish at the end.

Lewis Steven Goldblatt/CBN 90674
Goldblatt Law Firm

EXHIBIT 11

EXHIBIT 11



March 18, 2013

VIA EMAIL & CERTIFIED MAIL:

The Goldblatt Law Firm
Attn: L. Steven Goldblatt, Esq.
22 Martin Street
Gilroy, California 95037

Re: Obligations of Berry-Hinkley Industries Inc. ("BHI") and Jerry Herbst ("Mr. Herbst") with regard to 7695 South Virginia St., Reno, Nevada 89511 (the "Leased Premises")

Dear Mr. Goldblatt:

This office has been retained by Mr. Herbst and BHI with regard to certain outstanding obligations due regarding the Leased Premises. I am in receipt of your letter of March 12, 2013, on behalf of Overland Development Corporation, Inc., dba LJW Enterprises, Inc. and Larry J. Willard, Trustee of Larry James Willard Trust Privilege. According to the records and documents provided to us, BHI is the lessee of the Leased Premises pursuant to a Lease Agreement entered into on November 18, 2005 (together with all amendments and modifications, the "Lease"), and Mr. Herbst is the guarantor of the Lease obligations pursuant to a Guaranty Agreement dated as of the 9th day of March, 2007 (the "Guaranty").

It is my understanding that several years ago BHI and Mr. Herbst approached your clients with regard to compromise and settle the obligations due under the Lease and Guaranty. For various reasons, no agreements were agreed upon in this regard. Over the intervening time the financial and economic situations for both BHI and Mr. Herbst have worsened. BHI is simply not in the position to continue to operate the business located on the Leased Premises and maintain the Lease. As such, there are two options available; (i) an agreement for the orderly turnover of the Leased Premises to your clients and a termination of the Lease on terms acceptable to BHI together with an agreement limiting Mr. Herbst's continued exposure on the Guaranty, or (ii) BHI will seek liquidation under Chapter 7 of the Bankruptcy Code with an immediate termination of business at the Leased Premises, and your clients can pursue a claim in the Chapter 7 case. To the extent that your clients seek to enforce the Guaranty, in light of Mr. Herbst's other outstanding obligations and financial condition, he will have no other option but to seek protection under Chapter 11 of the Bankruptcy Code, and your clients can pursue a claim for damages under the Guaranty.

I believe that you are aware of the limitations on the payment of future lease obligations under Section 502 of the Bankruptcy Code, which limitation is applicable to your clients' claims under the Guaranty. I also believe that you are aware of the provisions for payment of allowed

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Gordon Silver

Attorneys and Counselors at Law

March 18, 2013

Page 2

unsecured claims against an individual debtor in Chapter 11. As such, your clients' recoveries in the event that Mr. Herbst must seek protection under the Bankruptcy Code will be materially impaired.

Given the outcome in the event of no resolution; no recovery from BHI, a limited recovery under the Guaranty payable over time, and repossession of non-operating locations, BHI is prepared to assist in a coordinated turnover of the Leased Premises, which affords your clients the opportunity to maintain operations and preserve value. Mr. Herbst will agree to amend the Guaranty to provide for a total payment over sixty (60) months of the allowed claim that your clients will have under Section 502(b)(6) of the Bankruptcy Code for future amounts due under the Lease, together with interest at 3% per annum. We believe that this amount will be significantly greater than the amount your clients will receive under Chapter 11.

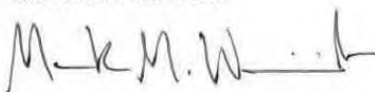
If your clients are interested in pursuing this alternative resolution, please contact me no later than close of business on March 25, 2013. We will provide you with calculations of the amount which Mr. Herbst will agree to pay and discuss the process for the turnover of the Leased Premises. All negotiations must be concluded by April 1, 2013.

Let me be very clear on two points. First, given the amount of moneys involved, agreements must be reached with each holder of a guaranty by Mr. Herbst of a BHI lease or other obligation. Second, the agreements with each landlord will be on the same monetary formula and terms; no agreement will be reached with your clients that is better or worse than the agreements reached with the others lessors.

I have not responded to each of the points you have raised in your letter. However, BHI and Mr. Herbst categorically deny the allegations set forth in the letter regarding the conduct of BHI and Mr. Herbst and any claim for damages associated with such alleged conduct.

Very truly yours,

GORDON SILVER


For GERALD M. GORDON, ESQ.

MMW/

EXHIBIT 12

EXHIBIT 12



April 12, 2013

VIA EMAIL & REGULAR MAIL:

Email: l.steven.goldblatt@gmail.com

The Goldblatt Law Firm
Attn: L. Steven Goldblatt, Esq.
22 Martin Street
Gilroy, California 95037

Re: Berry-Hinkley Industries Inc. ("BHI") Lease Agreement (the "Lease") with regard to 7695 S. Virginia St., Reno, Nevada (the "Leased Premises")

Dear Mr. Goldblatt:

By letter dated March 18, 2013, this office notified your client, Overland Development Corporation Inc., that it had been retained by BHI and Mr. Jerry Herbst with regard to certain outstanding obligations due regarding the Leased Premises. In part, we stated that BHI determined it is simply not in the position to continue to operate the business located on the Leased Premises and maintain the Lease. The losses it is experiencing can no longer be sustained. As such, BHI intended to cease to operate the Leased Premises and offered to assist in a coordinated turnover of the Leased Premises to either your client or its designated party, affording your client the opportunity to maintain operations and preserve value. We proposed that all negotiations in this regard must be concluded by April 1, 2013. By virtue of various delays, and to provide your client more time to consider the alternatives, BHI determined not to enforce this deadline.

While we have exchanged communications with regard to the Lease and the Leased Premises, we have not received any communication with regard to such a turnover. We also understand that Jackson Oil Co. has or will be contacting you with regard to leasing the Leased Premises.

In the absence of any agreement or a demand by you to vacate the Leased Premises, BHI will be vacating the Leased Premises on April 30, 2013. Again, BHI is prepared to coordinate with you, your client or its designee a turnover of the Leased Premises on or before April 30,

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR | LAS VEGAS, NEVADA 89169

T: 702.796.5555 | F: 702.369.2666

gordonsilver.com

103565-002/1888559.doc

LAS VEGAS | PHOENIX | RENO | WASHINGTON, D.C.

Gordon Silver

Attorneys and Counselors at Law

April 12, 2013

Page 2

2013. Please contact Chris Kemper at 702-798-6400 immediately, but no later than April 20, to coordinate a transition plan.

Very truly yours,

GORDON SILVER

A handwritten signature in black ink, appearing to read 'G. M. Gordon', with a stylized flourish at the end.

GERALD M. GORDON, ESQ.

MMW/crs

cc: Jerry Herbst (via email)
Chris Kemper (via email)
Mark M. Weisenmiller, Esq. (via email)
Marc Berger (via email)

EXHIBIT 13

EXHIBIT 13

OPERATION AND MANAGEMENT AGREEMENT

THIS OPERATION AND MANAGEMENT AGREEMENT (the "**Agreement**"), dated the 1st day of May, 2013 (the "**Effective Date**"), is made and entered into by and between BERRY-HINCKLEY INDUSTRIES, a Nevada corporation (the "**Operator**"), and OVERLAND DEVELOPMENT CORPORATION INC., D/B/A LJW ENTERPRISES, INC., and LARRY WILLARD AS TRUSTEE OF THE WILLARD FAMILY TRUST DATED NOVEMBER 14, 1987 (collectively, the "**Owner**") as follows:

RECITALS

- A. Owner is the owner of that certain gas station and convenience store located at 7695 S. Virginia Street, Reno, Nevada (the "**Location**").
- B. Operator is the tenant, and Owner is the landlord, under that certain Lease Agreement dated November 18, 2005, which encumbers the Location (as amended, the "**Lease**").
- C. Operator has informed Owner that Operator intends to vacate and cease operations at the Location no later than April 30, 2013. Owner has requested that Operator remain in possession and continue to operate the Location until such time as Owner is able to find a replacement tenant for the Location.
- D. Operator has agreed to remain in possession and continue operating the Location upon the terms and conditions as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained in this Agreement, the Owner and Operator agree as follows:

1. **TERM/TERMINATION.**

This Agreement shall be on a month to month basis commencing on the Effective Date. Either party hereto may terminate this Agreement at any time upon seven (7) days advance written notice to the other party. This Agreement shall automatically terminate on the last day of each month in which this Agreement is in effect if both parties do not agree, in writing, to renew this Agreement for an additional one (1) month period prior to the last day of the then current month.

2. **GENERAL SCOPE OF SERVICES.**

Owner hereby hires Operator as an independent contractor and Operator hereby accepts such engagement to provide for the Location such personnel as shall be required to operate and manage the Location as well as such other duties and responsibilities as are necessary to operate the Location (collectively, the "**Services**").

3. RELATIONSHIP OF PARTIES.

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

4. COMPENSATION TO OPERATOR.

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

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

5. **RENT.**

During the term of this Agreement, Operator shall have no obligation to make the rent payments set forth in the Lease. Owner hereby acknowledges and agrees that the continuous operation of the Location by Operator and the payment of the Net Profits to Owner (if any) constitutes sufficient consideration for Operator's occupation of the Location and shall be in lieu of any obligation to pay rent under the Lease during the term of this Agreement.

6. **OPERATOR'S EMPLOYEES.**

Operator shall select and maintain the staff of employees for the Location as Operator deems necessary for its performance of the Services hereunder. All personnel furnished by Operator for its performance of the Services hereunder shall be the employees of Operator, and Operator shall have the right, in its sole and absolute discretion, to select, hire, pay, supervise, discipline and discharge such employees. Operator shall be responsible for payment and supervision of personnel at the Location.

7. **INSURANCE.**

Operator shall at all times during the term of this Agreement maintain insurance in the types and amounts as is required by the Lease.

8. **DEFAULT -- REMEDIES.**

In the event either Owner or Operator defaults in the performance of any covenant or condition of this Agreement and, as to any such default, fails to remedy the same or fails to implement a corrective action plan acceptable to the non-defaulting Party within three (3) days after the complaining Party gives notice thereof to the other, then the non-defaulting party may, at its option and upon written notice to the other, terminate this Agreement without prejudice to any other rights or remedies such party may have here or by law. Either party's right to require strict performance of the other's obligations under this Agreement shall not be affected by any previous waiver, forbearance, course of dealing, or trade custom or usage.

9. **INDEMNIFICATION.**

Owner shall indemnify and defend Operator, and its officers, directors, owners, employees, affiliates and agents against, and hold them harmless from, any and all costs, expenses, claims, suits, liabilities, loss and damages, including attorneys' fees arising out of or relating to this Agreement and/or the services provided by Operator under this Agreement, excepting therefrom costs, expenses, claims, suits, liabilities, loss and damages arising as a result of Operator's gross negligence. The indemnification obligations set forth herein shall survive the expiration or earlier termination of this Agreement.

10. **CONFLICTING PROVISIONS.**

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

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

"OPERATOR"

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By: 

Name: Chris Kemper

Title: V.P. of Admin.

"OWNER"

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

By: 

Name: LARRY WILLARD

Title: President



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

EXHIBIT 14

EXHIBIT 14



To:

For: Retail Consulting Services
Rendered /May 2013

Make all checks payable to:
Gregory M. Breen

Thank you for your business!

07/31/2009

A.App.1887

EXHIBIT 15

EXHIBIT 15

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5/26/2013 16:23:24



5/26/2013 16:41:21



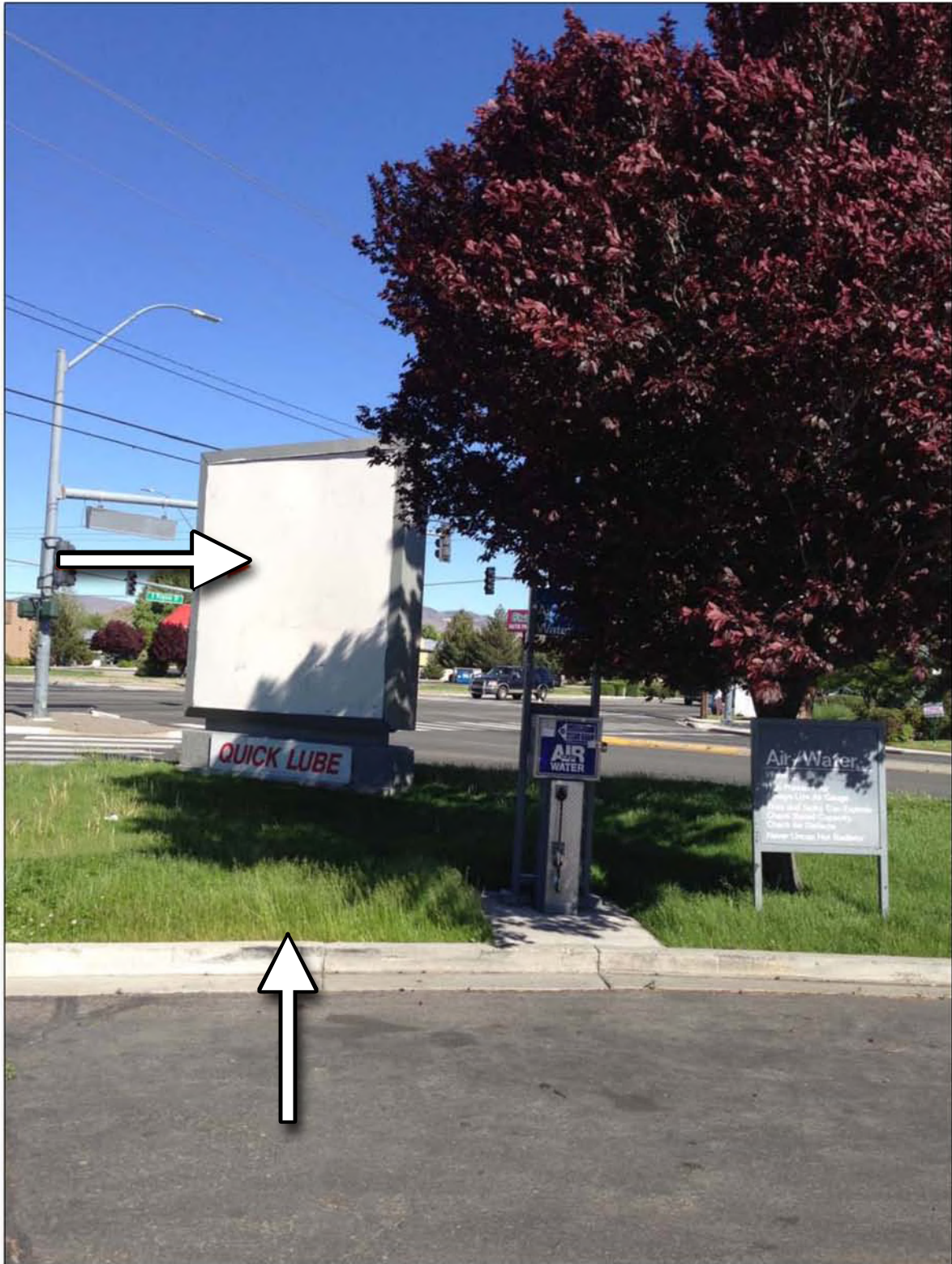
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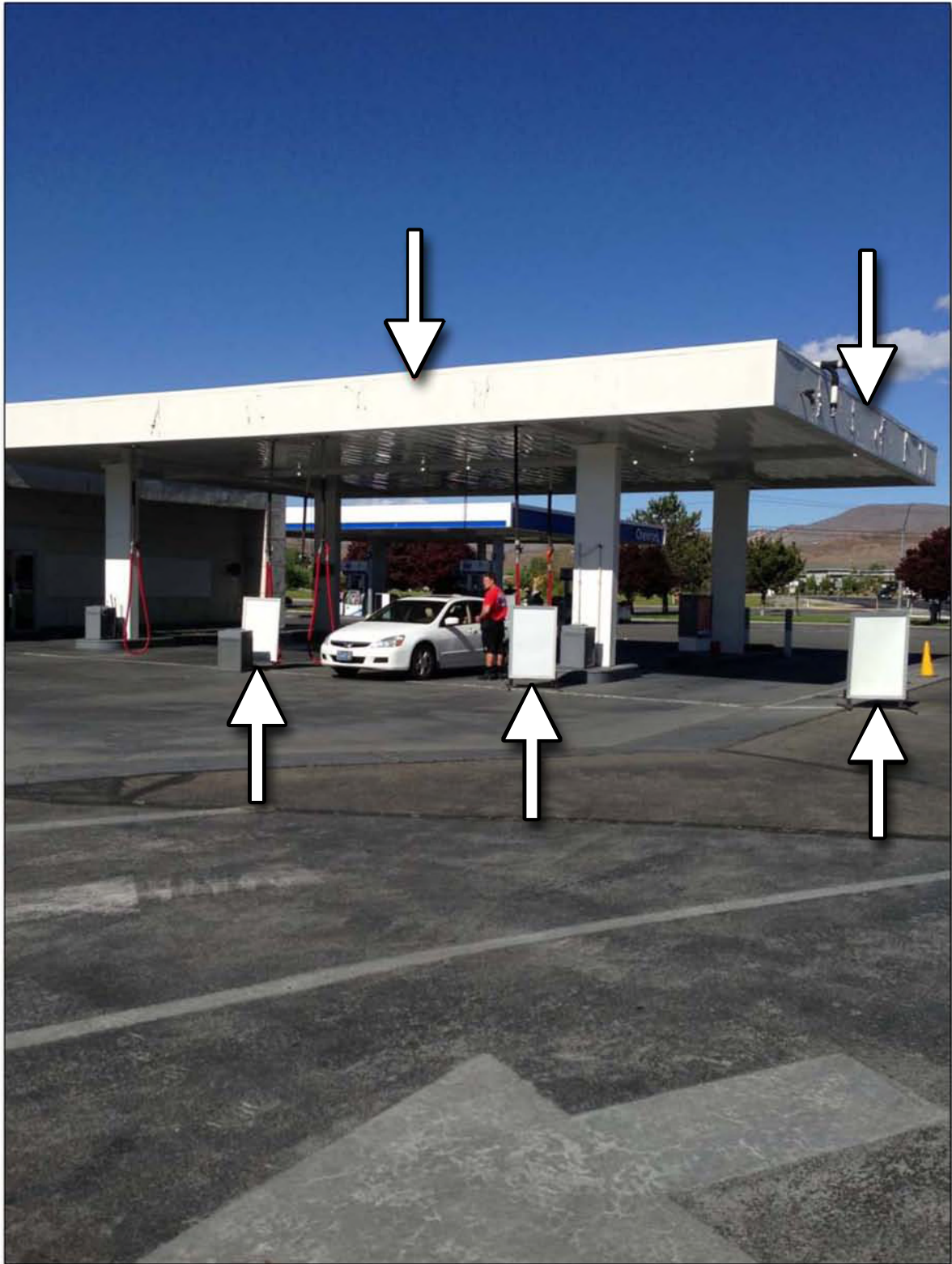
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5/27/2013 11:42:58



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 9 OF 19

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 950)
LEMONS, GRUNDY & EISENBERG
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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.

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184
	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel - Brian P. Moquin, Esq.	10/28/14	1	202-206

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 4)	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brain P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/23/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 12)	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 15)	Exhibit 9: Seller's Final Closing Statement		3	549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669
	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		3	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Edward C. Wooley	08/30/16	4	798-803
18.	Affidavit of Larry J. Willard	08/30/16	4	804-812

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
19.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	813-843
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated July 1, 2005 for Purchase of the Highway 50 Property		4	844-857
	Exhibit 2: <i>Lease Agreement</i> dated December 2, 2005 for the Highway 50 Property		4	858-901
	Exhibit 3: <i>Three Year Adjustment Term Note</i> dated January 19, 2007 in the amount of \$2,200,00.00 for the Highway 50 Property		4	902-906
	Exhibit 4: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	907-924
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		4	925-940
	Exhibit 6: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	941-948
	Exhibit 7: <i>Guaranty Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	949-953
	Exhibit 8: <i>Second Amendment to Lease</i> dated June 29, 2011 for the Highway 50 Property		4	954-956
	Exhibit 9: <i>Purchase and Sale Agreement</i> Dated July 14, 2006 for the Baring Property		5	957-979
	Exhibit 10: <i>Lease Agreement</i> dated June 6, 2006 for the Baring Property		5	980-1015
	Exhibit 11: <i>Five Year Adjustable Term Note</i> dated July 18, 2006 in the amount of \$2,100,00.00 for the Baring Property		5	1016-1034

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 12: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1035-1052
	Exhibit 13: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Baring Property		5	1053-1060
	Exhibit 14: <i>Guaranty Agreement</i> dated March 12, 2007 for the Baring Property		5	1061-1065
	Exhibit 15: <i>Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)</i> dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1066-1077
	Exhibit 16: <i>Assignment and Assumption of Lease</i> dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1078-1085
	Exhibit 17: <i>Substitution of Attorney</i> forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1086-1090
	Exhibit 18: <i>Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs</i> filed March 13, 2014 in the California Case		5	1091-1094
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and Brian Moquin re Joint Stipulation in California Case		5	1095-1099
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court		5	1100-1106

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 21: <i>Request for Dismissal</i> without prejudice filed May 19, 2014 in the California case		5	1107-1108
	Exhibit 22: <i>Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust</i> dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1109-1117
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1118-1119
	Exhibit 24: <i>Settlement Statement (HUD-1)</i> dated May 20, 2014 for sale of the Baring Property		5	1120-1122
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1123-1158
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1159-1161
	Exhibit 27: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		5	1162-1174
	Exhibit 28: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		6	1175-1210
	Exhibit 29: <i>Buyer's and Seller's Final Settlement Statements</i> dated February 24, 2006 for the Virginia Property		6	1211-1213
	Exhibit 30: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated February 21, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1214-1231

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 31: <i>Promissory Note</i> dated February 28, 2006 for \$13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1232-1236
	Exhibit 32: <i>Subordination, Attornment And Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1237-1251
	Exhibit 33: <i>Deed of Trust, Assignment of Rents, and Security Agreement</i> dated March 16, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1252-1277
	Exhibit 34: <i>Payment Coupon</i> dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1278-1279
	Exhibit 35: <i>Substitution of Trustee and Full Reconveyance</i> dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1280-1281
	Exhibit 36: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		6	1282-1287
	Exhibit 37: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		6	1288-1292
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1293-1297
	Exhibit 39: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1298-1300

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1301-1303
	Exhibit 41: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1304-1308
	Exhibit 42: <i>Notice of Intent to Foreclose</i> dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1309-1311
	Exhibit 43: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> dated June 18, 2013		6	1312-1315
	Exhibit 44: <i>Declaration in Support of Motion to Dismiss Case</i> filed by Larry James Willard on August 9, 2013, Northern District of California Bankruptcy Court Case No. 13-53293 CN		6	1316-1320
	Exhibit 45: <i>Substitution of Attorney</i> forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1321-1325
	Exhibit 46: <i>Declaration of Arm's Length Transaction</i> dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1326-1333
	Exhibit 47: <i>Purchase and Sale Agreement</i> dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for \$4,000,000.00		6	1334-1340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 48: <i>Short Sale Agreement</i> dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1341-1360
	Exhibit 49: <i>Consent to Act</i> dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1361-1362
	Exhibit 50: <i>Seller's Final Closing Statement</i> dated March 3, 2014 re the Virginia Property		6	1363-1364
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland evidencing discharge of \$8,597,250.20 in debt and assessing the fair market value of the Virginia Property at \$3,000,000.00		6	1365-1366
20.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1367-1386
	Exhibit 1: Declaration of John P. Desmond		6	1387-1390
21.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgment	12/20/16	6	1391-1396
	Exhibit 1: Expert Report of Michelle Salazar		7	1397-1430
22.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1431-1449
23.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	02/02/17	7	1450-1457

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 23)	Exhibit 1: January 19-25, 2017 Email Exchange		7	1458-1460
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1461-1485
24.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1486-1494
25.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1495-1518
26.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1519-1522
	Exhibit 1: May 30, 2017 Order		7	1523-1547
27.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1548-1555
28.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1556-1563
29.	Affidavit of Larry Willard	10/18/17	7	1564-1580
30.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1581-1621
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		7	1622-1632
	Exhibit 2: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		8	1633-1668
	Exhibit 3: <i>Subordination, Attornment and Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		8	1669-1683
	Exhibit 4: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		8	1684-1688

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 5: <i>Landlord's Estoppel Certificate</i> regarding the Virginia Lease dated on or about March 8, 2007		8	1689-1690
	Exhibit 6: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		8	1691-1696
	Exhibit 7: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		8	1697-1701
	Exhibit 8: Berry-Hinckley Industries <i>Financial Analysis</i> on the Virginia Property dated May 2008		8	1702-1755
	Exhibit 9: Appraisal of the Virginia Property by CB Richard Ellis dated October 1, 2008		8	1756-1869
	Exhibit 10: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Lease		9	1870-1874
	Exhibit 11: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property Lease		9	1875-1877
	Exhibit 12: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		9	1878-1880
	Exhibit 13: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		9	1881-1885
	Exhibit 14: Invoice from Gregory M. Breen dated May 31, 2013		9	1886-1887

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 15: Photographs of the Virginia Property taken by Larry J. Willard on May 26-27, 2013		9	1888-1908
	Exhibit 16: Photographs of the Virginia Property in 2012 retrieved from Google Historical Street View		9	1909-1914
	Exhibit 17: Invoice from Tholl Fence dated July 31, 2013		9	1915-1916
	Exhibit 18: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> filed June 18, 2018 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1917-1920
	Exhibit 19: <i>Motion by the National Credit Union Administration Board, Acting in its Capacity as Liquidating Agent for Telesis Community Credit Union, for Order Terminating Automatic Stay or, Alternatively, Requiring Adequate Protection</i> and related declarations and declarations and exhibits thereto filed July 18, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1921-1938
	Exhibit 20: <i>Order for Relief from Stay</i> filed August 8, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1939-1943
	Exhibit 21: <i>Motion to Dismiss Case</i> and related declarations filed August 9, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1944-1953

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 22: <i>Proof of Claim</i> and exhibits thereto filed August 27, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1954-1966
	Exhibit 23: <i>Objection to Claim</i> filed September 5, 2013 by Stanley A. Zlotoff in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1967-1969
	Exhibit 24: <i>Original Preliminary Report</i> dated August 12, 2013 from Stewart Title Company re the Virginia Property		9	1970-1986
	Exhibit 25: <i>Updated Preliminary Report</i> dated January 13, 2014 from Stewart Title Company re the Virginia Property		9	1987-2001
	Exhibit 26: Berry-Hinckley Industries Financial Statement on the Virginia Property for the Twelve Months Ending December 31, 2012		9	2002-2006
	Exhibit 27: Bill Detail from the Washoe County Treasurer website re 2012 property taxes on the Virginia Property		9	2007-2008
	Exhibit 28: Bill Detail from the Washoe County Treasurer website re 2013 property taxes on the Virginia Property		9	2009-2010
	Exhibit 29: <i>Order of Case Dismissal</i> filed September 30, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	2011-2016
	Exhibit 30: Invoice from Santiago Landscape & Maintenance dated October 24, 2013		9	2017-2018

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 31: Appraisal of the Virginia Property by David A. Stefan dated February 10, 2014		9	2019-2089
	Exhibit 32: <i>Seller's Final Closing Statement</i> dated March 6, 2014 re short sale of the Virginia Property from the Willard Plaintiffs to Longley Partners, LLC		9	2090-2091
	Exhibit 33: Invoices from NV Energy for the Virginia Property		9	2092-2109
	Exhibit 34: Invoices and related insurance policy documents from Berkshire Hathaway Insurance Company re the Virginia Property		9	2110-2115
	Exhibit 35: Notice of Violation from the City of Reno re the Virginia Property and correspondence related thereto		10	2116-2152
	Exhibit 36: Willard Plaintiffs Computation of Damages spreadsheet		10	2153-2159
	Exhibit 37: E-mail message from Richard Miller to Dan Gluhaich dated August 6, 2013 re Virginia Property Car Wash		10	2160-2162
	Exhibit 38: E-mail from Rob Cashell to Dan Gluhaich dated February 28, 2014 with attached <i>Proposed and Contract</i> from L.A. Perks dated February 11, 2014 re repairing the Virginia Property		10	2163-2167
	Exhibit 39: <i>Deed</i> by and between Longley Center Partnership and Longley Center Partners, LLC dated January 1, 2004 regarding the Virginia Property, recorded April 1, 2004 in the Washoe County Recorder's Office as Doc. No. 3016371		10	2168-2181

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 40: <i>Grant, Bargain and Sale Deed</i> by and between Longley Center Partners, LLC and P.A. Morabito & Co., Limited dated October 4, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291753		10	2182-2187
	Exhibit 41: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and Land Venture Partners, LLC dated September 30, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291760		10	2188-2193
	Exhibit 42: <i>Memorandum of Lease</i> dated September 30, 2005 by Berry-Hinckley Industries regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291761		10	2194-2198
	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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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
	Exhibit 1: Declaration of Brian R. Irvine		10	2328-2334
	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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 10: December 5, 2016 Email		11	2587-2593
	Exhibit 11: December 9, 2016 Email		11	2594-2595
	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
	Exhibit 16: April 1, 2016 Email		12	2642-2644
	Exhibit 17: May 3, 2016 Email		12	2645-2646
	Exhibit 18: June 21, 2016 Email Exchange		12	2647-2653
	Exhibit 19: July 21, 2016 Email		12	2654-2670
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		12	2671-2680
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		12	2681-2691
	Exhibit 22: Defendants' First Requests for Production on Willard		12	2692-2669
	Exhibit 23: Defendants' Second Request for Production on Willard		12	2700-2707
	Exhibit 24: Defendants' Third Request for Production on Willard		12	2708-2713
	Exhibit 25: Defendants Requests for Admission to Willard		12	2714-2719
	Exhibit 26: Willard Lease		12	2720-2755
	Exhibit 27: Willard Response to Second Set of Interrogatories		12	2756-2764

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 28: Deposition of L. Willard Excerpt		12	2765-2770
	Exhibit 29: April 12, 2013 Letter		12	2771-2773
	Exhibit 30: Declaration of G. Gordon		12	2774-2776
	Exhibit 31: Declaration of C. Kemper		12	2777-2780
32.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	12	2781-2803
	Exhibit 1: Plaintiffs' Initial Disclosures		12	2804-2811
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		12	2812-2820
	Exhibit 3: December 5, 2016 Email		12	2821-2827
	Exhibit 4: December 9, 2016 Email		12	2828-2829
	Exhibit 5: December 23, 2016 Email		12	2830-2833
	Exhibit 6: December 27, 2016 Email		12	2834-2837
	Exhibit 7: February 3, 2017 Letter		13	2838-2865
	Exhibit 8: Deposition Excerpts of D. Gluhaich		13	2866-2875
	Exhibit 9: Declaration of Brain Irvine		13	2876-2879
33.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	13	2880-2896
	Exhibit 1: Highway 50 Lease		13	2897-2940
	Exhibit 2: Declaration of Chris Kemper		13	2941-2943
	Exhibit 3: Wooley Deposition at 41		13	2944-2949
	Exhibit 4: Virginia Lease		13	2950-2985

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
	Exhibit 7: Willard Deposition at 89		13	3015-3020
34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
	Exhibit 1: Plaintiffs' Initial Disclosures		13	3059-3066
	Exhibit 2: November 2014 Email Exchange		13	3067-3076
	Exhibit 3: January 2015 Email Exchange		13	3077-3082
	Exhibit 4: February 12, 2015 Letter		13	3083-3085
	Exhibit 5: Willard July 2015 Interrogatory Responses		14	3086-3097
	Exhibit 6: Wooley July 2015 Interrogatory Responses		14	3098-3107
	Exhibit 7: August 28, 2015 Letter		14	3108-3119
	Exhibit 8: March 3, 2016 Letter		14	3120-3208
	Exhibit 9: March 15, 2016 Letter		14	3209-3300
	Exhibit 10: April 20, 2016 Letter		14	3301-3327
	Exhibit 11: December 2, 2016 Expert Disclosure		15	3328-3336
	Exhibit 12: December 5, 2016 Email		15	3337-3343
	Exhibit 13: December 9, 2016 Email		15	3344-3345
	Exhibit 14: December 23, 2016 Email		15	3346-3349
	Exhibit 15: December 27, 2016 Email		15	3350-3353
	Exhibit 16: February 3, 2017 Letter		15	3354-3381

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 34)	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		15	3382-3391
	Exhibit 18: Wooley Deposition Excerpts		15	3392-3397
	Exhibit 19: Highway 50 Lease		15	3398-3441
	Exhibit 20: April 1, 2016 Email		15	3442-3444
	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
	Exhibit 22: June 21, 2016 Email Exchange		15	3447-3453
	Exhibit 23: July 21, 2016 Letter		15	3454-3471
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		15	3472-3480
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		15	3481-3490
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		15	3491-3498
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		15	3499-3506
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		15	3507-3512
	Exhibit 29: Defendants' Requests for Admission on Wooley		15	3513-3518
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		15	3519-3528
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		15	3529-3539
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		15	3540-3547

<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.

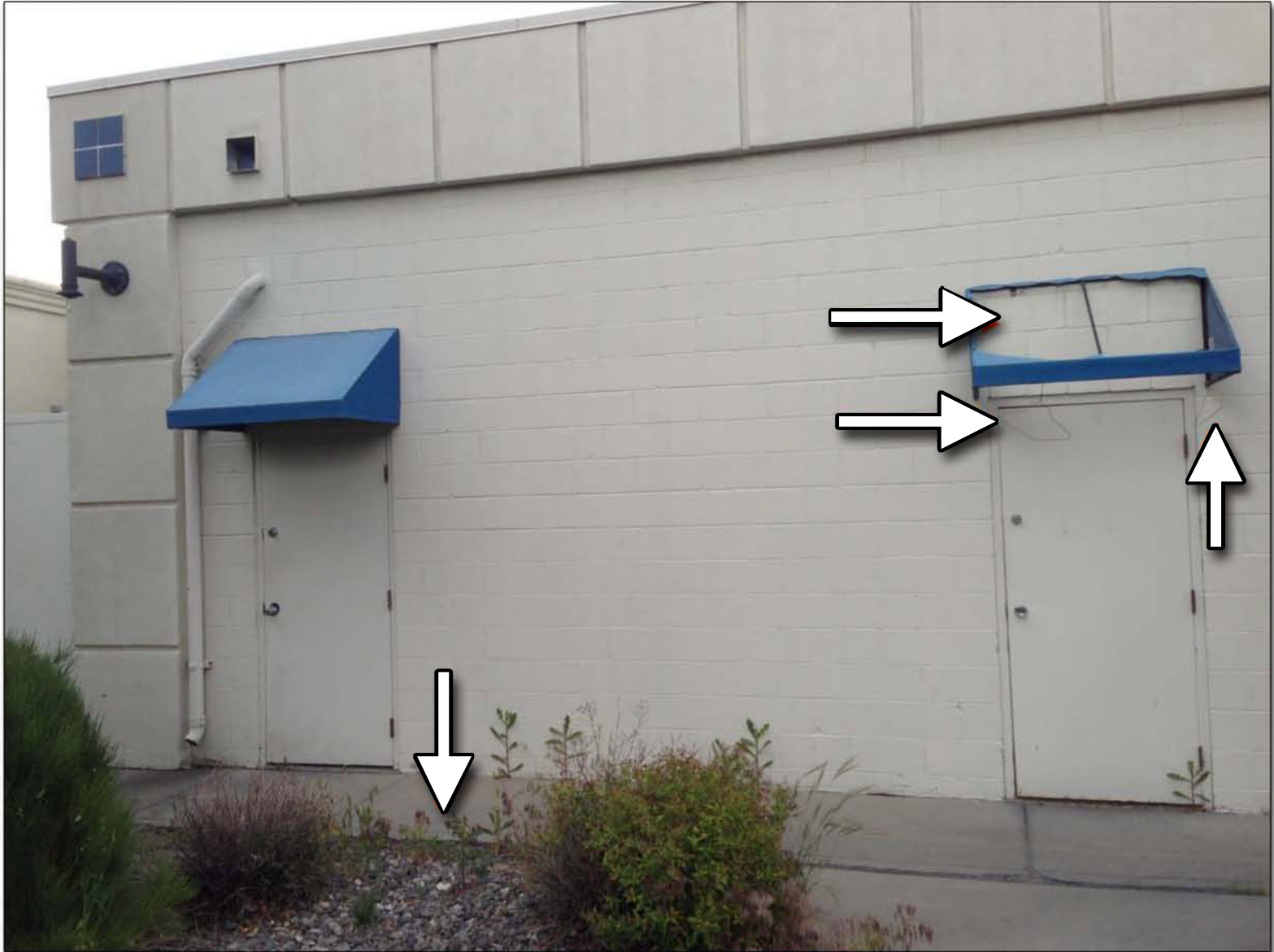
5/27/2013 11:52:39



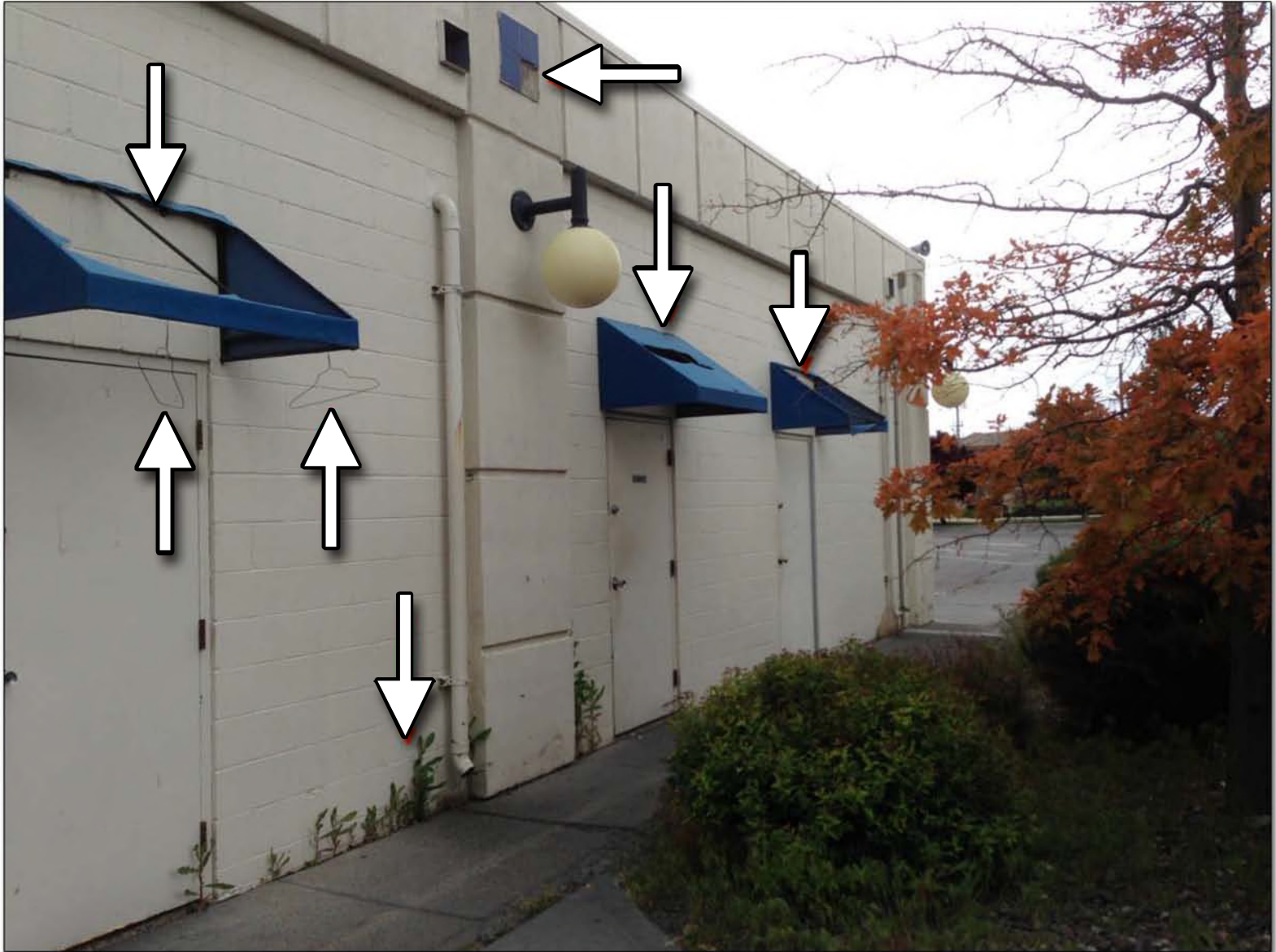
5/27/2013 12:52:19



5/27/2013 12:56:46



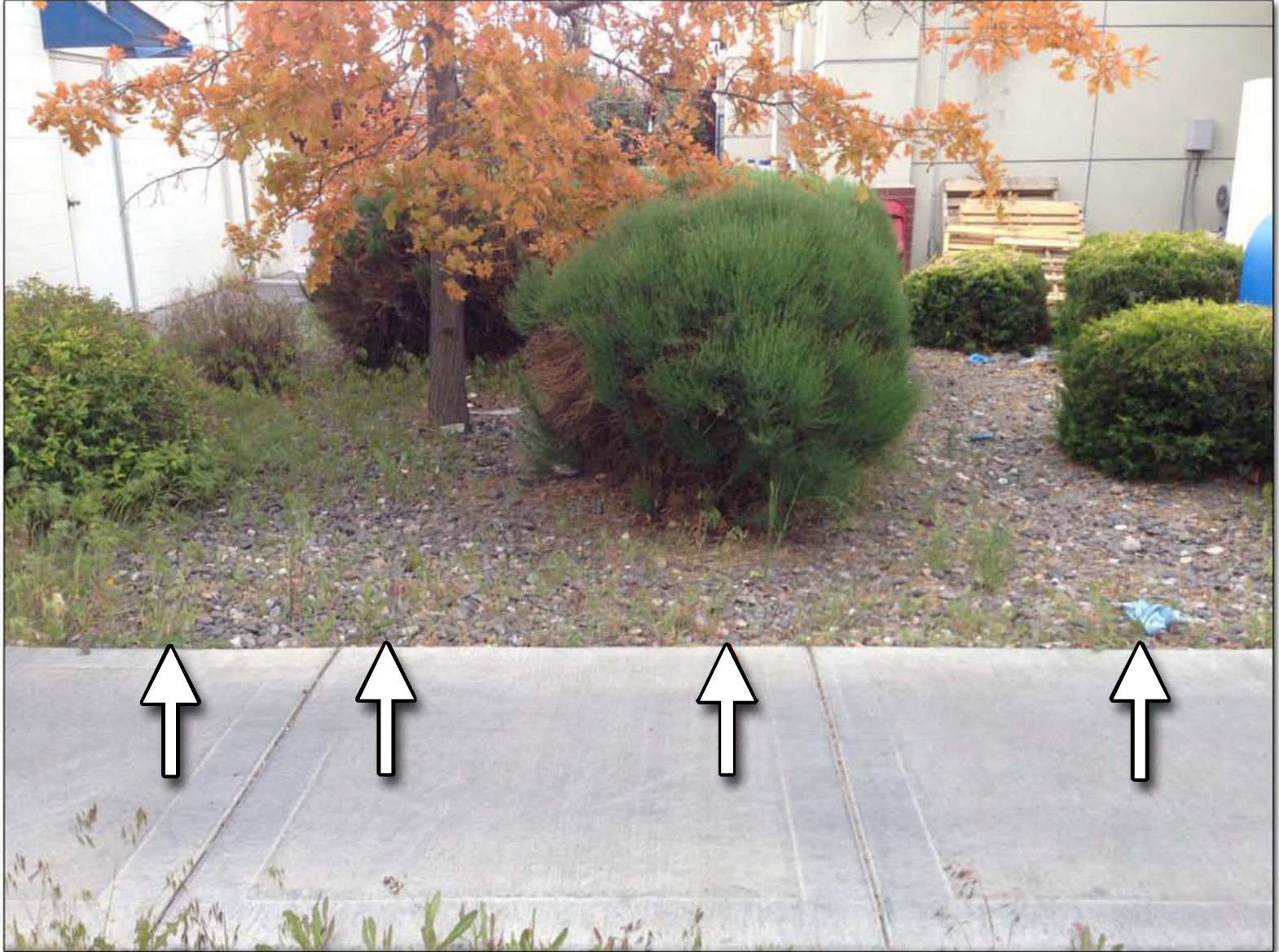
5/27/2013 12:56:53



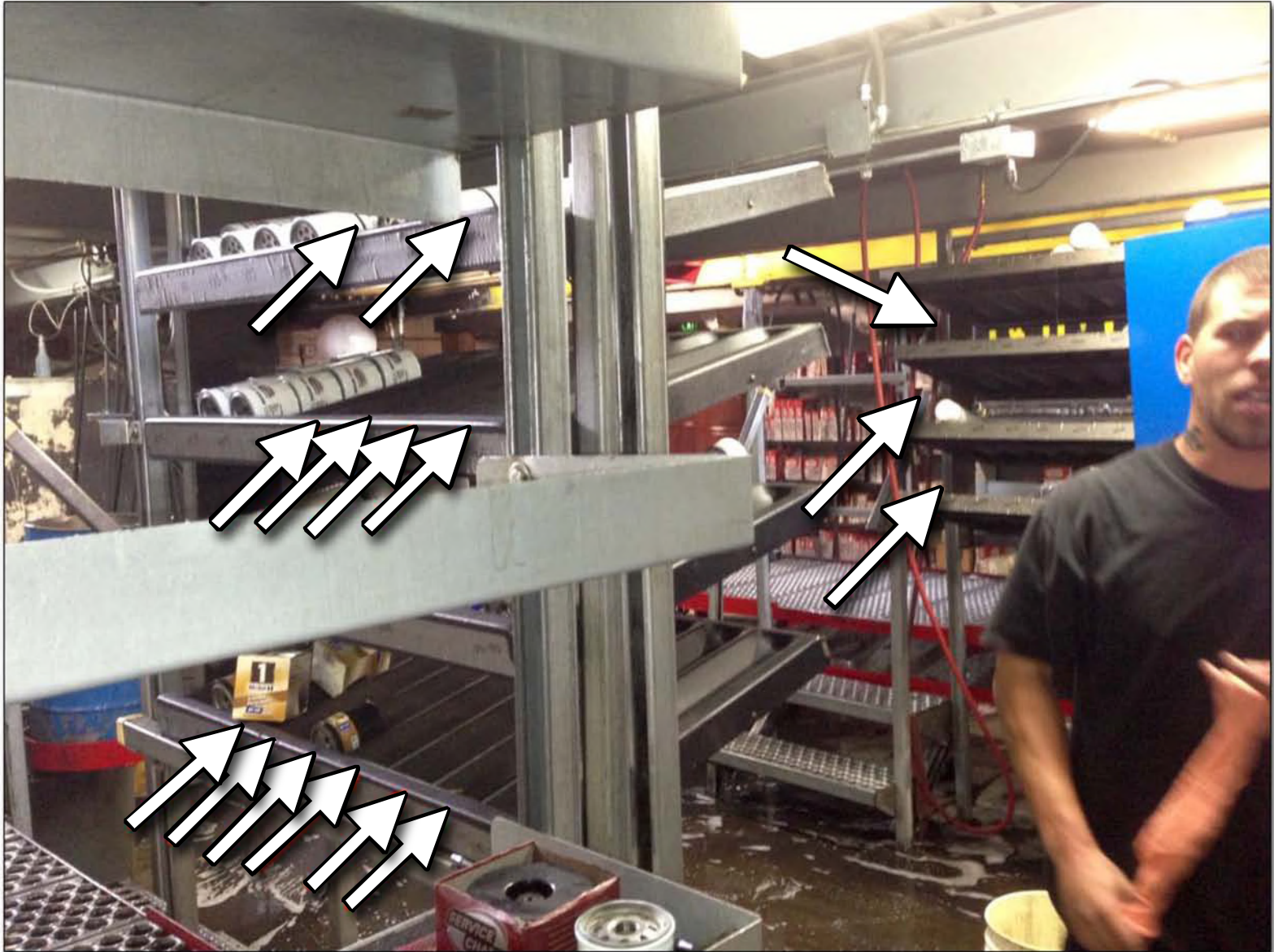
5/27/2013 12:56:56



5/27/2013 12:57:01



5/27/2013 13:10:48



5/27/2013 13:11:06



EXHIBIT 16

EXHIBIT 16











EXHIBIT 17

EXHIBIT 17



STATEMENT

A.App.1916

800 GLENDALE AVENUE • P.O. BOX 855
SPARKS, NEVADA 89432
TELEPHONE: (775) 358-8680 FAX: (775) 358-7197

Overland Development
826 Vanderbilt Place
San Diego, CA 92103

Statement of Account as of 7-31-2013

<u>Invoice</u>	<u>Description</u>	<u>Date</u>	<u>Charges</u>	<u>Credits</u>
SM9966	Inv TRENT Rnt cnstrctn fnc	06-04-2013	2,668.62	
5033	Pay	06-17-2013		2,477.25-
Non-contract Totals			2,668.62*	2,477.25-*
Statement Totals			2,668.62*	2,477.25-*

PD
1007
8/5/13

Current Amount	31-60 Days Amount	61-90 Days Amount	91-120 Days Amount	Over 120 Days Amount	Outstanding Amount
	191.37				191.37

A.App.1916

EXHIBIT 18

EXHIBIT 18

UNITED STATES BANKRUPTCY COURT
Northern District of California (San Jose)

Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on 6/17/13.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

**Creditors — Do not file this notice in connection with any proof of claim you submit to the court.
See Reverse Side For Important Explanations**

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Larry James Willard
826 Vanderbilt Place
San Diego, CA 92103

Case Number:
13-53293

Social Security/Individual Taxpayer ID/Employer Tax ID/Other
Nos.:
xxx-xx-0904

Attorney for Debtor(s) (name and address):

Stanley A. Zlotoff
Law Offices of Stanley A. Zlotoff
300 S 1st St. #215
San Jose, CA 95113
Telephone number: (408)287-5087

Meeting of Creditors

Date: **July 17, 2013**

Time: **10:30 AM**

Location: **U.S. Federal Bldg., 280 S. First St. #268, San Jose, CA 95113**

Important Notice to Individual Debtors: The United States Trustee requires all debtors who are individuals to provide government-issued photo identification and proof of social security number to the trustee at the meeting of creditors.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): **10/15/13**

For a governmental unit: **Must file before 180 days after the date relief was entered.**

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts: 9/16/13

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan.

Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:

280 South First Street
Room 3035
San Jose, CA 95113
Telephone number: 408-278-7500

Hours Open: Monday – Friday 9:00 AM – 4:30 PM

For the Court:

Clerk of the Bankruptcy Court:
Gloria L. Franklin

Date: 6/18/13

EXPLANATIONS

FORM B9E (12/12)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. A Proof of Claim form ("Official Form B 10") can be obtained at the United States Courts website: (http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx) or at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. Filing Deadline for a Creditor with a Foreign Address: The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
— Refer to Other Side for Important Deadlines and Notices —	

Notice Recipients

District/Off: 0971-5

User: rrombawa

Date Created: 6/18/2013

Case: 13-53293

Form ID: B9E

Total: 35

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Larry James Willard	826 Vanderbilt Place	San Diego, CA 92103
ust	Office of the U.S. Trustee / SJ	U.S. Federal Bldg.	280 S 1st St. #268 San Jose, CA 95113-3004
aty	Stanley A. Zlotoff	Law Offices of Stanley A. Zlotoff	300 S 1st St. #215 San Jose, CA 95113
smg	IRS	P.O. Box 7346	Philadelphia, PA 19101-7346
smg	State Board of Equalization	Attn: Special Procedures Section, MIC:55	P.O. Box 942879 Sacramento, CA 94279
smg	CA Employment Development Dept.	Bankruptcy Group MIC 92E	P.O. Box 826880 Sacramento, CA 94280-0001
smg	CA Franchise Tax Board	Attn: Special Procedures	P.O. Box 2952 Sacramento, CA 95812-2952
smg	IRS	P.O. Box 7346	Philadelphia, PA 19101-7346
13294678	Alan and Sharon Soccy	301 Mission Street, Suite 7F	San Francisco, CA 94105
13294923	Alan and Sharon Soccy	301 Mission Street, Suite 7F	San Francisco, CA 94105
13294679	Albright, Stoddard, Warnick & Albright	801 S. Rancho Drive, Building D	Las Vegas, NV 89106
13294680	Assn. of Apt. Owners	c/o Kahili Makai Holdings, LLC	P.O. Box 915 Hanalei, HI 96714
13294681	Association of Apt. Owners	c/o Jessie B. Hill, Trustee	P.O. Box 616 Kilauea, HI 96754
13294682	Bank of Hawaii	P.O. Box 2906	Honolulu, HI 96846-1000
13294683	Bank of the West	P.O. Box 4024	Alameda, CA 94501-0424
13294924	Bank of the West	P.O. Box 4024	Alameda, CA 94501-0424
13294684	Business Partners, LLC	P.O. Box 843458	Los Angeles, CA 90084-3458
13294925	Business Partners, LLC	P.O. Box 843458	Los Angeles, CA 90084-3458
13294685	Caine & Weiner	P.O. Box 5010	Woodland Hills, CA 91365-5010
13294926	County of Kauai	Real Property Collections Division	4444 Rice Street, Suite 463 Lihue, HI 96766
13294686	County of Kauai	Real Property Collections Division	4444 Rice Street, Suite 463 Lihue, HI 96766
13294687	Hyundai Motor Co.	P.O. Box 7204	Pasadena, CA 91109-2304
13294927	Hyundai Motor Co.	P.O. Box 7204	Pasadena, CA 91109-2304
13294688	Karin M. Willard	751 N. Edinburgh Ave., Apt. 3	Los Angeles, CA 90046-7021
13294689	L. Steven Goldblatt, esq.	22 Martin Street	Gilroy, CA 95020
13294690	Mahnaz Khazen	c/l Vaam and Associates	3165 Olin Avenue San Jose, CA 95117
13294928	Mahnaz Khazen	c/l Vaam and Associates	3165 Olin Avenue San Jose, CA 95117
13294691	Rush Moore, LLP	Caroline S. Otani, esq.	737 Bishop Street, Suite 2400 Honolulu, HI 96813
13294929	Santa Barbara Bank & Trust	P.O. Box 60839	Santa Barbara, CA 93160-0839
13294692	Santa Barbara Bank & Trust	P.O. Box 60839	Santa Barbara, CA 93160-0839
13294693	Santa Clara County Tax Collector	70 W. Hedding Street, East Wing	San Jose, CA 95110
13294930	Santa Clara County Tax Collector	70 W. Hedding Street, East Wing	San Jose, CA 95110
13294931	Specialized Loan Servicing, LLC	P.O. Box 636005	Littleton, CO 80163-6005
13294694	Specialized Loan Servicing, LLC	P.O. Box 636005	Littleton, CO 80163-6005
13294695	Vaam and Associates, Inc.	3165 Olin Avenue	San Jose, CA 95117

TOTAL: 35

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 9 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.

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184
	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel - Brian P. Moquin, Esq.	10/28/14	1	202-206

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 4)	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brain P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/23/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 12)	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 15)	Exhibit 9: Seller's Final Closing Statement		3	549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669
	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		3	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Edward C. Wooley	08/30/16	4	798-803
18.	Affidavit of Larry J. Willard	08/30/16	4	804-812

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
19.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	813-843
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated July 1, 2005 for Purchase of the Highway 50 Property		4	844-857
	Exhibit 2: <i>Lease Agreement</i> dated December 2, 2005 for the Highway 50 Property		4	858-901
	Exhibit 3: <i>Three Year Adjustment Term Note</i> dated January 19, 2007 in the amount of \$2,200,00.00 for the Highway 50 Property		4	902-906
	Exhibit 4: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	907-924
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		4	925-940
	Exhibit 6: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	941-948
	Exhibit 7: <i>Guaranty Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	949-953
	Exhibit 8: <i>Second Amendment to Lease</i> dated June 29, 2011 for the Highway 50 Property		4	954-956
	Exhibit 9: <i>Purchase and Sale Agreement</i> Dated July 14, 2006 for the Baring Property		5	957-979
	Exhibit 10: <i>Lease Agreement</i> dated June 6, 2006 for the Baring Property		5	980-1015
	Exhibit 11: <i>Five Year Adjustable Term Note</i> dated July 18, 2006 in the amount of \$2,100,00.00 for the Baring Property		5	1016-1034

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 12: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1035-1052
	Exhibit 13: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Baring Property		5	1053-1060
	Exhibit 14: <i>Guaranty Agreement</i> dated March 12, 2007 for the Baring Property		5	1061-1065
	Exhibit 15: <i>Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)</i> dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1066-1077
	Exhibit 16: <i>Assignment and Assumption of Lease</i> dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1078-1085
	Exhibit 17: <i>Substitution of Attorney</i> forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1086-1090
	Exhibit 18: <i>Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs</i> filed March 13, 2014 in the California Case		5	1091-1094
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and Brian Moquin re Joint Stipulation in California Case		5	1095-1099
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court		5	1100-1106

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 21: <i>Request for Dismissal</i> without prejudice filed May 19, 2014 in the California case		5	1107-1108
	Exhibit 22: <i>Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust</i> dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1109-1117
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1118-1119
	Exhibit 24: <i>Settlement Statement (HUD-1)</i> dated May 20, 2014 for sale of the Baring Property		5	1120-1122
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1123-1158
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1159-1161
	Exhibit 27: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		5	1162-1174
	Exhibit 28: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		6	1175-1210
	Exhibit 29: <i>Buyer's and Seller's Final Settlement Statements</i> dated February 24, 2006 for the Virginia Property		6	1211-1213
	Exhibit 30: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated February 21, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1214-1231

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 31: <i>Promissory Note</i> dated February 28, 2006 for \$13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1232-1236
	Exhibit 32: <i>Subordination, Attornment And Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1237-1251
	Exhibit 33: <i>Deed of Trust, Assignment of Rents, and Security Agreement</i> dated March 16, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1252-1277
	Exhibit 34: <i>Payment Coupon</i> dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1278-1279
	Exhibit 35: <i>Substitution of Trustee and Full Reconveyance</i> dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1280-1281
	Exhibit 36: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		6	1282-1287
	Exhibit 37: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		6	1288-1292
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1293-1297
	Exhibit 39: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1298-1300

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1301-1303
	Exhibit 41: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1304-1308
	Exhibit 42: <i>Notice of Intent to Foreclose</i> dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1309-1311
	Exhibit 43: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> dated June 18, 2013		6	1312-1315
	Exhibit 44: <i>Declaration in Support of Motion to Dismiss Case</i> filed by Larry James Willard on August 9, 2013, Northern District of California Bankruptcy Court Case No. 13-53293 CN		6	1316-1320
	Exhibit 45: <i>Substitution of Attorney</i> forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1321-1325
	Exhibit 46: <i>Declaration of Arm's Length Transaction</i> dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1326-1333
	Exhibit 47: <i>Purchase and Sale Agreement</i> dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for \$4,000,000.00		6	1334-1340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 48: <i>Short Sale Agreement</i> dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1341-1360
	Exhibit 49: <i>Consent to Act</i> dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1361-1362
	Exhibit 50: <i>Seller's Final Closing Statement</i> dated March 3, 2014 re the Virginia Property		6	1363-1364
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland evidencing discharge of \$8,597,250.20 in debt and assessing the fair market value of the Virginia Property at \$3,000,000.00		6	1365-1366
20.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1367-1386
	Exhibit 1: Declaration of John P. Desmond		6	1387-1390
21.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgment	12/20/16	6	1391-1396
	Exhibit 1: Expert Report of Michelle Salazar		7	1397-1430
22.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1431-1449
23.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	02/02/17	7	1450-1457

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 23)	Exhibit 1: January 19-25, 2017 Email Exchange		7	1458-1460
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1461-1485
24.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1486-1494
25.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1495-1518
26.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1519-1522
	Exhibit 1: May 30, 2017 Order		7	1523-1547
27.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1548-1555
28.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1556-1563
29.	Affidavit of Larry Willard	10/18/17	7	1564-1580
30.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1581-1621
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		7	1622-1632
	Exhibit 2: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		8	1633-1668
	Exhibit 3: <i>Subordination, Attornment and Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		8	1669-1683
	Exhibit 4: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		8	1684-1688

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 5: <i>Landlord's Estoppel Certificate</i> regarding the Virginia Lease dated on or about March 8, 2007		8	1689-1690
	Exhibit 6: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		8	1691-1696
	Exhibit 7: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		8	1697-1701
	Exhibit 8: Berry-Hinckley Industries <i>Financial Analysis</i> on the Virginia Property dated May 2008		8	1702-1755
	Exhibit 9: Appraisal of the Virginia Property by CB Richard Ellis dated October 1, 2008		8	1756-1869
	Exhibit 10: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Lease		9	1870-1874
	Exhibit 11: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property Lease		9	1875-1877
	Exhibit 12: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		9	1878-1880
	Exhibit 13: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		9	1881-1885
	Exhibit 14: Invoice from Gregory M. Breen dated May 31, 2013		9	1886-1887

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 15: Photographs of the Virginia Property taken by Larry J. Willard on May 26-27, 2013		9	1888-1908
	Exhibit 16: Photographs of the Virginia Property in 2012 retrieved from Google Historical Street View		9	1909-1914
	Exhibit 17: Invoice from Tholl Fence dated July 31, 2013		9	1915-1916
	Exhibit 18: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> filed June 18, 2018 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1917-1920
	Exhibit 19: <i>Motion by the National Credit Union Administration Board, Acting in its Capacity as Liquidating Agent for Telesis Community Credit Union, for Order Terminating Automatic Stay or, Alternatively, Requiring Adequate Protection</i> and related declarations and declarations and exhibits thereto filed July 18, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1921-1938
	Exhibit 20: <i>Order for Relief from Stay</i> filed August 8, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1939-1943
	Exhibit 21: <i>Motion to Dismiss Case</i> and related declarations filed August 9, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1944-1953

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 22: <i>Proof of Claim</i> and exhibits thereto filed August 27, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1954-1966
	Exhibit 23: <i>Objection to Claim</i> filed September 5, 2013 by Stanley A. Zlotoff in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1967-1969
	Exhibit 24: <i>Original Preliminary Report</i> dated August 12, 2013 from Stewart Title Company re the Virginia Property		9	1970-1986
	Exhibit 25: <i>Updated Preliminary Report</i> dated January 13, 2014 from Stewart Title Company re the Virginia Property		9	1987-2001
	Exhibit 26: Berry-Hinckley Industries Financial Statement on the Virginia Property for the Twelve Months Ending December 31, 2012		9	2002-2006
	Exhibit 27: Bill Detail from the Washoe County Treasurer website re 2012 property taxes on the Virginia Property		9	2007-2008
	Exhibit 28: Bill Detail from the Washoe County Treasurer website re 2013 property taxes on the Virginia Property		9	2009-2010
	Exhibit 29: <i>Order of Case Dismissal</i> filed September 30, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	2011-2016
	Exhibit 30: Invoice from Santiago Landscape & Maintenance dated October 24, 2013		9	2017-2018

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 31: Appraisal of the Virginia Property by David A. Stefan dated February 10, 2014		9	2019-2089
	Exhibit 32: <i>Seller's Final Closing Statement</i> dated March 6, 2014 re short sale of the Virginia Property from the Willard Plaintiffs to Longley Partners, LLC		9	2090-2091
	Exhibit 33: Invoices from NV Energy for the Virginia Property		9	2092-2109
	Exhibit 34: Invoices and related insurance policy documents from Berkshire Hathaway Insurance Company re the Virginia Property		9	2110-2115
	Exhibit 35: Notice of Violation from the City of Reno re the Virginia Property and correspondence related thereto		10	2116-2152
	Exhibit 36: Willard Plaintiffs Computation of Damages spreadsheet		10	2153-2159
	Exhibit 37: E-mail message from Richard Miller to Dan Gluhaich dated August 6, 2013 re Virginia Property Car Wash		10	2160-2162
	Exhibit 38: E-mail from Rob Cashell to Dan Gluhaich dated February 28, 2014 with attached <i>Proposed and Contract</i> from L.A. Perks dated February 11, 2014 re repairing the Virginia Property		10	2163-2167
	Exhibit 39: <i>Deed</i> by and between Longley Center Partnership and Longley Center Partners, LLC dated January 1, 2004 regarding the Virginia Property, recorded April 1, 2004 in the Washoe County Recorder's Office as Doc. No. 3016371		10	2168-2181

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 40: <i>Grant, Bargain and Sale Deed</i> by and between Longley Center Partners, LLC and P.A. Morabito & Co., Limited dated October 4, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291753		10	2182-2187
	Exhibit 41: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and Land Venture Partners, LLC dated September 30, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291760		10	2188-2193
	Exhibit 42: <i>Memorandum of Lease</i> dated September 30, 2005 by Berry-Hinckley Industries regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291761		10	2194-2198
	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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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
	Exhibit 1: Declaration of Brian R. Irvine		10	2328-2334
	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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 10: December 5, 2016 Email		11	2587-2593
	Exhibit 11: December 9, 2016 Email		11	2594-2595
	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
	Exhibit 16: April 1, 2016 Email		12	2642-2644
	Exhibit 17: May 3, 2016 Email		12	2645-2646
	Exhibit 18: June 21, 2016 Email Exchange		12	2647-2653
	Exhibit 19: July 21, 2016 Email		12	2654-2670
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		12	2671-2680
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		12	2681-2691
	Exhibit 22: Defendants' First Requests for Production on Willard		12	2692-2669
	Exhibit 23: Defendants' Second Request for Production on Willard		12	2700-2707
	Exhibit 24: Defendants' Third Request for Production on Willard		12	2708-2713
	Exhibit 25: Defendants Requests for Admission to Willard		12	2714-2719
	Exhibit 26: Willard Lease		12	2720-2755
	Exhibit 27: Willard Response to Second Set of Interrogatories		12	2756-2764

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 28: Deposition of L. Willard Excerpt		12	2765-2770
	Exhibit 29: April 12, 2013 Letter		12	2771-2773
	Exhibit 30: Declaration of G. Gordon		12	2774-2776
	Exhibit 31: Declaration of C. Kemper		12	2777-2780
32.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	12	2781-2803
	Exhibit 1: Plaintiffs' Initial Disclosures		12	2804-2811
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		12	2812-2820
	Exhibit 3: December 5, 2016 Email		12	2821-2827
	Exhibit 4: December 9, 2016 Email		12	2828-2829
	Exhibit 5: December 23, 2016 Email		12	2830-2833
	Exhibit 6: December 27, 2016 Email		12	2834-2837
	Exhibit 7: February 3, 2017 Letter		13	2838-2865
	Exhibit 8: Deposition Excerpts of D. Gluhaich		13	2866-2875
	Exhibit 9: Declaration of Brain Irvine		13	2876-2879
33.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	13	2880-2896
	Exhibit 1: Highway 50 Lease		13	2897-2940
	Exhibit 2: Declaration of Chris Kemper		13	2941-2943
	Exhibit 3: Wooley Deposition at 41		13	2944-2949
	Exhibit 4: Virginia Lease		13	2950-2985

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
	Exhibit 7: Willard Deposition at 89		13	3015-3020
34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
	Exhibit 1: Plaintiffs' Initial Disclosures		13	3059-3066
	Exhibit 2: November 2014 Email Exchange		13	3067-3076
	Exhibit 3: January 2015 Email Exchange		13	3077-3082
	Exhibit 4: February 12, 2015 Letter		13	3083-3085
	Exhibit 5: Willard July 2015 Interrogatory Responses		14	3086-3097
	Exhibit 6: Wooley July 2015 Interrogatory Responses		14	3098-3107
	Exhibit 7: August 28, 2015 Letter		14	3108-3119
	Exhibit 8: March 3, 2016 Letter		14	3120-3208
	Exhibit 9: March 15, 2016 Letter		14	3209-3300
	Exhibit 10: April 20, 2016 Letter		14	3301-3327
	Exhibit 11: December 2, 2016 Expert Disclosure		15	3328-3336
	Exhibit 12: December 5, 2016 Email		15	3337-3343
	Exhibit 13: December 9, 2016 Email		15	3344-3345
	Exhibit 14: December 23, 2016 Email		15	3346-3349
	Exhibit 15: December 27, 2016 Email		15	3350-3353
	Exhibit 16: February 3, 2017 Letter		15	3354-3381

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 34)	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		15	3382-3391
	Exhibit 18: Wooley Deposition Excerpts		15	3392-3397
	Exhibit 19: Highway 50 Lease		15	3398-3441
	Exhibit 20: April 1, 2016 Email		15	3442-3444
	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
	Exhibit 22: June 21, 2016 Email Exchange		15	3447-3453
	Exhibit 23: July 21, 2016 Letter		15	3454-3471
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		15	3472-3480
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		15	3481-3490
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		15	3491-3498
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		15	3499-3506
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		15	3507-3512
	Exhibit 29: Defendants' Requests for Admission on Wooley		15	3513-3518
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		15	3519-3528
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		15	3529-3539
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		15	3540-3547

<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.

EXHIBIT 19

EXHIBIT 19

1 Section 362(d)(2). Alternatively, Movant LIQUIDATING AGENT seeks an order for adequate
 2 protection pursuant to 11 U.S.C. Sections 361 and 363(e) on the ground that the Debtor LARRY
 3 JAMES WILLARD ("Debtor") has failed to make post-petition payments, has failed to adequately
 4 protect Movant LIQUIDATING AGENT, and has failed to pay delinquent property taxes.

5 MOTION

6 **Date of Petition/Jurisdiction**

- 7 1. Debtor filed his petition under Chapter 11 of the Bankruptcy Code on June 17, 2013.
- 8 2. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. Section
 9 334 and Section 157, and 11 U.S.C. Sections 361, 362 and 363.

10 **Movant LIQUIDATING AGENT's Claim**

11 3. The property is generally described as 7695 and 7699 S. Virginia Street, Reno, Nevada
 12 (the "Property").

13 4. Movant LIQUIDATING AGENT holds a secured claim against the Debtor, pursuant to
 14 a loan made by Telesis Community Credit Union (now in liquidation). Declaration of Mike Burns in
 15 Support of Motion by Movant LIQUIDATING AGENT filed concurrently herewith ("Burns
 16 Declaration"), at paragraphs 5, 7 and 8 (and Exhibits thereto). Declaration of Kempe Hayes ("Hayes
 17 Declaration"), at paragraphs 1 through 3.

18 5. On or about February 28, 2006, Debtor WILLARD (and the co-borrowers) executed
 19 and delivered to Movant LIQUIDATING AGENT a Promissory Note in the principal sum of
 20 \$13,312,500.00. ¹ The Promissory Note payments commenced May 1, 2006 and are due on the first
 21 day of each month thereafter with a balloon payment due on April 1, 2016. The current monthly
 22 principal and interest payment is \$87,077.52. Burns Declaration at paragraph 7 and Exhibit "A"
 23 thereto.

24 6. For the purpose of securing the loan, Debtor WILLARD executed and delivered to
 25 Movant LIQUIDATING AGENT, as beneficiary, a deed of trust on the Property. The Deed of Trust
 26 was recorded on March 28, 2006, in the Official Records of Washoe County, Nevada (Document No.
 27 _____)

28 ¹ All reference to the LIQUIDATING AGENT will include Telesis Community Credit Union, now in liquidation.

3367072). Burns Declaration at paragraph 8 and Exhibit "B" thereto. Movant LIQUIDATING AGENT's Deed of Trust is in a first position.

Defaults Under Note

7. Debtor WILLARD (and co-borrowers Overland Development and the Willard Trust) defaulted on the Promissory Note obligation by their failure to make payments due from, since and including March 1, 2013. Burns Declaration at paragraph 9. Further, Debtor WILLARD and his co-borrowers have failed to make property tax payments resulting in a delinquent tax lien recorded against the Property. Burns Declaration at paragraph 13.

8. Pre-Petition Delinquency: On June 17, 2013, the date Debtor WILLARD filed his Petition herein, the Debtor WILLARD was delinquent to the Movant LIQUIDATING AGENT in the amount of \$348,310.08 plus late charges. The pre-petition delinquency months are March 1, 2013, April 1, 2013, May 1, 2013 and June 1, 2013 (at \$87,077.52 for each month). Burns Declaration at paragraph 11.

9. Post-Delinquency: Since June 17, 2013, when the Petition was filed, the Debtor WILLARD is delinquent to the Movant LIQUIDATING AGENT in the amount of \$87,077.52. The \$87,077.52 delinquency is for the July 1, 2013 payment. The next monthly payment of \$87,077.52 is due August 1, 2013.

10. In addition to failing to make loan payments, Debtor WILLARD has not paid property taxes. As a result, a delinquent property tax lien has been recorded against the Property. The delinquent property tax, due March 4, 2013 (for the 2012 tax year), is \$12,608.55. Burns Declaration at paragraph 13 and Exhibit "D" thereto.

Current Loan And Property Status

11. Since and including June 1, 2013, the Property has been entirely vacant. Burns Declaration at paragraph 6.

12. As of July 1, 2013, the delinquent amount due the Movant LIQUIDATING AGENT is as follows:

///

///

1 a) PRE-PETITION AMOUNTS:

2 Payments due for 3/13 - 6/13
3 (4 months at \$87,077.52/mo.) \$348,310.08

4 Late Charges (4 months at
5 \$4,353.88/mo.) \$ 17,415.52

6 Pre-Petition TOTAL \$365,725.60

7 b) POST-PETITION AMOUNTS:

8 Payment due for 7/1/13
9 (1 month at \$87,077.52) \$ 87,077.52

10 Late Charges (1 mo. at
11 \$4,353.88/mo.) \$ 4,353.88

12 Attorney's Fees and Costs \$ 2,500.00

13 Post-Petition TOTAL \$ 93,931.40

14 c) LOAN PAYOFF:

15 The loan payoff is \$12,856,929.70. Burns Declaration at paragraph 14.

16 **Value of Property**

17 13. According to the Debtor's Schedules, the Debtor values the Property at \$8,000,000.00.
18 The Debtor's Schedule D identifies Movant LIQUIDATING AGENT as a first deed of trust holder
19 and asserts that the Property (full) value is \$8,000,000.00. Schedule A makes the same representa-
20 tion as to the value of the Property. For purposes of this Motion, Movant LIQUIDATING AGENT
21 requests that the Court take judicial notice of the Debtor's Schedules as to the \$8,000,000.00
22 Property value and the amount of the Movant LIQUIDATING AGENT's claim (ie. \$12,507,000.00).

23 14. The total loan obligation by the Debtor WILLARD owed to the Movant LIQUIDAT-
24 ING AGENT exceeds \$12,856,929.70. The Debtor has no equity in the Property.

25 15. Movant LIQUIDATING AGENT has asked Debtor WILLARD to make post-petition
26 payments and to enter into an adequate protection order, or to stipulate to relief from stay. Burns
27 Declaration at paragraph 10 and Exhibit "C" thereto. The Debtor has done nothing.

28 16. The Property is not necessary to the reorganization of the Debtor WILLARD. The
Debtor WILLARD has not yet proposed a Plan. The Debtor WILLARD has not made any post-
petition payments to Movant LIQUIDATING AGENT. The Property remains vacant. The Property

1 value continues to depreciate.

2 17. Debtor has no equity in the Property. The Property remains vacant. The Property
3 value continues to depreciate. Debtor refuses to provide adequate protection payments or to stipulate
4 to relief from stay.

5 **Grounds to Lift Stay or Grant Adequate Protection**

6 18. The automatic stay should be lifted for cause, or adequate protection of Movant
7 LIQUIDATING AGENT's interest in the subject Property ordered, pursuant to 11 U.S.C. Sections
8 361, 362((d)(1), and 363(e), on the grounds that the Debtor has failed to make post-petition
9 payments, the Debtor has no equity in the Property, and the Debtor has failed to keep the real
10 property taxes current. Moreover, the value of the Movant LIQUIDATING AGENT's security has
11 and continues to decrease.

12 **CONCLUSION**

13 The vacant Property remains a detriment and financial burden to the Debtor and the Debtor's
14 estate. As a result of the default in post-petition payments, "cause" to terminate the automatic stay
15 exists. The LIQUIDATING AGENT is also entitled to relief from the stay because there is no equity
16 in the Property. Nor is the Property necessary for the reorganization of the Debtor under 11 U.S.C.
17 Section 362(d)(2). Movant LIQUIDATING AGENT requests that this Court grant Movant's relief
18 from stay to foreclose against the Property, or, in the alternative, order that the Debtor make post-
19 petition payments, cure delinquent post-petition default, and immediately pay delinquent property
20 taxes.

21 WHEREFORE Movant LIQUIDATING AGENT prays judgment as follows:

- 22 1. For an Order granting relief from the automatic stay or requiring adequate protection;
- 23 2. For an Order that terminates or vacates the automatic stay as to the Debtor [the non-
24 filing co-debtor] and the estate for all purposes as it pertains to Movant LIQUIDATING AGENT's
25 interest in the Property, including all steps necessary to start, continue, and complete a non-judicial
26 foreclosure and to obtain possession of the Property under California law after completion of
27 foreclosure;

28 ///

1 3. For an Order waiving the fourteen-day stay period after entry of the Order under
2 Bankruptcy Rule 4001(a)(3) and California Civil Code Section 2924g(d) to the extent that it applies;

3 4. For an order binding Debtor in any conversion of this bankruptcy;

4 5. For attorney's fees and costs incurred by Movant LIQUIDATING AGENT for filing
5 this Motion be included in the outstanding balance of the note as allowed under non-bankruptcy law;
6 and,

7 6. For such other and further relief as the Court may deem proper.
8
9

10 Dated: July 18, 2013

By: /s/Thomas Caudill

THOMAS CAUDILL, Attorney for Creditor
National Credit Union Administration Board
("LIQUIDATING AGENT")

THE LAW OFFICE OF THOMAS CAUDILL

THOMAS CAUDILL (SBN: 111412)
 1025 NORTH FOURTH STREET
 SAN JOSE, CA 95112-4942
 TELEPHONE: (408) 298-4844
 FACSIMILE : (408) 298-5148

ATTORNEY FOR: Creditor NATIONAL CREDIT UNION ADMINISTRATION BOARD,
 acting in its capacity as Liquidating Agent for TELESIS COMMUNITY
 CREDIT UNION

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

IN RE:

LARRY JAMES WILLARD
 638 Teatree Court
 San Jose, CA 95128

SSN: xxx-xx-0904

Debtor.

Bankruptcy No.: 13-53293 CN

Chapter 11

RS No.: TC-160

**DECLARATION OF MIKE BURNS
 IN SUPPORT OF MOTION FOR ORDER
 TERMINATING AUTOMATIC STAY OR,
 ALTERNATIVELY, REQUIRING
 ADEQUATE PROTECTION.**

Hearing Date: August 7, 2013
 Hearing Time: 2:00 p.m.
 Courtroom: 3070
 Judge: Hon. Charles Novack

I, MIKE BURNS, declare:

1. I am employed as a REO Manager for Business Partners, LLC (hereinafter "BP"). BP is the loan servicer for Plaintiff NATIONAL CREDIT UNION ADMINISTRATION BOARD, acting in its capacity as Liquidating Agent for Telesis Community Credit Union (hereinafter referred to as the "Movant LIQUIDATING AGENT"). In addition to being the loan servicer, BP originated the loan which is the subject of this Motion. At all applicable times, I have been one of the employees of BP associated with the subject loan and have been the employee for BP who has personally serviced and administered the loan. As to the following facts, I have personal knowledge or have

1 gained knowledge through the business records of BP. If called upon to testify as to the facts set
 2 forth in this Declaration, I could and would competently testify thereto since the facts set forth
 3 herein are personally known to me to be true except as to those matters which I state on information
 4 and belief and, as to those matters, I believe them to be true.

5 2. Acting on behalf of Telesis Community Credit Union, BP facilitated the origination of
 6 the loan with the co-borrowers LARRY JAMES WILLARD (hereinafter "Debtor WILLARD"),
 7 LARRY WILLARD, Trustee of the Larry James Willard Trust dated November 14, 1987
 8 (hereinafter "Willard Trust") and Overland Development Corporation, Inc., a California corporation
 9 (hereinafter "Overland Development").¹ Overland Development and the Willard Trust have not, to
 10 my knowledge, filed bankruptcy.

11 3. The records of BP as they relate to the Debtor WILLARD's loan and extension of credit
 12 to said Debtor, which are the subject matter of this Motion, are kept in the regular course of BP's
 13 business. The records are carefully prepared to reflect all acts, conditions and events at or near the
 14 times said acts, conditions or events occurred and the entries made therein are made by persons who
 15 have knowledge of the facts or have a business duty to maintain those records. It is the standard
 16 operating procedure of BP to preserve these documents in a place of safekeeping on its business
 17 premises. I have personal access to these books and records and their continued safekeeping is
 18 maintained under my direction and supervision.

19 4. BP is the duly authorized and acting servicing agent on behalf of a certain loan in which
 20 Telesis Community Credit Union was the original lender and is now held by the NATIONAL
 21 CREDIT UNION ADMINISTRATION BOARD, acting in its capacity as Liquidating Agent for said
 22 Credit Union.² In my capacity as the REO Manager for the loan servicer (BP), I have access to, and
 23 I am familiar with, the books and records kept by BP as the loan servicer and the original loan
 24

25 ¹ Debtor's Schedule B, at Paragraph 13, states Debtor has a "100% ownership of Overland Development, Inc. (part
 26 owner of Reno real property)".

27 ² The original lender was Telesis Community Credit Union. The NATIONAL CREDIT UNION
 28 ADMINISTRATION BOARD, acting in its capacity as Liquidating Agent, has succeeded to all rights, title and interest of
 Telesis Community Credit Union. See the Order For Liquidation And Appointment, attached to the Declaration of Kempe
 Hayes. Reference to the "Liquidating Agent" will include Telesis Community Credit Union, the underlying lender, now in
 liquidation.

1 underwriter of said loan, which records are kept on behalf of the LIQUIDATING AGENT.

2 5. The Real Property: The subject real property securing the loan with Movant LIQUI-
3 DATING AGENT is generally described as 7695 and 7699 South Virginia Street, Reno, Nevada (the
4 "Property"). The Property is a mixed commercial property consisting of a gas station, a car wash, a
5 restaurant, a convenience store and office/retail space. The Debtor's Bankruptcy Schedules are
6 consistent with the loan documents and with Movant LIQUIDATING AGENT's understanding of
7 the use of Property.

8 6. The Property is Vacant: Since and including June 1, 2013, the Property has been entirely
9 vacant.

10 7. The Loan: On or about February 28, 2006, Debtor WILLARD and Co-Borrowers
11 Overland Development and the Willard Trust obtained a loan from the LIQUIDATING AGENT.
12 Also on or about February 28, 2006, Debtor WILLARD (and the co-borrowers) executed and
13 delivered to Movant LIQUIDATING AGENT a Promissory Note in the principal sum of
14 \$13,312,500.00 ("Promissory Note").

- 15 a) The Promissory Note provides for interest commencing from the date of funding, on
16 the unpaid balance, at the rate of 6.7% per annum.
- 17 b) The Promissory Note payments commenced May 1, 2006 and are due on the first day
18 of each month thereafter with a balloon payment due on April 1, 2016.
- 19 c) The current monthly principal and interest payment is \$87,077.52.
- 20 d) The Promissory Note provides for late charges of 5% on any installment received
21 after 10 days from the payment due date.

22 A true and correct copy of the Promissory Note is attached hereto as Exhibit "A" and is
23 incorporated herein as though set forth in full. In accordance with the Promissory Note, Telesis
24 Community Credit Union/Movant LIQUIDATING AGENT loaned Debtor WILLARD
25 \$13,312,500.00.

26 8. The Deed of Trust: Concurrent with the execution of the Promissory Note, and for the
27 purpose of securing said obligation, Debtor WILLARD executed and delivered to Movant
28 LIQUIDATING AGENT, as beneficiary, a deed of trust on the Property (hereinafter the "Deed of

1 Trust"). The Deed of Trust provides that attorney's fees and costs incurred as a result of protecting
 2 the security of the lender may be included in the outstanding balance under the Note. The Deed of
 3 Trust was recorded on March 28, 2006, in the Official Records of Washoe County, Nevada
 4 (Document No. 3367072). A true and accurate copy of the Deed of Trust is attached hereto as
 5 Exhibit "B" and is incorporated herein by reference. Movant LIQUIDATING AGENT's Deed of
 6 Trust is in a first position. Until receipt of Debtor's Schedules, and in particular Schedule D,
 7 Movant LIQUIDATING AGENT was unaware of any subordinate deeds of trust against the
 8 Property.

9 9. The Loan Default: Debtor WILLARD (and co-borrowers Overland Development and
 10 the Willard Trust) defaulted on the Promissory Note obligation by their failure to make payments
 11 due from and since March 1, 2013. Further, Debtor WILLARD has failed to make property tax
 12 payments resulting in a delinquent tax lien recorded against the Property.

13 10. Request For Post-Petition Payments: Movant LIQUIDATING AGENT has asked
 14 Debtor WILLARD to make post-petition payments or to otherwise make adequate protection
 15 payments. Alternatively, Movant LIQUIDATING AGENT has requested that Debtor stipulate to
 16 relief from stay. See the email from Movant's attorney to Debtor's attorney attached hereto as
 17 Exhibit "C". I am informed that Debtor WILLARD will not make post-petition payments nor
 18 stipulate to relief from stay. Rather, the Debtor refuses to make payments while retaining possession
 19 of the vacant Property.

20 11. Pre-Petition Delinquency: On June 17, 2013, the date Debtor WILLARD filed his
 21 Petition herein, the Debtor WILLARD was delinquent to the Movant LIQUIDATING AGENT in
 22 the amount of \$348,310.08 plus late charges. This pre-petition delinquency represents:

23 Payment Due Date	Amount Due	Date Received	Month Applied
24 March 1, 2013	\$87,077.52	no payment received	N/A
25 April 1, 2013	\$87,077.52	no payment received	N/A
26 May 1, 2013	\$87,077.52	no payment received	N/A
27 June 1, 2013	\$87,077.52	no payment received	N/A

28 ///

12. Post-Delinquency: Since June 17, 2013, when the Petition was filed, the Debtor WILLARD is delinquent to the Movant LIQUIDATING AGENT in the amount of \$87,077.52. This sum represents the following:

Payment Due Date	Amount Due	Date Received	Month Applied
July 1, 2013	\$87,077.52	no payment received	N/A

13. Delinquent Property Taxes: In addition to failing to make loan payments, Debtor WILLARD has not paid property taxes. As a result, a delinquent property tax lien has been recorded against the Property. A true and correct copy of the Washoe County Delinquent Property Tax Installment Notice printout is attached hereto as Exhibit "D" and is incorporated herein. The delinquent property tax, due March 4, 2013 (for the 2012 tax year), is \$12,608.55. BP, the loan servicer for Movant LIQUIDATING AGENT, has requested that Debtor WILLARD pay the property tax. The Debtor WILLARD (and the co-borrowers) have not done so. The delinquent property tax remains unpaid.

14. Current Loan Status: As of July 1, 2013, the delinquent amount due the Movant LIQUIDATING AGENT is as follows:

a) PRE-PETITION AMOUNTS:

Payments due for 3/13 - 6/13 (4 months at \$87,077.52/mo.)	\$348,310.08
Late Charges (4 months at \$4,353.88/mo.)	<u>\$ 17,415.52</u>
Pre-Petition TOTAL	\$365,725.60

b) POST-PETITION AMOUNTS:

Payment due for 7/1/13 (1 month at \$87,077.52)	\$ 87,077.52
Late Charges (1 mo. at \$4,353.88/mo.)	\$ 4,353.88
Attorney's Fees and Costs	<u>\$ 2,500.00</u>
Post-Petition TOTAL	\$ 93,931.40

1 An additional \$87,077.52 becomes due and owing on the 1st day of each month commencing
2 August 1, 2013 and each month thereafter. The late charge of \$4,353.88 is assessed on the 11th day
3 of each month where a payment is not received or is paid late.

4 c) LOAN PAYOFF:

5 The loan payoff as of June 30, 2013 is \$12,856,929.70.

6 15. The Debtor WILLARD has stopped paying Movant LIQUIDATING AGENT on the
7 loan secured by the First Deed of Trust. There have been no post-petition payments. The Movant
8 LIQUIDATING AGENT has not yet filed a Notice of Default.

9 16. Junior Encumbrance: According to the Debtor's Schedules, and in particular Schedule
10 D, the Property is further encumbered by a junior obligation and second deed of trust with a current
11 balance of \$4,000,000.00. Schedule D identifies the junior lienholder as Mahnaz Khazen c/I Vaam
12 and Associates.

13 17. Property Value: According to the Debtor's Schedules, the Debtor values the Property at
14 \$8,000,000.00 (with a 59% interest by Debtor WILLARD and a 41% interest by Debtor's corpora-
15 tion, Overland Development). Debtor's Schedule D identifies Movant LIQUIDATING AGENT as a
16 first deed of trust holder and asserts the Property (full) value to be \$8,000,000.00. Further, Schedule
17 A makes the same representation as to the full value of the Property. For purposes of this Motion,
18 Movant LIQUIDATING AGENT requests that the Court take judicial notice of the Debtor's
19 Schedules as to the \$8,000,000.00 Property value and the amount of the Movant LIQUIDATING
20 AGENT's claim (ie. \$12,507,000.00). Movant LIQUIDATING AGENT will use the Debtor's
21 Schedule of value for this Motion.

22 18. No Equity: The total loan obligation by the Debtor WILLARD owed to the Movant
23 LIQUIDATING AGENT exceeds \$12,856,929.70. According to Debtor's Schedules A and D, the
24 Property full value is \$8,000,000.00 (excluding closing costs, escrow and title charges, brokerage
25 fees, property maintenance, repairs, real property taxes, etc.). Accordingly, the Debtor has no equity
26 in the Property. Moreover, in its vacant condition, the Property depreciates and is a burden to the
27 Debtor and his estate. The vacant Property brings in no income. It is only a financial drain to
28 Debtor WILLARD.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California and that this Declaration was executed on July 17, 2013 at Chatsworth, California.

LJW000274

PROMISSORY NOTE
(Nevada)

US \$13,312,500.00

February 28, 2006

FOR VALUE RECEIVED, the undersigned, OVERLAND DEVELOPMENT CORPORATION, INC., a California corporation, and LARRY J. WILLARD, individually, and LARRY J. WILLARD, Trustee of the Larry James Willard Trust dated November 14, 1987 ("Borrower") jointly and severally (if more than one) promise(s) to pay to the order of TELESIS COMMUNITY CREDIT UNION, a California state chartered credit union, the principal sum of THIRTEEN MILLION THREE HUNDRED TWELVE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (US \$13,312,500.00), with interest on the unpaid principal balance as set forth in Section 3 below.

1. **Defined Terms.** As used in this Note, (i) the term "Lender" means the holder of this Note, and (ii) the term "Indebtedness" means the principal of, interest on, or any other amounts due at any time under, this Note, the Security Instrument or any other Loan Document, including late charges, default interest, and advances to protect the security of the Security Instrument under Section 12 of the Security Instrument. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. **Address for Payment.** All payments due under this Note shall be payable at c/o Business Partners, LLC, 9301 Winnetka Avenue, Chatsworth, CA 91311, Attn: Commercial Loan Department, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

3. **Payment of Principal and Interest.** Payments shall be made in immediately available funds as follows:

(a) **General.** Monthly payments will be applied to interest before principal. Any remaining principal and interest shall be due and payable on April 1, 2016 or on any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise (the "Maturity Date"). At any time an Event of Default shall have occurred and be continuing and/or after maturity of the Loan, including maturity upon acceleration, the unpaid principal balance, all accrued and unpaid interest and all other amounts payable under the Note shall bear interest at the "Default Rate" set forth in this Note. The unpaid principal balance shall continue to bear interest after the Maturity Date at the Default Rate set forth in this Note until and including the date on which it is paid in full. Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due. Interest under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. In the event any check given by Borrower to Lender as a payment on this Note is dishonored, or in the event there are insufficient funds in Borrower's designated account to cover any preauthorized monthly debit pursuant to the separate "ACH Debit Authorization," then, without limiting any other charges or remedies, Borrower shall pay to Lender a processing fee of \$25.00 (but not more than the maximum amount allowed by law) for each such event.

(b) **Interest Rate.** The unpaid principal balance of this Note shall accrue interest as follows:

(i) **Initial Interest Rate.** The initial interest rate charged on the unpaid principal of this Note shall be 6.7 percent (6.7%) per annum effective as of the date of disbursement to and excluding April 1, 2011. Thereafter, the interest rate the Borrower will pay may increase (but not decrease) in accordance with this Section 3(b).

(ii) **Interest Rate Changes.** The interest rate the Borrower will pay may change on April 1, 2011 (the "Interest Change Date"). Before the Interest Change Date, the Lender will calculate the Borrower's new interest rate by adding 2.1 percent (2.1%) to the Current Index. The Lender will then round the result of this addition to the nearest one-eighth of one percent (0.125%). If rounded amount so calculated exceeds the initial interest rate set forth in Section 3(b)(i) above, then this rounded amount will be the new interest rate during the balance of the term of this Note.

(iii) **The Index.** On the Interest Change Date, the interest rate may increase (but not decrease) based on an index. The "Index" will be based upon the weekly average yield on United States Treasury securities adjusted to a constant maturity of five years, as made available by the Federal Reserve Board. The most recent Index figure available forty-five (45) days before the Interest Change Date is called the "Current Index." If the Index is no longer available, the Lender will choose a comparable alternate Index. The selection of an alternate Index shall be made in Lender's discretion. Lender will give Borrower notice of such selection.

(iv) **Limit on Interest Rate Reduction.** Throughout the term of this Note, the Borrower's interest rate will never be less than 6.7 percent (6.7%) per annum.

(c) **Payments.** Principal and interest shall be paid as follows:

(i) **Interest Only Payment.** Unless disbursement of principal is made by Lender to Borrower on the first day of the month, interest for the period beginning on the date of disbursement and ending on and including the last day of the month in which such disbursement is made shall be payable upon the initial funding of the loan evidenced by this Note.

(ii) **Additional Interest Only Payments.** Monthly interest only payments shall be due and payable commencing on May 1, 2006, and on the same day of every calendar month thereafter through and including April 1, 2007.

Prepared by RoboDocs®
Nevada Promissory Note
Loan No. 59409040-82

EXHIBIT

"A"

LJW000275

(iii) **Amount of Initial Monthly Payments.** Monthly payments of principal and interest, initially in the amount of EIGHTY-FIVE THOUSAND NINE HUNDRED TWO AND 63/100 DOLLARS (U.S. \$85,902.63) shall be due and payable commencing on May 1, 2007, and on the same day of every calendar month thereafter through and including April 1, 2016. The amount of the initial monthly payment of principal and interest is the amount that would be sufficient to repay the face amount of this Note in full on the Amortization Date in substantially equal monthly payments. For purposes of this Section 3, the "Amortization Date" shall mean April 1, 2037.

(iv) **Change in Monthly Payments.** The monthly payments shall change if the interest rate changes pursuant to Section 3(b) of this Note. The change in monthly payments will reflect the change in the unpaid principal of the loan and in the interest rate. Lender will determine the amount of the new monthly payment in an amount that would be sufficient to repay the unpaid principal that is expected to be owed at the Interest Change Date in full on the Amortization Date at the new interest rate in substantially equal monthly payments.

(d) **Effective Date of Change.** The new interest rate will become effective on the Interest Change Date. Borrower will pay the new monthly payment beginning on the monthly payment due date next following such Interest Change Date.

(e) **Notice of Change.** The Lender will deliver or mail a notice of any change in the Borrower's interest rate and the amount of the new monthly payment promptly upon the calculation of such changes.

(f) **Failure to Make Adjustments.** If for any reason Lender fails to make an adjustment to the interest rate or the monthly payment amount as described in this Note, regardless of any notice requirement, Lender may, upon discovery of such failure, then make such adjustment as if it had been made on time. Borrower further agrees to pay upon demand any additional monies which Borrower may owe as a result of any such adjustment. Borrower agrees not to hold Lender responsible for any damages that may result from Lender's failure to make the adjustment and to allow Lender, at its option, to apply any excess monies which Borrower may have paid to partial prepayment of the unpaid principal balance of this Note.

4. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply the amount received to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured, among other things, by that certain deed of trust, mortgage or security deed dated as of the date of this Note and executed by Borrower and the Fee Owner (as defined in the Security Instrument) in favor of Lender (the "Security Instrument"), and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower. Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any monthly installment of interest or principal and interest or other amount payable under this Note or under the Security Instrument or any other Loan Document is not received in full by Lender within ten (10) days after the installment or other amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such installment or other amount due (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the loan evidenced by this Note (the "Loan") and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due for thirty (30) days or more or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the "Default Rate") equal to the lesser of four (4) percentage points above the rate stated in Section 3 of this Note or the maximum interest rate which may be collected from Borrower under applicable law. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Borrower acknowledges that (a) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, (b) during the time that any monthly installment under this Note is delinquent for thirty (30) days or more, Lender will incur additional costs and expenses

arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities; and (c) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for thirty (30) days or more or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan. During any period that the Default Rate is in effect the additional interest accruing over and above the rate stated in Section 3 of this Note shall be immediately due and payable in addition to the regularly scheduled principal and interest payments.

9. Full Recourse Liability. Borrower shall have full recourse liability under this Note, the Security Instrument and any and all other Loan Documents for the repayment of the Indebtedness and for the performance of any and all other obligations of Borrower under the Loan Documents.

10. Voluntary Prepayments. Borrower may voluntarily prepay all or part of the unpaid principal balance of this Note at any time without payment of penalty or premium. Any prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

11. Costs and Expenses. To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including fees and out-of-pocket expenses of attorneys (including Lender's in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

14. Loan Charges. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

15. Purpose of Indebtedness. Borrower represents that the Indebtedness is not being incurred by Borrower for personal, family or household purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

17. Governing Law. This Note shall be governed by the laws of the jurisdiction in which the Land is located.

18. Captions. The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices. All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument.

20. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the jurisdiction in which the Land is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

21. **Counterparts.** This Note may be executed in any number of counterparts each of which shall be deemed an original, but all such counterparts together shall constitute but one Note.

22. **WAIVER OF TRIAL BY JURY.** BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

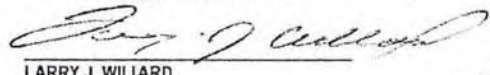
IN WITNESS WHEREOF, and in consideration of the Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative.

BORROWER:

OVERLAND DEVELOPMENT CORPORATION, INC.,
a California corporation

By: 

LARRY J. WILLARD, President


LARRY J. WILLARD

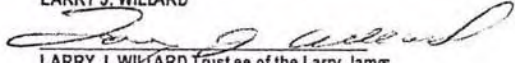

LARRY J. WILLARD, Trustee of the Larry James
Willard Trust dated November 14, 1987

EXHIBIT 20

EXHIBIT 20

Entered on Docket
 August 09, 2013
 GLORIA L. FRANKLIN, CLERK
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA



1 **THOMAS CAUDILL LAW OFFICE**
 2 THOMAS CAUDILL (SBN: 111412)
 3 1025 NORTH FOURTH STREET
 4 SAN JOSE, CA 95112-4942
 5 TELEPHONE: (408) 298-4844
 6 FACSIMILE : (408) 298-5148

The following constitutes
 the order of the court. Signed August 9, 2013

5 ATTORNEY FOR: Creditor
 6 National Credit Union Administration
 7 Board, acting in its capacity as
 8 Liquidating Agent for Telesis
 9 Community Credit Union

Charles Novack
 Charles Novack
 U.S. Bankruptcy Judge

11 IN THE UNITED STATES BANKRUPTCY COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

15 IN RE:) Bankruptcy No.: 13-53293 CN
 16)
 17 LARRY JAMES WILLARD) Chapter 11
 18 638 Teatree Court)
 19 San Jose, CA 95128) RS No.: TC-160

19 SSN: xxx-xx-0904

ORDER FOR RELIEF FROM STAY.

20 Debtor.

Hearing Date: August 7, 2013
 Hearing Time: 2:00 p.m.
 Courtroom: 3070
 Judge: Hon. Charles Novack

24 NATIONAL CREDIT UNION ADMINISTRATION BOARD, acting in its capacity as
 25 Liquidating Agent for TELESIS COMMUNITY CREDIT UNION's Motion For Relief From Stay
 26 came on regularly for hearing on **August 7, 2013 at 2:00 p.m.** NATIONAL CREDIT UNION
 27 ADMINISTRATION BOARD, acting in its capacity as Liquidating Agent for TELESIS COMMU-
 28 NITY CREDIT UNION, appeared through Thomas Caudill. The Debtor did/did not appear.

1 The Court having considered this Motion and Declaration, all papers on file herein, and oral
2 argument presented at the hearing, and good cause appearing therefor,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

4 1. That the Motion of NATIONAL CREDIT UNION ADMINISTRATION BOARD, acting
5 in its capacity as Liquidating Agent for TELESIS COMMUNITY CREDIT UNION ("Movant") for
6 Relief From Stay is GRANTED.

7 2. Relief from the automatic stay is hereby granted as to the property located at 7695 and
8 7699 S. Virginia Street, Reno, Nevada (the "Property"), and Movant is hereby authorized to take all
9 action necessary with respect to the interests of Debtor, the non-filing co-borrowers, and the Estate
10 in the Property.

11 3. Movant shall have immediate relief from the automatic stay to proceed with a Notice of
12 Default, hold a Trustee's Sale of the subject Property pursuant to applicable state law, and thereafter
13 commence any action necessary to obtain complete possession of the subject Property without
14 further Court Order or proceedings being necessary.

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19 ****END OF ORDER****
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COURT SERVICE LIST

Debtor:

LARRY JAMES WILLARD
826 Vanderbilt Place
San Diego, CA 92103

LARRY JAMES WILLARD
638 Teatree Court
San Jose, CA 95128

Debtor's Counsel:

Stanley A. Zlotoff, Esq.
LAW OFFICES OF STANLEY A. ZLOTOFF
300 S. 1st Street, #215
San Jose, CA 95113

U.S. Trustee:

Emily S. Keller
Office of the U.S. Trustee
U.S. Federal Bldg.
280 S. 1st Street, #268
San Jose, CA 95113-3004

20 Largest Unsecured Creditors:

Bank of the West
P.O. Box 4024
Alameda, CA 94501-0424

Business Partners, LLC
P.O. Box 843458
Los Angeles, CA 90084-3458

County of Kauai
Real Property Collections Division
4444 Rice Street, Suite 463
Lihue, HI 96766

Hyundai Motor Co.
P.O. Box 7204
Pasadena, CA 91109-2304

Mahnaz Khazen
c/l Vaam and Associates
3165 Olin Avenue
San Jose, CA 95117

Santa Barbara Bank & Trust
P.O. Box 60839
Santa Barbara, CA 93160-0839

Santa Clara County Tax Collector
70 W. Hedding Street, East Wing
San Jose, CA 95110

Specialized Loan Servicing, LLC
P.O. Box 636005
Littleton, CO 80163-6005

Alan and Sharon Soccy
301 Mission Street, Suite 7F
San Francisco, CA 94105

Albright, Stoddard, Warnick & Albright
801 S. Rancho Drive, Building D
Las Vegas, NV 89106

Bank of Hawaii
P.O. Box 2906
Honolulu, HI 96846-1000

Rush Moore, LLP
Caroline S. Otani, Esq.
737 Bishop Street, Suite 2400
Honolulu, HI 96813

Vaam and Associates, Inc.
3165 Olin Avenue
San Jose, CA 95117

Notice Recipients

District/Off: 0971-5

User: nortiz

Date Created: 8/9/2013

Case: 13-53293

Form ID: pdfec

Total: 16

Recipients of Notice of Electronic Filing:

aty	Emily S. Keller	emily.s.keller@usdoj.gov
aty	Stanley A. Zlotoff	zlotofflaw@gmail.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Larry James Willard	826 Vanderbilt Place	San Diego, CA 92103
13294679	Albright, Stoddard, Warnick & Albright		801 S. Rancho Drive, Building D Las Vegas, NV 89106
13294682	Bank of Hawaii	P.O. Box 2906	Honolulu, HI 96846-1000
13294683	Bank of the West	P.O. Box 4024	Alameda, CA 94501-0424
13294684	Business Partners, LLC	P.O. Box 843458	Los Angeles, CA 90084-3458
13294686	County of Kauai	Real Property Collections Division	4444 Rice Street, Suite 463 Lihue, HI 96766
13294687	Hyundai Motor Co.	P.O. Box 7204	Pasadena, CA 91109-2304
13294690	Mahnaz Khazen	c/I Vaam and Associates	3165 Olin Avenue San Jose, CA 95117
13294691	Rush Moore, LLP	Caroline S. Otani, esq.	737 Bishop Street, Suite 2400 Honolulu, HI 96813
13294692	Santa Barbara Bank & Trust	P.O. Box 60839	Santa Barbara, CA 93160-0839
13294693	Santa Clara County Tax Collector	70 W. Hedding Street, East Wing	San Jose, CA 95110
13294931	Specialized Loan Servicing, LLC	P.O. Box 636005	Littleton, CO 80163-6005
13294695	Vaam and Associates, Inc.	3165 Olin Avenue	San Jose, CA 95117
	LARRY JAMES WILLARD	638 Teatree Court	San Jose, CA 95128

TOTAL: 14

EXHIBIT 21

EXHIBIT 21

1 Stanley A. Zlotoff, State Bar No. 073283
Attorney at Law

2 300 S. First St. Suite 215
San Jose, CA 95113

3 Telephone (408) 287-1313

4 Facsimile (408) 287-7645

5 Attorney for Debtor

6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re:) Chapter 11
11)
12 Larry James Willard,) Case No. 13-53293 CN
13 Debtor.) Date: September 6, 2013
14) Time: 2:00 p.m.
15)
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17)
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MOTION TO DISMISS CASE

Debtor moves the Court as follows:

1. For an order dismissing this case.

2. The grounds for the motion are that debtor has no profitable core around which to structure a reorganization effort. The only meaningful asset of the estate is a lawsuit whose collectability seems remote. The estate may incur administrative expenses that it cannot handle, while waiting for the lawsuit to bear fruit. Creditors would be better served by having this case dismissed.

1 3. The motion is based on the Declaration of Debtor, the
2 Points and Authorities, and such other evidence as may be
3 introduced at the hearing.

4 Dated: 8/8/2013 /s/Stanley Zlotoff
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1 Stanley A. Zlotoff, State Bar No. 073283
 Attorney at Law

2 300 S. First St. Suite 215
 San Jose, CA 95113

3 Telephone (408) 287-1313

4 Facsimile (408) 287-7645

5 Attorney for Debtor

6
 7
 8 **UNITED STATES BANKRUPTCY COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re:) Chapter 11
 11)
 12 Larry James Willard,) Case No. 13-53293 CN
 13 Debtor.) Date: September 6, 2013
 14) Time: 2:00 p.m.
 15)
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DECLARATION IN SUPPORT OF MOTION TO DISMISS CASE

I, Larry James Willard, debtor herein, declare as follows:

1. This case was commenced voluntarily on June 17, 2013.
 No trustee has been appointed, and I am managing the affairs of
 the bankruptcy estate.

2. The significant assets of the estate consist of a gas
 station, car wash, and convenience store on 2.6 acres of land,
 owned in fee and situated in Reno, Nevada ("Reno Property"), and
 9.2 acres of undeveloped land in Kauai, Hawaii ("Hawaii
 Property"). The Reno Property is under lease to Berry-Hinkley

1 Industries("BHI")and the lease was guaranteed by Jerry
2 Herbst("Herbst").

3 3. BHI breached the lease in March, 2013, and abandoned
4 the Reno Property in or about May 2013. The lease payments were
5 \$137,000 per month and the remaining term of the lease was 10 ½
6 years. State court litigation against BHI and Herbst was
7 commenced for breach of contract and other causes of action.
8 However, BHI and Herbst are actively defending, and the
9 litigation may not result in an early resolution. Moreover,
10 Herbst has recently been sending signals that he may shortly be
11 filing his own bankruptcy case.
12

13 4. The Reno Property is presently vacant. It may be worth
14 approximately 8 million, but it is encumbered by a deed of trust
15 in favor of the National Credit Administration Board ("NCUAB").
16 NCUAB is owed almost 13 million, and its monthly payments are
17 approximately \$87,000 per month.

18 5. One reason for commencing this Chapter 11 was to
19 forestall foreclosure of the Reno Property by NCUAB and to re-
20 open communication with NCUAB. I was hopeful that the Reno
21 Property would obtain either a purchaser of my fee interest or
22 else a lessee, and that NCUAB would accept either disposition as
23 a satisfaction of the amount owed or, at least as a mitigation
24 of damages. Prior to filing this case, communications between
25 myself and NCUAB ceased, and it was reasonably believed that the

1 commencement of a Chapter 11 would re-open lines of
2 communication.

3 6. Another reason for filing this Chapter 11 was to stop
4 a pending foreclosure of the Hawaii Property. The Hawaii
5 Property may be worth 1.3 million, but it is subject to a lien
6 in favor of Bank of Hawaii in the amount of 1.4 million. In
7 fact, since filing, discussion with Bank of Hawaii have resumed,
8 and it is considering a deed in lieu of foreclosure.

9 7. Another reason for filing was to preserve venue in the
10 Northern District where the BHI litigation was filed. Debtor
11 now resides in San Diego. However, the state court attorney of
12 record will be disabled for several months.

13 8. Regarding the Reno Property, the cooperation expected
14 from NCUAB did not materialize. Moreover, I have not been able
15 to obtain an offer for purchase or lease of the Reno Property.

16 9. Regarding the unsecured claims, they total \$500,000,
17 but two of them, to Alan and Sharon Soucy and Specialized Loan
18 Servicing comprise \$300,000 of that amount. The Soucy debt is
19 guaranteed by another party, and the Specialized debt is
20 disputed, because it was a purchase money second deed of trust
21 on residential property that was lost to a senior lien by way of
22 a trustee's sale. For that reason, it is my belief that
23 California's anti-deficiency law will apply.
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1 10. I am retired and my income is presently from Social
2 Security. The only potential asset for repayment of other
3 claims is the BHI litigation; but it makes little sense to be
4 parked in bankruptcy waiting for that case to come to fruition.

5 11. Dismissal of the case is in the best interests of
6 creditors, because it appears that the Reno Property will soon
7 render the estate insolvent. Insurance, property taxes, utility
8 and maintenance charges will continue to accrue to the detriment
9 of the estate.

10 I declare under penalty of perjury that the foregoing is
11 true and correct. Executed in San Diego, California on July 24,
12 2013
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15 /s/Larry James Willard
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1 Stanley A. Zlotoff, State Bar No. 073283
Attorney at Law

2 300 S. First St. Suite 215
San Jose, CA 95113

3 Telephone (408) 287-1313

4 Facsimile (408) 287-7645

5 Attorney for Debtor

6
7
8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re:) Chapter 11
11)
12 Larry James Willard,) Case No. 13-53293 CN
13 Debtor.) Date: September 6, 2013
14) Time: 2:00 p.m.
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POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS CASE

Debtor's world collapsed after the tenant of his gas station complex in Reno Nevada, Berry-Hinkley Industries ("BHI") abandoned its long term lease. From rentals of \$137,000 per month, the Reno property now generates no income. The Reno property was subject to a deed of trust in favor of the National Credit Administration Board ("NCUAB"), and this obligation quickly fell into default.

Efforts to lease or sell the Reno property have not gone well. The tenant left the Reno property in bad shape and the

1 market will not support the kind of value that existed when the
2 BHI lease was entered into and the NCUAB debt incurred.

3 Debtor commenced litigation against BHI and Jerry Herbst
4 ("Herbst"), its guarantor, but the action is being actively
5 defended. More important, debtor has received signals that BHI
6 and Herbst may be headed into their own bankruptcies.

7 Debtor commenced this case believing that NCUAB would
8 cooperate while debtor got the gas station back up and running.
9 However, NCUAB seems loathe to cooperate, and in any event, the
10 Reno property is proving to be very troublesome.

11 Another reason to file the Chapter 11 was to preserve venue
12 in Northern California where the BHI litigation is proceeding.
13 Debtor now resides in San Diego. However, the litigation is
14 seeming to be ever more remote as a recoverable asset.

15 Although NCUAB was granted relief from stay to initiate
16 foreclosure, debtor believes it unlikely that it really wants to
17 complete foreclosure on the Reno property and become owner of a
18 gas station. In the meantime the bankruptcy estate will
19 continue to accrue administrative overhead in order to maintain
20 the Reno property.

21 Debtor is retired, and his only source of income is Social
22 Security.
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1 There are only eleven undisputed unsecured claims totaling
2 less than \$365,000; and one of these, whose debt is \$170,000, is
3 also owed by a co-obligor.

4 DISMISSAL IS APPROPRIATE

5 Where there is no profitable core around which to structure
6 a reorganization effort, except for a lawsuit whose recovery is
7 not assured, and no capital to bear future administrative
8 expenses, dismissal is appropriate. In re Imperial Heights
9 Apartments, Ltd., 18 B.R. 858, 864 (Bankr. OH 1982). See also,
10 7-1112 Collier on Bankruptcy, P 1112.04(6)(a)(ii)(16th ed.
11 Online, 2013).

12 Creditors will be better served outside of bankruptcy,
13 where debtor can take as much time as needed to hopefully make a
14 recovery from the lawsuit, and without the threat of possibly
15 unbearable administrative expenses.

16 CONCLUSION

17 The motion to dismiss should be granted.

18 Dated: 8/8/2013 /s/Stanley Zlotoff
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EXHIBIT 22

EXHIBIT 22

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT Northern District of California		PROOF OF CLAIM
Name of Debtor: Larry James Willard	Case Number: 13-53293	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Berry Hinckley Industries		
Name and address where notices should be sent: Gordon Silver c/o John P. Desmond, Esq. 100 West Liberty Street, Suite 940 Reno, Nevada 89501		COURT USE ONLY
Telephone number: (775) 343-7500 email: jdesmond@gordonsilver.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number: _____ email: _____		
1. Amount of Claim as of Date Case Filed: \$ <u>65,976.20</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Amounts due under Management Agreement</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Value of Property: \$ _____		Basis for perfection: _____
Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
Amount entitled to priority: \$ _____		
<i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- ☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: John P. Desmond, Esq.

Title: Shareholder

Company: Gordon Silver

Address and telephone number (if different from notice address above):

 8/8/13
(Signature) (Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

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 9 OF 19

Submitted for all appellants by:

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184
	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel - Brian P. Moquin, Esq.	10/28/14	1	202-206

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 4)	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brain P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/23/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 12)	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 15)	Exhibit 9: Seller's Final Closing Statement		3	549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669
	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		3	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Edward C. Wooley	08/30/16	4	798-803
18.	Affidavit of Larry J. Willard	08/30/16	4	804-812

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
19.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	813-843
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated July 1, 2005 for Purchase of the Highway 50 Property		4	844-857
	Exhibit 2: <i>Lease Agreement</i> dated December 2, 2005 for the Highway 50 Property		4	858-901
	Exhibit 3: <i>Three Year Adjustment Term Note</i> dated January 19, 2007 in the amount of \$2,200,00.00 for the Highway 50 Property		4	902-906
	Exhibit 4: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	907-924
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		4	925-940
	Exhibit 6: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	941-948
	Exhibit 7: <i>Guaranty Agreement</i> dated March 12, 2007 for the Highway 50 Property		4	949-953
	Exhibit 8: <i>Second Amendment to Lease</i> dated June 29, 2011 for the Highway 50 Property		4	954-956
	Exhibit 9: <i>Purchase and Sale Agreement</i> Dated July 14, 2006 for the Baring Property		5	957-979
	Exhibit 10: <i>Lease Agreement</i> dated June 6, 2006 for the Baring Property		5	980-1015
	Exhibit 11: <i>Five Year Adjustable Term Note</i> dated July 18, 2006 in the amount of \$2,100,00.00 for the Baring Property		5	1016-1034

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 12: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1035-1052
	Exhibit 13: <i>First Amendment to Lease Agreement</i> dated March 12, 2007 for the Baring Property		5	1053-1060
	Exhibit 14: <i>Guaranty Agreement</i> dated March 12, 2007 for the Baring Property		5	1061-1065
	Exhibit 15: <i>Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)</i> dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1066-1077
	Exhibit 16: <i>Assignment and Assumption of Lease</i> dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1078-1085
	Exhibit 17: <i>Substitution of Attorney</i> forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1086-1090
	Exhibit 18: <i>Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs</i> filed March 13, 2014 in the California Case		5	1091-1094
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and Brian Moquin re Joint Stipulation in California Case		5	1095-1099
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court		5	1100-1106

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 21: <i>Request for Dismissal</i> without prejudice filed May 19, 2014 in the California case		5	1107-1108
	Exhibit 22: <i>Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust</i> dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1109-1117
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1118-1119
	Exhibit 24: <i>Settlement Statement (HUD-1)</i> dated May 20, 2014 for sale of the Baring Property		5	1120-1122
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1123-1158
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1159-1161
	Exhibit 27: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		5	1162-1174
	Exhibit 28: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		6	1175-1210
	Exhibit 29: <i>Buyer's and Seller's Final Settlement Statements</i> dated February 24, 2006 for the Virginia Property		6	1211-1213
	Exhibit 30: <i>Deed of Trust, Fixture Filing and Security Agreement</i> dated February 21, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1214-1231

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 31: <i>Promissory Note</i> dated February 28, 2006 for \$13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1232-1236
	Exhibit 32: <i>Subordination, Attornment And Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1237-1251
	Exhibit 33: <i>Deed of Trust, Assignment of Rents, and Security Agreement</i> dated March 16, 2006 re the Virginia Property securing loan for \$13,312,500.00		6	1252-1277
	Exhibit 34: <i>Payment Coupon</i> dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1278-1279
	Exhibit 35: <i>Substitution of Trustee and Full Reconveyance</i> dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1280-1281
	Exhibit 36: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		6	1282-1287
	Exhibit 37: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		6	1288-1292
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1293-1297
	Exhibit 39: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1298-1300

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1301-1303
	Exhibit 41: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1304-1308
	Exhibit 42: <i>Notice of Intent to Foreclose</i> dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1309-1311
	Exhibit 43: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> dated June 18, 2013		6	1312-1315
	Exhibit 44: <i>Declaration in Support of Motion to Dismiss Case</i> filed by Larry James Willard on August 9, 2013, Northern District of California Bankruptcy Court Case No. 13-53293 CN		6	1316-1320
	Exhibit 45: <i>Substitution of Attorney</i> forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1321-1325
	Exhibit 46: <i>Declaration of Arm's Length Transaction</i> dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1326-1333
	Exhibit 47: <i>Purchase and Sale Agreement</i> dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for \$4,000,000.00		6	1334-1340

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 19)	Exhibit 48: <i>Short Sale Agreement</i> dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1341-1360
	Exhibit 49: <i>Consent to Act</i> dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1361-1362
	Exhibit 50: <i>Seller's Final Closing Statement</i> dated March 3, 2014 re the Virginia Property		6	1363-1364
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland evidencing discharge of \$8,597,250.20 in debt and assessing the fair market value of the Virginia Property at \$3,000,000.00		6	1365-1366
20.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1367-1386
	Exhibit 1: Declaration of John P. Desmond		6	1387-1390
21.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgment	12/20/16	6	1391-1396
	Exhibit 1: Expert Report of Michelle Salazar		7	1397-1430
22.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1431-1449
23.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	02/02/17	7	1450-1457

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 23)	Exhibit 1: January 19-25, 2017 Email Exchange		7	1458-1460
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1461-1485
24.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1486-1494
25.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1495-1518
26.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1519-1522
	Exhibit 1: May 30, 2017 Order		7	1523-1547
27.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1548-1555
28.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1556-1563
29.	Affidavit of Larry Willard	10/18/17	7	1564-1580
30.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1581-1621
	Exhibit 1: <i>Purchase and Sale Agreement</i> dated November 18, 2005 for the Virginia Property		7	1622-1632
	Exhibit 2: <i>Lease Agreement</i> dated November 18, 2005 for the Virginia Property		8	1633-1668
	Exhibit 3: <i>Subordination, Attornment and Nondisturbance Agreement</i> dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		8	1669-1683
	Exhibit 4: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		8	1684-1688

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 5: <i>Landlord's Estoppel Certificate</i> regarding the Virginia Lease dated on or about March 8, 2007		8	1689-1690
	Exhibit 6: <i>Amendment to Lease Agreement</i> dated March 9, 2007 for the Virginia Property		8	1691-1696
	Exhibit 7: <i>Guaranty Agreement</i> dated March 9, 2007 for the Virginia Property		8	1697-1701
	Exhibit 8: Berry-Hinckley Industries <i>Financial Analysis</i> on the Virginia Property dated May 2008		8	1702-1755
	Exhibit 9: Appraisal of the Virginia Property by CB Richard Ellis dated October 1, 2008		8	1756-1869
	Exhibit 10: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Lease		9	1870-1874
	Exhibit 11: Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property Lease		9	1875-1877
	Exhibit 12: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		9	1878-1880
	Exhibit 13: <i>Operation and Management Agreement</i> dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		9	1881-1885
	Exhibit 14: Invoice from Gregory M. Breen dated May 31, 2013		9	1886-1887

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 15: Photographs of the Virginia Property taken by Larry J. Willard on May 26-27, 2013		9	1888-1908
	Exhibit 16: Photographs of the Virginia Property in 2012 retrieved from Google Historical Street View		9	1909-1914
	Exhibit 17: Invoice from Tholl Fence dated July 31, 2013		9	1915-1916
	Exhibit 18: <i>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines</i> filed June 18, 2018 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1917-1920
	Exhibit 19: <i>Motion by the National Credit Union Administration Board, Acting in its Capacity as Liquidating Agent for Telesis Community Credit Union, for Order Terminating Automatic Stay or, Alternatively, Requiring Adequate Protection</i> and related declarations and declarations and exhibits thereto filed July 18, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1921-1938
	Exhibit 20: <i>Order for Relief from Stay</i> filed August 8, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1939-1943
	Exhibit 21: <i>Motion to Dismiss Case</i> and related declarations filed August 9, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1944-1953

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 22: <i>Proof of Claim</i> and exhibits thereto filed August 27, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1954-1966
	Exhibit 23: <i>Objection to Claim</i> filed September 5, 2013 by Stanley A. Zlotoff in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	1967-1969
	Exhibit 24: <i>Original Preliminary Report</i> dated August 12, 2013 from Stewart Title Company re the Virginia Property		9	1970-1986
	Exhibit 25: <i>Updated Preliminary Report</i> dated January 13, 2014 from Stewart Title Company re the Virginia Property		9	1987-2001
	Exhibit 26: Berry-Hinckley Industries Financial Statement on the Virginia Property for the Twelve Months Ending December 31, 2012		9	2002-2006
	Exhibit 27: Bill Detail from the Washoe County Treasurer website re 2012 property taxes on the Virginia Property		9	2007-2008
	Exhibit 28: Bill Detail from the Washoe County Treasurer website re 2013 property taxes on the Virginia Property		9	2009-2010
	Exhibit 29: <i>Order of Case Dismissal</i> filed September 30, 2013 in case <i>In re Larry James Willard</i> , Northern District of California Bankruptcy Case No. 13-53293 CN		9	2011-2016
	Exhibit 30: Invoice from Santiago Landscape & Maintenance dated October 24, 2013		9	2017-2018

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 31: Appraisal of the Virginia Property by David A. Stefan dated February 10, 2014		9	2019-2089
	Exhibit 32: <i>Seller's Final Closing Statement</i> dated March 6, 2014 re short sale of the Virginia Property from the Willard Plaintiffs to Longley Partners, LLC		9	2090-2091
	Exhibit 33: Invoices from NV Energy for the Virginia Property		9	2092-2109
	Exhibit 34: Invoices and related insurance policy documents from Berkshire Hathaway Insurance Company re the Virginia Property		9	2110-2115
	Exhibit 35: Notice of Violation from the City of Reno re the Virginia Property and correspondence related thereto		10	2116-2152
	Exhibit 36: Willard Plaintiffs Computation of Damages spreadsheet		10	2153-2159
	Exhibit 37: E-mail message from Richard Miller to Dan Gluhaich dated August 6, 2013 re Virginia Property Car Wash		10	2160-2162
	Exhibit 38: E-mail from Rob Cashell to Dan Gluhaich dated February 28, 2014 with attached <i>Proposed and Contract</i> from L.A. Perks dated February 11, 2014 re repairing the Virginia Property		10	2163-2167
	Exhibit 39: <i>Deed</i> by and between Longley Center Partnership and Longley Center Partners, LLC dated January 1, 2004 regarding the Virginia Property, recorded April 1, 2004 in the Washoe County Recorder's Office as Doc. No. 3016371		10	2168-2181

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 40: <i>Grant, Bargain and Sale Deed</i> by and between Longley Center Partners, LLC and P.A. Morabito & Co., Limited dated October 4, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291753		10	2182-2187
	Exhibit 41: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and Land Venture Partners, LLC dated September 30, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291760		10	2188-2193
	Exhibit 42: <i>Memorandum of Lease</i> dated September 30, 2005 by Berry-Hinckley Industries regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291761		10	2194-2198
	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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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
	Exhibit 1: Declaration of Brian R. Irvine		10	2328-2334
	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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 10: December 5, 2016 Email		11	2587-2593
	Exhibit 11: December 9, 2016 Email		11	2594-2595
	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
	Exhibit 16: April 1, 2016 Email		12	2642-2644
	Exhibit 17: May 3, 2016 Email		12	2645-2646
	Exhibit 18: June 21, 2016 Email Exchange		12	2647-2653
	Exhibit 19: July 21, 2016 Email		12	2654-2670
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		12	2671-2680
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		12	2681-2691
	Exhibit 22: Defendants' First Requests for Production on Willard		12	2692-2669
	Exhibit 23: Defendants' Second Request for Production on Willard		12	2700-2707
	Exhibit 24: Defendants' Third Request for Production on Willard		12	2708-2713
	Exhibit 25: Defendants Requests for Admission to Willard		12	2714-2719
	Exhibit 26: Willard Lease		12	2720-2755
	Exhibit 27: Willard Response to Second Set of Interrogatories		12	2756-2764

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 31)	Exhibit 28: Deposition of L. Willard Excerpt		12	2765-2770
	Exhibit 29: April 12, 2013 Letter		12	2771-2773
	Exhibit 30: Declaration of G. Gordon		12	2774-2776
	Exhibit 31: Declaration of C. Kemper		12	2777-2780
32.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	12	2781-2803
	Exhibit 1: Plaintiffs' Initial Disclosures		12	2804-2811
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		12	2812-2820
	Exhibit 3: December 5, 2016 Email		12	2821-2827
	Exhibit 4: December 9, 2016 Email		12	2828-2829
	Exhibit 5: December 23, 2016 Email		12	2830-2833
	Exhibit 6: December 27, 2016 Email		12	2834-2837
	Exhibit 7: February 3, 2017 Letter		13	2838-2865
	Exhibit 8: Deposition Excerpts of D. Gluhaich		13	2866-2875
	Exhibit 9: Declaration of Brain Irvine		13	2876-2879
33.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	13	2880-2896
	Exhibit 1: Highway 50 Lease		13	2897-2940
	Exhibit 2: Declaration of Chris Kemper		13	2941-2943
	Exhibit 3: Wooley Deposition at 41		13	2944-2949
	Exhibit 4: Virginia Lease		13	2950-2985

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
	Exhibit 7: Willard Deposition at 89		13	3015-3020
34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
	Exhibit 1: Plaintiffs' Initial Disclosures		13	3059-3066
	Exhibit 2: November 2014 Email Exchange		13	3067-3076
	Exhibit 3: January 2015 Email Exchange		13	3077-3082
	Exhibit 4: February 12, 2015 Letter		13	3083-3085
	Exhibit 5: Willard July 2015 Interrogatory Responses		14	3086-3097
	Exhibit 6: Wooley July 2015 Interrogatory Responses		14	3098-3107
	Exhibit 7: August 28, 2015 Letter		14	3108-3119
	Exhibit 8: March 3, 2016 Letter		14	3120-3208
	Exhibit 9: March 15, 2016 Letter		14	3209-3300
	Exhibit 10: April 20, 2016 Letter		14	3301-3327
	Exhibit 11: December 2, 2016 Expert Disclosure		15	3328-3336
	Exhibit 12: December 5, 2016 Email		15	3337-3343
	Exhibit 13: December 9, 2016 Email		15	3344-3345
	Exhibit 14: December 23, 2016 Email		15	3346-3349
	Exhibit 15: December 27, 2016 Email		15	3350-3353
	Exhibit 16: February 3, 2017 Letter		15	3354-3381

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 34)	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		15	3382-3391
	Exhibit 18: Wooley Deposition Excerpts		15	3392-3397
	Exhibit 19: Highway 50 Lease		15	3398-3441
	Exhibit 20: April 1, 2016 Email		15	3442-3444
	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
	Exhibit 22: June 21, 2016 Email Exchange		15	3447-3453
	Exhibit 23: July 21, 2016 Letter		15	3454-3471
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		15	3472-3480
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		15	3481-3490
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		15	3491-3498
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		15	3499-3506
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		15	3507-3512
	Exhibit 29: Defendants' Requests for Admission on Wooley		15	3513-3518
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		15	3519-3528
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		15	3529-3539
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		15	3540-3547

<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.

EXHIBIT 1

EXHIBIT 1

OPERATION AND MANAGEMENT AGREEMENT

THIS OPERATION AND MANAGEMENT AGREEMENT (the "**Agreement**"), dated the 1st day of May, 2013 (the "**Effective Date**"), is made and entered into by and between BERRY-HINCKLEY INDUSTRIES, a Nevada corporation (the "**Operator**"), and OVERLAND DEVELOPMENT CORPORATION INC., D/B/A LJW ENTERPRISES, INC., and LARRY WILLARD AS TRUSTEE OF THE WILLARD FAMILY TRUST DATED NOVEMBER 14, 1987 (collectively, the "**Owner**") as follows:

RECITALS

- A. Owner is the owner of that certain gas station and convenience store located at 7695 S. Virginia Street, Reno, Nevada (the "**Location**").
- B. Operator is the tenant, and Owner is the landlord, under that certain Lease Agreement dated November 18, 2005, which encumbers the Location (as amended, the "**Lease**").
- C. Operator has informed Owner that Operator intends to vacate and cease operations at the Location no later than April 30, 2013. Owner has requested that Operator remain in possession and continue to operate the Location until such time as Owner is able to find a replacement tenant for the Location.
- D. Operator has agreed to remain in possession and continue operating the Location upon the terms and conditions as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained in this Agreement, the Owner and Operator agree as follows:

1. **TERM/TERMINATION.**

This Agreement shall be on a month to month basis commencing on the Effective Date. Either party hereto may terminate this Agreement at any time upon seven (7) days advance written notice to the other party. This Agreement shall automatically terminate on the last day of each month in which this Agreement is in effect if both parties do not agree, in writing, to renew this Agreement for an additional one (1) month period prior to the last day of the then current month.

2. **GENERAL SCOPE OF SERVICES.**

Owner hereby hires Operator as an independent contractor and Operator hereby accepts such engagement to provide for the Location such personnel as shall be required to operate and manage the Location as well as such other duties and responsibilities as are necessary to operate the Location (collectively, the "**Services**").

3. RELATIONSHIP OF PARTIES.

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

4. COMPENSATION TO OPERATOR.

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

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

5. RENT.

During the term of this Agreement, Operator shall have no obligation to make the rent payments set forth in the Lease. Owner hereby acknowledges and agrees that the continuous operation of the Location by Operator and the payment of the Net Profits to Owner (if any) constitutes sufficient consideration for Operator's occupation of the Location and shall be in lieu of any obligation to pay rent under the Lease during the term of this Agreement.

6. OPERATOR'S EMPLOYEES.

Operator shall select and maintain the staff of employees for the Location as Operator deems necessary for its performance of the Services hereunder. All personnel furnished by Operator for its performance of the Services hereunder shall be the employees of Operator, and Operator shall have the right, in its sole and absolute discretion, to select, hire, pay, supervise, discipline and discharge such employees. Operator shall be responsible for payment and supervision of personnel at the Location.

7. INSURANCE.

Operator shall at all times during the term of this Agreement maintain insurance in the types and amounts as is required by the Lease.

8. DEFAULT -- REMEDIES.

In the event either Owner or Operator defaults in the performance of any covenant or condition of this Agreement and, as to any such default, fails to remedy the same or fails to implement a corrective action plan acceptable to the non-defaulting Party within three (3) days after the complaining Party gives notice thereof to the other, then the non-defaulting party may, at its option and upon written notice to the other, terminate this Agreement without prejudice to any other rights or remedies such party may have here or by law. Either party's right to require strict performance of the other's obligations under this Agreement shall not be affected by any previous waiver, forbearance, course of dealing, or trade custom or usage.

9. INDEMNIFICATION.

Owner shall indemnify and defend Operator, and its officers, directors, owners, employees, affiliates and agents against, and hold them harmless from, any and all costs, expenses, claims, suits, liabilities, loss and damages, including attorneys' fees arising out of or relating to this Agreement and/or the services provided by Operator under this Agreement, excepting therefrom costs, expenses, claims, suits, liabilities, loss and damages arising as a result of Operator's gross negligence. The indemnification obligations set forth herein shall survive the expiration or earlier termination of this Agreement.

10. CONFLICTING PROVISIONS.

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

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

"OPERATOR"

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By: Name: Chris KemperTitle: V.P. of Admin.

"OWNER"

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

By: Name: LARRY WILLARDTitle: President

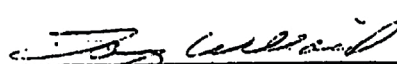

Trustee, THE WILLARD FAMILY TRUST
DATED NOVEMBER 14, 1987

EXHIBIT 2

EXHIBIT 2

Berry Hinckley Industries
Store #831 - 7695 S. Virginia St., Reno
For the Five Months Ending May 31, 2013

	<u>05/31/13</u>
Gas Sales	\$541,691.71
C-Store Sales	49,869.65
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Total Sales	591,561.36
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Gas Purchases	512,845.09
C-Store Purchases	50,684.08
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Total Purchases	563,529.17
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GROSS PROFIT	28,032.19
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STATION EXPENSES	
Over and Shorts	540.27
Salaries and Wages	18,532.89
Payroll Taxes	2,759.80
W/C Insurance Expense	398.39
Telephone	205.95
Utilities - Electricity	5,050.15
Utilities - Gas	165.65
Utilities - Water	337.91
Utilities - Sewer	0.00
Utilities - Garbage	780.00
Sta. General Operating Expense	975.08
Uniforms	0.00
Supplies	656.57
Credit Card Collection Fees	9,185.78
Repair and Maintenance	12,362.14
R&M - Store Equipment	0.00
R&M - Gas Equipment	733.00
R&M - Landscaping	0.00
R&M - Lighting	0.00
R&M - Signs	0.00
Real Estate Tax	1,096.10
Business Licenses	155.78
Station Insurance Expense	724.12
Employee Health Insurance	1,711.43
Advertising	300.00
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Total Expenses	58,671.01
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Net Profit/(Loss) Before Depr, Rent Inc, & Other Items	(28,638.82)
Gaming Rental Income	5,000.00
Other Sta. Income	102.46
Other Income - Chev Gift Cards	9.20
Other Income - BHN Gift Cards	2.59
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Total Income	(23,524.57)
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NET PROFIT / (LOSS)	(23,524.57)