

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 10 OF 19

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(cont 30)	Exhibit 50: <i>Assignment of Entitlements, Contracts, Rents and Revenues</i> by and between Berry-Hinckley Industries and First National Bank of Nevada dated June 29, 2007 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3551284		10	2252-2264
	Exhibit 51: <i>UCC Financing Statement</i> regarding the Virginia Property, recorded July 5, 2007 in the Washoe County Recorder's Office as Doc. No 3551285		10	2265-2272
	Exhibit 52: Sales brochure for the Virginia Property prepared by Daniel Gluhaich for marketing purposes in 2012		10	2273-2283
31.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	10	2284-2327
	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

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(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

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

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(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
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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

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(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
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37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	12/07/17	16	3577-3580
38.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	16	3581-3584
39.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	16	3585-3589
40.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	16	3590-3594
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	16	3595-3598

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42.	Notice of Entry of Order re Defendants' Motion for Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	16	3599-3602
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	16	3603-3606
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	16	3607-3640
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	16	3641-3644
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

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	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

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(cont 54)	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		17	3951-3958
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		17	3959-3962
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		17	3963-3965
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		17	3966-3975
	Exhibit 5: Receipt		17	3976-3977
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018			3978-3982
	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		17	3983-3989
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		17	3990-3994
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		17	3995-3997
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		17	3998-4000
	Exhibit 11: Notice of Withdrawal of Local Counsel		17	4001-4004
55.	Order re Request for Entry of Judgment	06/04/18	17	4005-4009

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

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<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 35

EXHIBIT 35

GORDON SILVER

May 26, 2015

David C. O'Mara, Esq.
The O'Mara Law Firm, P.C.
311 E. Liberty Street
Reno, NV 89501

Via U.S. Mail & E-Mail: david@omara-law.net

Brian P. Moquin, Esq.
Law Offices of Brian P. Moquin
3506 La Castellet Court
San Jose, CA 95148

Via U.S. Mail & E-Mail: bmoquin@lawprism.com

Re: City of Reno Notice of Violation at 7693 S. Virginia Street (the "Property")

Dear Messrs. O'Mara and Moquin:

Enclosed herewith as **Exhibit 1** please find an invoice from the City of Reno dated May 8, 2015. The invoice is related to the numerous Notices of Violation and Administrative Citations issued by the City of Reno in regard to the Property. The City has been issuing the Notices of Violation and Administrative Citations related to the Property since approximately September of 2013. From the outset, BHI has been very clear that it was accepting no responsibility for ongoing property management issues and was not taking any action in regard to the various Notices of Violation and Administrative Citations. See numerous correspondence attached as **Exhibit 2**. BHI's position in that regard remains unchanged. At this point, the enclosed Invoice, Notices of Violation and Administrative Citations are an issue to be resolved between Mr. Wooley and the party to which he sold the Property. The enclosed are being forwarded to you as a professional courtesy only as Mr. O'Mara was not involved with the case at the time the previous notices were received by BHI and forwarded to Mr. Moquin. Please be advised that this firm will discard any and all future Invoices, Notices of Violation and/or Administrative Citations related to the Property and will not, under any circumstances, continue to forward those documents.

Please do not hesitate to contact me should you wish to discuss further.

Very truly yours,

GORDON SILVER



John P. Desmond

JPD/csg
Enclosures

100 W LIBERTY STREET, SUITE 940 | RENO, NEVADA 89501
T: 775.343.7500 | F: 775.786.0131
gordonsilver.com

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

Exhibit A

Invoice Dated May 8, 2015



BILLING INVOICE

Community Development

P.O. Box 1900
Reno, Nevada 89505

Case No.: ENF14-C00631

Billing Date: 05/08/2015

Due Date: 05/28/2015

Inquiries: (775) 334-2229

PAY THIS



Charges	3,265.00
Payments	0.00
Amount Due	\$ 3,265.00

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Remit to: City of Reno, Nevada
Attn: Code Enforcement Division
P.O. Box 1900
Reno, NV 89505-1900 - or -

In Person: Development & Business Services Center
Reno City Hall - 1 East First St., 2nd Floor

DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PLEASE RETAIN BOTTOM PORTION FOR YOUR RECORDS

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

If there are any questions, please call
Code Enforcement Division at
(775) 334-2229.
City of Reno's Federal Tax ID is 88-60000201.
PLEASE NOTE:
YOUR PAYMENT IS DUE UPON RECEIPT

Subject Property: 043-011-47 7693 S VIRGINIA ST

Date	Trans No.	Record	Description	Charges	Payments	Balance
10/07/2013	238845	ENE14-V00599 on 10/7/2013	Re-Inspection Invoice	100.00		100.00
11/06/2013	239837	ENA14-AD100201 on 10/08/2013	1st Citation Invoice	100.00		200.00
11/06/2013	239837	ENE14-V01002 on 10/30/2013	Subsequent Re-Inspection Invoice	45.00		245.00
11/06/2013	239837	ENE14-V01002 on 11/6/2013	Subsequent Re-Inspection Invoice	45.00		290.00
11/26/2013	240513	ENA14-AD200082 on 11/08/2013	2nd Citation Invoice	250.00		540.00
11/26/2013	240513	ENE14-V01201 on 11/26/2013	Subsequent Re-Inspection Invoice	45.00		585.00
01/03/2014	241419	ENA14-AD300074 on 11/27/2013	3rd Citation Invoice	500.00		1,085.00
01/03/2014	241419	ENE14-V01391 on 1/2/2014	Subsequent Re-Inspection Invoice	45.00		1,130.00
01/30/2014	242293	ENA14-AD400022 on 01/06/2014	4th Citation Invoice	1,000.00		2,130.00
01/30/2014	242293	ENE14-V01391 on 1/2/2014	Subsequent Re-Inspection Invoice	45.00		2,175.00
02/20/2014	243045	ENE14-V01575 on 1/29/2014	Subsequent Re-Inspection Invoice	45.00		2,220.00
02/20/2014	243045	ENE14-V01709 on 2/19/2014	Subsequent Re-Inspection Invoice	45.00		2,265.00
02/20/2014	243046	ENA14-AD400025 on 01/31/2014	4th Citation Invoice	1,000.00		3,265.00
Balance Due						\$ 3,265.00

PAYMENT IN FULL IS DUE AND PAYABLE ON RECEIPT OF THIS INVOICE. ANY BALANCE DUE BEYOND THAT LENGTH OF TIME WILL BE CONSIDERED DELINQUENT, AND INTEREST WILL BE CHARGED AT THE RATE OF 1% PER MONTH ON THE UNPAID BALANCE. RETURN TOP PORTION OF THIS INVOICE WITH YOUR REMITTANCE TO INSURE PROPER CREDIT.

Exhibit B

Past Correspondence

GORDON SILVER

March 13, 2014

Brian P. Moquin, Esq.
Law Offices of Brian P. Moquin
3506 La Castellet Court
San Jose, CA 95148

Via U.S. Mail & E-Mail: bmoquin@lawprism.com

Re: City of Reno Notice of Violation at 7693 S. Virginia Street (the "Property")

Dear Brian:

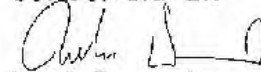
Enclosed herewith as **Exhibit 1** please find a Notice of Violation issued by the City of Reno and subsequently recorded on March 7, 2014, with the Washoe County Recorder as a lien against the Property. The City of Reno began issuing Notices of Violation and Administrative Citations regarding the Property in September of 2013. Prior to that time, in June of 2013, Berry-Hinckley Industries ("BHI") unequivocally surrendered possession of the Property back to Mr. Willard. Upon BHI surrendering possession of the Property back to Mr. Willard, Mr. Willard had the Property enclosed with fencing which, to our knowledge, remains in place today.

BHI was very clear in its numerous previous pieces of correspondence directed to Mr. Goldblatt, and in his absence, Mr. Zlotoff and Mr. English, that BHI was accepting no responsibility for ongoing property management issues and was not taking any action in regard to the various Notices of Violation and Administrative Citations. See numerous correspondence attached as **Exhibit 2**. BHI's position in that regard remains unchanged. At this point, the enclosed Notices of Violation and Administrative Citations are an issue to be resolved between Mr. Wooley and the party which recently acquired the Property, and are being forwarded to you as a professional courtesy only.

Please do not hesitate to contact me should you wish to discuss further.

Very truly yours,

GORDON SILVER



John P. Desmond

JPD/fsg
Enclosures

100 W. LIBERTY STREET, SUITE 950 • RENO, NEVADA 89501
T: 775.343.7591 • F: 775.786.0131
gordonsilver.com

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

Exhibit 2

Invoice dated July 2, 2014

APN: 043-011-47
Case Number: ENF14-C00631



DOC # 4332644

03/07/2014 11:19:01 AM
Requested By
RENO CITY
Washoe County Recorder
Laurence R. Burtress - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 1



NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN pursuant to Reno Municipal Code Section 1.05.105, that the following violations of the Reno Municipal Code exist on the property identified as follows:

PROPERTY OWNER: Overland Development Corp., C/O Berry-Hinckley Industries
PHYSICAL ADDRESS: 7693 S. Virginia Street, Reno, NV 89511
MAILING ADDRESS: 5195 Las Vegas Boulevard, Las Vegas, NV 89119

RENO MUNICIPAL CODE SECTIONS VIOLATED:

RMC Section 8.22.090. Unlawful to permit or Allow Existence of Nuisance.
IPMC Section 302.10. Maintenance of Premises - Exterior Property Areas.
IPMC Section 308.2. Disposal of Rubbish - Rubbish and Garbage.

VIOLATION: There is rubbish and outside storage on the property.

CORRECTIVE ACTION: Properly dispose of all rubbish. Store furnishings and store materials out of public view.

The above listed violation(s) may cause legal proceedings to be initiated if conformance to the Reno Municipal Code is not attained. Further no future municipal permits will be issued for the property until all violations have been corrected or abated.

DATED: this 5th day of March, 2014

By

Lynnette R. Jones

STATE OF NEVADA)

ss.

COUNTY OF WASHOE)

On the 5th day of March, 2014, personally appeared before me, a notary public, Lynnette R. Jones, City Clerk, of the City of Reno, who acknowledges that she executed the above instrument.

Notary Public

When Recorded Mail To:
City of Reno - Attn: G. Levenson #495
Code Enforcement Officer
P.O. Box 1900, Reno, NV 89505

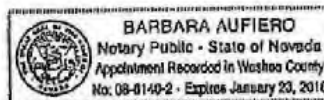


Exhibit 2

Various Correspondence Regarding Notices of Violation and Administrative Citations



September 6, 2013

Via E-Mail: lsteven.goldblatt@gmail.com

L. Steven Goldblatt
Goldblatt Law Firm
22 Martin Street
Gilroy, CA 95020

Re: City of Reno Notice of Violation at 7693 S. Virginia St. Property

Dear Mr. Goldblatt:

Please be advised that the City of Reno has issued a Notice of Violation to the Overland Development Group regarding the 7693 S. Virginia St. Property. A copy of the Notice of Violation is attached to this letter. I refer you to the attached Notice of Violation from the City of Reno for more details.

Pursuant to the Notice of Violation, Overland is required to correct the violations listed in the Notice of Violation by Friday, September 20, 2013. Please update Overland's contact information with the City of Reno to ensure that notices are not sent c/o Berry-Hinckley Industries.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

GORDON SILVER

John P. Desmond

JPD/csg

Enclosure

cc: Chris Kemper (via email - ckemper@terribleherbst.com)

100 W. Liberty Street, Suite 900 • Reno, Nevada 89501
T: 775.343.7500 • F: 775.788.0131
gordonilver.com

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



Certified Mail
Regular Mail

NOTICE OF VIOLATION

OVERLAND DEVELOPMENT CORP.
C/O BERRY-HINCKLEY INDUSTRIES
5795 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Date of Citation: September 03, 2013
Case Number: ENFTH-C00631
Citation Number: ENA19-NOV00133
Subject Property: 7691 S VIRGINIA ST
Parcel Number: 043-071-47

Dear Property Owner or Responsible Party:

The subject property is in violation of the provisions of the RENO MUNICIPAL CODE as detailed in the Violations and Corrective Actions Section beginning on page 2 of this Notice. Under the authority of Chapter 1.05 of the RENO MUNICIPAL CODE you are hereby being issued:

NOTICE OF VIOLATION

To avoid further enforcement action, you must correct the violations by Friday, September 20, 2013. If you need further information about the violations and/or how to comply, please call the number listed below. If you intend on complying but need an extension of time, there is no need to appeal this notice. Contact the officer listed below. Code Enforcement can provide you an extension for up to 14 calendar days if there is a valid cause.

Respectfully,

Gina Levenson
Code Enforcement Officer
City of Reno
P.O. Box 7904
Reno, NV 89506
(775) 331-2319

Refer to Case Number: ENF14-C00631
Page 2 of 4

VIOLATIONS AND CORRECTIVE ACTIONS:

The following violations have been cited:

RMC Sec 8.22.090

NUISANCES - UNLAWFUL TO PERMIT OR ALLOW EXISTENCE OF NUISANCE. There are weeds and rubbish on the property. This is also a violation of the International Property Maintenance Code, an adopted code. RMC 8.22.035 defines this as a nuisance.

IPMC Sec 307.2

DISPOSAL OF RUBBISH. - RUBBISH AND GARBAGE. There is rubbish on the property.

IPMC Sec 302.4

WEEDS, - EXTERIOR PROPERTY AREAS. There are weeds on the property.

The following actions are required to avoid further administrative fines being issued:

Properly dispose of all rubbish on the property. Rubbish may not be stored in public view as it is at the dumpster enclosure facing the interior of the parking lot. Trim/remove the weeds and any associated slash and debris from the property and sidewalk. Maintain the landscaping in a healthy and vigorous manner.

Refer to Case Number EN714-C00631
Page 3 of 4

Important - Read the Following Carefully

All necessary permits must be secured and completed to correct the violations set forth in this notice.

Reinspection Fee - The Reno Municipal Code Section 1.05.030 provides for the recovery of costs incurred by the city for all reinspections. A reinspection fee will be levied for all reinspections required after the date of this notice until full compliance with this notice. If full compliance is not achieved by the date above mentioned correction date, you will be charged an initial reinspection fee of \$100.00. All future required reinspection fees are \$40.00 each.

Administrative Citation - Reno Municipal Code Section 1.05.325 provides for the issuance of administrative citations for Municipal Code Violations. There are four levels of citations that can be issued progressively for a violation. The fines, as indicated above, are \$100.00 for the First Citation, \$250.00 for the Second Citation and \$500.00 for The Third and subsequent citations for the violation(s) of the same ordinance within one year upon non-commercial properties. Commercial properties shall be subject to \$1000.00 for the Fourth and subsequent Citations for violation(s), of the same ordinance within one year. These fines are cumulative and citations may be issued for each day the violation exists.

Consequences of Failure to Correct Violation(s) - Failure to correct the violation(s) can lead to further administrative actions such as the remedies detailed in Chapter 1.05 of the Reno Municipal Code or criminal prosecution as a misdemeanor with a maximum penalty of six months in jail and \$1000.00 fine.

Rights of Appeal - You have the right to appeal this administrative citation within ten (10) business days from the date of the citation. An appeal form can be obtained from the City Clerk's Office located at 1 E. First Street - 2nd floor. The cost for the appeal is \$50.00. For directions call 334-2030. A properly filed appeal will result in an administrative hearing. A full description of the hearing process for the City's administrative hearings for Municipal Code violations and your rights in that process are found in the Reno Municipal Code Chapter 1.05 Article VI (Copies of the current Municipal Code can be electronically accessed at www.municode.com or you may contact the City Clerk's office at (775) 334-2030.)

Refer to Case Number ENF14-C00631
Page 4 of 4

Failure of any person to properly file a written appeal within ten (10) business days from the date of this citation shall constitute a waiver of his or her right to an administrative hearing and adjudication of the administrative citation or any portion thereof and the total amount of the fine.

Benjamin W. Kennedy

From: Benjamin W. Kennedy
Sent: Monday, December 02, 2013 4:54 PM
To: zlotofflaw@gmail.com
Cc: John P. Desmond; Cindy S. Grinstead
Subject: City of Reno notice of violation
Attachments: sharp copler_20131202_145908.pdf

Mr. Zlotoff:

Attached please find a notice of violation issued by the City of Reno related to the Willard property on South Virginia.

Please confirm receipt of the attached and forward to Willard's property manager for that location.

Please note that BHI has not taken any action with regard to the attached, nor does it intend to do so.

Thank you.

Ben



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Regular Mail

NOTICE OF VIOLATION AND ADMINISTRATIVE CITATION

OVERLAND DEVELOPMENT CORP
C/O BERRY-WINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Date of Citation: November 27, 2013
Case Number: ENF14-C00631
Citation Number: ENA14-AD300074
Subject Property: 7693 S VIRGINIA ST
Parcel Number: 043-011-47

Dear Property Owner or Responsible Party:

The subject property is in violation of the provisions of the RENO MUNICIPAL CODE as detailed in the Violations and Corrective Actions Section beginning on page 2 of this Notice. Under the authority of Chapter 1.05 of the RENO MUNICIPAL CODE you are hereby being assessed the following fine in conjunction with the violation(s).

3rd Citation \$500.00 FINE

To avoid further fines you must correct the violations by Thursday, December 12, 2013. If you need further information about the violations and/or how to comply please call the number listed below. If you intend on complying but need an extension of time, there is no need to appeal this notice. Contact the officer listed below. Code Enforcement can provide you an extension for up to 14 calendar days if there is a valid cause.

YOU WILL RECEIVE AN INVOICE IN THE MAIL. PAYMENT IS DUE UPON RECEIPT OF THE INVOICE. PAYMENTS MAY BE MADE IN PERSON AT CITY HALL - 1 E. 1st. STREET, 2nd FLOOR. BRING A COPY OF THIS NOTICE WHEN PAYMENT IS BEING MADE WITHOUT AN INVOICE.

Respectfully,

Gina Levenson
Code Enforcement Officer
City of Reno
P.O. Box 1900
Reno, NV 89505
(775) 334-2539

Refer to Case Number ENF14-C00631
Page 2 of 4

VIOLATIONS AND CORRECTIVE ACTIONS:

The following violations have been cited:

RMC Sec 8.22.090

NUISANCES - UNLAWFUL TO PERMIT OR ALLOW EXISTENCE OF NUISANCE. There is rubbish and outside storage on the property. This is also a violation of the International Property Maintenance Code, an adopted code. RMC 8.22.035 defines this as a nuisance.

IPMC Sec 308.2

DISPOSAL OF RUBBISH. - RUBBISH AND GARBAGE.. There is rubbish on the property.

IPMC Sec 302.10

MAINTENANCE OF PREMISES. - EXTERIOR PROPERTY AREAS. There is outside storage consisting of shelving, plastics, barrels, etc. on the property.

The following actions are required to avoid further administrative fines being issued:

Properly dispose of all rubbish on the property. Rubbish may not be stored in public view as it is at the dumpster enclosure facing the interior of the parking lot. Remove all outside storage items from public view. Maintain the property free of outside storage and rubbish.

THE CODE ENFORCEMENT DIVISION reserves the authority to WAIVE THIS CITATION only IF YOU COMPLY WITH THE CORRECTIVE ACTIONS BY THE COMPLIANCE DATE LISTED ON PAGE 1 OF THIS LETTER.

Refer to Case Number: ENP14-C00631
Page 3 of 4

Important - Read the Following Carefully

All necessary permits must be secured and completed to correct the violations set forth in this notice.

Reinspection Fee - The Reno Municipal Code Section 1.05.030 provides for the recovery of costs incurred by the city for all reinspections. A reinspection fee will be levied for all reinspections required after the date of this notice until full compliance with this notice. If full compliance is not achieved by the date above mentioned correction date, you will be charged an initial reinspection fee of \$100.00. All future required reinspection fees are \$40.00 each.

Administrative Citation - Reno Municipal Code Section 1.05.525 provides for the issuance of administrative citations for Municipal Code Violations. There are four levels of citations that can be issued progressively for a violation. The fines, as indicated above, are \$100.00 for the First Citation, \$250.00 for the Second Citation and \$500.00 for The Third and subsequent citations for the violation(s) of the same ordinance within one year upon non-commercial properties. Commercial properties shall be subject to \$1000.00 for the Forth and subsequent Citations for violation(s), of the same ordinance within one year. These fines are cumulative and citations may be issued for each day the violation exists.

Consequences of Failure to Correct Violation(s) - Failure to correct the violation(s) can lead to further administrative actions such as the remedies detailed in Chapter 1.05 of the Reno Municipal Code or criminal prosecution as a misdemeanor with a maximum penalty of six months in jail and \$1000.00 fine.

Rights of Appeal - You have the right to appeal this administrative citation within ten (10) business days from the date of the citation. An appeal form can be obtained from the City Clerks Office located at 1 E. First Street - 2nd floor. The cost for the appeal is \$50.00. For directions call 334-2030. A properly filed appeal will result in an administrative hearing. A full description of the hearing process for the City's administrative hearings for Municipal Code violations and your rights in that process are found in the Reno Municipal Code Chapter 1.05 Article VI (Copies of the current Municipal Code can be electronically accessed at www.munlcode.com or you may contact the City Clerk's office at (775) 334-2030.)

Refer to Case Number: ENF14-C00631
Page 4 of 4

Failure of any person to properly file a written appeal within ten (10) business days from the date of this citation shall constitute a waiver of his or her right to an administrative hearing and adjudication of the administrative citation or any portion thereof and the total amount of the fine.

YOU WILL RECEIVE AN INVOICE IN THE MAIL. PAYMENT IS DUE UPON RECEIPT OF THE INVOICE. PAYMENTS MAY BE MADE IN PERSON AT CITY HALL ON THE 2nd FLOOR - I.E. 1st. STREET. BRING A COPY OF THIS NOTICE WHEN PAYMENT IS BEING MADE WITHOUT AN INVOICE.

Enclosures: Invoice

ENF Admin Citation v1.97

Invoice.pdf

ENF Admin Citation v1.97 20131126 123405.pdf



BILLING INVOICE

Community Development


P.O. Box 1900
Reno, Nevada 89505

Case No.: ENF14-C00631

Billing Date: 11/26/2013

Due Date: 12/03/2013

Inquiries: (775) 334-2229

PAY THIS 	Charges	685.00
	Payments	0.00
	Amount Due	\$ 685.00

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Remit to: City of Reno, Nevada
Attn: Code Enforcement Division
P.O. Box 1900
Reno, NV 89505-1900 - or -

In Person: Development & Business Services Center
Reno City Hall - 1 East First St., 2nd Floor

DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PLEASE RETAIN BOTTOM PORTION FOR YOUR RECORDS

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

If there are any questions, please call
Code Enforcement Division at
(775) 334-2229.
City of Reno's Federal Tax ID is 88-6000201.
PLEASE NOTE:
YOUR PAYMENT IS DUE UPON RECEIPT

Subject Property: 043-011-47 7693 S VIRGINIA ST

Date	Trans No.	Record	Description	Charges	Payments	Balance
10/07/2013	238845	ENE14-V00589 on 10/7/2013	Re-Inspection Invoice	100.00		100.00
11/08/2013	238837	ENA14-AD100201 on 10/08/2013	1st Citation Invoice	100.00		200.00
11/08/2013	238837	ENE14-V01002 on 10/30/2013	Subsequent Re-Inspection Invoice	45.00		245.00
11/08/2013	238837	ENE14-V01002 on 11/6/2013	Subsequent Re-Inspection Invoice	45.00		290.00
11/26/2013	240513	ENA14-AD200082 on 11/19/2013	2nd Citation Invoice	250.00		540.00
11/26/2013	240513	ENE14-V01201 on 11/26/2013	Subsequent Re-Inspection Invoice	45.00		585.00
Balance Due						\$ 585.00

PAYMENT IN FULL IS DUE AND PAYABLE ON RECEIPT OF THIS INVOICE. ANY BALANCE DUE BEYOND THAT LENGTH OF TIME WILL BE CONSIDERED DELINQUENT, AND INTEREST WILL BE CHARGED AT THE RATE OF 1% PER MONTH ON THE UNPAID BALANCE. RETURN TOP PORTION OF THIS INVOICE WITH YOUR REMITTANCE TO INSURE PROPER CREDIT.

GORDON SILVER

January 10, 2014

VIA U.S. MAIL & E-MAIL: zlotofflaw@gmail.com

Stanley A. Zlotoff
Law Office of Stanley A. Zlotoff
300 South First Street
Suite 215
San Jose, CA 95113

Re: 7693 South Virginia Street (the "Property")
City of Reno Notice of Violation and Administrative Citation

Dear Mr. Zlotoff:

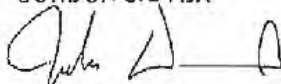
Enclosed herewith please find a Notice of Violation and Administrative Citation (the "Citation") issued by the City of Reno in connection with the Property. As was made clear by Ben Kennedy of my office in his previous correspondence with you, Berry-Hinckley Industries ("BHI") has not taken, nor does it intend to take, any action in regard to the Citation. BHI has surrendered the property (which your client promptly enclosed with a fence) and will not accept any responsibility or obligation related to the ongoing property management issues.

Note that these citations are being issued in the name of your client, and the City of Reno will continue issuing citations until the condition is remedied. As you will see on the attached, the penalties for each successive inspection and citation increase dramatically. Your client would be well advised to address this issue to prevent future charges.

Lastly, BHI received an inquiry from Ben Gallas with Cushman & Wakefield regarding the possible purchase of the Property. We provided him with your contact information. If you would like to contact Mr. Gallas, he can be reached at (775) 750-6429.

Very truly yours,

GORDON SILVER



John P. Desmond

JPD/csg
Enclosure

cc: Chris Kemper (via email - ckemper@terribleherbst.com)

100 W LIBERTY STREET, SUITE 910 • RENO, NEVADA 89501
T: 775.343.7500 • F: 775.786.0131
gordonsilver.com

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



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NOTICE OF VIOLATION AND ADMINISTRATIVE CITATION

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Date of Citation: January 06, 2014
Case Number: ENF14-C00631
Citation Number: ENA14-AD400022
Subject Property: 7693 S VIRGINIA ST
Parcel Number: 043-011-47

Dear Property Owner or Responsible Party:

The subject property is in violation of the provisions of the RENO MUNICIPAL CODE as detailed in the Violations and Corrective Actions Section beginning on page 2 of this Notice. Under the authority of Chapter 1.05 of the RENO MUNICIPAL CODE you are hereby being assessed the following fine in conjunction with the violation(s).

4th Citation \$1,000.00 FINE

To avoid further fines you must correct the violations by Wednesday, January 22, 2014. If you need further information about the violations and/or how to comply please call the number listed below. If you intend on complying but need an extension of time, there is no need to appeal this notice. Contact the officer listed below. Code Enforcement can provide you an extension for up to 14 calendar days if there is a valid cause.

YOU WILL RECEIVE AN INVOICE IN THE MAIL. PAYMENT IS DUE UPON RECEIPT OF THE INVOICE. PAYMENTS MAY BE MADE IN PERSON AT CITY HALL - 1 E. 1st STREET, 2nd FLOOR. BRING A COPY OF THIS NOTICE WHEN PAYMENT IS BEING MADE WITHOUT AN INVOICE.

Respectfully,

Gina Leverson
Code Enforcement Officer
City of Reno
P.O. Box 1900
Reno, NV 89505
(775) 334-2539

Refer to Case Number: EN714-C00631
Page 2 of 4

VIOLATIONS AND CORRECTIVE ACTIONS:

The following violations have been cited:

IPMC Sec 302.10

MAINTENANCE OF PREMISES. - EXTERIOR PROPERTY AREAS. There is outside storage consisting of shelving, plastics, barrels, etc. on the property.

IPMC Sec 308.2

DISPOSAL OF RUBBISH. - RUBBISH AND GARBAGE. There is rubbish on the property.

RMC Sec 8.22.090

NUISANCES - UNLAWFUL TO PERMIT OR ALLOW EXISTENCE OF NUISANCE. There is rubbish and outside storage on the property. This is also a violation of the International Property Maintenance Code, an adopted code. RMC 8.22.035 defines this as a nuisance.

The following actions are required to avoid further administrative fines being issued:

Properly dispose of all rubbish on the property. Rubbish may not be stored in public view as it is at the dumpster enclosure facing the interior of the parking lot. Remove all outside storage items from public view. Maintain the property free of outside storage and rubbish.

THE CODE ENFORCEMENT DIVISION reserves the authority to WAIVE THIS CITATION only IF YOU COMPLY WITH THE CORRECTIVE ACTIONS BY THE COMPLIANCE DATE LISTED ON PAGE 1 OF THIS LETTER.

Refer to Case Number ENP14-C00631
Page 3 of 4

Important - Read the Following Carefully

All necessary permits must be secured and completed to correct the violations set forth in this notice.

Reinspection Fee - The Reno Municipal Code Section 1.05.030 provides for the recovery of costs incurred by the city for all re inspections. A reinspection fee will be levied for all re inspections required after the date of this notice until full compliance with this notice. If full compliance is not achieved by the date above mentioned correction date, you will be charged an initial reinspection fee of \$100.00. All future required reinspection fees are \$40.00 each.

Administrative Citation - Reno Municipal Code Section 1.05.525 provides for the issuance of administrative citations for Municipal Code Violations. There are four levels of citations that can be issued progressively for a violation. The fines, as indicated above, are \$100.00 for the First Citation, \$250.00 for the Second Citation and \$500.00 for The Third and subsequent citations for the violation(s) of the same ordinance within one year upon non-commercial properties. Commercial properties shall be subject to \$1000.00 for the Forth and subsequent Citations for violation(s), of the same ordinance within one year. These fines are cumulative and citations may be issued for each day the violation exists.

Consequences of Failure to Correct Violation(s) - Failure to correct the violation(s) can lead to further administrative actions such as the remedies detailed in Chapter 1.05 of the Reno Municipal Code or criminal prosecution as a misdemeanor with a maximum penalty of six months in jail and \$1000.00 fine.

Rights of Appeal - You have the right to appeal this administrative citation within ten (10) business days from the date of the citation. An appeal form can be obtained from the City Clerks Office located at 1 E. First Street - 2nd floor. The cost for the appeal is \$50.00. For directions call 334-2030. A properly filed appeal will result in an administrative hearing. A full description of the hearing process for the City's administrative hearings for Municipal Code violations and your rights in that process are found in the Reno Municipal Code Chapter 1.05 Article VI (Copies of the current Municipal Code can be electronically accessed at www.muncode.com or you may contact the City Clerk's office at (775) 334-2030.)

Refer to Case Number: ENF14-C00631
Page 4 of 4

Failure of any person to properly file a written appeal within ten (10) business days from the date of this citation shall constitute a waiver of his or her right to an administrative hearing and adjudication of the administrative citation or any portion thereof and the total amount of the fine.

YOU WILL RECEIVE AN INVOICE IN THE MAIL. PAYMENT IS DUE UPON RECEIPT OF THE INVOICE. PAYMENTS MAY BE MADE IN PERSON AT CITY HALL ON THE 2nd FLOOR - 1 E. 1st. STREET. BRING A COPY OF THIS NOTICE WHEN PAYMENT IS BEING MADE WITHOUT AN INVOICE.

Enclosures: Invoice

Invoice.pdf




BILLING INVOICE

Community Development

P.O. Box 1900
Reno, Nevada 89505

Case No.: ENF14-C00631
Billing Date: 01/03/2014
Due Date: 01/10/2014
Inquiries: (775) 334-2229

PAY THIS 	Charges	1,130.00
	Payments	0.00
	Amount Due	\$ 1,130.00

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89134

Remit to: City of Reno, Nevada
Attn: Code Enforcement Division
P.O. Box 1900
Reno, NV 89505-1900 - or -
In Person: Development & Business Services Center
Reno City Hall - 1 East First St., 2nd Floor

DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PLEASE RETAIN BOTTOM PORTION FOR YOUR RECORDS

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89134

If there are any questions, please call
Code Enforcement Division at
(775) 334-2229.
City of Reno's Federal Tax ID is 88-6000201.
PLEASE NOTE:
YOUR PAYMENT IS DUE UPON RECEIPT

Subject Property: 043-011-47 7693 S VIRGINIA ST

Date	Trans No.	Record	Description	Charges	Payments	Balance
10/07/2013	238837	ENE14-V00601 on 10/7/2013	Re-inspection Invoice	65.00		65.00
11/06/2013	238837	ENA14-AD100201 on 10/08/2013	1st Citation Invoice	100.00		200.00
11/08/2013	238837	ENE14-V01002 on 10/30/2013	Subsequent Re-inspection Invoice	45.00		245.00
11/08/2013	238837	ENE14-V01002 on 11/6/2013	Subsequent Re-inspection Invoice	45.00		290.00
11/28/2013	240513	ENA14-AD200082 on 11/08/2013	2nd Citation Invoice	260.00		550.00
11/28/2013	240513	ENE14-V01201 on 11/28/2013	Subsequent Re-inspection Invoice	45.00		595.00
01/03/2014	241419	ENA14-AD300074 on 11/27/2013	3rd Citation Invoice	600.00		1195.00
01/03/2014	241419	ENE14-V01391 on 1/2/2014	Subsequent Re-inspection Invoice	45.00		1,130.00
Balance Due						\$ 1,130.00

PAYMENT IN FULL IS DUE AND PAYABLE ON RECEIPT OF THIS INVOICE. ANY BALANCE DUE BEYOND THAT LENGTH OF TIME WILL BE CONSIDERED DELINQUENT, AND INTEREST WILL BE CHARGED AT THE RATE OF 1% PER MONTH ON THE UNPAID BALANCE. RETURN TOP PORTION OF THIS INVOICE WITH YOUR REMITTANCE TO INSURE PROPER CREDIT.

GORDON SILVER

February 28, 2013

L. Steven Goldblatt
Goldblatt Law Firm
22 Martin Street
Gilroy, CA 95020

Via U.S. Mail & E-Mail: Lsteven.goldblatt@gmail.com

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

Via U.S. Mail & E-Mail: tvenesh7@gmail.com

Stanley A. Zlotoff
Law Office of Stanley A. Zlotoff
300 South First Street
Suite 215
San Jose, CA 95113

Via U.S. Mail & E-Mail: zlotofflaw@gmail.com

Re: 7693 South Virginia Street (the "Property")
City of Reno Notice of Violation and Administrative Citation

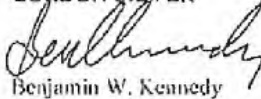
Dear Messrs. Goldblatt, English and Zlotoff:

Enclosed herewith please find a Notice of Violation and Administrative Citation (the "Citation") issued by the City of Reno in connection with the Property. As we have previously communicated to you on numerous occasions, Berry-Hinckley Industries ("BHI") has not taken, nor does it intend to take, any action in regard to the Citation. BHI has surrendered the property (which your client promptly enclosed with a fence) and will not accept any responsibility or obligation related to the ongoing property management issues.

Note that these citations are being issued in the name of your client, and the City of Reno will continue issuing citations until the condition is remedied. As you will see on the attached, the penalties for each successive inspection and citation increase dramatically. Your client would be well advised to address this issue to prevent future charges.

Very truly yours,

GORDON SILVER



Benjamin W. Kennedy

Enclosure

100 W. LIBERTY STREET, SUITE 910 • RENO, NEVADA 89501
T: 775.343.7500 F: 775.786.0131
gordonsilver.com

LAS VEGAS PHOENIX RENO WASHINGTON, D.C.



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NOTICE OF VIOLATION AND ADMINISTRATIVE CITATION

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Date of Citation: February 21, 2014
Case Number: ENF14-C00631
Citation Number: ENA14-AID00028
Subject Property: 7693 S VIRGINIA ST
Parcel Number: 043-011-47

Dear Property Owner or Responsible Party:

The subject property is in violation of the provisions of the RENO MUNICIPAL CODE as detailed in the Violations and Corrective Actions Section beginning on page 2 of this Notice. Under the authority of Chapter 1.05 of the RENO MUNICIPAL CODE you are hereby being assessed the following fine in conjunction with the violation(s).

4th Citation \$1,000.00 FINE

To avoid further fines you must correct the violations by Monday, March 10, 2014. If you need further information about the violations and/or how to comply please call the number listed below. If you intend on complying but need an extension of time, there is no need to appeal this notice. Contact the officer listed below. Code Enforcement can provide you an extension for up to 14 calendar days if there is a valid cause.

YOU WILL RECEIVE AN INVOICE IN THE MAIL. PAYMENT IS DUE UPON RECEIPT OF THE INVOICE. PAYMENTS MAY BE MADE IN PERSON AT CITY HALL - 1 E. 1st STREET, 2nd FLOOR. BRING A COPY OF THIS NOTICE WHEN PAYMENT IS BEING MADE WITHOUT AN INVOICE.

Respectfully,

Gina Levenson
Code Enforcement Officer
City of Reno
P.O. Box 1900
Reno, NV 89505
(775) 334-2539

Refer to Case Number: ENF14-C00631
Page 2 of 4

VIOLATIONS AND CORRECTIVE ACTIONS:

The following violations have been cited:

IPMC Sec 302.10

MAINTENANCE OF PREMISES. - EXTERIOR PROPERTY AREAS. There is outside storage consisting of shelving, plastics, barrels, etc. on the property.

IPMC Sec 308.2

DISPOSAL OF RUBBISH. RUBBISH AND GARBAGE. There is rubbish on the property.

RMC Sec 8.22.090

NUISANCES - UNLAWFUL TO PERMIT OR ALLOW EXISTENCE OF NUISANCE. There is rubbish and outside storage on the property. This is also a violation of the International Property Maintenance Code, an adopted code. RMC 8.22.035 defines this as a nuisance.

The following actions are required to avoid further administrative fines being issued:

Properly dispose of all rubbish on the property. Rubbish may not be stored in public view as it is at the dumpster enclosure facing the interior of the parking lot. Remove all outside storage items from public view. Maintain the property free of outside storage and rubbish.

THE CODE ENFORCEMENT DIVISION reserves the authority to WAIVE THIS CITATION only IF YOU COMPLY WITH THE CORRECTIVE ACTIONS BY THE COMPLIANCE DATE LISTED ON PAGE 1 OF THIS LETTER.

Refer to Case Number: ENF14-C0063)
Page 3 of 4

Important - Read the Following Carefully

All necessary permits must be secured and completed to correct the violations set forth in this notice.

Reinspection Fee - The Reno Municipal Code Section 1.05.030 provides for the recovery of costs incurred by the city for all reinspections. A reinspection fee will be levied for all reinspections required after the date of this notice until full compliance with this notice. If full compliance is not achieved by the date above mentioned correction date, you will be charged an initial reinspection fee of \$100.00. All future required reinspection fees are \$40.00 each.

Administrative Citation - Reno Municipal Code Section 1.05.525 provides for the issuance of administrative citations for Municipal Code Violations. There are four levels of citations that can be issued progressively for a violation. The fines, as indicated above, are \$100.00 for the First Citation, \$250.00 for the Second Citation and \$500.00 for The Third and subsequent citations for the violation(s) of the same ordinance within one year upon non-commercial properties. Commercial properties shall be subject to \$1000.00 for the Fourth and subsequent Citations for violation(s), of the same ordinance within one year. These fines are cumulative and citations may be issued for each day the violation exists.

Consequences of Failure to Correct Violation(s) - Failure to correct the violation(s) can lead to further administrative actions such as the remedies detailed in Chapter 1.05 of the Reno Municipal Code or criminal prosecution as a misdemeanor with a maximum penalty of six months in jail and \$1000.00 fine.

Rights of Appeal - You have the right to appeal this administrative citation within ten (10) business days from the date of the citation. An appeal form can be obtained from the City Clerks Office located at 1 E. First Street - 2nd floor. The cost for the appeal is \$50.00. For directions call 334-2030. A properly filed appeal will result in an administrative hearing. A full description of the hearing process for the City's administrative hearings for Municipal Code violations and your rights in that process are found in the Reno Municipal Code Chapter 1.05 Article VI (Copies of the current Municipal Code can be electronically accessed at www.municode.com or you may contact the City Clerk's office at (775) 334-2030.)

Refer to Case Number: HNF14-C00631
Page 4 of 4

Failure of any person to properly file a written appeal within ten (10) business days from the date of this citation shall constitute a waiver of his or her right to an administrative hearing and adjudication of the administrative citation or any portion thereof and the total amount of the fine.

YOU WILL RECEIVE AN INVOICE IN THE MAIL. PAYMENT IS DUE UPON RECEIPT OF THE INVOICE. PAYMENTS MAY BE MADE IN PERSON AT CITY HALL ON THE 2nd FLOOR - I.E. 1st. STREET. BRING A COPY OF THIS NOTICE WHEN PAYMENT IS BEING MADE WITHOUT AN INVOICE.

Enclosures: Invoice

Invoice.pdf

CC:ROBERT F NIELSEN



BILLING INVOICE

Community Development

P.O. Box 1900
Reno, Nevada 89505

|||||

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Case No.: ENF14-C00631

Billing Date: 02/20/2014

Due Date: 02/27/2014

Inquiries: (775) 334-2229

PAY THIS →	Charges	3,265.00
	Payments	0.00
	Amount Due	\$ 3,265.00

Remit to: City of Reno, Nevada

Attn: Code Enforcement Division

P.O. Box 1900

Reno, NV 89505-1900 - or -

In Person: Development & Business Services Center
Reno City Hall - 1 East First St., 2nd Floor

DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PLEASE RETAIN BOTTOM PORTION FOR YOUR RECORDS

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

If there are any questions, please call
Code Enforcement Division at
(775) 334-2229

City of Reno's Federal Tax ID is 88-60000201

PLEASE NOTE:
YOUR PAYMENT IS DUE UPON RECEIPT

Subject Property: 043-011-47 7693 S VIRGINIA ST

Date	Trans No.	Record	Description	Charges	Payments	Balance
10/07/2013	238845	ENE14-V00589 on 10/7/2013	Re-Inspection Invoice	100.00		100.00
11/06/2013	239837	ENA14-AD100201 on 10/08/2013	1st Citation Invoice	100.00		200.00
11/06/2013	239837	ENE14-V01002 on 10/30/2013	Subsequent Re-Inspection Invoice	45.00		245.00
11/06/2013	239837	ENE14-V01002 on 11/6/2013	Subsequent Re-Inspection Invoice	45.00		290.00
11/26/2013	240513	ENA14-AD200082 on 11/08/2013	2nd Citation Invoice	250.00		540.00
11/26/2013	240513	ENE14-V01201 on 11/26/2013	Subsequent Re-Inspection Invoice	45.00		585.00
01/03/2014	241419	ENA14-AD300074 on 11/27/2013	3rd Citation Invoice	500.00		1,085.00
01/03/2014	241419	ENE14-V01391 on 1/2/2014	Subsequent Re-Inspection Invoice	45.00		1,130.00
01/30/2014	242293	ENA14-AD400022 on 01/08/2014	4th Citation Invoice	1,000.00		2,130.00
01/30/2014	242293	ENE14-V01391 on 1/2/2014	Subsequent Re-Inspection Invoice	45.00		2,175.00
02/20/2014	243045	ENE14-V01575 on 1/29/2014	Subsequent Re-Inspection Invoice	45.00		2,220.00
02/20/2014	243045	ENE14-V01709 on 2/19/2014	Subsequent Re-Inspection Invoice	45.00		2,265.00
02/20/2014	243048	ENA14-AD400025 on 01/31/2014	4th Citation Invoice	1,000.00		3,265.00
Balance Due						\$ 3,265.00

PAYMENT IN FULL IS DUE AND PAYABLE ON RECEIPT OF THIS INVOICE. ANY BALANCE DUE BEYOND THAT LENGTH OF TIME WILL BE CONSIDERED DELINQUENT, AND INTEREST WILL BE CHARGED AT THE RATE OF 1% PER MONTH ON THE UNPAID BALANCE. RETURN TOP PORTION OF THIS INVOICE WITH YOUR REMITTANCE TO INSURE PROPER CREDIT.

Exhibit 2

Invoice dated July 2, 2014



BILLING INVOICE

Community Development


P.O. Box 1900
Reno, Nevada 89505

Case No.: ENF14-C00631

Billing Date: 07/02/2014

Due Date: 07/09/2014

Inquiries: (775) 334-2229

PAY THIS 	Charges	3,265.00
	Payments	0.00
	Amount Due	\$ 3,265.00

|||||

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

Remit to: City of Reno, Nevada

Attn: Code Enforcement Division

P.O. Box 1900

Reno, NV 89505-1900 - or -

In Person: Development & Business Services Center
Reno City Hall - 1 East First St., 2nd Floor

DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PLEASE RETAIN BOTTOM PORTION FOR YOUR RECORDS

OVERLAND DEVELOPMENT CORP
C/O BERRY-HINCKLEY INDUSTRIES
5195 LAS VEGAS BLVD S
LAS VEGAS, NV 89119

If there are any questions, please call
Code Enforcement Division at
(775) 334-2229.

City of Reno's Federal Tax ID is 88-60000201.

PLEASE NOTE:
YOUR PAYMENT IS DUE UPON RECEIPT

Subject Property: 043-011-47 7693 S VIRGINIA ST

Date	Trans No.	Record	Description	Charges	Payments	Balance
10/07/2013	238845	ENE14-V00599 on 10/7/2013	Re-Inspection Invoice	100.00		100.00
11/06/2013	239837	ENA14-AD100201 on 10/08/2013	1st Citation Invoice	100.00		200.00
11/08/2013	239837	ENE14-V01002 on 10/30/2013	Subsequent Re-Inspection Invoice	45.00		245.00
11/06/2013	239837	ENE14-V01002 on 11/6/2013	Subsequent Re-Inspection Invoice	45.00		290.00
11/26/2013	240513	ENA14-AD200082 on 11/08/2013	2nd Citation Invoice	250.00		540.00
11/26/2013	240513	ENE14-V01201 on 11/26/2013	Subsequent Re-Inspection Invoice	45.00		585.00
01/03/2014	241419	ENA14-AD300074 on 11/27/2013	3rd Citation Invoice	500.00		1,085.00
01/03/2014	241419	ENE14-V01391 on 1/2/2014	Subsequent Re-Inspection Invoice	45.00		1,130.00
01/30/2014	242293	ENA14-AD400022 on 01/06/2014	4th Citation Invoice	1,000.00		2,130.00
01/30/2014	242293	ENE14-V01391 on 1/2/2014	Subsequent Re-Inspection Invoice	45.00		2,175.00
02/20/2014	243045	ENE14-V01575 on 1/29/2014	Subsequent Re-Inspection Invoice	45.00		2,220.00
02/20/2014	243045	ENE14-V01709 on 2/19/2014	Subsequent Re-Inspection Invoice	45.00		2,265.00
02/20/2014	243046	ENA14-AD400025 on 01/31/2014	4th Citation Invoice	1,000.00		3,265.00
Balance Due						\$ 3,265.00

PAYMENT IN FULL IS DUE AND PAYABLE ON RECEIPT OF THIS INVOICE. ANY BALANCE DUE BEYOND THAT LENGTH OF TIME WILL BE CONSIDERED DELINQUENT, AND INTEREST WILL BE CHARGED AT THE RATE OF 1% PER MONTH ON THE UNPAID BALANCE. RETURN TOP PORTION OF THIS INVOICE WITH YOUR REMITTANCE TO INSURE PROPER CREDIT.

EXHIBIT 36

EXHIBIT 36

WILLARD PLAINTIFFS COMPUTATION OF DAMAGES

Plaintiffs Larry J. Willard and Overland Development Corporation

Property: 7695/7699 S. Virginia Street, Reno, Nevada (the "Virginia Property")

TABLE I. COMPUTATION PARAMETERS

REF	PARAMETER	VALUE
*1	INTEREST RATE UPON DEFAULT	18%
*2	DISCOUNT RATE	4%
*3	INTEREST THROUGH DATE	10/16/2017
*4	LEASE TERM START	1/1/2006
*5	LEASE TERM END	12/31/2025
*6	DATE OF ABANDONMENT	6/1/2013
*7	FAIR MARKET VALUE WITH LEASE	\$ 19,700,000.00
*8	FAIR MARKET VALUE WITHOUT LEASE	\$ 4,270,000.00
*9	FAIR RENTAL VALUE	\$ 38,206.00

TABLE II. EXPENSES

REF	DATE INCURRED	DESCRIPTION	DAMAGE AMOUNT	LATE PAYMENT CHARGE	INTEREST AS OF 10/16/2017	DAMAGE AMOUNT INCL. INTEREST
*1	5/31/13	GREG BREEN	\$ 2,500.00	\$ 125.00	\$ 1,971.37	\$ 4,471.37
*2	6/4/13	THOLL FENCE	\$ 2,668.62	\$ 133.43	\$ 2,099.07	\$ 4,767.69
*3	9/3/13	BERKSHIRE HATHAWAY INS.	\$ 7,206.00	\$ 360.30	\$ 5,344.68	\$ 12,550.68
*4	10/7/13	RENO FINE 238845	\$ 100.00	\$ 5.00	\$ 72.49	\$ 172.49
*5	10/24/13	SANTIAGO LANDSCAPE	\$ 1,000.00	\$ 50.00	\$ 716.55	\$ 1,716.55
*6	11/6/13	NV ENERGY	\$ 10,393.35	\$ 519.67	\$ 7,380.70	\$ 17,774.05
*7	11/6/13	RENO FINE 239837	\$ 100.00	\$ 5.00	\$ 71.01	\$ 171.01
*8	11/6/13	RENO FINE 239837	\$ 45.00	\$ 2.25	\$ 31.96	\$ 76.96
*9	11/6/13	RENO FINE 239837	\$ 45.00	\$ 2.25	\$ 31.96	\$ 76.96
*10	11/26/13	RENO FINE 240513	\$ 250.00	\$ 12.50	\$ 175.07	\$ 425.07
*11	11/26/13	RENO FINE 240513	\$ 45.00	\$ 2.25	\$ 31.51	\$ 76.51
*12	1/3/14	RENO FINE 241419	\$ 500.00	\$ 25.00	\$ 340.77	\$ 840.77
*13	1/3/14	RENO FINE 241419	\$ 45.00	\$ 2.25	\$ 30.67	\$ 75.67
*14	1/30/14	RENO FINE 242293	\$ 1,000.00	\$ 50.00	\$ 668.22	\$ 1,668.22
*15	1/30/14	RENO FINE 242293	\$ 45.00	\$ 2.25	\$ 30.07	\$ 75.07
*16	2/20/14	RENO FINE 243045	\$ 45.00	\$ 2.25	\$ 29.60	\$ 74.60
*17	2/20/14	RENO FINE 243045	\$ 45.00	\$ 2.25	\$ 29.60	\$ 74.60
*18	2/20/14	RENO FINE 243046	\$ 1,000.00	\$ 50.00	\$ 657.86	\$ 1,657.86
TOTALS:			\$ 27,032.97	\$ 1,351.65	\$ 19,713.17	\$ 48,097.79

TABLE III. PRESENT VALUE OF FUTURE RENT

REF	MONTH	RENT DUE	NET PRESENT VALUE (RUNNING TOTAL)
*1	6/2013	\$ 140,175.55	\$ 139,709.85
	7/2013	\$ 140,175.55	\$ 278,955.54
	8/2013	\$ 140,175.55	\$ 417,738.63
	9/2013	\$ 140,175.55	\$ 556,060.64
	10/2013	\$ 140,175.55	\$ 693,923.11
	11/2013	\$ 140,175.55	\$ 831,327.57
	12/2013	\$ 140,175.55	\$ 968,275.53
*2	1/2014	\$ 142,979.06	\$ 1,107,498.38
	2/2014	\$ 142,979.06	\$ 1,246,258.69
	3/2014	\$ 142,979.06	\$ 1,384,558.00
	4/2014	\$ 142,979.06	\$ 1,522,397.85
	5/2014	\$ 142,979.06	\$ 1,659,779.76
	6/2014	\$ 142,979.06	\$ 1,796,705.25
	7/2014	\$ 142,979.06	\$ 1,933,175.84
	8/2014	\$ 142,979.06	\$ 2,069,193.03
	9/2014	\$ 142,979.06	\$ 2,204,758.35
	10/2014	\$ 142,979.06	\$ 2,339,873.28
	11/2014	\$ 142,979.06	\$ 2,474,539.32
	12/2014	\$ 142,979.06	\$ 2,608,757.97
*3	1/2015	\$ 145,838.64	\$ 2,745,206.16
	2/2015	\$ 145,838.64	\$ 2,881,201.04
	3/2015	\$ 145,838.64	\$ 3,016,744.10
	4/2015	\$ 145,838.64	\$ 3,151,836.86
	5/2015	\$ 145,838.64	\$ 3,286,480.80
	6/2015	\$ 145,838.64	\$ 3,420,677.42
	7/2015	\$ 145,838.64	\$ 3,554,428.21
	8/2015	\$ 145,838.64	\$ 3,687,734.64
	9/2015	\$ 145,838.64	\$ 3,820,598.19
	10/2015	\$ 145,838.64	\$ 3,953,020.34
	11/2015	\$ 145,838.64	\$ 4,085,002.55
	12/2015	\$ 145,838.64	\$ 4,216,546.27
*4	1/2016	\$ 148,755.41	\$ 4,350,275.11
	2/2016	\$ 148,755.41	\$ 4,483,559.66
	3/2016	\$ 148,755.41	\$ 4,616,401.41
	4/2016	\$ 148,755.41	\$ 4,748,801.83
	5/2016	\$ 148,755.41	\$ 4,880,762.38
	6/2016	\$ 148,755.41	\$ 5,012,284.52
	7/2016	\$ 148,755.41	\$ 5,143,369.70
	8/2016	\$ 148,755.41	\$ 5,274,019.39
	9/2016	\$ 148,755.41	\$ 5,404,235.03
	10/2016	\$ 148,755.41	\$ 5,534,018.06
	11/2016	\$ 148,755.41	\$ 5,663,369.92
	12/2016	\$ 148,755.41	\$ 5,792,292.03

TABLE IV. PRESENT VALUE OF FAIR RENTAL VALUE

REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
*1	6/2013	\$ 0.00	\$ 0.00
	7/2013	\$ 0.00	\$ 0.00
	8/2013	\$ 0.00	\$ 0.00
	9/2013	\$ 0.00	\$ 0.00
	10/2013	\$ 0.00	\$ 0.00
	11/2013	\$ 0.00	\$ 0.00
	12/2013	\$ 0.00	\$ 0.00
	1/2014	\$ 0.00	\$ 0.00
	2/2014	\$ 0.00	\$ 0.00
	3/2014	\$ 0.00	\$ 0.00
	4/2014	\$ 0.00	\$ 0.00
	5/2014	\$ 0.00	\$ 0.00
*2	6/2014	\$ 38,206.00	\$ 36,588.40
	7/2014	\$ 38,206.00	\$ 73,055.25
	8/2014	\$ 38,206.00	\$ 109,400.94
	9/2014	\$ 38,206.00	\$ 145,625.88
	10/2014	\$ 38,206.00	\$ 181,730.48
	11/2014	\$ 38,206.00	\$ 217,715.13
	12/2014	\$ 38,206.00	\$ 253,580.22
	1/2015	\$ 38,206.00	\$ 289,326.16
	2/2015	\$ 38,206.00	\$ 324,953.35
	3/2015	\$ 38,206.00	\$ 360,462.17
	4/2015	\$ 38,206.00	\$ 395,853.02
	5/2015	\$ 38,206.00	\$ 431,126.30
	6/2015	\$ 38,206.00	\$ 466,282.39
	7/2015	\$ 38,206.00	\$ 501,321.68
	8/2015	\$ 38,206.00	\$ 536,244.56
	9/2015	\$ 38,206.00	\$ 571,051.42
	10/2015	\$ 38,206.00	\$ 605,742.64
	11/2015	\$ 38,206.00	\$ 640,318.61
	12/2015	\$ 38,206.00	\$ 674,779.71
	1/2016	\$ 38,206.00	\$ 709,126.31
	2/2016	\$ 38,206.00	\$ 743,358.81
	3/2016	\$ 38,206.00	\$ 777,477.59
	4/2016	\$ 38,206.00	\$ 811,483.01
	5/2016	\$ 38,206.00	\$ 845,375.45
	6/2016	\$ 38,206.00	\$ 879,155.30
	7/2016	\$ 38,206.00	\$ 912,822.92
	8/2016	\$ 38,206.00	\$ 946,378.68
	9/2016	\$ 38,206.00	\$ 979,822.97
	10/2016	\$ 38,206.00	\$ 1,013,156.15
	11/2016	\$ 38,206.00	\$ 1,046,378.58
	12/2016	\$ 38,206.00	\$ 1,079,490.64

REF	MONTH	RENT DUE	NET PRESENT VALUE (RUNNING TOTAL)	REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
*5	1/2017	\$ 151,730.52	\$ 5,923,355.71		1/2017	\$ 38,206.00	\$ 1,112,492.70
	2/2017	\$ 151,730.52	\$ 6,053,983.96		2/2017	\$ 38,206.00	\$ 1,145,385.11
	3/2017	\$ 151,730.52	\$ 6,184,178.23		3/2017	\$ 38,206.00	\$ 1,178,168.24
	4/2017	\$ 151,730.52	\$ 6,313,939.96		4/2017	\$ 38,206.00	\$ 1,210,842.47
	5/2017	\$ 151,730.52	\$ 6,443,270.59		5/2017	\$ 38,206.00	\$ 1,243,408.14
	6/2017	\$ 151,730.52	\$ 6,572,171.54		6/2017	\$ 38,206.00	\$ 1,275,865.61
	7/2017	\$ 151,730.52	\$ 6,700,644.26		7/2017	\$ 38,206.00	\$ 1,308,215.26
	8/2017	\$ 151,730.52	\$ 6,828,690.16		8/2017	\$ 38,206.00	\$ 1,340,457.43
	9/2017	\$ 151,730.52	\$ 6,956,310.65		9/2017	\$ 38,206.00	\$ 1,372,592.49
	10/2017	\$ 151,730.52	\$ 7,083,507.16		10/2017	\$ 38,206.00	\$ 1,404,620.78
	11/2017	\$ 151,730.52	\$ 7,210,281.08		11/2017	\$ 38,206.00	\$ 1,436,542.67
	12/2017	\$ 151,730.52	\$ 7,336,633.84		12/2017	\$ 38,206.00	\$ 1,468,358.50
*6	1/2018	\$ 154,765.13	\$ 7,465,085.47		1/2018	\$ 38,206.00	\$ 1,500,068.64
	2/2018	\$ 154,765.13	\$ 7,593,110.35		2/2018	\$ 38,206.00	\$ 1,531,673.42
	3/2018	\$ 154,765.13	\$ 7,720,709.91		3/2018	\$ 38,206.00	\$ 1,563,173.21
	4/2018	\$ 154,765.13	\$ 7,847,885.54		4/2018	\$ 38,206.00	\$ 1,594,568.34
	5/2018	\$ 154,765.13	\$ 7,974,638.66		5/2018	\$ 38,206.00	\$ 1,625,859.18
	6/2018	\$ 154,765.13	\$ 8,100,970.68		6/2018	\$ 38,206.00	\$ 1,657,046.05
	7/2018	\$ 154,765.13	\$ 8,226,882.99		7/2018	\$ 38,206.00	\$ 1,688,129.32
	8/2018	\$ 154,765.13	\$ 8,352,376.98		8/2018	\$ 38,206.00	\$ 1,719,109.32
	9/2018	\$ 154,765.13	\$ 8,477,454.05		9/2018	\$ 38,206.00	\$ 1,749,986.39
	10/2018	\$ 154,765.13	\$ 8,602,115.59		10/2018	\$ 38,206.00	\$ 1,780,760.88
	11/2018	\$ 154,765.13	\$ 8,726,362.96		11/2018	\$ 38,206.00	\$ 1,811,433.14
	12/2018	\$ 154,765.13	\$ 8,850,197.56		12/2018	\$ 38,206.00	\$ 1,842,003.49
*7	1/2019	\$ 157,860.43	\$ 8,976,089.20		1/2019	\$ 38,206.00	\$ 1,872,472.28
	2/2019	\$ 157,860.43	\$ 9,101,562.60		2/2019	\$ 38,206.00	\$ 1,902,839.84
	3/2019	\$ 157,860.43	\$ 9,226,619.15		3/2019	\$ 38,206.00	\$ 1,933,106.52
	4/2019	\$ 157,860.43	\$ 9,351,260.23		4/2019	\$ 38,206.00	\$ 1,963,272.64
	5/2019	\$ 157,860.43	\$ 9,475,487.21		5/2019	\$ 38,206.00	\$ 1,993,338.54
	6/2019	\$ 157,860.43	\$ 9,599,301.49		6/2019	\$ 38,206.00	\$ 2,023,304.55
	7/2019	\$ 157,860.43	\$ 9,722,704.41		7/2019	\$ 38,206.00	\$ 2,053,171.01
	8/2019	\$ 157,860.43	\$ 9,845,697.37		8/2019	\$ 38,206.00	\$ 2,082,938.25
	9/2019	\$ 157,860.43	\$ 9,968,281.70		9/2019	\$ 38,206.00	\$ 2,112,606.59
	10/2019	\$ 157,860.43	\$ 10,090,458.79		10/2019	\$ 38,206.00	\$ 2,142,176.37
	11/2019	\$ 157,860.43	\$ 10,212,229.96		11/2019	\$ 38,206.00	\$ 2,171,647.90
	12/2019	\$ 157,860.43	\$ 10,333,596.59		12/2019	\$ 38,206.00	\$ 2,201,021.53
*8	1/2020	\$ 161,017.64	\$ 10,456,979.26		1/2020	\$ 38,206.00	\$ 2,230,297.56
	2/2020	\$ 161,017.64	\$ 10,579,952.03		2/2020	\$ 38,206.00	\$ 2,259,476.34
	3/2020	\$ 161,017.64	\$ 10,702,516.26		3/2020	\$ 38,206.00	\$ 2,288,558.18
	4/2020	\$ 161,017.64	\$ 10,824,673.29		4/2020	\$ 38,206.00	\$ 2,317,543.39
	5/2020	\$ 161,017.64	\$ 10,946,424.48		5/2020	\$ 38,206.00	\$ 2,346,432.32
	6/2020	\$ 161,017.64	\$ 11,067,771.19		6/2020	\$ 38,206.00	\$ 2,375,225.26
	7/2020	\$ 161,017.64	\$ 11,188,714.75		7/2020	\$ 38,206.00	\$ 2,403,922.55
	8/2020	\$ 161,017.64	\$ 11,309,256.50		8/2020	\$ 38,206.00	\$ 2,432,524.50

REF	MONTH	RENT DUE	NET PRESENT VALUE (RUNNING TOTAL)	REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
	9/2020	\$ 161,017.64	\$ 11,429,397.79		9/2020	\$ 38,206.00	\$ 2,461,031.42
	10/2020	\$ 161,017.64	\$ 11,549,139.93		10/2020	\$ 38,206.00	\$ 2,489,443.64
	11/2020	\$ 161,017.64	\$ 11,668,484.26		11/2020	\$ 38,206.00	\$ 2,517,761.47
	12/2020	\$ 161,017.64	\$ 11,787,432.09		12/2020	\$ 38,206.00	\$ 2,545,985.21
*9	1/2021	\$ 164,238.00	\$ 11,908,355.81		1/2021	\$ 38,206.00	\$ 2,574,115.19
	2/2021	\$ 164,238.00	\$ 12,028,877.78		2/2021	\$ 38,206.00	\$ 2,602,151.72
	3/2021	\$ 164,238.00	\$ 12,148,999.35		3/2021	\$ 38,206.00	\$ 2,630,095.09
	4/2021	\$ 164,238.00	\$ 12,268,721.84		4/2021	\$ 38,206.00	\$ 2,657,945.64
	5/2021	\$ 164,238.00	\$ 12,388,046.59		5/2021	\$ 38,206.00	\$ 2,685,703.66
	6/2021	\$ 164,238.00	\$ 12,506,974.90		6/2021	\$ 38,206.00	\$ 2,713,369.46
	7/2021	\$ 164,238.00	\$ 12,625,508.11		7/2021	\$ 38,206.00	\$ 2,740,943.34
	8/2021	\$ 164,238.00	\$ 12,743,647.52		8/2021	\$ 38,206.00	\$ 2,768,425.62
	9/2021	\$ 164,238.00	\$ 12,861,394.44		9/2021	\$ 38,206.00	\$ 2,795,816.59
	10/2021	\$ 164,238.00	\$ 12,978,750.17		10/2021	\$ 38,206.00	\$ 2,823,116.57
	11/2021	\$ 164,238.00	\$ 13,095,716.01		11/2021	\$ 38,206.00	\$ 2,850,325.84
	12/2021	\$ 164,238.00	\$ 13,212,293.27		12/2021	\$ 38,206.00	\$ 2,877,444.73
*10	1/2022	\$ 167,522.76	\$ 13,330,807.02		1/2022	\$ 38,206.00	\$ 2,904,473.51
	2/2022	\$ 167,522.76	\$ 13,448,927.05		2/2022	\$ 38,206.00	\$ 2,931,412.50
	3/2022	\$ 167,522.76	\$ 13,566,654.64		3/2022	\$ 38,206.00	\$ 2,958,261.99
	4/2022	\$ 167,522.76	\$ 13,683,991.12		4/2022	\$ 38,206.00	\$ 2,985,022.28
	5/2022	\$ 167,522.76	\$ 13,800,937.77		5/2022	\$ 38,206.00	\$ 3,011,693.66
	6/2022	\$ 167,522.76	\$ 13,917,495.89		6/2022	\$ 38,206.00	\$ 3,038,276.44
	7/2022	\$ 167,522.76	\$ 14,033,666.78		7/2022	\$ 38,206.00	\$ 3,064,770.90
	8/2022	\$ 167,522.76	\$ 14,149,451.72		8/2022	\$ 38,206.00	\$ 3,091,177.34
	9/2022	\$ 167,522.76	\$ 14,264,851.99		9/2022	\$ 38,206.00	\$ 3,117,496.04
	10/2022	\$ 167,522.76	\$ 14,379,868.87		10/2022	\$ 38,206.00	\$ 3,143,727.32
	11/2022	\$ 167,522.76	\$ 14,494,503.64		11/2022	\$ 38,206.00	\$ 3,169,871.44
	12/2022	\$ 167,522.76	\$ 14,608,757.56		12/2022	\$ 38,206.00	\$ 3,195,928.71
*11	1/2023	\$ 170,873.21	\$ 14,724,909.38		1/2023	\$ 38,206.00	\$ 3,221,899.41
	2/2023	\$ 170,873.21	\$ 14,840,675.32		2/2023	\$ 38,206.00	\$ 3,247,783.83
	3/2023	\$ 170,873.21	\$ 14,956,056.66		3/2023	\$ 38,206.00	\$ 3,273,582.25
	4/2023	\$ 170,873.21	\$ 15,071,054.66		4/2023	\$ 38,206.00	\$ 3,299,294.96
	5/2023	\$ 170,873.21	\$ 15,185,670.62		5/2023	\$ 38,206.00	\$ 3,324,922.25
	6/2023	\$ 170,873.21	\$ 15,299,905.79		6/2023	\$ 38,206.00	\$ 3,350,464.40
	7/2023	\$ 170,873.21	\$ 15,413,761.44		7/2023	\$ 38,206.00	\$ 3,375,921.69
	8/2023	\$ 170,873.21	\$ 15,527,238.83		8/2023	\$ 38,206.00	\$ 3,401,294.40
	9/2023	\$ 170,873.21	\$ 15,640,339.22		9/2023	\$ 38,206.00	\$ 3,426,582.82
	10/2023	\$ 170,873.21	\$ 15,753,063.87		10/2023	\$ 38,206.00	\$ 3,451,787.23
	11/2023	\$ 170,873.21	\$ 15,865,414.01		11/2023	\$ 38,206.00	\$ 3,476,907.90
	12/2023	\$ 170,873.21	\$ 15,977,390.89		12/2023	\$ 38,206.00	\$ 3,501,945.11
*12	1/2024	\$ 174,290.67	\$ 16,091,227.86		1/2024	\$ 38,206.00	\$ 3,526,899.15
	2/2024	\$ 174,290.67	\$ 16,204,686.63		2/2024	\$ 38,206.00	\$ 3,551,770.27
	3/2024	\$ 174,290.67	\$ 16,317,768.47		3/2024	\$ 38,206.00	\$ 3,576,558.78
	4/2024	\$ 174,290.67	\$ 16,430,474.61		4/2024	\$ 38,206.00	\$ 3,601,264.92

REF	MONTH	RENT DUE	NET PRESENT VALUE (RUNNING TOTAL)	REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
	5/2024	\$ 174,290.67	\$ 16,542,806.32		5/2024	\$ 38,206.00	\$ 3,625,888.99
	6/2024	\$ 174,290.67	\$ 16,654,764.83		6/2024	\$ 38,206.00	\$ 3,650,431.25
	7/2024	\$ 174,290.67	\$ 16,766,351.38		7/2024	\$ 38,206.00	\$ 3,674,891.97
	8/2024	\$ 174,290.67	\$ 16,877,567.22		8/2024	\$ 38,206.00	\$ 3,699,271.43
	9/2024	\$ 174,290.67	\$ 16,988,413.57		9/2024	\$ 38,206.00	\$ 3,723,569.89
	10/2024	\$ 174,290.67	\$ 17,098,891.66		10/2024	\$ 38,206.00	\$ 3,747,787.63
	11/2024	\$ 174,290.67	\$ 17,209,002.71		11/2024	\$ 38,206.00	\$ 3,771,924.91
	12/2024	\$ 174,290.67	\$ 17,318,747.94		12/2024	\$ 38,206.00	\$ 3,795,982.00
*13	1/2025	\$ 177,776.49	\$ 17,430,316.19		1/2025	\$ 38,206.00	\$ 3,819,959.17
	2/2025	\$ 177,776.49	\$ 17,541,513.77		2/2025	\$ 38,206.00	\$ 3,843,856.67
	3/2025	\$ 177,776.49	\$ 17,652,341.93		3/2025	\$ 38,206.00	\$ 3,867,674.79
	4/2025	\$ 177,776.49	\$ 17,762,801.89		4/2025	\$ 38,206.00	\$ 3,891,413.77
	5/2025	\$ 177,776.49	\$ 17,872,894.87		5/2025	\$ 38,206.00	\$ 3,915,073.89
	6/2025	\$ 177,776.49	\$ 17,982,622.10		6/2025	\$ 38,206.00	\$ 3,938,655.40
	7/2025	\$ 177,776.49	\$ 18,091,984.78		7/2025	\$ 38,206.00	\$ 3,962,158.57
	8/2025	\$ 177,776.49	\$ 18,200,984.13		8/2025	\$ 38,206.00	\$ 3,985,583.65
	9/2025	\$ 177,776.49	\$ 18,309,621.36		9/2025	\$ 38,206.00	\$ 4,008,930.91
	10/2025	\$ 177,776.49	\$ 18,417,897.66		10/2025	\$ 38,206.00	\$ 4,032,200.61
	11/2025	\$ 177,776.49	\$ 18,525,814.25		11/2025	\$ 38,206.00	\$ 4,055,392.99
	12/2025	\$ 177,776.49	\$ 18,633,372.30		12/2025	\$ 38,206.00	\$ 4,078,508.33
TOTALS:		\$ 23,993,004.41	\$ 18,633,372.30	TOTALS:		\$ 5,310,634.00	\$ 4,078,508.33

TABLE V. ACCELERATED RENT DAMAGES

REF	DESCRIPTION	AMOUNT
*1	PRESENT VALUE OF FUTURE RENT	\$ 18,633,372.30
*2	PRESENT VALUE OF FAIR RENTAL VALUE	\$ 4,078,508.33
ACCELERATED RENT DAMAGES:		\$ 14,554,863.98

TABLE VI. DIMINUTION IN VALUE

REF	DESCRIPTION	AMOUNT
*1	FAIR MARKET VALUE WITH LEASE	\$ 19,700,000.00
*2	FAIR MARKET VALUE WITHOUT LEASE	\$ 4,270,000.00
DIMINUTION IN VALUE:		\$ 15,430,000.00

TABLE VII. TOTAL DAMAGES

REF	DESCRIPTION	DAMAGE AMOUNT	INTEREST AS OF 10/16/2017	DAMAGE AMOUNT INCL. INTEREST
*1	UNPAID RENT, MARCH 2013	\$ 140,175.55	\$ 116,825.76	\$ 257,001.31
*2	LATE PAYMENT CHARGE, MARCH 2013	\$ 7,008.78		\$ 7,008.78
*3	UNPAID RENT, APRIL 2013	\$ 140,175.55	\$ 114,682.80	\$ 254,858.35
*4	LATE PAYMENT CHARGE, APRIL 2013	\$ 7,008.78		\$ 7,008.78
*5	UNPAID RENT, MAY 2013	\$ 140,175.55	\$ 112,608.97	\$ 252,784.52
*6	LATE PAYMENT CHARGE, MAY 2013	\$ 7,008.78		\$ 7,008.78
*7	ACCELERATED RENT DAMAGES	\$ 14,554,863.98	\$ 11,470,030.34	\$ 26,024,894.31
*8	DIMINUTION IN VALUE	\$ 15,430,000.00	\$ 12,159,685.48	\$ 27,589,685.48
*9	EXPENSES W/ LATE PAYMENT CHARGES	\$ 28,384.62	\$ 19,713.17	\$ 48,097.79
TOTALS:		\$ 30,454,801.58	\$ 23,993,546.52	<u>\$54,448,348.10</u>

TABLE VIII. INTEREST ACCRUAL RATE

INTEREST PER DAY:	\$ 15,007.77
INTEREST PER MONTH:	\$ 456,486.34
INTEREST PER YEAR:	\$ 5,477,836.05

EXHIBIT 37

EXHIBIT 37

From: Dan Gluhaich </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=INTEROREALESTATE1.onmicrosoft.com-54191-dgluhaich@interorealestate.com565>
Sent: Tuesday, August 06, 2013 5:17 PM
To: telllarry@gmail.com
Subject: FW: S. Virginia Car Wash

Dan Gluhaich #00963076
 Intero Real Estate Services
 175 E. Main Ave, #130
 Morgan Hill, CA 95037
 408-201-0120 Direct
 408-516-9869 Efax
dgluhaich@interorealestate.com

From: Richard Miller [<mailto:rmillersfo@me.com>]
Sent: Tuesday, August 06, 2013 5:11 PM
To: Dan Gluhaich
Subject: S. Virginia Car Wash

Dan

Further to our conversation on the S. Virginia site, let me expand on how we see the condition of this run-down and tired property. We were given access to the site in July and performed a detailed walk through. The problems we see include (but certainly not limited to) the following.

- Equipment room is a mess, with the chemical application board either missing pumps or broken pumps.
- The chemical board is disconnected and broken
- The conveyor hydraulic motor was leaking oil into the trench
- The motors on the wash cloth are leaking hydraulic fluid and therefore ruined the wash material which will have to be 100% replaced.
- The conveyor was essentially installed in the wrong direction and we would have to reverse the flow of the tunnel for proper operation
- The DRB computer control system is non-functioning and could require as much as \$40,000 to install
- The tunnel is a dirty and as gross as we have ever seen. Herbst must have never cleaned anything for years.
- The vacuum system could not be confirmed to be functional and will probably need substantial repairs.
- The employee rest area and bathrooms are in bad shape

These are the highlights (or lowlights as the case may be) and this is not uncommon in my experience in taking over a Herbst site. For example, the site we took over with Jacksons at 2805 N. McCarran in Sparks, had a situation where they were using 2,000,000 gallons of fresh water per month. We don't use that much water in a year at our locations. We quickly discovered that a 2" water line had broken off and was free flowing into the

sewer. I have never seen anything like that in my 25 years in the business. They frankly are not capable or professional operators. Like this location, it was a dirty mess through and through.

Thank you,

Richard Miller

EXHIBIT 38

EXHIBIT 38

From: Dan Gluhaich

/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP
/CN=RECIPIENTS/CN=INTEROREALESTATE1.ONMICROSOFT.COM-54191-
DGLUHAICH@INTEROREALESTATE.COM565

Subject: FW: Longley Chevron Revised 2-27-14.pdf

Date: February 28, 2014 at 8:02 AM

To: Stanley A. Zlotoff (zlotofflaw@gmail.com) zlotofflaw@gmail.com

THE BANK MAY WANT TO SEE THIS.

DAN

Dan Gluhaich Cal BRE #00963076
Intero Real Estate Services
175 E. Main Ave, #130
Morgan Hill, CA 95037
408-201-0120 Direct
408-516-9869 Efax
dgluhaich@interorealestate.com

-----Original Message-----

From: Rob Cashell [mailto:rob@cei1.com]

Sent: Friday, February 28, 2014 5:39 AM

To: Dan Gluhaich

Subject: Longley Chevron Revised 2-27-14.pdf

Dan,

Attached is the bid (\$190k) we received this week on the work necessary to repair the tank that is leaking and bring other fuel related items into compliance. We are able to go this route as a result of avoiding a Phase II. If we get into a Phase II this number will easily surpass \$250k.

Let me know if any questions.

Thx,

ROB



Longley Chevron
Revised 2-27-14.pdf



**765 East Greg Street #103
Sparks, NV. 89431**

Phone (775) 358-4403

Fax (775) 358-4411

keith@perkspetroleum.com

www.perkspetroleum.com

PROPOSAL and CONTRACT

REVISED 2/27/14

February 14, 2014

Job: Longley Chevron
Address: 7695 S Virginia St.
City: Reno, NV

Reference: Demo of existing tank pad
Installation of all new spill bucket and manholes
Installation of all new hanging hardware

Pursuant to your recent request, L.A. Perks respectfully submit the following quotation to perform the various services as listed below.

- USA site for location of underground utilities.
- Mobilize personnel, equipment, and associated materials to site.
- Provide and install all necessary protective fencing / barricade around job site.
- Conduct and document tailgate safety meetings with all affected personnel.
- Layout and prep site for demo of existing 60' X 60' X 8" concrete tank pad. And a 70' X 13' X 6" drive pad underneath Eastside of canopy.
- Once demo work has been completed, excavate around existing manholes for tank entries points and prep for the new installation of fiberglass sumps.
- All three gasoline tank to then be inert of all vapor so that tanks can be safely entered and inspected
- Existing 10,000 gallon gasoline tank will need to have existing tank lining removed and reinstalled. Once lining has been reinstalled tank lining company to then follow the API (American Petroleum Institute) for all testing procedures. After tank has had all passing results, tank will then be certified and cleared for gasoline.
- Provide and install (3) 42" Western Fiberglass sumps with 32" top hat reducers.
- Provide and install (3) Pomeco 37" Steel watertight manhole covers
- Provide and install (4) OPW 2100 series fill buckets with new fill adapters
- Provide and install (3) OPW 2100 series Vapor Buckets with new vapor adapters

- Provide and install (4) 42" Pemco Steel watertight manholes cover for all three gasoline turbines and one diesel turbine.
- Provide and install (8) 24" Pemoco steel watertight manhole cover for all existing annular and tank gauging
- Once all new tank top equipment has been installed a new 60' X 60' X 8" tank pad and a 70' X 13' X 6" drive pad on Eastside of canopy to be poured.
- Provide and install all new hanging hardware for existing gasoline and diesel dispensers.
- Provide and install miscellaneous gasket as needed for leaky dispenser meters.
- Provide and install new Nucleus Chevron team POS. New POS system to come as a duel station, scanners, printers, pin pads and Wayne Fusion for dispenser interfacing etc.
- Once diesel and gasoline has been dropped into existing tanks. Entire system is then to be purged of all air. Existing dispensers to have all calibrating check to ensure they are in tolerance.
- L.A. Perks technician to verify all dispensers are work properly.
- L.A. Perks technician to install and program new POS and ensure all dispensers are communicating with new POS.
- Dispensers and POS system to be fully functional before turning over to owners.

Exclusions:

- *Permits or permit fees*
- *Damages to any existing equipment*
- *Installation of any new Ethernet, phone, wireless com, for P.O.S. etc.*
- *Damages to any underground piping*
- *Unforeseen regulatory requirements*
- *Precision line or tank testing*
- *Soil sampling / analytical*

TOTAL QUOTE: \$190,941.00

All of the above work to be completed in a workmanlike manner according to standard practices for the sum of: ***One Hundred Ninety Thousand Nine Hundred Forty One 00/100 Dollars.***

Payable as follows: 20% down with progressive billing.

This quote is good for 30 days.

Terms: A charge of 2% per month which is an Annual Percentage Rate of 24% will be charged on all past due accounts.

Approximate dates when work will begin _____ and when work will be completed _____. Any alteration or deviation from the above specifications involving extra cost of materials or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contact; all agreements must be made in writing.

Respectfully submitted,

By _____
Keith Perks

L.A. Perks Petroleum Specialists.

ACCEPTANCE

The undersigned hereby authorizes you to furnish all materials and labor required to complete the work mentioned in the hereinabove proposal. The undersigned agrees to pay the amount stated in the said proposal upon presentation of billing. In event it becomes necessary to refer said proposal to an attorney, the undersigned agrees to pay attorney's fees and all costs incurred in the collection of the monies due under said proposal.

Dated: _____ Signed _____

By _____

Nevada License 12559A Classification C1, unlimited
Nevada License 12559B Classifications A15, 16, 19, 22 limit \$5,000,000
Nevada License 12559C Classification B2, 4 limit \$5,000,000
California License 678948 Classifications A, C-36, HAZ
Nevada Underground Handlers License 1018

EXHIBIT 39

EXHIBIT 39

DOC # 3016371

04/01/2004 02:30P Fee:25.00

BK1

Requested By

STEWART TITLE OF NORTHERN NEVADA

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 13 RPTT 0.00

APN: 043-011-47

Mail Future Tax Statements to
and When Recorded Mail to:

John W. Hoffman
429 W. Plumb Lane
Reno, Nevada 89509



041601506

DEED

THIS INDENTURE, made as of the 1st day of January, 2004, by and between LONGLEY CENTER PARTNERSHIP, a Nevada co-partnership, hereinafter called "Grantor", and LONGLEY CENTER PARTNERS, L.L.C., a Nevada limited liability company, 429 W. Plumb Lane, Reno, Nevada 89509, hereinafter called "Grantee":

WITNESSETH:

WHEREAS, the undersigned are all of the partners in Longley Center Partnership, a Nevada co-partnership.

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), lawful money of the United States of America, and other valuable consideration, to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell unto Grantee, and to its successors and assigns forever, all that certain lot, piece or parcel of land situate in the County of Washoe, State of Nevada, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

TOGETHER WITH, all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances thereunto belonging, unto Grantee, and to its successors and assigns forever.

IN WITNESS WHEREOF, the Grantors have executed this conveyance the day and year first hereinabove written.


Arthur T. Hinckley



3016371
04/01/2004
2 of 13

TOUCHLESS CAR WASH, INC.

By: _____
Myron Tucker, President

NEV-IDA PROPERTY INVESTMENTS, L.L.C.

By: _____
Leonard C. Buck, Manager

HINCKLEY SMITH, L.L.C.

By: _____
Carol Hinckley Smith, Manager

HINCKLEY BY-PASS TRUST

By: _____
Arthur T. Hinckley, Trustee

ANNE E. BUCK 2000 IRREVOCABLE TRUST

By: _____
Leonard C. Buck, Trustee

CHRISTIAN E. BUCK 2000
IRREVOCABLE TRUST

By: _____
Randall Thornton, Trustee



TOUCHLESS CAR WASH, INC.

By:


Myron Tucker, President

NEV-IDA PROPERTY INVESTMENTS, L.L.C.

By:

Leonard C. Buck, Manager


HINCKLEY-SMITH, L.L.C.

By:

Carol Hinckley Smith, Manager

HINCKLEY BY-PASS TRUST

By:


Arthur T. Hinckley, Trustee

ANNE E. BUCK 2000 IRREVOCABLE TRUST

By:

Leonard C. Buck Trustee

CHRISTIANE E. BUCK 2000
IRREVOCABLE TRUST

By:

Randall Thornton, Trustee



TOUCHLESS CAR WASH, INC.

By: _____
Myron Tucker, President

NEV-IDA PROPERTY INVESTMENTS, L.L.C.

By: Leonard C. Buck
Leonard C. Buck, Manager

HINCKLEY-SMITH, L.L.C.

By: _____
Carol Hinckley Smith, Manager

HINCKLEY BY-PASS TRUST

By: _____
Arthur T. Hinckley, Trustee

ANNE E. BUCK 2000 IRREVOCABLE TRUST

By: Leonard C. Buck
Leonard C. Buck, Trustee

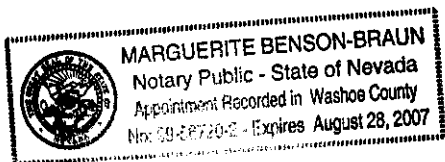
CHRISTIAN E. BUCK 2000
IRREVOCABLE TRUST

By: Randall Thornton
Randall Thornton, Trustee



STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this 24 day of March, 2004, personally appeared before me,
a Notary Public, Arthur T. Hinckley, who acknowledged to me that he executed the foregoing
instrument.



Marguerite Benson-Braun
Notary Public

STATE OF IDAHO,)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2004, personally appeared before me,
a Notary Public, Myron Tucker, President of Touchless Car Wash, Inc., who acknowledged to
me that he executed the foregoing instrument.

Notary Public

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this 23rd day of March, 2004, personally appeared before me,
a Notary Public, Leonard C. Buck, Manager of Nev-Ida Property Investments, L.L.C., who
acknowledged to me that he executed the foregoing instrument.



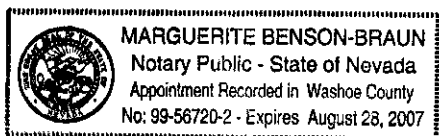
NANCY HODGE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
Expires January 11, 2005

Nancy Hodge
Notary Public



STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

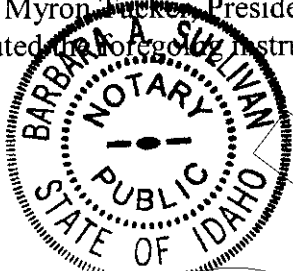
On this 24th day of March, 2004, personally appeared before me,
a Notary Public, Arthur T. Hinckley, who acknowledged to me that he executed the foregoing
instrument.



Marguerite Benson-Braun
Notary Public

STATE OF IDAHO,)
) ss.
COUNTY OF Ada)

On this 15th day of March, 2004, personally appeared before me,
a Notary Public, Myron Tucker, President of Touchless Car Wash, Inc., who acknowledged to
me that he executed the foregoing instrument.



Barbara A. Sullivan
Notary Public

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

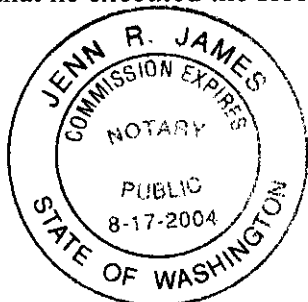
On this _____ day of _____, 2004, personally appeared before me,
a Notary Public, Leonard C. Buck, Manager of Nev-Ida Property Investments, L.L.C., who
acknowledged to me that he executed the foregoing instrument.

Notary Public



STATE OF Washington,)
) ss.
COUNTY OF Snohomish.

On this 18 day of March, 2004, personally appeared before me,
a Notary Public, Carol Hinckley Smith, Manager of Hinckley-Smith, L.L.C., who acknowledged
to me that he executed the foregoing instrument.



Jenn R. James
Notary Public

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this _____ day of _____, 2004, personally appeared before me,
a Notary Public, Arthur T. Hinckley, Trustee Hinckley By-Pass Trust, who acknowledged to me
that he executed the foregoing instrument.

Notary Public

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this _____ day of _____, 2004, personally appeared before me,
a Notary Public, Leonard C. Buck, Trustee of the Anne E. Buck 2000 Irrevocable Trust, who
acknowledged to me that he executed the foregoing instrument.


Notary Public

Notary Public

[illegible]

~~Notary Public~~

STATE OF NEVADA,)
) ss.
~~COUNTY OF WASHOE.~~)

 **BETTY L. RUFF**
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 94-0516-2 - Expires: October 16, 2008

Notary Public



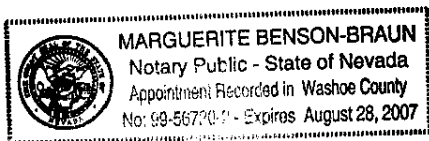
STATE OF _____,)
) ss.
COUNTY OF _____.)

On this _____ day of _____, 2004, personally appeared before me,
a Notary Public, Carol Hinckley Smith, Manager of Hinckley-Smith, L.L.C., who acknowledged
to me that he executed the foregoing instrument.

Notary Public

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this 24th day of March, 2004, personally appeared before me,
a Notary Public, Arthur T. Hinckley, Trustee Hinckley By-Pass Trust, who acknowledged to me
that he executed the foregoing instrument.



Marguerite Benson-Braun
Notary Public

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this _____ day of _____, 2004, personally appeared before me,
a Notary Public, Leonard C. Buck, Trustee of the Anne E. Buck 2000 Irrevocable Trust, who
acknowledged to me that he executed the foregoing instrument.

Notary Public



STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this 18 day of March, 2004, personally appeared before me,
a Notary Public, Randall Thornton, Trustee of the Christian E. Buck 2000 Irrevocable Trust,
who acknowledged to me that he executed the foregoing instrument.

Connie Hayduk
Notary Public





LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of Washoe, described as follows:

PARCEL 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South 1/2 of the Northwest 1/4 of Section 6, T.18N., R.20E., M.D.M., and being more particularly described as follows:

COMMENCING at the Southwest corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence N. $00^{\circ}16'56''$ E. a distance of 579.25 feet to the Northerly side of Longley Lane;

Thence along said Northerly line S. $69^{\circ}21'09''$ W., a distance of 21.41 feet to the TRUE POINT OF BEGINNING;

Thence leaving said Northerly line of Longley Lane N. $00^{\circ}16'56''$ E., a distance of 406.67 feet;

Thence S. $89^{\circ}40'18''$ E., a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said Westerly line of South Virginia Street S. $20^{\circ}39'19''$ E., a distance 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angle of $90^{\circ}00'28''$ and a radius of 60.00 feet to the Northerly side of said Longley Lane;

Thence along said Northerly line of Longley Lane S. $69^{\circ}21'19''$ W. a distance of 342.78 feet to the TRUE POINT OF BEGINNING.

Continued on next page

-1-

EXHIBIT "A"



The basis of bearing for this description is the West property line of Parcel Map No. 218, File No. 388954, on record in the Office of the Washoe County Recorder, Nevada (N 00°16'56"E)

APN: 043-011-47

Document Number 2024695 is provided pursuant to the requirements of Section 1. NRS 111.312

PARCEL 2:

An easement and right of way for ingress and egress and parking over that portion of the SE 1/2 of Section 6, T.18N., R.20E., M.D.M., described as follows:

COMMENCING at the Northwest corner of Parcel A, said point being a 5/8 inch iron rod as shown on Parcel Map No. 218, File No. 388954, on file in the office of the County Recorder of Washoe County, Nevada, said point being the TRUE POINT OF BEGINNING;

Thence S00°16'56" W, a distance of 483.03 feet to the northerly right-of-way of Huffaker Lane;

Thence along said right-of-way S69°21'09"W a distance of 322.63 feet to the easterly right-of-way of U.S. 395 Freeway;

Thence along said right-of-way N21°04'38"W a distance of 653.04 feet;

Thence leaving said right-of-way N14°55'49"E a distance of 126.66 feet;

Thence N89°52'07"E a distance of 458.81 feet;

Thence N19°19'30"W a distance of 0.78 feet;

Thence N84°51'10"E a distance of 232.89 feet to the westerly right-of-way of South Virginia Street;

Thence along said right-of-way S20°39'19"E a distance of 185.19 feet;

Continued on next page



Thence leaving said right-of-way N85°24'22"W a distance of 249.82 feet to the TRUE POINT OF BEGINNING, as granted in that certain "Mutual Parking and Access Agreement" recorded April 12, 1995 in Book 4282, Page 40, as Document No. 1885230 of Official Records.

Document No. 2024695 PROVIDED PER SECTION 1 NRS 111.312

COPY

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 10 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)
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775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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	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

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(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

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(cont 30)	Exhibit 45: <i>Lease Termination Agreement</i> dated January 25, 2006 by Land Venture Partners, LLC and Berry-Hinckley Industries regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353288		10	2214-2218
	Exhibit 46: <i>Grant, Bargain and Sale Deed</i> by and between Land Venture Partners, LLC and P.A. Morabito & Co., Limited dated February 23, 2006 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353289		10	2219-2224
	Exhibit 47: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and the Willard Plaintiffs dated January 20, 2006 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353290		10	2225-2230
	Exhibit 48: <i>Deed of Trust, Fixture Filing and Security Agreement</i> by and between the Willard Plaintiffs and South Valley National Bank dated February 21, 2006 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3353292		10	2231-2248
	Exhibit 49: Proposed <i>First Amendment to Lease Agreement</i> regarding the Virginia Property sent to the Willard Plaintiffs in October 2006		10	2249-2251

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(cont 30)	Exhibit 50: <i>Assignment of Entitlements, Contracts, Rents and Revenues</i> by and between Berry-Hinckley Industries and First National Bank of Nevada dated June 29, 2007 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3551284		10	2252-2264
	Exhibit 51: <i>UCC Financing Statement</i> regarding the Virginia Property, recorded July 5, 2007 in the Washoe County Recorder's Office as Doc. No 3551285		10	2265-2272
	Exhibit 52: Sales brochure for the Virginia Property prepared by Daniel Gluhaich for marketing purposes in 2012		10	2273-2283
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	Exhibit 6: March 3, 2016, Letter		11	2370-2458
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	Exhibit 8: April 20, 2016, Letter		11	2551-2577
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	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
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58.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	18	4054-4060
59.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	18	4061-4092
60.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	18	4093-4096
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64.	Transcript of Proceedings – Status Hearing	08/17/15	18	4217-4234
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66.	Transcript of Proceedings - Pre-Trial Conference	12/12/17	19	4304-4331
67.	Transcript of Proceedings - Oral Arguments – Plaintiffs’ Rule 60(b) Motion (condensed)	09/04/18	19	4332-4352
<u>ADDITIONAL DOCUMENTS</u>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] ¹	01/04/18	19	4353-4357

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

EXHIBIT 40

EXHIBIT 40

DOC # 3291753
10/13/2005 03:16P Fee:43.00
BK1
Requested By
FIRST AMERICAN TITLE
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 5 RPTT 38312.45

Washoe County Assessor's
Parcel Number: 043-011-47

WHEN RECORDED, MAIL TO:
Lionel Sawyer & Collins
50 West Liberty Street
Suite 1100
Reno, Nevada 89501

~~Escrow No.~~ DTT - #38,312.45

Mail Tax bills to:
P.A. Morabito & Co., Limited
688 N. Coast Highway, No. 517
Laguna Beach, CA 92651

165786

Grant, Bargain and Sale Deed

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Longley Center Partners, L.L.C., a Nevada limited liability company, ("Grantor") hereby grants, bargains, sells and conveys to P.A. Morabito & Co., Limited, a Nevada corporation, 688 N. Coast Highway, No. 517, Laguna Beach, California, 92651 ("Grantee"), all of the rights, titles and interests in and to that real property situate in the County of Washoe, State of Nevada, which is more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Real Property").

Together with all tenements, hereditaments and appurtenances thereto belonging or appertaining, and subject to all restrictions of record.

Dated this 4th day of October, 2005.

Grantor:

Longley Center Partners, L.L.C., a Nevada limited liability company

By: 

Name: Ward W. Hinckley

Title: Duly Authorized Agent

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10/13/2005
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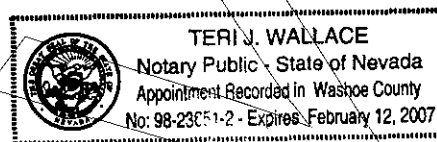
STATE OF NEVADA

COUNTY OF WASHOE

This instrument was acknowledged before me on Oct. 4, 2005 by
WARD W. HICKLEY as duly Authorized of Longley Center.
Agent Partners

Teri J. Wallace
NOTARY PUBLIC

My commission expires: 2-12-07





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16/13/2005
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Exhibit A

Property Address: 7695 South Virginia Street, Reno, Nevada (APN 043-011-47)

Parcel 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South 1/2 of the Northwest 1/4 of Section 6, Township 18N., Range 20E., M.D.M., and being more particularly described as follows:

Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of washoe County, Nevada; thence North 00°16'56" East a distance of 579.25 feet to the Northerly side of Longley Lane; Thence along said Northerly line South 69°21'09" W., a distance of 21.41 feet to the True Point of Beginning; Thence leaving said Northerly line of Longley Lane North 00°16'56" East, a distance of 406.67 feet; Thence South 89°40'18" East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada; Thence along said Westerly line of South Virginia Street South 20°39'19" East a distance 221.13 feet to the beginning of a curve to the right; Thence along said curve a distance of 94.26 feet, a central angle of 90°00'28" and a radius of 60.00 feet to the Northerly side of said Longley Lane; Thence along said Northerly line of Longley Lane South 69°21'19" West a distance of 342.78 feet to the True Point of Beginning.

The basis of bearing for this description is the West property line of Parcel Map No. 218, File No. 388954, on record in the Office of the Washoe County Recorder, Nevada (North 0016'56" East)

Parcel 2:

An easement and right of way for ingress and egress and parking over that portion of the SE 1/2 of Section 6, Township 18 North, Range 20 East., M.D.M., described as follows:

Commencing at the Northeast corner of Parcel A, said point being a 5/8 inch iron rod as shown on Parcel Map No. 218, File No. 388954, on file in the office of the County Recorder of washoe County, Nevada, said point being the True Point of Beginning; Thence South 00°16'56" West, a distance of 483.03 feet to the Northerly right of way of Huffaker Lane; Thence along said right of way South 69°21'09" West a distance of 322.63 feet to the Easterly right of way of U.S. 395 freeway; Thence along said right-of way North 21°04'38" West a distance of 653.04 feet; Thence leaving said right of way North 14°55'49" East a distance of 126.66 feet; Thence North 89°52'07" East a distance of 458.81 feet; Thence North 19°19'30" West a distance of .078 feet; Thence North 84°51'10" East a distance of 232.89 feet to the Westerly right of way of south Virginia Street; Thence along said right of way South 20°39'19" East a distance of 185.19 feet; Thence leaving said right of way North 86°24'22" a distance of 249.82 feet to the True Point of Beginning, as granted in that certain "Mutual Parking and Access Agreement" recorded April 12, 1995 in Book 4282, Page 40, as Document No. 1885230 of Official Records.



Document No. 2024695 provided per Section 1 NRS 111.312.

Note. The above metes and bounds description previously appeared in that certain Grant, Bargain, Sale Deed recorded April 1, 2004 Instrument No. 3016371.

COPY

3291753
18/13/2005
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WASHOE COUNTY RECORDER

OFFICE OF THE RECORDER
KATHRYN L. BURKE, RECORDER

1001 E. NINTH STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520-0027
PHONE (775) 328-3661
FAX (775) 325-8010

LEGIBILITY NOTICE

The Washoe County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties rights may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed it may not reproduce a legible copy.

Melia T Espejo
Signature

10/13/05
Date

Melia T Espejo
Printed Name

EXHIBIT 41

EXHIBIT 41

DOC # 3291760

10/13/2005 03:18P Fee:43.00

BK1

Requested By

FIRST AMERICAN TITLE

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 5 RPTT 120950.00

Washoe County Assessor's
Parcel Numbers: 037-012-05,
534-092-04, 043-011-47,
and 086-101-26



WHEN RECORDED, MAIL TO:
Lionel Sawyer & Collins
50 West Liberty Street
Suite 1100
Reno, Nevada 89501

Escrow No. 165786

Mail Tax bills to:

P.A. Morabito & Co., Limited
425 Maestro Drive
Reno, NV 89511

DTT - \$120,950.00

Grant, Bargain and Sale Deed

165785
165792
165787
165786

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, P.A. Morabito & Co., Limited, a Nevada corporation, ("Grantor") hereby grants, bargains, sells and conveys to Land Venture Partners LLC, a Delaware limited liability company, 50 South 6th Street, Suite 1480, Minneapolis, Minnesota, 55402 ("Grantee"), all of the rights, titles and interests in and to that real property situate in the County of Washoe, State of Nevada, which is more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Real Property").

Together with all tenements, hereditaments and appurtenances thereto belonging or appertaining, and subject to all restrictions of record.

Dated this 30 day of September, 2005.



3291760
10/13/2005
2 of 5

Grantor:

P.A. Morabito & Co., Limited, a Nevada corporation

By: _____

Name: Paul Morabito

Title: President

COPY

3291768
18/13/2005
3 of 5

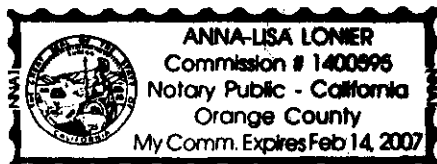
STATE OF CALIFORNIA

COUNTY OF ORANGE

This instrument was acknowledged before me on September 30, 2005 by Paul A. Morabito
as President of P.A. Morabito & Co., Limited.


NOTARY PUBLIC

My commission expires: February 14, 2007





3291760
18/13/2005
4 of 5

Exhibit A

Property Address: 350 North McCarran Blvd., Sparks, Nevada (APN 037-012-05)

Parcel A of Parcel Map 1308 for American Savings and Loan Association, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada on December 29, 1981, as File No. 774726.

Property Address: 8895 Spanish Springs (La Posada) Road, Sparks, Nevada (APN 534-092-04)

Parcel 3 of Parcel Map No. 1747 for Arthur M. Pastel and Pyramid Ranch Homes, Inc., according to the map thereof, filed in the Office of the County Recorder of Washoe County, State of Nevada, on October 11, 1984.

Property Address: 7695 South Virginia Street, Reno, Nevada (APN 043-011-47)

Parcel 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South 1/2 of the Northwest 1/4 of Section 6, Township 18N., Range 20E., M.D.M., and being more particularly described as follows: Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of washoe County, Nevada; thence North 00°16'56" East a distance of 579.25 feet to the Northerly side of Longley Lane; Thence along said Northerly line South 69°21'09" W., a distance of 21.41 feet to the True Point of Beginning; Thence leaving said Northerly line of Longley Lane North 00°16'56" East, a distance of 406.67 feet; Thence South 89°40'18" East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada; Thence along said Westerly line of South Virginia Street South 20°39'19" East a distance 221.13 feet to the beginning of a curve to the right; Thence along said curve a distance of 94.26 feet, a central angle of 90°00'28" and a radius of 60.00 feet to the Northerly side of said Longley Lane; Thence along said Northerly line of Longley Lane South 69°21'19" West a distance of 342.78 feet to the True Point of Beginning. The basis of bearing for this description is the West property line of Parcel Map No. 218, File No. 388954, on record in the Office of the Washoe County Recorder, Nevada (North 00°16'56" East).

Parcel 2:

An easement and right of way for ingress and egress and parking over that portion of the SE 1/2 of Section 6, Township 18 North, Range 20 East., M.D.M., described as follows: Commencing at the Northeast corner of Parcel A, said point being a 5/8 inch iron rod as shown on Parcel Map No. 218, File No. 388954, on file in the office of the County Recorder of Washoe County, Nevada, said point being the True Point of Beginning; Thence South 00°16'56" West, a distance of 483.03 feet to the Northerly right of way of Huffaker Lane; Thence along said right of way South 69°21'09" West a distance of 322.63 feet to the Easterly right of way of U.S. 395 freeway; Thence along said right-of way North 21°04'38" West a distance of 653.04 feet; Thence leaving said right of way North 14°55'49" East a distance of 126.66 feet; Thence North 89°52'07" East a distance of 458.81 feet; Thence North 19°19'30" West a distance of .078 feet; Thence North 84°51'10" East a distance of 232.89 feet to the Westerly right of way of south Virginia Street; Thence along said right of way South 20°39'19" East a distance of 185.19 feet;



3291760
10/13/2005
5 of 5

Thence leaving said right of way North 86°24'22" a distance of 249.82 feet to the True Point of Beginning, as granted in that certain "Mutual Parking and Access Agreement" recorded April 12, 1995 in Book 4282, Page 40, as Document No. 1885230 of Official Records.

Document No. 2024695 provided per Section 1 NRS 111.312.

Note. The above metes and bounds description previously appeared in that certain Grant, Bargain, Sale Deed recorded April 1, 2004 Instrument No. 3016371.

Property Address: 13900 Stead Boulevard, Reno, Nevada (APN 086-101-26)

Being portions of the adjusted North parcel of Parcels B, C and D of Parcel Map No. 1075 recorded March 27, 1980, under File No. 664673, Official Records of Washoe County, and more particularly described as follows:

Commencing at the Southwest corner of Parcel D as shown on said Parcel Map No. 1075; thence North 01E55'52" East, 108.32 feet to the point of beginning; thence North 01E55'52" East, 130.68 feet; thence on a curve to the right having a central angle of 90E00'00", a radius of 20.00 feet, for an arc distance of 31.42 feet; thence South 88E04'08 East, 179.68 feet; thence South 01E55'52" West, 150.68 feet; thence North 88E04'08" West, 199.68 feet to the point of beginning.

Note: The above metes and bounds legal description appeared previously in that certain document recorded November 8, 1996 in Book 4716, page 730 as Instrument No. 2046114, Washoe County, Official Records.

Together with the easements and rights conveyed under the certain Conveyance and Grant of Easement Agreement between Dermody Family Limited Partnership I and P. A. Morabito & Co., Limited, dated OCT. 10, 2005 and recorded in the land records of Washoe County, Nevada on OCT. 12, 2005, 2005 in Book N/A, page N/A as instrument no. 3291102 and also together with the easements and rights and subject to the burdens of that certain Easement between P.A. Morabito & Co., Limited and Dermody Family Limited Partnership I, dated OCT. 11, 2005 and recorded in the land records of Washoe County, Nevada on OCT. 12, 2005 in Book N/A, page N/A as instrument no. 3291101.

EXHIBIT 42

EXHIBIT 42

DOC # 3291761

10/13/2005 03:16P Fee:42.00

BK1

Requested By

FIRST AMERICAN TITLE

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 4 RPTT 0.00

Assessor's Parcel Numbers: 043-011-47



Recording requested by and
when recorded return to:

Land Venture Partners LLC
Attn: Richard J. Hauser
c/o Capital Real Estate, Inc.
50 South 6th Street, Suite 1480
Minneapolis, Minnesota 55402

MEMORANDUM OF LEASE

On September 30, 2005, the undersigned Lessor and Lessee entered into a certain Lease, wherein Lessor leased to Lessee the real property located in the County of Washoe, State of Nevada, which is described on Exhibit "A" (the "Property") attached hereto and incorporated herein by reference for a term commencing on or about the date hereof and continuing until March 31, 2026. Lessee has the option, pursuant to the Lease, to extend the initial term for four (4) additional successive periods of five (5) years each.

This Memorandum of Lease may be executed in counterparts.

This Memorandum of Lease is effective as of September 30, 2005.

[Signatures on Following Page]



LESSOR:

**Land Venture Partners LLC, a Delaware
limited liability company**

By: 

Name: James F. Vitt

Title: Vice Manager

STATE OF MINNESOTA)

) :SS

COUNTY OF HENNEPIN)

This instrument was acknowledged before me on October 6, 2005 by James F. Vitt as the Vice Manager of Land Venture Partners LLC.




NOTARY PUBLIC

(My Commission expires: 1-31-07)



3291761
10/13/2005
3 of 4

LESSEE:

**Berry-Hinckley Industries, a Nevada
corporation**

By: 

Name: Paul Morabito

Title: Chief Executive Officer

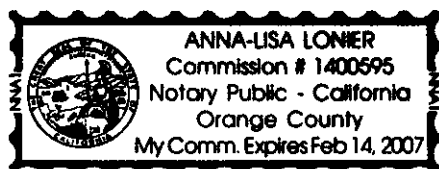
STATE OF CALIFORNIA)

) :SS

COUNTY OF ORANGE)

This instrument was acknowledged before me on October 6, 2005 by Paul Morabito as Chief Executive Officer of Berry-Hinckley Industries.


NOTARY PUBLIC



(My Commission expires: 2/14/07)



3291761
18/13/2005
4 of 4

EXHIBIT A

Property Address: 7695 South Virginia Street, Reno, Nevada (APN 043-011-47)

Parcel I:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South 1/2 of the Northwest 1/4 of Section 6, Township 18N., Range 20E., M.D.M., and being more particularly described as follows:

Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North 00E16'56" East a distance of 579.25 feet to the Northerly side of Longley Lane; Thence along said Northerly line South 69E21'09" W., a distance of 21.41 feet to the True Point of Beginning; Thence leaving said Northerly line of Longley Lane North 00E16'56" East, a distance of 406.67 feet; Thence South 89E40'18" East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeastly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada; Thence along said Westerly line of South Virginia Street South 20E39'19" East a distance 221.13 feet to the beginning of a curve to the right; Thence along said curve a distance of 94.26 feet, a central angle of 90E00'28" and a radius of 60.00 feet to the Northerly side of said Longley Lane; Thence along said Northerly line of Longley Lane South 69E21'19" West a distance of 342.78 feet to the True Point of Beginning.

The basis of bearing for this description is the West property line of Parcel Map No. 218, File No. 388954, on record in the Office of the Washoe County Recorder, Nevada (North 00E16'56" East).

Parcel 2:

An easement and right of way for ingress and egress and parking over that portion of the SE 1/2 of Section 6, Township 18 North, Range 20 East., M.D.M., described as follows;

Commencing at the Northeast corner of Parcel A, said point being a 5/8 inch iron rod as shown on Parcel Map No. 218, File No. 388954, on file in the office of the County Recorder of Washoe County, Nevada, said point being the True Point of Beginning; Thence South 00E16'56" West, a distance of 483.03 feet to the Northerly right of way of Huffaker Lane; Thence along said right of way South 69E21'09" West a distance of 322.63 feet to the Easterly right of way of U.S. 395 freeway; Thence along said right-of way North 21E04'38" West a distance of 653.04 feet; Thence leaving said right of way North 14E55'49" East a distance of 126.66 feet; Thence North 89E52'07" East a distance of 458.81 feet; Thence North 19E19'30" West a distance of .078 feet; Thence North 84E51'10" East a distance of 232.89 feet to the Westerly right of way of south Virginia Street; Thence along said right of way South 20E39'19" East a distance of 185.19 feet; Thence leaving said right of way North 86E24'22" a distance of 249.82 feet to the True Point of Beginning, as granted in that certain "Mutual Parking and Access Agreement" recorded April 12, 1995 in Book 4282, Page 40, as Document No. 1885230 of Official Records.

Document No. 2024695 provided per Section 1 NRS 111.312.

Note. The above metes and bounds description previously appeared in that certain Grant, Bargain, Sale Deed recorded April 1, 2004 Instrument No. 3016371.

GDG.15893.0012.memo lease.093005

EXHIBIT 43

EXHIBIT 43

DOC # 3291766

10/13/2005 03:18P Fee:48.00

BK1

Requested By

FIRST AMERICAN TITLE

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 10 RPTT 0.00

APN: 043-011-47

After recording, mail to:

Malkerson Gilliland Martin LLP

Attn: Kathleen M. Martin

220 South 6th Street, Suite 1900

Minneapolis, MN 55402

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE

THIS AGREEMENT, made effective as of October 3, 2005, by and between LAND VENTURE PARTNERS LLC, a Delaware limited liability company, having a mailing address of 50 South Sixth Street, Suite 1480, Minneapolis, MN 55402 ("Lessor"), and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, having a mailing address of 668 North Coast Highway, Suite 517, Laguna Beach, California 92651 ("Lessee") and M&I MARSHALL & ILSLEY BANK, a Wisconsin state banking corporation ("Lender"), having a mailing address of 651 Nicollet Mall, Minneapolis, MN 55402, and/or its participants, successors or assigns.

WITNESSETH:

A. WHEREAS, by Lease Agreement dated September 30, 2005 (hereinafter referred to as the "Lease"), Lessor leased and rented to Lessee the real property having a street address of 7693, 7695 and 7699 South Virginia Street, in Reno, Nevada, a legal description of which is attached as **Exhibit A** (the "Property"), which Lease is evidenced by a Memorandum of Lease dated September 30, 2005 and filed of record in the records of the County of Washoe, State of Nevada (the "Official Records") in Book N/A, Page N/A as Document No. 3291761; and

B. WHEREAS, Lessor has obtained a loan from Lender secured by, among other things, a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing



B. WHEREAS, Lessor has obtained a loan from Lender secured by, among other things, a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement encumbering, among other things, the Property dated September 29, 2005 and filed of record in the Official Records in Book N/A, Page N/A as Document No. 3291766 (the "Deed of Trust"), and as a condition to making such loan, it was agreed between Lessor and Lender that Lessor would obtain from Lessee certain written agreements; and

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

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

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

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

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

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



3. In no event shall Lender or any other Purchaser be:
- a. liable for any act or omission of any prior landlord;
 - b. liable for the return of any security deposit which has not been delivered to the Purchaser;
 - c. subject to any offsets or defenses which the Lessee might have against any prior landlord;
 - d. bound by any payment of Base Annual Rental, Base Monthly Rental or Additional Rental which the Lessee might have paid to any prior landlord for more than the current month;
 - e. bound by any provisions of the Lease regarding commencement or completion of construction of the Property; or
 - f. bound by any warranties of construction provided by Lessor under the Lease.
4. Lessee agrees to give prompt written notice to Lender of any default by the Lessor under the Lease which would entitle Lessee to cancel the Lease or abate the Rental payable thereunder, and agrees that notwithstanding any provision of Lease, no notice of cancellation thereof shall be effective unless Lender has received the notice aforesaid and has failed within 30 days of the date of receipt thereof to cure, or if the default cannot be cured within 30 days, has failed to commence and to pursue diligently the cure of the Lessor's default which gave rise to such right of cancellation or abatement. Lessee further agrees to give such notices to any successor-in-interest of Lender, provided that such successor-in-interest shall have given written notice to Lessee of its acquisition of Lender's interest in the Deed of Trust and designated the address to which such notices are to be sent.
5. Lessee acknowledges that, under the terms of the Deed of Trust, Lessor has assigned to Lender the rentals under the Lease as additional security for said loan, and Lessee hereby expressly consents to and recognizes such Deed of Trust, and agrees to pay the Rental to Lender or its nominee whenever Lender claims or requests the Rental under the terms of said Assignment.
6. Lessee agrees that it will not, without the prior written consent of Lender, do any of the following, and any such purported action without such consent shall be void as against Lender:
- a. make a prepayment in excess of one month of Base Monthly Rental thereunder;
 - b. subordinate or permit subordination of the Lease to any lien subordinate to the Deed of Trust; or

3291766
10/13/2005
4 of 10

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

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

a. Lessee is the tenant under the Lease for the Property. The Base Monthly Rental presently is \$120,000.00 per month.

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

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

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

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

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

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

9. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and,



without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or otherwise.

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

11. This agreement may be signed in counterparts.

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

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

[Remainder of page intentionally left blank; signatures follow]

COPIES




3291766
10/13/2005
6 of 10

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

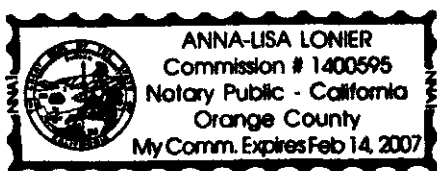
LESSEE:

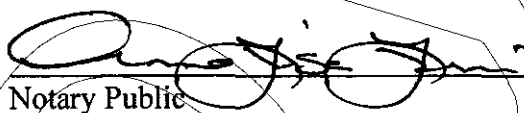
BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: 
Its: CARRAWAY CORP.
PAUL MORABITO

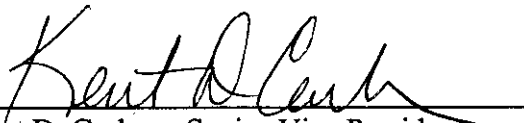
STATE OF California)
COUNTY OF Orange) ss.

The foregoing instrument was acknowledged before me on Oct. 3, 2005,
by Paul Morabito, the Chairman
of Berry-Hinckley Industries, a Nevada corporation, for and on behalf of the corporation.




Notary Public

**LENDER:****M&I MARSHALL & ILSLEY BANK**

By: 
 Kent D. Carlson, Senior Vice President

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on September 29, 2005, by Kent D. Carlson, the Senior Vice President of M&I Marshall & Ilsley Bank, a Wisconsin state banking corporation, for and on behalf of the corporation.


 Notary Public






3291766
10/13/2005
8 of 18

LANDLORD:

LAND VENTURE PARTNERS LLC

By: 
James F. Vitt, Vice Manager

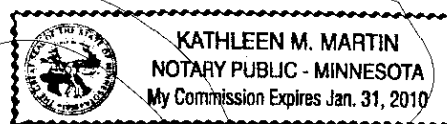
STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on September 29, 2005, by James F. Vitt, the Vice Manager of Land Venture Partners LLC, a Delaware limited liability company, for and on behalf of the limited liability company.


Notary Public

This instrument was prepared by:

Malkerson GillilandMartin LLP
220 South Sixth Street, Suite 1900
Minneapolis, MN 55402
612-344-1111



3291766
10/13/2005
9 of 10**EXHIBIT A TO SNDA****Parcel 1:**

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South 1/2 of the Northwest 1/4 of Section 6, Township 18N., Range 20E., M.D.M., and being more particularly described as follows:

Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North $00^{\circ}16'56''$ East a distance of 579.25 feet to the Northerly side of Longley Lane; thence along said Northerly line South $69^{\circ}21'09''$ W., a distance of 21.41 feet to the True Point of Beginning; thence leaving said Northerly line of Longley Lane North $00^{\circ}16'56''$ East, a distance of 406.67 feet; thence South $89^{\circ}40'18''$ East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada; thence along said Westerly line of South Virginia Street South $20^{\circ}39'19''$ East a distance 221.13 feet to the beginning of a curve to the right; thence along said curve a distance of 94.26 feet, a central angle of $90^{\circ}00'28''$ and a radius of 60.00 feet to the Northerly side of said Longley Lane; thence along said Northerly line of Longley Lane South $69^{\circ}21'19''$ West a distance of 342.78 feet to the True Point of Beginning.

The basis of bearing for this description is the West property line of Parcel Map No. 218, File No. 388954, on record in the Office of the Washoe County Recorder, Nevada (North $00^{\circ}16'56''$ East)

APN: 043-011-47

Parcel 2:

An easement and right of way for ingress and egress and parking over that portion of the SE 1/2 of Section 6, Township 18 North, Range 20 East., M.D.M., described as follows;

Commencing at the Northeast corner of Parcel A, said point being a 5/8 inch iron rod as shown on Parcel Map No. 218, File No. 388954, on file in the office of the County Recorder of washoe County, Nevada, said point being the True Point of Beginning; thence South $00^{\circ}16'56''$ West, a distance of 483.03 feet to the Northerly right of way of Huffaker Lane; thence along said right of way South $69^{\circ}21'09''$ West a distance of 322.63 feet to the Easterly right of way of U.S. 395 freeway; thence along said right-of way North $21^{\circ}04'38''$ West a distance of 653.04 feet; thence leaving said right of way North $14^{\circ}55'49''$ East a distance of 126.66 feet; thence North $89^{\circ}52'07''$ East a distance of 458.81 feet; thence North $19^{\circ}19'30''$ West a distance of .078 feet; thence North $84^{\circ}51'10''$ East a distance of 232.89 feet to the Westerly right of way of south Virginia Street; thence along said right of way South $20^{\circ}39'19''$ East a distance of 185.19 feet; thence leaving said right of way north $86^{\circ}24'22''$ a distance of 249.82 feet to the True Point of Beginning, as



3291766
18/13/2005
18 of 18

granted in that certain "Mutual Parking and Access Agreement" recorded April 12, 1995 in Book 4282, Page 40, as Document No. 1885230 of Official Records.

Note: the above metes and bounds legal description previously appeared in that certain Grant, Bargain, Sale Deed recorded April 1, 2004 Instrument No. 3016371.

COPY

EXHIBIT 44

EXHIBIT 44

DOC # 3323645

12/14/2005 03:41P Fee:16.00

BK1

Requested By

MCDONALD CARANO WILSON LLP

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 3 RPTT 0.00

APN 043-011-47**When recorded mail to:****A. J. Hicks****P.O. Box 2670****Reno, NV 89505**

MEMORANDUM OF LEASE
WITH OPTIONS TO EXTEND

On October 21, 1997, Longley Center, predecessor to Berry-Hinckley Industries, Inc., as "Licensor" or Lessor, entered into a Sublease Agreement with Winner's Gaming Partnership, predecessor to Winner's Gaming, Inc., as "Licensee" and subsequently as Lessee, relating to premises then commonly known as 7695 South Virginia Street, Reno, Washoe County, Nevada, being Assessor's Parcel No. 043-011-47, and more particularly described as:

Parcel 1

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 18 North, Range 20 East, M.D.M., and being more particularly described as follows:

Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North $00^{\circ}16'56''$ East a distance of 579.25 feet to the Northerly side of Longley Lane; thence along said Northerly line South $69^{\circ}21'09''$ West, a distance of 21.41 feet to the True Point of Beginning; thence leaving said Northerly line of Longley Lane North $00^{\circ}16'56''$ East, a distance of 406.67 feet; thence South $89^{\circ}40'18''$ East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada; thence along



said Westerly line of South Virginia Street South 20°39'19" East a distance 221.31 feet to the beginning of a curve to the right; thence along said curve a distance of 94.26 feet, a central angle of 90°00'28" and a radius of 60.00 feet to the Northerly side of said Longley Lane; thence along said Northerly line of Longley Lane South 69°21'19" West a distance of 342.78 feet to the True Point of Beginning.

The basis of bearing for this description is the West property line of Parcel Map No. 218, File No. 388954, on record in the Office of the Washoe County Recorder, Nevada (North 00°16'56" East).

Parcel 2

An easement and right of way for ingress and egress and parking over that portion of the SE ½ of Section 6, Township 18 North, Range 20 East, M.D.M., described as follows:

Commencing at the Northeast corner of Parcel A, said point being a 5/8 inch iron rod as shown on Parcel Map No. 218, File No. 388954, on file in the Office of the County Recorder of Washoe County, Nevada, said point being the True Point of Beginning; thence South 00°16'56" West, a distance of 483.03 feet to the Northerly right of way of Huffaker Lane; thence along said right of way South 69°21'09" West a distance of 322.63 feet to the Easterly right of way of U.S. 395 freeway; thence along said right of way North 21°04'38" West a distance of 653.04 feet; thence leaving said right of way North 14°55'49" East a distance of 126.66 feet; thence North 89°52'07" East a distance of 458.81 feet; thence North 19°19'30" West a distance of .078 feet; thence North 84°51'10" East a distance of 232.89 feet to the Westerly right of way of South Virginia Street; thence along said right of way South 20°39'19" East a distance of 185.19 feet; thence leaving said right of way North 86°24'22" a distance of 249.82 feet to the True Point of Beginning, as granted in that certain "Mutual Parking and Access Agreement" recorded April 12, 1995, in Book 4282, Page 40, as Document No. 1885230 of Official Records.

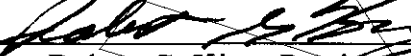


NOTE: The above metes and bounds legal description previously appeared in that certain Grant, Bargain Sale Deed recorded April 1, 2004, Instrument No. 3016371.

Further, by subsequent amendments to said Lease, the Lessor granted to Lessee and its successors and assigns options to extend the Lease through April 30, 2036.


Dated this 1st day of December, 2005.

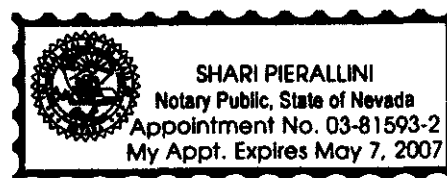
Lessee
Winner's Gaming, Inc.

By 
Robert G. King, President
425 Maestro Drive, Suite 100
Reno, NV 89511

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE.)

This instrument was acknowledged before me on December 1, 2005,
by Robert G. King, President of Winner's Gaming, Inc.


Notary Public



166239.18

EXHIBIT 45

EXHIBIT 45

DOC # 3353288

02/24/2006 04:10P Fee:42.00

BK1

Requested By

FIRST AMERICAN TITLE

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 4 RPTT 0.00



RECORDING REQUESTED BY:

First American Title

WHEN RECORDED RETURN TO:

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

APN: 043-011-47

ORDER #: 203502 RB

LEASE TERMINATION AGREEMENT

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

This cover page must be typed or printed.



3353288
62/24/2006
2 of 4

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT (this "Agreement") is made as of January __, 2006 (the "Effective Date") between **LAND VENTURE PARTNERS LLC**, a Delaware limited liability company ("Landlord") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation having its principal office at 425 Maestro Drive, Reno, Nevada 89511 ("Tenant").

WHEREAS, Landlord and Tenant are parties to a certain Lease Agreement made as of September 30, 2005 (the "Lease"), ^{**}respecting certain premises located at 7693, 7695 and 7699 S. Virginia St., Reno, Nevada , (APN 043-011-47) (the "Property"), as more particularly described on Exhibit A attached hereto; and

^{**}and recorded October 13, 2005 as Instrument No. 3291761, Washoe County, Nevada

WHEREAS, Landlord and Tenant desire to terminate the Lease.

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby terminate the Lease in its entirety, effective as of the Effective Date. Landlord and Tenant each hereby reserves all rights, claims and interests to which either of them might be entitled as to any and all claims, liabilities or obligations arising or accruing prior to the Effective Date. This Agreement may be executed in counterparts.

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

LANDLORD:

LAND VENTURE PARTNERS LLC

By: 

Name: James F. Vitt

Title: Vice Manager

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me on January 25, 2006 by James F. Vitt, the Vice Manager of Land Venture Partners LLC, a Delaware limited liability company, on behalf of the company.




NOTARY PUBLIC

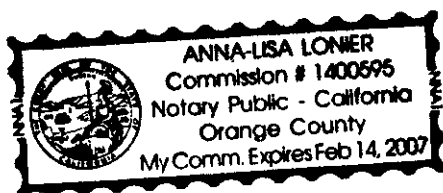
My commission expires: 1-31-07

Willard/BHI
7695 S. Virginia, Reno, NV
APN 043-011-47
000160/00859 GBD0CS 508342v1

3353288
62/24/2006
3 of 4

TENANT:

BERRY-HINCKLEY INDUSTRIES

By: Name: Paul MurabitoTitle: CEOSTATE OF California
COUNTY OF OrangeThis instrument was acknowledged before me on Feb 23, 2006 byPaul Murabito
NOTARY PUBLICMy commission expires: 2/14/07

3353288
02/24/2006
4 of 4

EXHIBIT A

Property Address: 7695 and 7699 S. Virginia, Reno, Nevada

Parcel 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 18 N., Range 20 E., M.D.M., and being more particularly described as follows:

Commencing at the south corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North $00^{\circ}16'56''$ East a distance of 579.25 feet to the northerly side of Longley Lane;

Thence along said northerly line South $69^{\circ}21'09''$ W., a distance of 21.41 feet to the True Point of Beginning;

Thence leaving said northerly line of Longley Lane North $00^{\circ}16'56''$ East, a distance of 406.67 feet;

Thence South $89^{\circ}40'18''$ East, a distance of 275.76 feet to the westerly side of South Virginia Street and the northeasterly corner of the parcel of land as shown on record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said westerly line of South Virginia Street South $20^{\circ}39'19''$ East a distance of 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angle of $90^{\circ}00'28''$ and a radius of 60.00 feet to the northerly side of Longley Lane;

Thence along said northerly line of Longley Lane South $69^{\circ}21'19''$ West a distance of 342.78 feet to the True Point of Beginning.

Parcel 2:

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

EXHIBIT 46

EXHIBIT 46

DOC # 3353289

02/24/2006 04:10P Fee:43.00

BK1

Requested By

FIRST AMERICAN TITLE

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 5 RPTT 70394.95



Washoe County Assessor's

Parcel Number: 043-011-47

Escrow No. _____

Mail Tax bills to:

Berry-Hinckley Industries

425 Maestro Drive

Reno, Nevada 89502

WHEN RECORDED, MAIL TO:

Sujata Yalamanchili, Esq.

Hodgson Russ LLP

One M&T Plaza, Suite 2000

Buffalo, New York 14203

Grant, Bargain and Sale Deed

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Land Venture Partners LLC, a Delaware limited liability company ("Grantor") hereby grants, bargains, sells and conveys to P.A. Morabito & Co., Limited, a Nevada corporation ("Grantee") all of the rights, titles and interests in and to that real property situate in the County of Washoe, State of Nevada, which is more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Real Property"), together with all tenements, hereditaments and appurtenances thereto belonging or appertaining, and subject to all restrictions, covenants, easements and leases of record.

3353289
02/24/2006
2 of 5

By accepting this Deed, Grantee acknowledges, agrees and confirms, for itself and on behalf of all of its successors and assigns, that (1) Grantor has not accepted this Deed nor acquired the Real Property based upon any representation, warranty, statement or expression of opinion by Grantor or any person or entity acting or allegedly acting for or on behalf of Grantor with respect to Grantor, the Real Property and all improvements thereon and thereto (collectively, the "Property") or the "Condition of the Property" (as hereinafter defined); (2) the Property has been sold and conveyed and accepted by Grantee AS IS, WHERE IS, WITH ALL DEFECTS AND WITHOUT ANY WRITTEN OR ORAL REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW; (3) Grantor has not made and does not make any representation, warranty or covenant, express, implied or statutory, of any kind whatsoever with respect to the Property, including, without limitation, any representation, warranty or covenant as to title, parties or tenants in possession of the Property, survey conditions, use of the Property for Grantee's intended use (included as a facility offering gaming), the condition of the Property, past or present use, present or future zoning, the presence or absence of hazardous or controlled substances, the availability of utilities, access to public road, habitability, merchantability, fitness or suitability for any purpose, compliance of the Property and use of the Property with any federal, state, municipal or local statutes, laws, regulations or ordinances (including, without limitation, those pertaining to construction, building and health codes, gaming, land use, zoning, hazardous substances or toxic wastes or substances, pollutants, contaminants, or other environmental matters), or any other matters with respect to the Property (collectively, the "Condition of the Property"), all of which



3353289
02/24/2006
3 of 5

are hereby expressly disclaimed by Grantor; (4) Grantee has been given full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of Grantee's choosing, including, without limitation, the Condition of the Property and (5) Grantee, for itself and its successor and assigns, releases Grantor from all claims, causes of action, demands and liabilities of any nature regarding the Condition of the Property.

Dated this _____ day of January, 2006.

Grantor:

Land Venture Partners LLC,
a Delaware limited liability company

By:

Name: James F. Vitt
Title: Vice Manager

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me on January 25, 2006 by James F. Vitt, the Vice Manager of Land Venture Partners LLC, a Delaware limited liability company, on behalf of the company.



Charlotte Maria Schu
NOTARY PUBLIC
My commission expires: 1-31-07



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02/24/2006
4 of 5

ACCEPTANCE

Grantee:

P.A. Morabito & Co., Limited

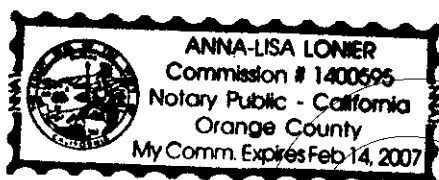
By: 

Name: Paul Morabito
Title: CEO
Paul Morabito

STATE OF California
COUNTY OF Orange

This instrument was acknowledged before me on ~~January~~ Feb 23, 2006 by

Paul Morabito the CEO of P.A. Morabito & Co.
NV co., on behalf of the company




NOTARY PUBLIC

My commission expires: 2/14/07



3353289
02/24/2006
5 of 5

EXHIBIT A

Property Address: 7695 and 7699 S. Virginia, Reno, Nevada

Parcel 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 18 N., Range 20 E., M.D.M., and being more particularly described as follows:

Commencing at the south corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North $00^{\circ}16'56''$ East a distance of 579.25 feet to the northerly side of Longley Lane;

Thence along said northerly line South $69^{\circ}21'09''$ W., a distance of 21.41 feet to the True Point of Beginning;

Thence leaving said northerly line of Longley Lane North $00^{\circ}16'56''$ East, a distance of 406.67 feet;

Thence South $89^{\circ}40'18''$ East, a distance of 275.76 feet to the westerly side of South Virginia Street and the northeasterly corner of the parcel of land as shown on record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said westerly line of South Virginia Street South $20^{\circ}39'19''$ East a distance of 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angle of $90^{\circ}00'28''$ and a radius of 60.00 feet to the northerly side of Longley Lane;

Thence along said northerly line of Longley Lane South $69^{\circ}21'19''$ West a distance of 342.78 feet to the True Point of Beginning.

Parcel 2:

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

EXHIBIT 47

EXHIBIT 47

DOC # 3353290
02/24/2006 04:10P Fee:43.00
BK1
Requested By
FIRST AMERICAN TITLE
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 5 RPTT 72775.00



APN # 043-011-47

Recording Requested by:

Name First American Title Company

5310 Kietzke Ln. #100

Address Reno, NV 89511

(for Recorder's use only)

City/State/Zip _____

Grant, Bargain and Sale Deed
(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2.
(Additional recording fee applies)

This cover page must be typed or printed.

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02/24/2006
2 of 5

Washoe County Assessor's

Parcel Number: 043-011-47

Escrow No. NCS-203502-SAL(TH)

Mail Tax bills to:

Berry-Hinckley Industries

425 Maestro Drive

Reno, Nevada 89502

WHEN RECORDED, MAIL TO:

Sujata Yalamanchili, Esq.

Hodgson Russ LLP

One M&T Plaza, Suite 2000

Buffalo, New York 14203

Grant, Bargain and Sale Deed

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged P.A. MORABITO & CO., LIMITED, a Nevada corporation ("Grantor") hereby grants, bargains, sells and conveys to Overland Development Corporation, Inc. a California corporation as to an undivided 41% interest and Larry J. Willard, Trustee of the Larry James Willard Trust dated November 14, 1987 as to an undivided 59% interest as tenants in common ("Grantee") all of the rights, titles and interests in and to that real property situate in the County of Washoe, State of Nevada, which is more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Real Property").

Together with all tenements, hereditaments and appurtenances thereto belonging or appertaining, and subject to all restrictions of record.



3353290
02/24/2006
3 of 5

Dated this 20th day of January, 2006.

Grantor:

P.A. MORABITO & CO., LIMITED

By: _____

Name: TREVOR LLOYD

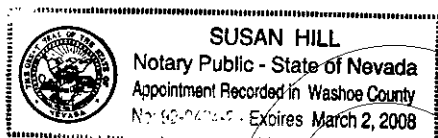
Title: SECRETARY

STATE OF NEVADA

COUNTY OF WASHOE

This instrument was acknowledged before me on January 20th, 2006 by

TREVOR LLOYD.



Susan Hill

NOTARY PUBLIC

My commission expires: Mar 2, 2008

3353290
02/24/2006
4 of 5

EXHIBIT A

Property Address: 7695 and 7699 S. Virginia, Reno, Nevada

Parcel 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 18 N., Range 20 E., M.D.M., and being more particularly described as follows:

Commencing at the south corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North $00^{\circ}16'56''$ East a distance of 579.25 feet to the northerly side of Longley Lane;

Thence along said northerly line South $69^{\circ}21'09''$ W., a distance of 21.41 feet to the True Point of Beginning;

Thence leaving said northerly line of Longley Lane North $00^{\circ}16'56''$ East, a distance of 406.67 feet;

Thence South $89^{\circ}40'18''$ East, a distance of 275.76 feet to the westerly side of South Virginia Street and the northeasterly corner of the parcel of land as shown on record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said westerly line of South Virginia Street South $20^{\circ}39'19''$ East a distance of 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angle of $90^{\circ}00'28''$ and a radius of 60.00 feet to the northerly side of Longley Lane;

Thence along said northerly line of Longley Lane South $69^{\circ}21'19''$ West a distance of 342.78 feet to the True Point of Beginning.

Parcel 2:

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

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02/24/2006
5 of 5

WASHOE COUNTY RECORDER

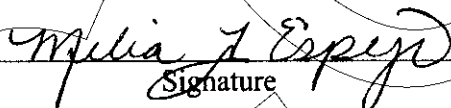
OFFICE OF THE RECORDER
KATHRYN L. BURKE, RECORDER

1001 E. NINTH STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520-0027
PHONE (775) 328-3661
FAX (775) 325-8010

LEGIBILITY NOTICE

The Washoe County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties rights may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed it may not reproduce a legible copy.


Signature

Melia T Espejo – Recording Clerk
First American Title Co. of Nevada


Date

EXHIBIT 48

EXHIBIT 48

DOC # 3353292

02/24/2006 04:10P Fee:55.00

BK1

Requested By

FIRST AMERICAN TITLE

Washoe County Recorder

Kathryn L. Burke - Recorder

Pg 1 of 17 RPT 0.00

**203502 RB**

ASSESSOR'S PARCEL NUMBER:043-011-47

UPON RECORDATION RETURN TO:

Pacific Capital Bank, N.A.

c/o Loan Services, PO Box 60654

Santa Barbara, California 93160-0654

MAIL TAX STATEMENTS TO:

Larry Willard

133 Glenn Ridge Avenue

Los Gatos, CA 95030

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

This DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this "Deed of Trust") entered into as of **February 21, 2006**, among **Overland Development Corporation**, a California corporation as an undivided 41% interest and **Larry J. Willard, Trustee of the Larry James Willard Trust dated November 14, 1987** as an undivided 59% interest as tenants in common (collectively and jointly and severally, the "Trustor"), **First American Title Company**, with an address of **5 First American Way, Santa Ana, CA 92707** (the "Trustee") for the use and benefit of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es): **7695 and 7699 S. Virginia Street, Reno, Nevada 89512** (the "Address(es)").

This document serves as a fixture filing under Nevada Revised Statutes Section 104.9502.

Trustor Larry James Willard Trust dated November 14, 1987's organizational identification number is 553-54-0904.

Trustor Overland Development Corporation's organizational identification number is 94-1749554.

3353292
02/24/2006
2 of 17

1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain **One Year Adjustable Term Note**, dated **February 21, 2006**, by **Larry James Willard Trust dated November 14, 1987 and Overland Development Corporation** in favor of the Beneficiary in the original principal amount of **\$13,250,000.00** (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

This Deed of Trust shall secure the principal amount of Obligations of up to \$13,250,000.00. The maximum amount of principal secured hereby may be increased or decreased by amendment to this Deed of Trust. This Deed of Trust shall nevertheless secure payment and performance of all Obligations including, without limitation, any other liabilities and future advances, direct or indirect, absolute or contingent, now existing or hereafter arising from the Trustor to the Beneficiary. Future advances hereunder are governed by Nevada Revised Statutes Sections 106.300 to 106.400, inclusive.

1.2 Security Interest in Property. As continuing security for the Obligations the Trustor hereby pledges, assigns and grants to the Beneficiary, and its successors and assigns, a security interest in any of the Property (as hereinafter defined) constituting personal property or fixtures. This Deed of Trust is and shall be deemed to be a security agreement, fixture filing and financing statement pursuant to the terms of the Uniform Commercial Code of Nevada (the "Uniform Commercial Code") as to any and all personal property and fixtures and as to all such property the Beneficiary shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Deed of Trust constitutes a financing statement filed as a fixture filing under Section 104.9502(c) of the Uniform Commercial Code covering any Property which now is or later may become a fixture.

1.3 Collateral Assignment of Leases and Rents. The Trustor hereby irrevocably and unconditionally assigns to the Beneficiary, and its successors and assigns, as collateral security for the Obligations all of the Trustor's rights and benefits under any and all Leases (as hereinafter defined) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This collateral assignment shall be absolute and effective immediately, but the Trustor shall have a license, revocable by the Beneficiary, to continue to collect rents owing under the Leases until an Event of Default (as hereinafter defined) occurs and the Beneficiary exercises its rights and remedies to collect such rents as set forth herein.

1.4 Conditions to Grant. To have and to hold the above granted Property unto and to the use and benefit of the Trustee, IN TRUST, for the benefit and security of the Beneficiary, and to the Beneficiary, as the case may be, and their successors and assigns, forever; provided, however, the conveyances, grants and assignments contained in this Deed of Trust are upon the express condition that, if Trustor shall pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Deed of Trust, shall pay and perform all other Obligations as set forth in this Deed of Trust and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Deed of Trust shall cease, terminate and be void.

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that

term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgments, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

1.6 Obligations. The term "Obligation(s)," as used in this Deed of Trust, shall mean without limitation all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, now or hereafter owing by the Trustor to the Beneficiary at any time, of each and every kind, nature and description, whether arising under this Deed of Trust or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Trustor to the Beneficiary, or are due indirectly by the Trustor to the Beneficiary as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Beneficiary, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment of all amounts outstanding when due pursuant to the terms of any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Trustor or due from the Trustor to the Beneficiary from time to time and all advances, costs and expenses referred to in this Deed of Trust, including without limitation the costs and expenses (including reasonable attorney's fees) of enforcement of the Beneficiary's rights hereunder or pursuant to any document or instrument executed in connection herewith.

1.7 Cross-Collateral and Future Advances. It is the express intention of the Trustor that this Deed of Trust secure payment and performance of all of the Obligations, whether now existing or hereinafter incurred by reason of future advances by the Beneficiary or otherwise, and regardless of whether such Obligations are or were contemplated by the parties at the time of the granting of this Deed of Trust. Notice of the continuing grant of this Deed of Trust shall not be required to be stated on the face of any document evidencing any of the Obligations, nor shall such documents be required to otherwise specify that they are secured hereby.

2. REPRESENTATIONS, WARRANTIES, COVENANTS

2.1 Representations and Warranties. The Trustor represents and warrants that:

- (a) This Deed of Trust has been duly executed and delivered by the Trustor and is the legal, valid and binding obligation of the Trustor enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;



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- (b) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Bank in connection with this Deed of Trust (the "Permitted Encumbrances");
- (c) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;
- (d) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and
- (e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

2.2 Recording; Further Assurances. The Trustor covenants that it shall, at its sole cost and expense and upon the request of the Beneficiary, cause this Deed of Trust, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Beneficiary in the Property and the rights of the Beneficiary under this Deed of Trust. Trustor will from time to time execute and deliver to the Beneficiary such documents, and take or cause to be taken, all such other further action, as the Beneficiary may request in order to effect and confirm or vest more securely in the Beneficiary all rights contemplated by this Deed of Trust (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Beneficiary the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Trustor authorizes the Beneficiary to file financing statements, continuation statements or amendments without Trustor's signature appearing thereon, and any such financing statements, continuation statements or amendments may be signed or authenticated by the Beneficiary on behalf of Trustor, if necessary, and may be filed at any time in any jurisdiction. The Beneficiary may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Property as "all assets of Trustor" or words of similar effect and which contain any other information required by Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor; Trustor also authorizes the Beneficiary to file financing statements describing any agricultural liens or other statutory liens held by the Beneficiary. Trustor agrees to furnish any such information to the Beneficiary promptly upon request. In addition, Trustor shall at any time and from time to time, take such steps as the Beneficiary may reasonably request for the Beneficiary (i) to obtain an acknowledgement, in form and substance satisfactory to the Beneficiary, of any bailee having possession of any of the Property that the bailee holds such Property for the Beneficiary, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such terms are defined in Article 9 of the Uniform Commercial Code relating to what constitutes "control" for such items of Property), with any agreements establishing control to be in form and substance satisfactory to the Beneficiary, and (iii) otherwise to insure the continued perfection and priority of the Beneficiary's security interest in any of the Property and the preservation of its rights therein. Trustor hereby constitutes the Beneficiary its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Deed of Trust terminates in accordance with its terms, all Obligations are paid in full and the Property is released.

2.3 Restrictions on the Trustor. The Trustor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Beneficiary in each instance:



- (a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust;
- (b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or
- (c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

2.4 Operation of Property. The Trustor covenants and agrees as follows:

- (a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;
- (b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability



- from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;
- (c) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;
 - (d) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and
 - (e) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

2.5 Nevada Covenants. Where not otherwise inconsistent with the other provisions of this Deed of Trust, Covenants Nos. 1; 2 (full replacement value); 3; 4 (highest rate permitted under the Note); 5; 6; 7 (a reasonable percentage); 8; and 9 of Nevada Revised Statutes Section 107.030, are hereby adopted and made a part of this Deed of Trust.

2.6 Payments. The Trustor covenants to pay when due: all Federal, state, municipal, real property and other taxes, betterment and improvement assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges on the Property, this Deed of Trust or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or on any interest therein. If and when requested by the Beneficiary, the Trustor shall deposit from time to time with the Beneficiary sums determined by the Beneficiary to be sufficient to pay when due the amounts referred to in this Section. The Trustor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Beneficiary's request, provides the Beneficiary with adequate cash security, in the Beneficiary's reasonable judgement, against the enforcement thereof. The Trustor shall furnish to the Beneficiary the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Trustor shall also furnish to the Beneficiary evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Beneficiary. If Trustor shall fail to pay such sums, the Beneficiary may, but shall not be obligated to, advance such sums. Any sums so advanced by the Beneficiary shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Deed of Trust.

2.7 Notices; Notice of Default. The Trustor will deliver to the Beneficiary, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Trustor is in default in the performance or observance of any of the terms hereof or that the Trustor or any tenant is in default of any terms of the Leases. The Trustor further agrees to deliver to the Beneficiary written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.8 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a



"Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Trustor shall promptly give written notice to the Beneficiary, describing the nature and extent thereof. The Beneficiary may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Trustor shall promptly give to the Beneficiary copies of all notices, pleadings, determinations and other papers relating thereto. The Trustor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Trustor shall not settle any such claim without the Beneficiary's prior written consent. The Trustor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Beneficiary and promptly pay the same to the Beneficiary. The Trustor authorizes any award or settlement due in connection with a Taking to be paid directly to the Beneficiary in amounts not exceeding the Obligations. The Beneficiary may apply such amounts to the Obligations in such order as the Beneficiary may determine.

2.9 Insurance Proceeds. The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Beneficiary and, at the option of the Beneficiary, be applied to the Obligations in such order as the Beneficiary may determine; provided, however, that if the Beneficiary shall require repair of the Property, the Beneficiary may release all or any portion of such proceeds to the Trustor for such purpose. Any insurance proceeds paid to the Trustor shall be held in trust for the Beneficiary and promptly paid to it.

3. CERTAIN RIGHTS OF THE BENEFICIARY

3.1 Legal Proceedings. The Beneficiary shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Beneficiary's reasonable judgement, might affect the Property or any of the rights created or secured by this Deed of Trust. The Beneficiary shall have such right whether or not there shall have occurred an Event of Default hereunder.

3.2 Appraisals/Assessments. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Beneficiary deems necessary or as may be required by applicable law, or its prevailing credit or underwriting policies.

3.3 Financial Statements. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to require delivery of financial statements in form and substance acceptable to the Beneficiary from the Trustor or any guarantor of any of the Obligations and the Trustor hereby agrees to deliver such financial statements and/or cause any such guarantor to so deliver any such financial statement when required by the Beneficiary.

3.4 Substitution of Trustee. The Beneficiary may from time to time, without notice to the Trustor or Trustee and with or without cause and with or without the resignation of Trustee, substitute a successor or successors to the Trustee named herein or acting hereunder. Upon such appointment, the successor trustee shall be vested with all title, powers and duties conferred upon the Trustee named herein or acting hereunder. Each such appointment and substitution shall be made by a writing executed by Beneficiary and when duly recorded in the appropriate office shall be conclusive proof of proper appointment of such successor Trustee. The procedure herein provided for substitution of the Trustee shall be conclusive of all other provisions for substitution, statutory or otherwise.

3.5 Leases and Rent Roll. The Trustor shall deliver to the Beneficiary during each calendar year and at such other times as the Beneficiary shall request a rent roll for the Property, in form acceptable to the Beneficiary, listing all tenants and occupants and describing all of the Leases.

4. DEFAULTS AND REMEDIES

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the following events:



- (a) default of any liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;
- (b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents continuing for 30 days;
- (c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;
- (d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary continuing for 30 days;
- (e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party continuing for 30 days;
- (f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false in any material respect when made;
- (g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;
- (h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;
- (i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;
- (j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;
- (k) a judgement or judgements for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;
- (l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;
- (m) the termination or revocation of any guaranty of the Obligations; or



- (n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Trustor or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Beneficiary, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Trustor or any guarantor of the Obligations to the Beneficiary has been or may be impaired.

4.2 Remedies. On the occurrence of any Event of Default the Beneficiary may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

- (a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;
- (b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;
- (c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;
- (d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. In the event this Deed of Trust shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Beneficiary shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Beneficiary may in its discretion subordinate this Deed of Trust to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;
- (e) Cause one or more environmental assessments to be taken, arrange for the cleanup of any



Hazardous Substances or otherwise cure the Trustor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Trustor shall provide the Beneficiary or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Trustor from any responsibility therefor or given the Beneficiary "control" over the Property or cause the Beneficiary to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and

- (f) Take such other actions or proceedings as the Beneficiary deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Trustor hereby waives any right to object to such appointment) and exercise of any of the Beneficiary's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.

In addition, the Trustee and the Beneficiary shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof.

The Trustor agrees and acknowledges that the acceptance by the Trustee or the Beneficiary of any payments from either the Trustor or any guarantor after the occurrence of any Event of Default, the exercise by the Trustee or the Beneficiary of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Trustee's or the Beneficiary's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Trustee or the Beneficiary. The Trustor agrees and acknowledges that the Trustee or the Beneficiary, by making payments or incurring costs described herein, shall be subrogated to any right of the Trustor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Trustor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

4.3 Advances. If the Trustor fails to pay or perform any of its obligations respecting the Property, the Beneficiary may in its sole discretion do so without waiving or releasing Trustor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Beneficiary hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and shall be due and payable to the Beneficiary, on demand, together with interest thereon to the extent permitted by applicable law, at the highest rate permitted under any of the notes evidencing the Obligations.

4.4 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Beneficiary might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Trustor further agrees that the Trustee and the Beneficiary may exercise any or all of its rights or remedies set forth herein without having to pay the Trustor any sums for use or occupancy of the Property.

4.5 Trustor's Waiver of Certain Rights. To the extent permitted by applicable law, the Trustor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

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4.6 Transfer of Title. Upon the completion of any sale or sales of any Property, Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed of conveyance or assignment and transfer, lawfully conveying, assigning, and transferring the Property sold, but without any covenant or warranty, express or implied.

4.7 Effect of Sale. Any sale or sales made by virtue of or under this Deed of Trust, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the property so sold, or any part thereof from, through or under Trustor, its successors and assigns. The receipt by Trustee shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Deed of Trust, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

4.8 Reconveyance. Upon written request of the Beneficiary and surrender of this Deed of Trust and any Notes to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

5. MISCELLANEOUS

5.1 Costs and Expenses. To the extent permitted by applicable law, the Trustor shall pay to the Trustee and the Beneficiary, on demand, all reasonable expenses (including attorneys' fees and expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Trustee and the Beneficiary in connection with the Trustee's and the Beneficiary's interpretation, recordation of this Deed of Trust, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Deed of Trust and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law, until paid in full by the Trustor at the highest rate set forth in any of the notes evidencing the Obligations. Any amounts owed by the Trustor hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and the Beneficiary shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Trustor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 Indemnification Regarding Leases. The Trustor hereby agrees to defend, and does hereby indemnify and hold the Beneficiary, Trustee, and each of their respective directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnitees arising from any undertakings on the part of the Beneficiary to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Beneficiary or any Indemnitee or make them liable for performance of any of the obligations of the Trustor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any

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current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

5.4 Indemnitor's Expenses. If any Indemnitor is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitor concerning this Deed of Trust or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Trustor or other person or entity, then the Trustor shall indemnify, defend and hold each Indemnitor harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitor in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgement. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Beneficiary in favor of the Trustor.

5.5 Waivers. The Trustor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Beneficiary in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as "the Beneficiary's rights and remedies") hereunder shall constitute a waiver thereof; and no waiver by the Beneficiary of any default of the Trustor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Beneficiary, which consent makes explicit reference to this Deed of Trust. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Beneficiary and the Trustor at any time (whether before, during or after the effective date or term of this Deed of Trust) shall be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under this Deed of Trust (nor shall anything in this Deed of Trust be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under any such other agreement or transaction) but all the Beneficiary's rights and remedies not only under the provisions of this Deed of Trust but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Beneficiary at such time or times and in such order of preference as the Beneficiary in its sole discretion may determine.

5.6 Severability. If any provision of this Deed of Trust or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Deed of Trust (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.7 Complete Agreement. This Deed of Trust and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.8 Binding Effect of Agreement. This Deed of Trust shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Beneficiary shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Beneficiary may transfer and assign this Deed of Trust and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Beneficiary; and the Beneficiary shall then be relieved and discharged of any responsibility or liability with respect to this Deed of Trust and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Deed of Trust or the other Loan Documents.

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5.9 Notices. Any notices under or pursuant to this Deed of Trust shall be deemed duly received and effective if delivered in hand to any officer or agent of the Trustor or the Beneficiary, or if mailed by registered or certified mail, return receipt requested, addressed to the Trustor or the Beneficiary at the address set forth in this Deed of Trust or as any party may from time to time designate by written notice to the other party.

5.10 Governing Law. This Deed of Trust shall be governed by Nevada law without giving effect to the conflicts of laws principles thereof.

5.11 Reproductions. This Deed of Trust and all documents which have been or may be hereinafter furnished by the Trustor to the Beneficiary may be reproduced by the Beneficiary by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.12 Jurisdiction and Venue. The Trustor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California and any Federal or state court sitting in Nevada, over any suit, action or proceeding arising out of or relating to this Deed of Trust. The Trustor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Trustor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Trustor's address set forth herein or such other address as has been provided in writing to the Beneficiary and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Trustor.

5.13 JURY WAIVER. THE TRUSTOR AND THE BENEFICIARY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS DEED OF TRUST, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. THE TRUSTOR CERTIFIES THAT NEITHER THE BENEFICIARY NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BENEFICIARY WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

5.14 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.



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EXECUTED under seal as of the date first above written.

Trustor:

Larry James Willard Trust dated November 14, 1987

By: 
Larry J. Willard, Trustee

Trustor:

Overland Development Corporation

By: 
Larry J. Willard, President

CORPORATION



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STATE OF CALIFORNIA

: SS.

COUNTY OF Santa Clara

On February 22, 2006 before me, Katie Caspary, Notary personally appeared Larry J. Willard ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Katie Caspary
STATE OF CALIFORNIA

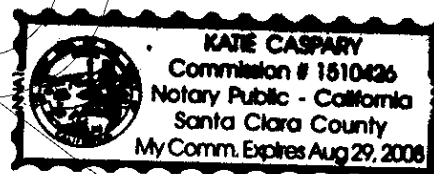
: SS.

COUNTY OF Santa Clara

On February 22, 2006 before me, Katie Caspary, Notary personally appeared Larry J. Willard ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Katie Caspary (SEAL)



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EXHIBIT A

Property Address: 7695 and 7699 S. Virginia, Reno, Nevada

Parcel 1:

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 18 N., Range 20 E., M.D.M., and being more particularly described as follows:

Commencing at the south corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North $00^{\circ}16'56''$ East a distance of 579.25 feet to the northerly side of Longley Lane;

Thence along said northerly line South $69^{\circ}21'09''$ W., a distance of 21.41 feet to the True Point of Beginning;

Thence leaving said northerly line of Longley Lane North $00^{\circ}16'56''$ East, a distance of 406.67 feet;

Thence South $89^{\circ}40'18''$ East, a distance of 275.76 feet to the westerly side of South Virginia Street and the northeasterly corner of the parcel of land as shown on record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said westerly line of South Virginia Street South $20^{\circ}39'19''$ East a distance of 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angel of $90^{\circ}00'28''$ and a radius of 60.00 feet to the northerly side of Longley Lane;

Thence along said northerly line of Longley Lane South $69^{\circ}21'19''$ West a distance of 342.78 feet to the True Point of Beginning.

Parcel 2:

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

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EXHIBIT A

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EXHIBIT 49

EXHIBIT 49

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made and entered into effective as of October __, 2006, by and between **OVERLAND DEVELOPMENT CORPORATION INC. dba LJW ENTERPRISES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST**, ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030 and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is Attn: Paul A. Morabito, Chief Executive Officer, 425 Maestro Drive, Reno, Nevada 89511.

Lessor and Lessee entered into a Lease Agreement dated as of September 30, 2005 (the "Lease") with respect to real property and improvements as described in the Lease. Terms not defined in this Amendment have the meanings given to them in the Lease. Lessor and Lessee wish to modify certain provisions of the Lease as described in this Amendment.

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

1. **Lease Term.** The Initial Term, as set forth in Section 3 of the Lease, is hereby amended to expire at midnight on May 31, 2023 ("Expiration Date"), unless terminated sooner as provided in the Lease and as may be extended as provided in the Lease. Except as set forth herein, all other terms and conditions of Section 3 of the Lease shall remain unchanged and are in full force and effect.
2. **Assignment and Subletting.** Section 23 of the Lease is amended to provide that a sale of the stock of the Lessee or any parent or affiliate of Lessee will not be considered an assignment requiring Lessor's consent or approval.
3. **Guaranty.** Lessor confirms that there is no guaranty of the Lease by any party and that Lessee is the sole obligor of the Lessee's responsibilities under the Lease.
4. **Ratification.** Except as expressly stated herein, the Lease shall remain in full force and effect. If there is any conflict between the Lease and the terms of this Amendment, the terms of this Amendment shall control.

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

Lessor and Lessee have executed this Amendment as of the date set forth above.

LESSOR:

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

By: _____

Printed Name: _____

Title: _____

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

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 10 OF 19

Submitted for all appellants by:

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

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

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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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 50

EXHIBIT 50

A P No. 043-011-47

Prepared by and when
recorded mail to:

James L. Morgan, Esq.
Henderson & Morgan, LLC
4600 Kietzke Lane, Suite K228
Reno, NV 89502

FOR THE PURPOSE OF COMPLYING WITH NRS 239B.030(4), THE
UNDERSIGNED HEREBY AFFIRMS THAT THIS DOCUMENT DOES NOT CONTAIN
THE SOCIAL SECURITY NUMBER OF ANY PERSON.

**ASSIGNMENT OF ENTITLEMENTS, CONTRACTS,
RENTS AND REVENUES
(7695 S. VIRGINIA)**

THIS ASSIGNMENT OF ENTITLEMENTS, CONTRACTS, RENTS AND
REVENUES (7695 S. VIRGINIA) ("Assignment") is made and entered into as of June
29, 2007 by and between BERRY-HINCKLEY INDUSTRIES, a Nevada corporation,
hereinafter referred to as "Assignor", party of the first part, and FIRST NATIONAL BANK
OF NEVADA, hereinafter referred to, together with its successors and assigns, as
"Lender", party of the second part.

R E C I T A L S:

WHEREAS:

A. Assignor is the lessee of the real property which is situated in the
County of Washoe, State of Nevada and which is particularly described by Exhibit "A"
attached hereto is hereinafter collectively referred to as the "Land".

B. All references herein to the "Real Property" shall be to: (i) the
Land; (ii) all real property which is used in connection with, the Land and in which
Assignor now owns, or hereafter acquires, an interest (the "Adjacent Property"); and
(iii) all tenements, hereditaments and appurtenances to the Land or the Adjacent
Property.

C. Reference is made to that certain Credit Agreement (as it may be
hereafter renewed, extended, amended, restated or otherwise modified, the "Credit
Agreement") dated June 28, 2007, by and among Assignor, JH, INC., a Nevada
corporation and JERRY E. HERBST, as Trustee of the HERBST GAMING TRUST

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CREATED BY AGREEMENT DATED MARCH 19, 2003, all as borrowers (collectively, the "Initial Borrowers") and Lender, as lender.

D. All capitalized words and terms which are used herein (and which are not otherwise defined herein) shall have the respective meanings and be construed herein as provided in Section 1.01 of the Credit Agreement and any reference to a provision of the Credit Agreement shall be deemed to incorporate that provision as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

E. As a condition of the WGI Closing Date, which is referred to in the Credit Agreement, Winners Gaming, Inc., a Nevada corporation ("WGI") is required, among other things, to assume, on a joint and several basis with the Initial Borrowers, all obligations of Initial Borrowers under the Credit Agreement and the Loan Documents. All references herein to the "Borrowers" shall be to: (i) Initial Borrowers; (ii) as of the WGI Closing Date, WGI; and (iii) any other person or entity which hereafter becomes a Borrower under the Credit Agreement.

F. Pursuant to the Credit Agreement, and subject to the terms and conditions specified therein, Lender has agreed to provide: (i) a revolving credit facility to Borrowers with an initial maximum principal amount of Twenty-three Million Seven Hundred Thousand Dollars (\$23,700,000.00) available for Borrowings thereunder (together with all extensions, renewals, amendments, restatements, substitutions and other modifications thereof, the "Revolving Credit Facility"); and (ii) a term loan to Borrowers in the principal amount of Fifty Million Three Hundred Thousand Dollars (\$50,300,000.00) to be funded on the WGI Closing Date, which is referred to in the Credit Agreement (together with all extensions, renewals, amendments, restatements, substitutions and other modifications thereof, the "Term Loan"). The Revolving Credit Facility, the Term Loan and any other loan, credit facility or other credit accommodation which is hereafter provided to Borrowers, or any of them, by Lender, are collectively referred to herein as the "Bank Facilities".

G. It is a condition of the Bank Facilities that all of Assignor's present and future right, title and interest in and to:

(i) all leases and purchase contracts which are now existing or are hereafter entered into, for furniture, fixtures, equipment, signs and other items of personal property which are used in connection with, or which relate to: (aa) the Real Property; (bb) the convenience store and retail gasoline filling station business, any automotive service business and all related activities to be conducted by, or on behalf of, Assignor on the Real Property (collectively, the "Convenience Store Facilities"); or (cc) any other

business activity now, or hereafter, conducted by, or on behalf of, Assignor on, or in connection with, the Real Property (collectively, the "Additional Business(es)"); all together with any and all modifications, extensions, or renewals thereof (collectively, the "Equipment Agreements");

(ii) all leases, subleases, licenses, concessions, franchises and other use or occupancy agreements which now exist or are hereafter entered into and which relate to any portion of the Real Property, and all guarantees, extensions, renewals, amendments and modifications thereof (collectively, the "Spaceleases");

(iii) all present and future rents, issues, profits, products, earnings, accounts, rights, benefits, income, proceeds, payments, revenue, receipts and deposits of any kind or nature (collectively, the "Proceeds") which relate to, or are derived from, the Real Property, the Convenience Store Facilities, or any Additional Business, including, without limitation, present and future Proceeds, of any nature whatsoever, derived from, or received with respect to, retail activities and any other activity undertaken in operation of, or in relation to, the Real Property, the Convenience Store Facilities or any Additional Business, and also including without limitation, Proceeds from any of the Spaceleases (collectively, the "Rents and Revenues"); and

(iv) all present and future assignable permits, licenses, warranties, contracts and other entitlements, if any, which are issued, granted, agreed to, or entered into in connection with, or relating to, the Real Property, the Convenience Store Facilities or any Additional Business, together with any and all modifications, extensions or renewals thereof (collectively, the "Entitlements");

be presently assigned to Lender in consideration of the Bank Facilities upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the Bank Facilities, Assignor does hereby presently, absolutely and unconditionally assign to the Lender all of its right, title and interest in and to the Equipment Agreements, the Spaceleases, the Rents and Revenues and the Entitlements as follows:

1. Assignor does hereby grant, assign and convey unto Lender all the right, title, interest and privilege which Assignor has or may hereafter acquire, in or to: (i) all Equipment Agreements, Spaceleases and/or Entitlements; and (ii) the Rents

and Revenues. Without limiting the generality of the foregoing, and subject to the provisions of Sections 4 and 5 below, Lender shall have the present and continuing right with full power and authority, in its own name, or in the name of Assignor, or otherwise: (aa) to do any and all things which Assignor may be or may become entitled to do under the Equipment Agreements, Spaceleases, and/or Entitlements and the right to make all waivers and agreements, give all notices, consents and releases and other instruments and to do any and all other things whatsoever which Assignor may be or may become entitled to do under said Equipment Agreements, Spaceleases and/or Entitlements; and (bb) to make claim for, enforce, collect, receive and make receipt (in its own name, in the name of Assignor, or otherwise) for any and all of the Rents and Revenues and to do any and all things which Assignor is or may become entitled to do for the collection of the Rents and Revenues. Notwithstanding anything herein to the contrary, in no event shall the Equipment Leases or the Spaceleases, which are assigned hereunder, include any lease, license, contract, property rights or agreement to which Assignor is a party or any of its rights or interests thereunder if and for so long as such assignment shall constitute or result in: (i) the abandonment, invalidation or unenforceability of any right, title or interest of Assignor therein; or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Commercial Code), provided however that the assignment shall include any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above.

2. The acceptance of this Assignment and the payment or performance under the Equipment Agreements, the Spaceleases, the Rents and Revenues and/or Entitlements hereby assigned shall not constitute a waiver of any rights of Lender under the terms of the Credit Agreement or any other Loan Document for the benefit of Lender.

3. Assignor shall keep and perform the following with respect to the Equipment Agreements, the Spaceleases and the Entitlements:

(a) Except as may be permitted in the Credit Agreement, Assignor will not further assign any interest in the Equipment Agreements, in the Spaceleases, or in the Entitlements, or create or permit any lien, charge, or encumbrance upon its interests in the Equipment Agreements, in the Spaceleases or in the Entitlements;

(b) Assignor will not, without the prior written consent of Lender:

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(i) cause, or consent to, any cancellation, termination or surrender of any Equipment Agreement, Spacelease or Entitlement if such cancellation, termination or surrender would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business (except for any cancellation or termination of an Equipment Agreement, Spacelease or Entitlement which is caused by a default thereunder on the part of a party other than Assignor or one of its Affiliates);

(ii) permit any event to occur which would entitle any party to an Equipment Agreement, Spacelease or Entitlement to terminate or cancel said Equipment Agreement, Spacelease or Entitlement if such cancellation or termination would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business (except any cancellation or termination of an Equipment Agreement, Spacelease or Entitlement which is caused by a default thereunder on the part of a party other than Assignor or one of its Affiliates);

(iii) amend or modify any of the Equipment Agreements or the Spaceleases or any of the Entitlements if such amendment or modification would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business;

(iv) waive any default under or breach of any Equipment Agreements, any Spaceleases or any Entitlements except for any waiver that would not be reasonably likely to result in any material adverse affect on either the Convenience Store Facilities or any Additional Business; or

(v) give any consent, waiver or approval which would impair Assignor's interest in any of the Equipment Agreements, any of the Spaceleases or any of the Entitlements if such consent, waiver or approval would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business.

(c) Assignor will promptly notify Lender of the occurrence of any default under any of the Equipment Agreements, Spaceleases and/or Entitlements, which, if left uncured, would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business.

4. Notwithstanding anything to the contrary contained in this Assignment, it is understood and agreed that so long as there shall exist no Event of Default under the Credit Agreement there is reserved to Assignor a revocable license to retain, use and enjoy the Equipment Agreements, the Spaceleases, the

Entitlements and the properties and entitlements which are the subject thereof. Upon the occurrence of an Event of Default, and so long as such Event of Default is continuing, such license granted to Assignor may be immediately revoked by Lender (except that, upon occurrence of an Event of Default under subsections 7.01(g), (h) or (i) of the Credit Agreement, such license granted to Assignor shall be automatically revoked) without further demand or notice and Lender is hereby empowered to enter and take possession of the Real Property and to use, manage and operate the same and to do all acts required or permitted by the Equipment Agreements, the Spaceleases and/or the Entitlements, and perform such other acts in connection with the use, management and operation of the property and entitlements, which are the subject of the Equipment Agreements, the Spaceleases and the Entitlements as Lender, in its sole discretion, may deem proper (including, without limitation, such acts as are otherwise authorized under this Assignment). Lender agrees that, until such license granted to Assignor has been revoked, as set forth above, Lender shall refrain from exercising its rights and remedies which are granted with respect to the Equipment Agreements, the Spaceleases, and/or the properties they concern under Section 1 of this Assignment or under this Section 4. Should the Event of Default which resulted in any such revocation be cured prior to foreclosure, deed-in-lieu of foreclosure, or a similar conveyance under the Deed of Trust, then such license granted to Assignor shall be immediately reinstated without further demand or notice and Lender shall, as soon as reasonably possible, redeliver to Assignor possession of the Equipment Agreements, of the Spaceleases and of the Entitlements (and, at the expense of Assignor, shall execute such notices to third parties as Assignor may reasonably request) and the parties hereto shall each be restored to, and be reinstated in, their respective rights and positions hereunder as if the Event of Default had not occurred (without impairment of or limitation on Lender's right to proceed hereunder upon subsequent Events of Default).

5. It is also understood and agreed that so long as there shall exist no Event of Default under the Credit Agreement there is reserved to Assignor a revocable license to collect the Rents and Revenues as they become due, but not prior to accrual. Upon the occurrence of an Event of Default, and so long as such Event of Default is continuing, such license granted to Assignor may be immediately revoked (except that, upon occurrence of an Event of Default under subsections 7.01(g), (h) or (i) of the Credit Agreement, such license granted to Assignor shall be automatically revoked) without further demand or notice and Lender is hereby empowered, but shall not be obligated, to do any, or all of the following: (i) enter and take possession of the Real Property; (ii) manage and operate all, or any portion of, the Real Property, the Convenience Store Facilities and/or the Additional Businesses (or any of them); (iii) demand payment of the Rents and Revenues from the appropriate party; (iv) give notice that further payments of Rents and Revenues

are to be made as directed by Lender; and (v) settle compromise, bring suit in respect of Rents and Revenues or otherwise deal with the person owing such Rents and Revenues, either in the name of Assignor or in its own name; all on its own behalf or through a receiver. If any such Rents and Revenues are collected by Assignor in violation of this Assignment, such Rents and Revenues shall be held in trust for the benefit of Lender. No action taken by Lender, or by a receiver, in exercising any of the rights and remedies hereunder shall cause any of them to be characterized as a "Mortgagee in Possession". This Assignment is intended to be and is an absolute present assignment from Assignor to Lender and not merely the passing of a security interest. Lender agrees that, until such license granted to Assignor has been revoked, as set forth above, Lender shall refrain from exercising its rights and remedies which are granted with respect to the Rents and Revenues and/or the collection thereof under Section 1 of this Assignment or under this Section 5. Should the Event of Default which resulted in any such revocation be cured prior to foreclosure, deed-in-lieu of foreclosure, or a similar conveyance under the Deed of Trust, then such license granted to Assignor shall be immediately reinstated without further demand or notice and Lender shall, as soon as reasonably possible, execute, at the expense of Assignor, such notices to third parties as Assignor may reasonably request and the parties hereto shall each be restored to, and be reinstated in, their respective rights and positions hereunder as if the Event of Default had not occurred (without impairment of or limitation on Lender's right to proceed hereunder upon subsequent Events of Default).

6. Lender shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under the Equipment Agreements, the Spaceleases, the Entitlements, and/or relating to the Rents and Revenues. This Assignment shall not place responsibility for the management, control, care, operation or repair of the Real Property, the Convenience Store Facilities or any Additional Business, upon Lender, or upon any of its trustees, officers, employees, agents, attorneys or stockholders (collectively, the "Indemnified Parties"); nor shall this Assignment cause any of the Indemnified Parties to be responsible or liable for any negligence in the management, control, care, operation or repair of the Real Property, the Convenience Store Facilities or any Additional Business, which results in loss, injury or death to any tenant, guest, licensee, employee or stranger (provided that this Section 6 shall not act to relieve any Indemnified Party from liability which results from such Indemnified Party's own gross negligence or willful misconduct).

7. Assignor agrees to indemnify, protect, defend and hold harmless the Indemnified Parties from and against any and all losses, damages, expenses or liabilities of any kind or nature from any suits, claims or demands including reasonable

counsel fees incurred in investigating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with: (i) this Assignment; (ii) any of the Equipment Agreements, Spaceleases, Entitlements, or Rents and Revenues; or (iii) the management, control, care, operation or repair of the Real Property, the Convenience Store Facilities and/or any Additional Business; all in accordance with Section 5.13 of the Credit Agreement, which is incorporated by reference herein, as if fully set forth herein (provided that this Section 7 shall not act to relieve any Indemnified Party from liability which results from such Indemnified Party's own gross negligence or willful misconduct).

8. Assignor agrees that this Assignment and the designation and directions herein set forth are irrevocable. Until Bank Facility Termination has occurred, Assignor will not make any other assignment, designation or direction inconsistent herewith (except as otherwise permitted in the Credit Agreement), and any such assignment, designation or direction which is inconsistent herewith shall be void. Assignor will, from time to time, execute all such instruments of further assurance and all such supplemental instruments as may be reasonably requested by Lender.

9. No action or inaction on the part of Lender shall constitute an assumption, on the part of Lender of any obligations or duties under the Equipment Agreements, Spaceleases and/or the Entitlements, or relating to the Rents and Revenues. No action or inaction on the part of Assignor shall adversely affect or limit in any way the rights of Lender under this Assignment or, through this Assignment, under the Equipment Agreements, the Spaceleases and/or the Entitlements, or relating to the Rents and Revenues.

10. Assignor covenants and represents that it has the full right and title to assign the Equipment Agreements, the Spaceleases, the Entitlements, the Rents and Revenues; that no other assignments of its interests in the Equipment Agreements, Spaceleases and/or the Entitlements, or of its interests in the Rents and Revenues have been made; that no notice of termination has been served on it with respect to any Equipment Agreements, the Spaceleases or the Entitlements, the termination of which would be reasonably likely to result in a Material Adverse Change; and that there are presently no defaults existing under any of the Equipment Agreements, the Spaceleases or the Entitlements, which defaults would be reasonably likely to result in a Material Adverse Change if left uncured.

11. The full performance of the terms contained in the Credit Agreement and the other Loan Documents and the due release and termination of the Security Documentation shall render this Assignment void. Upon such performance, release and termination, Lender, at the request and the expense of Assignor, will

promptly deliver either an instrument canceling this Assignment or assigning the rights of the Lender hereunder, as Assignor shall direct.

12. Assignor and Lender intend that this Assignment shall be a present, absolute and unconditional assignment, subject to the license granted above, and not merely the passing of a security interest. During the term of this Assignment, neither the Equipment Agreements, the Spaceleases, the Entitlements nor the Rents and Revenues shall constitute property of Assignor (or any estate of Assignor) within the meaning of 11 U.S.C. § 541 (as it may be amended or recodified from time to time).

13. This Assignment applies to, binds and inures to the benefit of, the parties hereto and their respective heirs, administrators, executors, successors and assigns. This Assignment may not be modified or terminated orally.

14. All of the rights and remedies of Lender hereunder are cumulative and not exclusive of any other right or remedy which may be provided for hereunder or under any other Loan Document. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to its terms shall be deemed a waiver, by Lender of any rights or remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any rights or remedies possessed by Lender under the terms of the Loan Documents. The right of the Lender to collect the secured principal, interest, and other Indebtedness, and to enforce any security may be exercised by Lender prior to, simultaneous with, or subsequent to any action taken under this Assignment.

15. Upon the occurrence and during the continuance of an Event of Default, Assignor shall be deemed to have appointed and does hereby appoint Lender the attorney-in-fact of Assignor to prepare, sign, file and/or record such documents or instruments, or take such other actions, as may be reasonably necessary to perfect and preserve, against third parties, the interest in the Equipment Agreements, the Spaceleases, the Entitlements and Rents and Revenues which is granted to Lender hereunder.


16. This Assignment shall be governed by the internal laws of the State of Nevada, without regard to principles of conflict of law.

17. This Assignment may be executed in any number of separate counterparts with the same effect as if the signatures hereto and hereby were upon the same instrument. All such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed the foregoing instrument as of the day and year first above written.

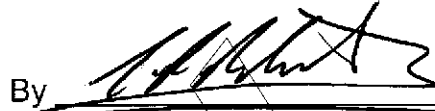
ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By 
Jerry E. Herbst,
President

LENDER:

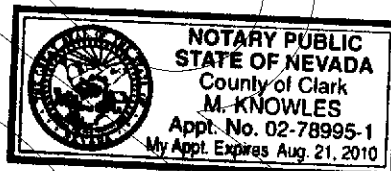
FIRST NATIONAL BANK OF
NEVADA

By 
E. Philip Potamitis,
Senior Vice President

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on June 29, 2007 by JERRY E. HERBST as President of BERRY-HINCKLEY INDUSTRIES.

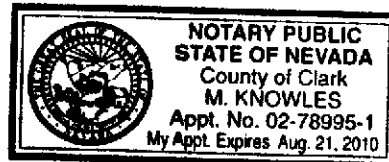

Notary Public



STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on June 29, 2007 by E. PHILIP POTAMITIS as Senior Vice President of FIRST NATIONAL BANK OF NEVADA.


Notary Public



LEGAL DESCRIPTION

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

Parcel One (1):

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South Half (S ½) of the Northwest Quarter (NW ¼) of Section 6, Township 18 North, Range 20 East, M.D.M. and being more particularly described as follows:

Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North 00°16'56" East, a distance of 579.25 feet to the Northerly side of Longley Lane;

Thence along said Northerly line South 69°21'09" West, a distance of 21.41 feet to the True Point of Beginning;

Thence leaving said Northerly line of Longley Lane North 00°16'56" East, a distance of 406.67 feet;

Thence South 89°40'18" East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said Westerly line of South Virginia Street South 20°39'19" East, a distance of 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angle of 90°00'28" and a radius of 60.00 feet to the Northerly side of Longley Lane;

Thence along said Northerly line of Longley Lane South 69°21'19" West, a distance of 342.78 feet to the True Point of Beginning.

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EXHIBIT "A"
Page 1 of 2

Parcel One-A (1A):

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

Document No. 3353290 is provided pursuant to the requirements of Section 1.NRS 111.312

(APN No. 043-011-47)

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EXHIBIT 51

EXHIBIT 51

DOC # 3551285

07/05/2007 08:49:30 AM

Requested By

CHICAGO TITLE AGENCY OF NEVADA

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$60.00 RPTT:

Page 1 of 7

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

JAMES L. MORGAN; 775-825-7000

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**JAMES L. MORGAN, ESQ.
HENDERSON & MORGAN, LLC
4600 KIETZKE LANE, SUITE K228
RENO, NV 89502**



THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

BERRY-HINCKLEY INDUSTRIES

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

5195 LAS VEGAS BOULEVARD

CITY

LAS VEGAS

STATE

NV

POSTAL CODE

89119

COUNTRY

USA1d. SEE INSTRUCTIONSADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

CORP.

1f. JURISDICTION OF ORGANIZATION

NEVADA

1g. ORGANIZATIONAL ID #, if any

C649-1975☐ NONE2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. SEE INSTRUCTIONSADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR(S)) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

FIRST NATIONAL BANK OF NEVADA

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

LAS VEGAS

STATE

NV

POSTAL CODE

89103

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

ALL PRESENT AND FUTURE PERSONAL PROPERTY, WHETHER NOW OWNED OR HEREAFTER ACQUIRED, INCLUDING, WITHOUT LIMITATION, THE PERSONAL PROPERTY DESCRIBED BY EXHIBIT "A" ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. SOME OF THE GOODS DESCRIBED BY EXHIBIT "A" ARE, OR ARE TO BECOME, FIXTURES TO THE REAL PROPERTY DESCRIBED BY EXHIBIT "B" ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSOR/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING6. ☒ This FINANCING STATEMENT is to be filed for record (or recorded) in the REAL ESTATE RECORDS. Attach Addendum. ☐ Check to REQUEST SEARCH REPORT(S) on Debtor(s) (Additional Fee) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

7695 S. VIRGINIA (WASHOE COUNTY RECORDER)

3551285

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR **BERRY-HINCKLEY INDUSTRIES**

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR 11b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11d. **SEE INSTRUCTIONS**ADD'L INFO RE
ORGANIZATION
DEBTOR

11e. TYPE OF ORGANIZATION

11f. JURISDICTION OF ORGANIZATION

11g. ORGANIZATIONAL ID #, if any

☐ NONE**12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a. ORGANIZATION'S NAME

OR 12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

15. Additional collateral description:

**SEE EXHIBIT "B" ATTACHED HERETO AND
INCORPORATED BY REFERENCE HEREIN.**15. Name and address of a RECORD OWNER of above-described real estate
(if Debtor does not have a record interest):17. Check only if applicable and check only one box.Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate18. Check only if applicable and check only one box.☐ Debtor is a TRANSMITTING UTILITY☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years☐ Filed in connection with a Public-Finance Transaction — effective 30 years

DEBTOR: BERRY-HINCKLEY INDUSTRIES
SECURED PARTY: FIRST NATIONAL BANK OF NEVADA

DESCRIPTION OF COLLATERAL
ATTACHED TO UCC-1
FINANCING STATEMENT (the "UCC-1")

All right, title and interest of Debtor, whether now owned or hereafter acquired, in, or to, any of the following described personal property, whether now existing or hereafter coming into existence (collectively, the "Personal Property"):

(a) All present and future: (i) accounts; (ii) chattel paper; (iii) commercial tort claims; (iv) deposit accounts; (v) documents; (vi) equipment, inventory and other goods of any kind or nature; (vii) instruments; (viii) investment property; (ix) letter of credit rights; (x) money; (xi) general intangibles; and (xii) proceeds of any of the foregoing; all as defined by Article 9 of the Commercial Code.

(b) All present and future chattels, furniture, furnishings, equipment, fixtures, building materials, building contents and building components, all of every kind and nature, and other tangible personal property: (i) which is used in connection with, situate in or on, affixed to, or incorporated into: (aa) any portion of the real property which is particularly described by "Exhibit B" to the UCC-1 (the "Land"); (bb) all real property which is adjacent to, or used in connection with, the Land and in which Debtor now owns or hereafter acquires an interest (the "Adjacent Property"); and/or (cc) all tenements, hereditaments and appurtenances to the Land or the Adjacent Property (the "Appurtenances" and, together with the Land and the Adjacent Property, the "Real Property"); (ii) which is used in connection with, situate in or on, affixed to, or incorporated into, any building, structure or other improvement that is now or that may be hereafter constructed on or under the Real Property; and/or (iii) in which Debtor otherwise has or acquires an interest; all including, without limitation: (aa) all lumber, bricks, cement, masonry, steel, doors, windows, fasteners, nails, bolts, scaffolding, tools, construction supplies, construction tools and equipment and all other building materials, supplies and equipment of any kind or nature; (bb) all air conditioning, heating, electrical, lighting, fire fighting and fire prevention, plumbing, security, sound, signaling, telephone, window washing, irrigation, storage, shop, landscaping, signage and other equipment and fixtures, of whatever kind or nature, consisting of, without limitation, air conditioners, compressors, fans, duct work, thermostats, furnaces, boilers, radiators, burners, wiring, conduits, cables, generators, transformers, switching gear, lighting fixtures, sprinkler systems and other fire extinguishing equipment, fire alarms and other fire detection equipment, piping, pumps, valves, sinks, toilets, tubs, motors, carts, elevators and other lifts, ovens, refrigerators, surveillance and entry detection systems, speakers, intercoms and public address systems, hardware, shelving, maintenance and repair equipment and all other similar

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EXHIBIT "A"
Page 1 of 3

DEBTOR: BERRY-HINCKLEY INDUSTRIES
SECURED PARTY: FIRST NATIONAL BANK OF NEVADA

items; (cc) all furniture, furnishings, wall coverings, floor coverings, window coverings, artwork and decorative items including, without limitation, storage, retail, office, administrative and other furniture, furnishings, wall coverings, floor coverings, window coverings, artwork and decorative items; (dd) all office and administrative equipment and supplies including, without limitation, office appliances, filing cabinets, computers, peripheral computer equipment and other data processing and storage equipment, stationery and other office supply items, and other office and administrative equipment and supplies; (ee) all tools and other maintenance and repair equipment; (ff) all equipment for storage, monitoring, delivery, pumping analysis and other activities with respect to petroleum and petroleum byproducts including, without limitation, gasoline as well as related and similar products; and (gg) all equipment, supplies and other materials utilized in connection with any other activity engaged in by Debtor;

(c) All right, title and interest of Debtor in and to all leases, licenses, concessions, or similar agreements whether or not specifically herein described which now or may hereafter pertain to the Real Property and all amendments to the same, including, but not limited to the following: (aa) all payments due and to become due under such agreements, whether as rent, damages, insurance payments, condemnation awards, or otherwise; (bb) all claims, rights, powers, privileges and remedies under such agreements; and (cc) all rights of Debtor under such leases to exercise any election or option, or to give or receive any notice, consent, waiver or approval, or to accept any surrender of the premises or any part thereof, together with full power and authority in the name of Debtor or otherwise, to demand and receive, enforce, collect, or receipt for any or all of the foregoing, to endorse or execute any checks or any instruments or orders, to file any claims or to take any action which Beneficiary may deem necessary or advisable in connection therewith;

(d) All plans, specifications, soil reports, engineering reports, land planning maps, surveys, and any other reports, exhibits or plans used or to be used in connection with the development, construction, planning, operation or maintenance of the Real Property, together with all amendments and modifications thereof;

(e) All water rights and conditional water rights that are now, or may hereafter be appurtenant to, used in connection with or intended for use in connection with the Real Property;

(f) All right, title and interest of Debtor, whether now owned or hereafter acquired, in, or to, any and all present and future awards or payments, including without limitation, interest on them, and the right to receive them, which may

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DEBTOR: BERRY-HINCKLEY INDUSTRIES
SECURED PARTY: FIRST NATIONAL BANK OF NEVADA

be made with respect to the Real Property and/or the rents thereof as a result of: (i) the exercise of the right of eminent domain; (ii) the alteration of the grade of any street; (iii) any loss of or damage to any building or other improvement included in the Real Property; (iv) any other injury to or decrease in the value of the Real Property, any occupancy agreements related thereto and/or the rents thereof (including, without limitation, proceeds of any policy of insurance); and (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Real Property, any occupancy agreements related thereto, and/or the rents thereof;

(g) All development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, that benefit, or are appurtenant to, any portion of the Real Property, and all extensions, renewals, amendments, restatements and other modifications thereof;

(h) All other tangible and intangible personal property of Debtor;

(i) All present and future accessions, appurtenances, components, repairs, repair parts, spare parts, replacements, substitutions, additions, issue and/or improvements to or of or with respect to any of the foregoing;

(j) All rights, remedies, powers and/or privileges of Debtor with respect to any of the foregoing; and

(k) Any and all income, profits, proceeds and products of any of the foregoing, including, without limitation, all money, accounts, general intangibles, deposit accounts, documents, instruments, chattel paper, goods, insurance proceeds, and any other tangible or intangible property received upon the sale or disposition of any of the foregoing.

LEGAL DESCRIPTION

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

Parcel One (1):

The land referred to herein situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South Half (S ½) of the Northwest Quarter (NW ¼) of Section 6, Township 18 North, Range 20 East, M.D.M. and being more particularly described as follows:

Commencing at the South corner of Parcel "C" a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, as on file in the County Recorder's Office of Washoe County, Nevada; thence North 00°16'56" East, a distance of 579.25 feet to the Northerly side of Longley Lane;

Thence along said Northerly line South 69°21'09" West, a distance of 21.41 feet to the True Point of Beginning;

Thence leaving said Northerly line of Longley Lane North 00°16'56" East, a distance of 406.67 feet;

Thence South 89°40'18" East, a distance of 275.76 feet to the Westerly side of South Virginia Street and the Northeasterly corner of the parcel of land as shown on Record of Survey Map No. 2887, File No. 1902006, on file in the County Recorder's Office of Washoe County, Nevada;

Thence along said Westerly line of South Virginia Street South 20°39'19" East, a distance of 221.13 feet to the beginning of a curve to the right;

Thence along said curve a distance of 94.26 feet, a central angle of 90°00'28" and a radius of 60.00 feet to the Northerly side of Longley Lane;

Thence along said Northerly line of Longley Lane South 69°21'19" West, a distance of 342.78 feet to the True Point of Beginning.

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EXHIBIT "B"
Page 1 of 2

Parcel One-A (1A):

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

Document No. 3353290 is provided pursuant to the requirements of Section 1.NRS 111.312

(APN No. 043-011-47)

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EXHIBIT 52

EXHIBIT 52

Single Tenant Investment Offering
\$19,500,000
Cap Rate: 8.45%
20 Year NNN Corporate Lease

7695 & 7699 South Virginia Street

7695 & 7699 S. Virginia Street, Reno, NV 89511

DANIEL GLUHAICH
+1 408-201-0120
Dan.Gluhaich@colliers.com



Confidentiality Agreement

This Confidential Offering Memorandum (the "Memorandum") is being delivered exclusively by Colliers International (the "Agent") to a party who may be interested in the acquisition of the Fee Simple interest in 7695 & 7699 S. Virginia Street, (the "Property"), described in this Memorandum. This is a private offering, made only by delivery of a copy of the Memorandum to the recipient (the "Recipient"). By accepting this Memorandum, the Recipient agrees to comply strictly with the terms and conditions of the Confidentiality Agreement previously executed and delivered to the Agent by the Recipient with respect to this Memorandum and all information contained herein, and to use this Memorandum only for the purpose of evaluating the offering made hereby.

The material contained in this Memorandum is provided solely to assist the Recipient in determining whether it is interested in making an investigation or evaluation concerning a potential purchase of the Property. Neither the Agent nor any affiliates or client of the Agent which term includes related entities, the owners of any equity interest in the Property, ("Owner"), the manager of the Property ("Manager"), and any officers, employees and agents of any such parties make any representations or warranties with regard to the accuracy or completeness of the information contained herein. This Memorandum may include statements and estimates provided by the Agent, the Owner, or the Manager with respect to the anticipated future performance of the Property. Nothing contained in this Memorandum should be construed as a representation as to the future performance of the Property, and the Recipient acknowledges and agrees that any statements or estimates relating to future performance reflect various assumptions concerning the Property's anticipated results, which may or may not prove to be correct. No representations are made as to the accuracy of such statements and estimates, and none of the Agent, the Manager, or any related entities shall have any liability with respect to or arising from any inaccuracy in such statements or estimates. Statements made in this Memorandum as to the content of any contract or other document referred to, are not complete or definitive descriptions, but summaries or portions thereof. Each such statement is qualified by its reference to the full text of the contract or document, copies of which will be made available by the Agent to Recipient upon request. In addition, not all contracts or other documents, which may be relevant, have been summarized or referenced in this Memorandum. This Memorandum is being delivered by the Agent to a prospective purchaser with the understanding that it will independently investigate those matters which it deems appropriate in evaluating the Property and will rely solely on its own investigation in determining whether to purchase the Property.

This Memorandum does not constitute an offer to sell, or a solicitation of an offer to buy, an interest in the Property in any jurisdiction in which, or to any person for which, such offer, sale, or solicitation would be unlawful. Except where otherwise indicated, the information contained in this Memorandum has been prepared as and no obligation is assumed to supplement or modify the information to reflect subsequent events or conditions. Nothing contained in this Memorandum may be construed to constitute legal or tax advice to a Recipient concerning the Property or purchase of the Property.

More detailed information regarding the expected terms, conditions, and timing of the offering of the Property will be provided in due course by separate communication with each Recipient. The Agent, the Owner and the Manager reserve the right to engage in discussions or negotiations with one or more recipients or other prospective investors at any time without notification to, or other obligation to, any other Recipient or prospective investor. The offering made hereby is subject to a change in terms or termination without notice. The Owner and the Manager will remain free to operate the Property in their sole and absolute discretion during the evaluation and offering process, including the taking of such actions, whether within or outside of the ordinary course of business, which the Owner or the Manager shall deem necessary, prudent or desirable.

The Agent reserves the right to require the return of this Memorandum and any other material provided to the Recipient at any time.

Acceptance of this Memorandum by the Recipient constitutes acceptance of the terms and conditions outlined above.

© 2012 Colliers International

7695 & 7699 S. VIRGINIA ST., RENO, NV 89511

INVESTMENT OPPORTUNITY

COPIES OF THE INFORMATION P. 2

Executive Summary

THE OFFERING

Daniel Gluhaich of Colliers International is proud to present 7695 & 7699 S. Virginia Street, Reno, Nevada 89511, two freestanding retail buildings leased to Terrible Herbst operating as a Winner's Corner featuring a Convenience Store, Chevron Quick Lube, Car Wash and Gas Station, Fast Food Restaurant and offices. This property is 100% occupied under a single tenant lease extending to 2026 and as late as 2046.

Terrible Herbst, Inc. has been a family-owned and operated business for over 40 years, with over 100 locations in Nevada, Arizona and California offering quick lube centers and car washes.

There are 14 years left on the initial NNN 20 year lease, with 2% increases each year and 4-five year options extending the lease to as late as January 2046. The tenant pays for all expenses and maintenance including roof and structure. The buildings are comprised of a combined total of 18,639 square feet and were built in 1989.

INVESTMENT HIGHLIGHTS

- Corporate Guaranty and Established Tenant
- 2% Rent Escalations every Year throughout Lease term including 4- 5 Year Extension Options
- Well maintained Buildings, constructed in 1989 with highest quality materials.
- 100% Occupied Single Tenant Lease



Investment Summary

7695 & 7699 S. Virginia St., Reno, NV 89511

List Price	\$19,500,000
Lease Type	NNN
NOI (Feb. 2012 - Jan. 2013)	\$1,649,124
Square Footage	18,639
Price Per Square Foot	\$1046
Actual Cap Rate	8.45%
Occupancy	100%
Year Built	1989

Property Description

7695 & 7699 S. Virginia Street, Reno, Nevada 89511, is a Winner's Corner Center comprised of a Convenience Store with gaming, car wash, a fast food restaurant and offices and a quick lube building. The buildings have a combined total of 18,639 square foot situated on 2.5 acres. In addition, there are tenant owned pumps with canopy cover, tanks, and miscellaneous trade fixtures. The Winners Corner is comprised of approximately 16,132 square feet and the Quick Lube building is comprised of approximately 2,507 square feet. The parking lot is paved and there are approximately 60 parking spaces. The property is fully landscaped.

Property Detail	
7695 & 7699 S. Virginia St., Reno, NV 89511	
Building Square Footage	18,639
Number of Buildings	2
Number of Stories	1
Land Acres	2.5
Zoning	Commercial Multi-Use
Building Class	A
Location Class	A
Number of Parking Spaces	60
Parking Ratio	3/1000



Location Overview

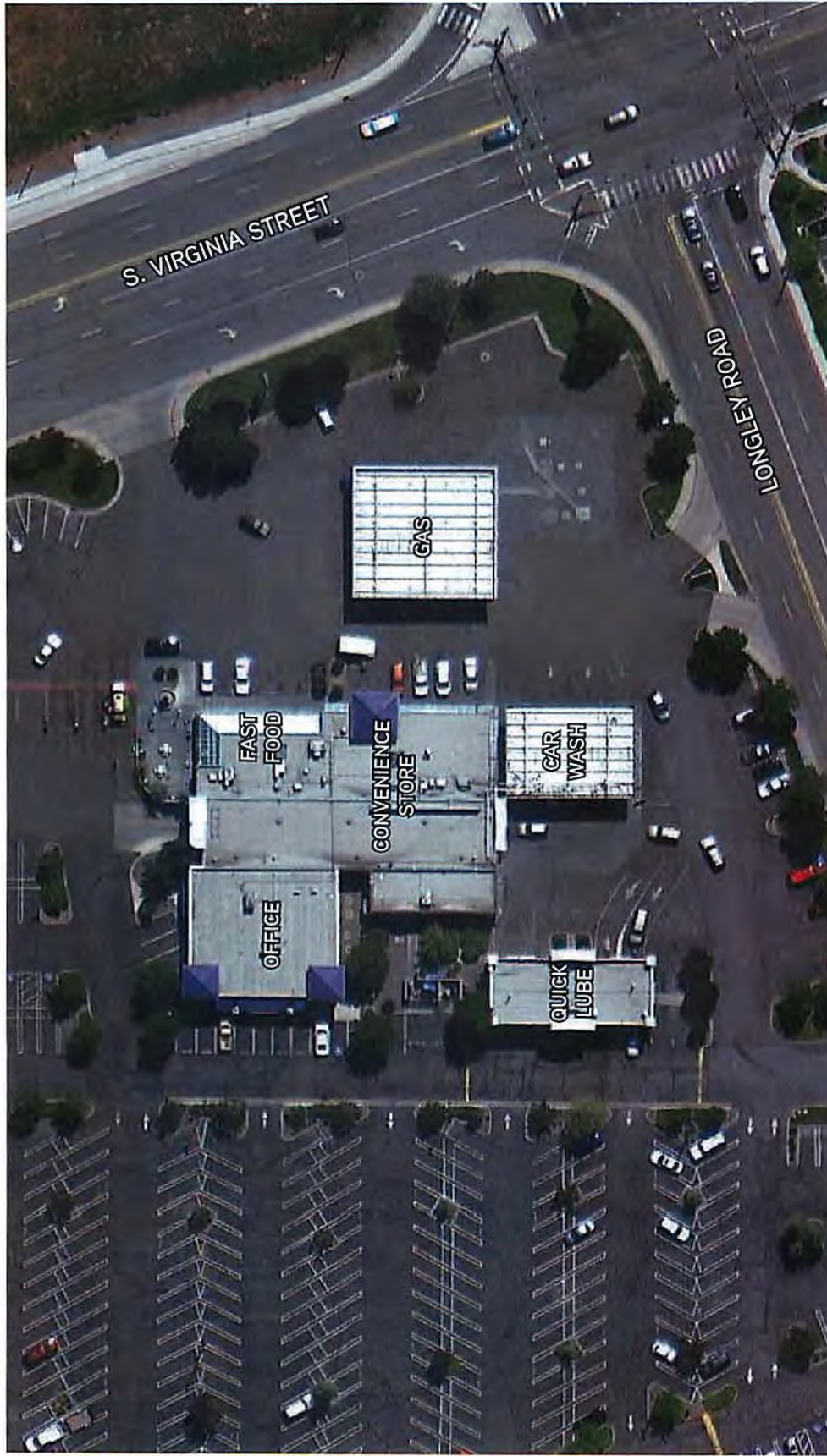
7695 & 7699 S. Virginia Street, Reno, Nevada 89511 is located on the highly visible busy traffic-lighted intersection of S. Virginia Street and Longley Road. Virginia Street is a major north-south commercial corridor into the Reno downtown area. The Winners Corner Center is minutes from Highway 395 and 1 mile from Meadowood Mall an 890,000 square foot regional mall, the Reno/Sparks Conventions Center and downtown Reno and casinos. To the southeast of the subject are newer residential developments in the South Meadows area. East of the property across Virginia Street are newer business parks. The Reno-Tahoe Airport is about a ten minute drive from the property.

MARKET HIGHLIGHTS

- Busy Corner Location with High Visibility
- Tenant strategically positioned to distribute products to its large market customer base while benefiting from Nevada's business friendly climate.
- Minutes to Meadowood Mall, Reno/Sparks Convention Center and Downtown Reno
- One block to US-580



Location Overview



Financial Overview

Building Information		
9590 W. Tropicana Ave., Las Vegas, NV 89147		
Price	\$19,500,000	\$1046
Down Payment	\$19,500,000	\$1046
Rentable Square Footage	18,639	
Price PSF	\$1046	
CAP Rate	8.45%	
Year Built	1989	
Lot Size	2.50 Acres	
Lease Type	NNN	
Base Rent	\$1,649,124	\$88.48 PSF
Monthly Rent	\$137,427	\$7.37 PSF

*Pricing analysis based on February 2012 - January 2013

Lease Overview

RENT ROLL							
Tenant	Lease Commence	Lease End	Square Footage	Building Share	Annual Rent	Monthly Rent	Monthly Rent (PSF)
Terrible Horst, Inc.	Jan. 2006	Jan. 2026	18,639	100%	\$1,649,124	\$137,427	\$7.37
Rent Increases: 2% Bumps Every Year							
4 - 5 Year Options to extend to as late as January 2046							



DEMOGRAPHICS

Area Demographics

POPULATION	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
2017 PROJECTION	7,420	62,147	126,622
2012 ESTIMATE	7,027	59,411	121,110
2000 CENSUS	5,781	49,350	100,255
1990 CENSUS	4,086	39,432	80,930
PROJECTED GROWTH 2012 - 2017	5.6%	4.6%	4.6%
ESTIMATED GROWTH 2000 - 2012	21.6%	20.4%	20.8%
GROWTH 1990 - 2000	41.5%	25.2%	23.9%

HOUSEHOLDS	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
2017 PROJECTION	3,185	24,917	51,868
2012 ESTIMATE	3,022	23,981	50,077
2000 CENSUS	2,496	20,492	42,441
1990 CENSUS	1,802	17,310	36,043
GROWTH 2000 - 2012	21.07%	17.03%	17.99%

2012 EST. HOUSEHOLDS BY INCOME	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
\$500,000 OR MORE	8.50%	10.31%	10.61%
\$250,000 TO \$499,999	9.43%	10.58%	10.63%
\$150,000 TO \$249,999	14.13%	12.99%	12.16%
\$100,000 TO \$149,999	21.97%	17.36%	15.35%
\$75,000 TO \$99,999	23.10%	19.79%	18.48%
\$50,000 TO \$74,999	11.18%	11.28%	11.49%
\$35,000 TO \$49,999	5.53%	6.90%	7.64%
\$25,000 TO \$34,999	2.05%	3.85%	4.71%
\$15,000 TO \$24,999	1.99%	2.85%	3.50%
\$15,000 OR LESS	1.62%	3.42%	4.39%
2010 EST. AVERAGE HH INCOME	\$60,103	\$68,136	\$74,510
2010 EST. MEDIAN HH INCOME	\$47,249	\$48,931	\$51,690
2010 EST. INCOME PER CAPITA	\$26,495	\$27,709	\$31,151

2012 EST. POPULATION BY RACE/ETHNICITY	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
WHITE ALONE	77.8%	74.18%	76.69%
BLACK ALONE	2.1%	2.25%	1.99%
AMER. INDIAN/ALASKAN ALONE	1.5%	1.21%	1.37%
ASIAN ALONE	6.1%	6.18%	5.73%
HAWAIIAN/PACIFIC ISLANDER ALONE	0.7%	0.58%	0.53%
SOME OTHER ALONE	7.5%	11.56%	10.05%
TWO OR MORE RACES	4.2%	4.05%	3.65%
NOT OF HISPANIC ORIGIN	80.52%	71.20%	75.87%
HISPANIC ORIGIN	19.48%	28.80%	24.13%

2012 EST. HISPANIC RACE BASE	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
WHITE ALONE	1.369	17,111	29,218
BLACK ALONE	51.94%	51.94%	50.46%
AMER. INDIAN/ALASKAN ALONE	0.88%	0.72%	0.66%
ASIAN ALONE	1.97%	1.27%	1.32%
HAWAIIAN/PACIFIC ISLANDER ALONE	0.51%	0.57%	0.60%
SOME OTHER ALONE	0.15%	0.26%	0.19%
TWO OR MORE RACES	38.06%	39.57%	40.96%
	6.50%	5.69%	5.81%

2012 EST. POPULATION BY SEX	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
MALE	49.55%	50.23%	50.57%
FEMALE	50.45%	49.77%	49.43%

Area Demographics

2012 EST. POPULATION BY HOUSEHOLD TYPE	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
FAMILY HOUSEHOLDS	3,022	23,981	50,077
NON FAMILY HOUSEHOLDS	53.54%	59.51%	59.21%
	46.46%	40.49%	40.79%

2012 EST. MARITAL STATUS PERSONS 15+	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
SINGLE MALE, NEVER MARRIED	5,676	46,984	97,517
SINGLE FEMALE, NEVER MARRIED	16.86%	16.74%	16.35%
MARRIED	16.65%	13.06%	11.84%
DIVORCED	46.69%	50.20%	51.37%
WIDOWED	13.83%	14.00%	14.30%
	5.97%	6.01%	6.14%

2012 EST. HOUSEHOLDS BY TYPE	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
SINGLE PERSON HOUSEHOLD	3,022	23,981	50,077
MARRIED COUPLE FAMILIES	31.90%	28.36%	30.23%
OTHER FAMILY - MALE HEAD	73.11%	73.96%	75.32%
OTHER FAMILY - FEMALE HEAD	8.10%	7.85%	7.30%
	18.85%	18.19%	17.37%

2012 EST. HOUSEHOLDS BY POVERTY STATUS	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
ABOVE POVERTY LEVEL	1,618	14,270	29,649
BELOW POVERTY LEVEL	88.81%	87.96%	89.43%
	11.12%	12.04%	10.57%

2012 EST. POPULATION BY AGE	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
0 TO 4 YEARS	7,027	59,411	121,110
5 TO 9 YEARS	6.65%	7.66%	6.99%
10 TO 14 YEARS	6.46%	6.88%	6.46%
15 TO 17 YEARS	6.12%	6.38%	6.03%
18 TO 20 YEARS	2.73%	3.39%	3.59%
21 TO 24 YEARS	3.44%	3.56%	3.47%
25 TO 34 YEARS	5.15%	4.93%	4.72%
35 TO 44 YEARS	17.69%	14.89%	14.27%
45 TO 54 YEARS	14.23%	13.70%	12.86%
55 TO 64 YEARS	13.22%	13.62%	14.40%
65 TO 74 YEARS	10.97%	11.97%	13.03%
75 TO 84 YEARS	6.40%	7.01%	7.44%
85+ YEARS	4.26%	4.23%	4.72%
	2.68%	1.79%	2.02%
MEDIAN AGE	36	37	38

2012 EST. POP. 25+ BY EDUCATION	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
ELEMENTARY (K-8)	4,881	39,926	83,253
SOME HIGH SCHOOL (9-11)	3.34%	6.12%	5.49%
HIGH SCHOOL GRAD. (12)	4.88%	7.83%	7.95%
SOME COLLEGE (13-15)	29.05%	24.60%	21.72%
ASSOCIATE DEGREE	30.87%	26.01%	25.38%
BACHELOR'S DEGREE	6.64%	7.53%	8.01%
MASTER'S DEGREE	16.19%	17.79%	19.15%
PROFESSIONAL SCHOOL DEGREE	4.59%	6.50%	7.62%
DOCTORATE DEGREE	3.42%	2.74%	3.35%
	1.00%	0.87%	1.32%

Area Demographics

2012 EST. POP. 16+ BY OCCUPATION	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
ARCHITECT/ENGINEER	5.618	46.310	96.075
ARTS/ENTERTAIN/SPORTS	2.65%	1.70%	1.55%
BUILDING GROUNDS MAINT	1.36%	1.71%	1.88%
BUSINESS/FINANCIAL OPS	2.73%	4.39%	4.45%
COMMUNITY/SOC SVCS	5.33%	4.75%	4.53%
COMPUTER/MATHEMATICAL	0.72%	0.92%	0.93%
CONSTRUCTION/EXTRACTION	1.44%	2.50%	2.42%
EDU/TRAINING/LIBRARY	3.29%	5.05%	5.13%
FARM/FISH/FORESTRY	2.37%	3.97%	5.26%
FOOD PREP/SERVING	0.00%	0.10%	0.14%
HEALTH PRACTITIONER/TEC	5.17%	6.48%	6.37%
HEALTHCARE SUPPORT	4.40%	5.31%	6.18%
MAINTENANCE REPAIR	1.54%	1.31%	1.53%
LEGAL	1.70%	2.80%	2.43%
LIFE/PHYS/SOC SCIENCE	3.01%	1.67%	1.91%
MANAGEMENT	0.87%	0.71%	0.95%
OFFICE/ADMIN SUPPORT	8.36%	9.71%	10.20%
PRODUCTION	17.83%	15.86%	14.61%
PROTECTIVE SVCS	4.43%	3.93%	3.81%
SALES/RELATED	4.04%	3.11%	2.80%
PERSONAL CARE/SVC	14.25%	13.18%	12.72%
TRANSPORTATION/MOVING	5.71%	4.31%	4.09%
	8.70%	6.55%	6.11%

2012 EST. HH BY NUMBER OF VEHICLES	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
NO VEHICLES	3.022	23.981	50.077
1 VEHICLE	3.67%	7.76%	9.38%
2 VEHICLES	47.19%	38.96%	35.54%
3 VEHICLES	37.06%	37.80%	37.14%
4 VEHICLES	7.48%	10.31%	12.27%
5 OR MORE VEHICLES	2.85%	3.31%	3.58%
	1.72%	1.85%	2.09%

2012 EST. WORKERS TRANS. TO WORK	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
DROVE ALONE	3.868	30.193	61.253
CAR POOLED	81.80%	79.75%	77.71%
PUBLIC TRANSPORTATION	8.40%	8.28%	7.95%
WALKED	2.30%	4.07%	4.36%
BICYCLE	1.73%	2.23%	3.17%
OTHER MEANS	1.29%	0.65%	0.81%
WORKED AT HOME	1.99%	1.77%	1.86%
	2.51%	3.26%	4.13%

2012 EST. OWNER OCC. PROPERTY VALUES	1 MILE RADIUS	3 MILE RADIUS	5 MILE RADIUS
UNDER \$20,000	1.028	11.750	26.467
\$20,000 TO \$39,999	0.97%	5.50%	3.08%
\$40,000 TO \$59,999	0.39%	2.45%	1.80%
\$60,000 TO \$79,999	1.36%	2.94%	1.89%
\$80,000 TO \$99,999	3.50%	3.86%	2.65%
\$100,000 TO \$149,999	3.31%	3.25%	2.47%
\$150,000 TO \$199,999	22.18%	8.88%	8.77%
\$200,000 TO \$299,999	34.73%	24.26%	19.90%
\$300,000 TO \$399,999	15.18%	27.58%	30.66%
\$400,000 TO \$499,999	5.74%	9.95%	12.73%
\$500,000 TO \$749,999	1.65%	3.96%	6.58%
\$750,000 TO \$999,000	4.47%	3.99%	5.70%
\$1,000,000 OR MORE	3.79%	1.96%	2.33%
	2.63%	1.40%	1.44%
MEDIAN PROPERTY VALUE	\$176,283	\$197,610	\$230,790

2645
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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

CASE NO. CV14-01712
DEPT. 6

Plaintiff,
vs.

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

Defendants.

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

Counterclaimants,
vs

LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT

1 CORPORATION, a California corporation;

2 Counter-defendants.

3 _____/

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5 **DEFENDANTS'/COUNTERCLAIMANTS' OPPOSITION TO LARRY WILLARD AND**
6 **OVERLAND DEVELOPMENT CORPORATION'S**
7 **MOTION FOR SUMMARY JUDGMENT**

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28 **ORAL ARGUMENT REQUESTED**

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1 Defendants/Counterclaimants Berry-Hinckley Industries (“BHI”) and Jerry Herbst
2 (collectively, “Defendants”), by and through their counsel of record, Dickinson Wright PLLC,
3 hereby file this Opposition to Larry Willard and Overland Development Corporation’s
4 (collectively, “Willard”) Motion for Summary Judgment. This Opposition is supported by the
5 attached memorandum of points and authorities, all papers and pleadings on file herein, and
6 any information that this Court may choose to consider.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 While Willard’s Motion for Summary Judgment may appear innocuous at first blush, the
10 Motion, which is required to be based upon undisputed facts, and Willard’s conduct throughout
11 this case, is actually an affront to this Court, the Defendants, and the Nevada discovery process.

12 Specifically, first, Willard has never complied with his NRCP 16.1 damages
13 computation obligations, a fact to which he has stipulated and admitted in open court. Willard
14 has blatantly disregarded this Court’s express order directing him to serve NRCP 16.1 damages
15 computations, and ignored Defendants’ many requests for compliance made throughout the
16 pendency of this litigation.

17 Additionally, in December of 2016, Willard disclosed an expert, but the disclosure
18 wholly failed to comply with Nevada law. Willard acknowledged this immediately after serving
19 the noncompliant disclosure, and has also admitted to this in a Stipulation and Court Order, but
20 has not even attempted to rectify his wrongdoing.

21 Yet less than one month before the close of discovery, Willard filed the present Motion,
22 requesting judgment on a brand-new, never-disclosed, model of damages. These damages are
23 premised on brand new theories and foundations, and would require both expert opinion and
24 rebuttal expert opinion, as well as additional discovery—an impossibility given the amount of
25 time remaining. Willard is also seeking \$40 million more in damages; more than triple the
26 amount originally sought. Further, this newly-requested relief is based solely upon the opinions
27 of the expert whom Willard never properly disclosed, and Defendants therefore never had a
28

1 chance to rebut. It is also based on never-disclosed appraisals, despite Defendants' discovery
2 request to Willard in 2015 requesting all such appraisals.

3 Willard deliberately chose to file the Motion at a time when it was too late for
4 Defendants to prepare a defense: in fact, Willard has expressly stipulated that one month would
5 be an inadequate amount of time for Defendants to rebut any expert opinions or new damages.
6 (February 9, 2017, Stipulation and Order, on file herein). There was no explanation as to why
7 Willard waited until the end of discovery to make untimely disclosures: indeed, the
8 declarations, improper expert opinions, and damages **all rely exclusively upon information**
9 **that has been in Willard's possession since the inception of this case.** In other words, all of
10 this information could have been timely disclosed years ago, yet Willard deliberately waited
11 until the close of discovery to disclose it, at a time when Defendants could not rebut it or
12 otherwise meaningfully respond.

13 There is no reason why Willard could not have timely disclosed his damages model,
14 expert, or appraisals except one: Willard intentionally waited until the eleventh hour, when it
15 was too late for Defendants to respond or otherwise prepare a defense, to change his damages
16 model and untimely "disclose" an expert so late that Defendants cannot respond (and then, in
17 the height of irony, use the purported expert's conclusions as "undisputed facts"). This appears
18 to be a blatant effort to "sandbag" Defendants and prejudice their ability to prepare the case for
19 trial. Further, regardless of Willard's motivations, it is undisputed that Defendants are
20 prejudiced as a result of Willard's needless and repeated delay. Defendants would need to
21 engage in significant new discovery and retain direct and rebuttal experts to adequately respond.
22 (February 9, 2017, Stipulation and Order, on file herein). Throughout this case, Defendants gave
23 Willard numerous opportunities to rectify his noncompliance, yet Willard declined every
24 invitation to do so. This Court issued multiple orders that Willard ignored. Further, Willard's

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Specious conduct has led to three trial continuances to give Willard time to comply, but to no avail whatsoever.¹

Summary judgment is completely inappropriate on claims that Defendants are reviewing for the first time. Rather than grant Willard's Motion for Summary Judgment, Defendants ask that this Court sanction Willard for his recalcitrant conduct and dismiss this case, or, in the alternative, preclude Willard from seeking his new damages or relying upon his untimely-disclosed expert and appraisals.

COUNTER-STATEMENT OF FACTS AND HISTORY

Willard's recitation of the purported "facts" is irrelevant when Willard's requested relief is considered in its proper context. As will be discussed herein, Willard has completely ignored the NRCP and this Court's orders, which categorically prohibit Willard from receiving any of his untimely and improperly-requested relief in his Motion.

1. Willard's complaint.

On August 8, 2014, Plaintiffs commenced this action against Defendants. (Complaint, on file herein). In pertinent part, Willard sought the following damages against Defendants for an alleged breach of the parties' lease: (1) "rental income" for \$19,443,836.94, discounted by 4% per the lease to \$15,741,360.75 as of March 1, 2013; and (2) certain property-related damages, such as insurance and installation of a security fence. *Id.*; (First Amended Complaint ("FAC"), on file herein). Willard also sought several other categories of unforeseeable and overreaching damages which have since been dismissed or withdrawn. (May 30, 2017, Order, on file herein).

¹This conduct is part of a larger pattern and practice of Willard to disregard discovery obligations. Defendants have been forced to file two motions to compel and a motion for contempt and sanctions, all of which have been granted, but Willard apparently remains undeterred. Further, Defendants have propounded numerous requests on Willard throughout this litigation to comply with his basic discovery obligations and adequately respond to Defendants' discovery requests, but Willard has simply refused to meaningfully participate in the discovery process required under the NRCP.

1 **2. Willard's initial disclosures.**

2 On December 12, 2014, Plaintiffs provided their initial disclosures. (**Exhibit 2**).
3 However, while Plaintiffs disclosed expected witnesses and documents, they did not provide a
4 computation of Plaintiffs' claimed damages, notwithstanding the express requirement in NRCP
5 16.1(a)(1)(C).

6 **3. Defendants' February 12, 2015, letter.**

7 On February 12, 2015, Defendants wrote to Plaintiffs regarding the deficiencies in their
8 initial disclosures, and informing them that the disclosures "do not include the damages
9 computations required under the Rule, or the documents upon which such computations are
10 based," and that Plaintiffs have not produced "under Rule 34 the documents or other evidentiary
11 matter, not privileged or protected from disclosure, on which such computation is based,
12 including materials bearing on the nature and extent of injuries suffered." (February 12, 2015,
13 Letter, **Exhibit 3**). Defendants further admonished Plaintiffs that should they fail to comply
14 with NRCP 16.1(a)(1)(C), "Defendants will avail themselves of all available legal remedies,
15 including filing motions seeking to exclude evidence of such categories of damages." *Id.*
16 Willard did not comply with his NRCP 16.1 obligations upon receipt of this letter or any time
17 thereafter. (Decl. of B. Irvine, **Exhibit 1**).

18 **4. Willard's interrogatory responses.**

19 In April of 2015, Defendants served Willard with written discovery. Defendants had not
20 received any NRCP 16.1 damages disclosures from Willard, and asked Willard to "[p]lease
21 explain in detail how the damages in Paragraphs 13-18 alleged in your Amended Complaint
22 were calculated." (Willard July 2015 Interrogatory Responses 7, **Exhibit 4**). Willard did not
23 respond, even after Defendants granted multiple extensions, which ultimately required
24 Defendants to file a motion to compel. (June 23, 2015, Motion to Compel, on file herein).
25 Willard did not oppose the Motion, and this Court granted the Motion. (July 1, 2015, Order
26 Granting Motion to Compel, on file herein). Only then did Willard finally comply with his
27 obligations to respond to Defendants' Interrogatories (nearly three months after they were
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1 served on Willard). He responded, in pertinent part, by simply repeating the allegations in the
2 Complaint: the rent damages were calculated by computing the Base Monthly Rental from
3 March 1, 2013, through August 23, 2023 and adding two percent per annum, which purportedly
4 totaled \$19,443,836.94, and were then discounted applying a 4% discount rate in the Apple
5 Numbers spreadsheet application, which purportedly yielded a net present value of
6 \$15,741,360.75. (Willard July 2015 Interrogatory Responses 7, **Exhibit 4**). Notably, this court-
7 ordered response from more than two years ago **was the last time Willard provided any**
8 **indication of what his claimed damages are until the present motion**, and even this did not
9 comply with NRCP 16.1.

10 **5. The September 3, 2015, stipulation and order to continue to trial date.**

11 On August 28, 2015, Defendants wrote to Plaintiffs, referencing Plaintiffs' continued
12 delay in complying with discovery obligations and resulting prejudice to Defendants, and noting
13 that Plaintiffs had also failed to comply with a promise they made during a status conference
14 before this Court. (August 28, 2015, letter, **Exhibit 5**). Plaintiffs' delay necessitated a
15 stipulation and order vacating the discovery deadlines in place and continuing the trial date.
16 (September 3, 2015, Stipulation and Order, on file herein).

17 **6. The parties' May 2, 2016, stipulation and order to continue the trial date.**

18 In March of 2016, Defendants wrote Plaintiffs twice, seeking documentation that
19 Plaintiffs failed to provide previously, and asking that Plaintiffs comply with their NRCP 26(e)
20 obligation to supplement their responses as necessary. (March 3, 2016, letter, **Exhibit 6**; March
21 15, 2016, letter, **Exhibit 7**).

22 On April 20, 2016, Defendants continued to request the information that they sought in
23 their March 2016 letters, noting that Plaintiffs had promised to provide such documents but had
24 not done so. (April 20, 2016, letter, **Exhibit 8**). Defendants again requested Plaintiffs' NRCP
25 16.1 damages calculations, noting that "this is an issue which we have raised on multiple
26 occasions" and detailing pertinent law and Willard's noncompliance. *Id.* Further, Defendants
27 again admonished that Plaintiffs' failure to comply would result in Defendants seeking
28

1 sanctions. *Id.* Yet again, Willard failed to comply with his NRCP 16.1 obligations. (Decl. of B.
2 Irvine, **Exhibit 1**).

3 Defendants also stated that “[y]our clients’ failure to provide us with the discovery
4 documents ha[s] prejudiced our ability to prepare a defense on behalf of our clients. Without
5 such documents, we cannot depose several witnesses, and our experts are unable to complete
6 their opinions. This also jeopardizes our ability to submit dispositive motions with complete
7 information in time for the Court to fully consider those motions.” (April 20, 2016, letter,
8 **Exhibit 8**).

9 Accordingly, the parties agreed to continue the trial, for a second time. The agreed-upon
10 basis for a continuance was that Plaintiffs needed to provide Defendants with documents and
11 information, and also needed to provide “Plaintiffs’ NRCP 16.1 damages calculations.” (May 2,
12 2016, Stipulation and Order, on file herein). This Court signed the Order, adding that “no
13 further continuances will be granted.” *Id.* Trial was scheduled for May 2, 2017, and discovery
14 was set to close on March 2, 2017.

15 **7. Willard’s unsuccessful purported disclosure of Daniel Gluhaich.**

16 On December 2, 2016, Plaintiffs purported to disclose Daniel Gluhaich as an un-retained
17 expert. (December 2, 2016, Disclosure, **Exhibit 9**). However, while Plaintiffs’ disclosure
18 generally referenced the categories to which Gluhaich was expected to testify, Plaintiffs did not
19 provide “a summary of the facts and opinions to which the witness is expected to testify” as
20 required by NRCP 16.1(a)(2)(B).² *Id.*

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23 ²In contrast, Defendants disclosed Michelle Salazar as an expert and served Plaintiffs
24 with Ms. Salazar’s report, which included, as required under NRCP 16.1(a)(2)(B) “a complete
25 statement of all opinions to be expressed and the basis and reasons therefor; the data or other
26 information considered by the witness in forming the opinions; any exhibits to be used as a
27 summary of or support for the opinions; the qualifications of the witness, including a list of all
28 publications authored by the witness within the preceding 10 years; the compensation to be paid
for the study and testimony; and a listing of any other cases in which the witness has testified as
an expert at trial or by deposition within the preceding four years.”

1 In fact, Plaintiffs immediately admitted to this, reiterating in an email to Defendants that
2 Defendants had agreed to “allow Plaintiffs to provide an amended expert witness disclosure by
3 mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr.
4 Gluhaich will be testifying....” (December 5, 2016, email, **Exhibit 10**³). However, Plaintiffs did
5 not provide an amended disclosure on December 8 or any time thereafter. (Decl. of B. Irvine,
6 **Exhibit 1**).

7 **8. The parties’ December 2016 correspondence.**

8 On December 9, 2016, Defendants’ counsel wrote that Defendants did not receive the
9 amended disclosure, or dates pursuant to which Defendants could depose Gluhaich. (December
10 9, 2016, email, **Exhibit 11**). Defendants admonished that “[o]bviously, we will be prejudiced by
11 further delay in learning all of the expert opinion testimony that plaintiffs intent to present at
12 trial. Please provide that information immediately.” *Id.* Defendants also addressed Plaintiffs’
13 continual failure to provide their NRCP 16.1 damages and asked to “[p]lease provide NRCP
14 16.1 damages computations for all plaintiffs, immediately,” noting that “it is impossible for us
15 to recommend any settlement to our clients without this information.” *Id.*

16 On December 23, 2016, Defendants’ counsel discussed Plaintiffs’ continued failure to
17 properly disclose an expert or even work with Defendants on expert deposition dates, even
18 though Defendants had provided Plaintiffs an extension. (December 23, 2016, email, **Exhibit**
19 **12**). Defendants also stated that this conduct was prejudicing Defendants and making it
20 impossible for Defendants to comply with discovery deadlines, referencing Defendants’ need to
21 obtain “significant additional information about Mr. Gluhaich’s proposed expert testimony,
22 including a supplemental disclosure providing the opinions he intended to offer and an
23 additional deposition of Mr. Gluhaich, before we could prepare and disclose potential expert
24 report(s) rebutting Mr. Gluhaich.” *Id.* Additionally, Defendants stated that “we still have never
25 received an NRCP 16.1 damages computations from either set of Plaintiffs, despite numerous

26 ³Defendants have included the attachment but are not using it to prove the validity or
27 amount of any claim, which is prohibited by Nevada law. NRS 48.105.

1 demands. Please ensure that Plaintiffs meet their obligations to provide such computations
 2 immediately, or we will seek to preclude Plaintiffs from seeking any non-disclosed damages at
 3 trial.... We also reserve the right to provide Plaintiffs' damages disclosure to Ms. Salazar so
 4 that she can provide new opinions about any new damages model." *Id.*

5 On December 27, 2016, Plaintiffs' counsel responded. (December 27, 2016, email,
 6 **Exhibit 13**⁴). Plaintiffs did not address their failure to provide their damages disclosures in any
 7 way, nor did they provide a disclosure. *Id.* Plaintiffs stated that Defendants "are granted an open
 8 extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until [they]
 9 have received Plaintiffs' amended disclosure, deposed Mr. Gluhaich, and provided any rebuttal
 10 expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s)." *Id.*
 11 Plaintiffs also stated that the amended expert witness disclosure would be tendered that day. *Id.*
 12 However, Plaintiffs did not provide any amended disclosure that day or any time thereafter.
 13 (Decl. of B. Irvine, **Exhibit 1**).

14 **9. This Court's January 10, 2017, hearing.**

15 On January 10, 2017, this Court held a hearing on Defendants' motion for partial
 16 summary judgment on Plaintiffs' overreaching consequential damages, which Mr. Willard
 17 personally attended. (January 10, 2017, transcript, on file herein). At the hearing, in pertinent
 18 part, Defendants' counsel informed this Court that Defendants had never received a damages
 19 computation from Plaintiffs pursuant to NRCP 16.1, despite Defendants' many demands. *Id.* at
 20 18. Plaintiffs' counsel attempted to claim that Plaintiffs' interrogatory responses satisfied the
 21 requirements. *Id.* at 42-43. But Plaintiffs' counsel **admitted**, in open court, that "with respect to
 22 Willard, they do not" have an up-to-date, clear picture of Plaintiffs' damages claims.⁵ *Id.* Upon
 23 orally granting Defendants' motion, this Court also ordered that "the Court enters a case
 24

25 ⁴Wooley's 2014 state tax return, which is attached to this email, has been omitted.

26 ⁵Plaintiffs claimed that Wooley's damages disclosures were up-to-date. (January 10,
 27 2017, Transcript at 42-43, on file herein). This was a blatant misrepresentation, as is discussed
 28 further in Defendants' Opposition to Wooley's Motion.

management order that directs the plaintiffs to serve, within 15 days after the entry of the summary judgment, an updated 16.1 damages disclosure.” *Id.* at 68.

10. The February 9, 2017, stipulation and order.

In spite of the rapidly impending trial date (at the time, May 2, 2017) and close of discovery (at the time, March 2, 2017), Willard did not provide Defendants with any damages disclosures or otherwise supplement or update his discovery responses in any way. (Decl. of B. Irvine, **Exhibit 1**). Nor did he ever supplement his improper disclosure of Mr. Gluhaich or properly disclose any expert.

On February 3, 2017, Defendants wrote Plaintiffs, prefacing their letter by stating that “as of the date of this letter, we have less than thirty (30) days to complete discovery, less than sixty (60) days to fully-brief and submit dispositive motions to the Court for decision and less than three months until the current trial date.” (February 3, 2017, letter, **Exhibit 14**). Defendants wrote this letter to inform Plaintiffs that because of their failure to comply with their obligations, Defendants would not be able to timely complete discovery or submit dispositive motions, all to Defendants’ prejudice, and to inform Plaintiffs that their conduct necessitated yet another continuance. *Id.*

In the letter, Defendants first addressed Plaintiffs’ obstinate refusal to comply with expert disclosure requirements. *Id.* Defendants reminded Plaintiffs that Plaintiffs “were indisputably aware of the fact that Plaintiffs’ disclosures did not comply with the Nevada Rules of Civil Procedure at the time [they] served the deficient disclosure or immediately thereafter, as demonstrated by [the parties’] December 5, 2016, telephonic conversation.” *Id.* However, despite Defendants granting a 6-day extension, Plaintiffs had not even attempted to comply with the Nevada Rules of Civil Procedure more than two months after the deadline, “without any justification whatsoever.” *Id.*

Defendants further informed Plaintiffs that their “failure to comply with the Nevada Rules of Civil Procedure in the first instance, or to rectify their failure by providing an amended disclosure, is severely prejudicing Defendants.” *Id.* With the close of discovery being one

1 month away, “regardless of what Plaintiffs do at this point, this discovery deadline would need
2 to be extended to enable the Defendants to complete discovery and disclose rebuttal experts in
3 the time permitted by the rule, the parties’ joint case conference report, and the stipulation and
4 order on file with the Court.” *Id.*

5 Defendants also addressed Plaintiffs’ continued failure to provide Defendants with an
6 NRCP 16.1 disclosure. *Id.* Defendants stated that it would be “patently prejudicial to
7 Defendants to receive Plaintiffs’ damages model within mere days of the close of discovery,”
8 and it would be impossible for Defendants’ expert to opine on any new damages theories under
9 the current discovery deadlines if Plaintiffs were to seek any additional or different types of
10 damages. *Id.* Finally, Defendants requested that Plaintiffs also provide other outstanding
11 discovery, stating that Plaintiffs “have been promising to disclose these documents for more
12 than 10 months, but have yet to do so.” *Id.* Based on these issues, Defendants asked for a
13 continuance so that Plaintiffs could comply with their obligations such that Defendants could
14 receive time to prepare their defenses in the timeline entitled to them by the Nevada Rules of
15 Civil Procedure and the parties’ agreements. *Id.*

16 Plaintiffs agreed to a continuance, and on February 9, 2017, the parties signed a
17 stipulation which contained several express stipulations that are critical to this Opposition. First,
18 Plaintiffs agreed that they never properly disclosed Gluhaich and that this conduct had been
19 prejudicial to Defendants:

20 4. On December 2, 2016, Plaintiffs disclosed Dan
21 Gluhaich as a non-retained expert. Plaintiffs’ disclosure of Mr.
22 Gluhaich indicated that Mr. Gluhaich would offer testimony
23 regarding twelve separate subject matters and included Mr.
24 Gluhaich’s resume, but did not include “a summary of the facts
25 and opinions to which the witness is expected to testify” as
26 required by NRCP 16.1(a)(2)(B).

27 5. Because Plaintiffs’ disclosure of Mr. Gluhaich did
28 not include a summary of the facts and opinions to which the
witness is expected to testify as required by NRCP 16.1(a)(2)(B),
Defendants have been unable to conduct a meaningful deposition
of Mr. Gluhaich or to retain experts to rebut Mr. Gluhaich’s
opinions, because those opinions remain unknown to Defendants.

1 6. Following receipt of Plaintiffs' supplemental
2 disclosure of Mr. Gluhaich, if any, which includes a summary of
3 the facts and opinions to which the witness is expected to testify
4 as required by NRCP 16.1(a)(2)(B), Defendants intend to depose
5 Mr. Gluhaich and retain experts to rebut his opinions.

6 10. ...[B]ecause Plaintiffs have not yet provided an
7 expert disclosure of Mr. Gluhaich that includes a summary of the
8 facts and opinions to which the witness is expected to testify as
9 required by NRCP 16.1(a)(2)(B), Defendants will be unable to
10 complete the deposition of Mr. Gluhaich or to retain and disclose
11 experts to rebut Mr. Gluhaich's opinions within the time currently
12 allowed for discovery.

13 (February 9, 2017, Stipulation and Order, on file herein).

14 Plaintiffs also stipulated that they had not properly provided their NRCP 16.1 damages
15 disclosures:

16 7. On January 10, 2017, the parties appeared in this
17 Court for a hearing on Defendants' Motion for Partial Summary
18 Judgment. At the hearing, the parties discussed with the Court
19 Plaintiffs' obligation to provide, pursuant to NRCP 16.1(a)(1)(C),
20 "[a] computation of any category of damages claimed by the
21 disclosing party, making available for inspection and copying as
22 under Rule 34 the documents or other evidentiary matter, not
23 privileged or protected from disclosure, on which such
24 computation is based, including materials bearing on the nature
25 and extent of injuries suffered." (January 10, 2017 Hearing
26 Transcript at 18, 42-43 and 61-62). Plaintiffs conceded at the
27 hearing that they have not yet provided Defendants with a
28 complete damages disclosure pursuant to NRCP 16.1(a)(1)(C),
and the Court ordered Plaintiffs "to serve, within 15 days after the
entry of the summary judgment, an updated 16.1 damage
disclosure." *Id.* at 68.

 8. Upon receipt of Plaintiffs' NRCP 16.1 damages
disclosure, Defendants intend to have Michelle Salazar
supplement her initial expert report to include any opinions about
any new or revised damages claims or calculations submitted by
Plaintiffs, and Defendants may also need to conduct additional
fact discovery on any new or revised damages claims or
calculations submitted by Plaintiffs.

 9. Discovery in this matter currently is scheduled to
close on March 2, 2017, and dispositive motions must be filed and
submitted for decision no later than March 31, 2017.

 10. Because Plaintiffs have not yet provided a
complete NRCP 16.1 damages disclosure, Defendants will not be
able to complete necessary fact discovery on Plaintiffs' damages,
or to disclose an updated expert report of Michelle Salazar within
the time currently allowed for discovery....

1 *Id.*

2 Plaintiffs stipulated that this Court should enter an order which, in pertinent part,
3 requires “Plaintiffs to serve Defendants with an updated initial expert disclosure of Dan
4 Gluhaich that is fully-compliant with NRCP 16.1 and NRCP 26 within thirty (30) days of the
5 date of the Order approving this Stipulation.” *Id.* Plaintiffs also stipulated to other pertinent
6 deadlines:

7 3. The deadline for Defendants to serve a
8 supplemental expert disclosure of Michelle Salazar providing any
9 opinions about any new or revised damages claims or calculations
submitted by Plaintiffs shall be extended until sixty (60) days
before the close of discovery....

10 5. The deadline for Defendants to serve any rebuttal
11 expert disclosures shall be extended until forty-five (45) days
12 after Plaintiffs serve Defendants with an updated initial expert
disclosure of Dan Gluhaich that is fully-compliant with NRCP
16.1 and NRCP 26.

13 *Id.*

14 This Court entered an Order consistent with the stipulation on February 9, 2017. *Id.*
15 However, the Plaintiffs have done **nothing** in this case since the entry of this Court’s Order or
16 the stipulation of the parties. (Decl. of B. Irvine, **Exhibit 1**).

17 The parties set a trial date of January 29, 2018, meaning that, per the Stipulation and
18 Order, discovery is set to close on November 15, 2017.

19 **11. This Court’s May 30, 2017, order.**

20 On May 30, 2017, this Court entered an Order granting Defendants’ motion for partial
21 summary judgment. (Order, on file herein). In pertinent part, this Court stated that “[i]t is
22 further ordered Plaintiffs shall serve, within fifteen (15) days of entry of this order, an updated
23 NRCP 16.1 damage disclosure.” *Id.* Again, Plaintiffs completely ignored this order. They have
24 failed to both properly disclose Gluhaich or to provide damages computations, despite the
25 express requirements of the NRCP and this Court’s Orders. Instead, the Plaintiffs chose to do
26 nothing in this case until filing the present motion for summary judgment. (Decl. of B. Irvine,
27 **Exhibit 1**).

12. Willard's motion for summary judgment.

After three years of obstinate refusal to provide Defendants with NRCP 16.1 damages or to supplement any damages calculations, and after nearly one year of refusing to comply with the requirements to properly disclose an expert, Willard filed a motion for summary judgment in which Willard seeks brand new, never-before disclosed, types, categories, and amounts of damages. Further, his purported calculations are based upon opinions of an expert who was never properly disclosed and who is basing most of his opinions on appraisals that have not been disclosed in this case and which Defendants saw for the first time as exhibits to the present Motion. And, this Motion was filed with only four weeks remaining in discovery—putting Defendants in the exact same position that they were placed in February of 2017. (February 3, 2017, letter, **Exhibit 14**). Perhaps most egregiously, Willard's new damages and expert opinions are all based upon information that has been in Willard's possession throughout this case: in other words, there is no reason that Willard could not have disclosed these damages at the inception of the case.

A comparison amply demonstrates the difference between the present damages being sought and those in the Complaint/Interrogatory response from two years ago (the last time Willard provided any indication of his damages):

<u>FAC/ Interrogatory Response⁶</u>	<u>Present motion for summary judgment</u>
<u>Accelerated rent:</u> "rental income" in the amount of \$19,443,836.94, discounted by 4% per the lease to \$15,741,360.75 as of March 1, 2013.	<u>Liquidated damages (brand new) plus default interest (brand new):</u> \$26,024,894.31
<u>Property-related damages:</u> \$20,881.50	<u>Diminution in value (brand new) plus default interest (brand new):</u> \$27,589,685.48
<u>Total:</u> \$15,762,242.25	<u>Property-related damages plus interest</u>

⁶Willard also sought many millions in unforeseeable consequential damages, and this Court has granted summary judgment in Defendants' favor on those claims. (May 30, 2017, Order, on file herein). Because these claims have since been dismissed, they are not included here.

	<u>(new amount)</u> : \$48,097.79
	<u>Unpaid rent and late payment charges (new)</u> : \$785,670.52.
	<u>Total</u> : \$54,448,348.10

This simple comparison demonstrates the following differences:

- Willard is seeking **more than triple** the amount of damages, nearly **\$40 million more** in damages than he sought in his complaint and ostensibly throughout this case.
- Willard has a brand new, different basis for his claimed “rent” damages: the liquidated damages provision in the lease. Unlike the damages sought in his Complaint, the liquidated damages clause has a variable—reasonable rental value—that would necessarily require Willard to introduce an expert opinion to meet his burden of proof.
- Willard has a brand new claim for diminution in value damages that would also require Willard to offer expert opinions to meet his burden of proof.
- Default interest is a brand new component of Willard’s claimed damages.
- The property-related damages now have a different purported value and amount.
- Willard’s damages are based upon the opinions of an undisclosed expert, and therefore Defendants did not have the chance to explore this expert’s opinions or rebut them as they are entitled to do.
- Willard and his purported expert rely upon appraisals from 2008 and 2014 which were never disclosed in this litigation, despite Willard’s NRCP 16.1 and NRCP 26(e) obligations. *See also* (Willard Responses to Defendants’ First Set of Requests for Production of Documents 17, **Exhibit 15** (“Please produce any and all appraisals for the Property from January 1, 2012 through present.”)).

At this point in the case, Defendants have obviously only been able to prepare defenses to the bases for damages that Willard asserted in the Complaint and Interrogatory responses, not to Willard’s brand new bases for damages. And, Defendants now cannot engage in appropriate fact discovery and retain appropriate expert opinions to prepare defenses to Willard’s new damages claims. It is beyond dispute that the Defendants have been ambushed by Willard, both with respect to the type and amount of his newly-requested damages, with mere days remaining in discovery. This timing of Willard’s Motion also undeniably deprives Defendants of the process that the parties expressly agreed was necessary to rebut any properly-disclosed expert opinions or properly-disclosed NRCP 16.1 damages calculations, as confirmed by express order of this Court. (February 9, 2017, Stipulation and Order, on file herein).

1 Further, there is no explanation for Willard's delay in changing his damages model at
2 the eleventh hour. This much is clear from Willard's Motion, where the declarations, the
3 improper expert opinions, and the damages calculations **all rely exclusively upon information**
4 **that has been in Willard's possession since the inception of this case.** Thus, there is no
5 reason why Willard could not have timely complied with his NRCp 16.1 obligations, this
6 Court's Orders, or Defendants' many requests. *Id.* Further, Defendants are clearly blameless for
7 the delay.

8 Indeed, Defendants must point out that the conduct discussed herein is part of a larger
9 pattern of Plaintiffs to ignore their discovery obligations. Defendants have been forced to file
10 two motions to compel and a motion for contempt and sanctions, simply to have Willard
11 comply with his discovery obligations. All were unopposed and granted, and for each such
12 Motion, this Court awarded Defendants their attorneys' fees. (Orders, on file herein). Further,
13 Defendants have had to undergo similar efforts with Willard throughout the litigation simply to
14 have Willard comply with his basic discovery obligations. (March 3, 2016, letter, **Exhibit 6**
15 (seeking requested documentation not previously provided and also seeking supplemental
16 responses); March 15, 2016, letter, **Exhibit 7** (same); April 1, 2016, email, **Exhibit 16** (seeking
17 documents after providing extensions); May 3, 2016, email exchange, **Exhibit 17** (seeking
18 previously-requested documents); June 21, 2016, email exchange, **Exhibit 18** (seeking
19 supplemental responses that Defendants had been requesting for months); July 21, 2016, letter,
20 **Exhibit 19** (seeking previously-requested responses, stating that "you have been promising to
21 provide [Defendants] with Plaintiffs' responses to Defendants' discovery requests for many
22 months (*see* attached emails), but we still have received no such responses.")). Put simply,
23 Defendants have been required repeatedly to go to extraordinary lengths to attempt to force
24 Willard to comply with basic obligations and deadlines imposed by the NRCp.

25 This Court can likely deduce the relief that Defendants will seek herein. Willard's
26 newly-requested relief and conduct throughout this case is patently improper, in bad faith, and
27 deliberate, and Defendants respectfully submit that this entire case should be dismissed, or, at a
28

minimum, Willard should be limited to seeking the damages that he has sought throughout this case rather than his new model and amounts, and Gluhaich must not be permitted to testify as an expert.

ARGUMENT

1. Willard's noncompliance with Nevada law and this Court's orders necessitates dismissal.

Defendants respectfully submit that this Court should not only deny Willard's Motion, but it should also dismiss the case due to Willard's willful and repeated refusal to comply with Nevada law and this Court's orders.

Indeed, when considering the sanctions to impose, Defendants request that this Court consider the following:

- Willard **never** complied with his mandatory NRCP 16.1 obligation to provide a damages computation (including supporting documentation), a fact to which he has stipulated and also admitted in open court. (May 2, 2016, Stipulation and Order, on file herein; February 9, 2017, Stipulation and Order, on file herein; January 10, 2017, Transcript, on file herein).
- Willard ignored this Court's express order directing him to serve updated NRCP 16.1 disclosures within 15 days of the Court's Order. In fact, Willard has done nothing in response to the Court's Order, which was entered in May of 2017. (May 30, 2017, Order, on file herein).
- Willard never properly disclosed an expert, a fact to which he has stipulated. (February 9, 2017, Stipulation and Order, on file herein).
- Willard ignored this Court's Order directing him to serve compliant expert disclosures, and affirming the parties' agreed-upon timeline that was to be triggered by Willard submitting compliant expert and damages disclosures. (February 9, 2017, Stipulation and Order, on file herein; *see also* May 2, 2016, Stipulation and Order, on file herein). Again, Willard has never made **any** attempts to comply, including since signing the February 9, 2017, Stipulation and Order.
- Defendants repeatedly and graciously provided Willard with extensions to comply with his obligations. *See* (February 9, 2017, Stipulation and Order, on file herein); December 2016 correspondence, *supra* pp. 6-8.
- Willard acknowledged and agreed that, upon him finally providing compliant disclosures, Defendants would obviously need time to respond to those disclosures through additional fact discovery and retention of experts. *See id.*; *supra* pp. 9-12. The parties agreed to a timeline, which this Court confirmed. *Id.*
- Yet, Willard did absolutely nothing to provide Defendants with any of the court-ordered, required disclosures. (Decl. of B. Irvine, **Exhibit 1**).

- 1 • Then, less than one month before the close of discovery, Willard sought summary
2 judgment on a brand-new, never-disclosed model of damages. (Motion). These damages
3 were premised on brand-new theories and bases, with new considerations (such as the
4 fact that expert testimony would be required to establish and rebut these), and were for
5 \$40 million more than originally sought. *Id.*
- 6 • Further, this newly-requested relief was based exclusively upon information that has
7 been available to Willard since the inception of this case, without any justification for
8 the delay. *Id.*
- 9 • Additionally, this newly-requested relief was based upon the opinions of an expert who
10 was never properly disclosed (and whose opinions were also based solely upon
11 information that was available to Willard throughout this entire litigation), and therefore
12 Defendants never had the opportunity to rebut.
- 13 • It was also based upon appraisals that were never disclosed, notwithstanding
14 Defendants' express requests for appraisals and Willard's NRCP 16.1 and NRCP 26(e)
15 obligations.
- 16 • And, Willard's new damages model was presented at a time when it is too late for
17 Defendants to be able to undertake the necessary additional discovery, including
18 depositions, and retain the appropriate experts to rebut the testimony. To that end, it also
19 deprived Defendants of the agreed-upon timeline.
- 20 • This conduct is part of a larger pattern and practice of Willard to disregard discovery
21 obligations. Defendants have been forced to file two motions to compel and a motion for
22 contempt and sanctions, all of which have been granted, but Willard apparently remains
23 undeterred. Further, Defendants have propounded numerous requests on Willard
24 throughout this litigation to comply with his basic discovery obligations and adequately
25 respond to Defendants' discovery requests, but to no avail. *Supra* p. 15. Indeed,
26 Willard's disregard for discovery has already necessitated three continuances of the trial
27 date. *Supra* pp. 5-12.

28 The inexorable conclusion from this conduct is that Willard strategically violated the
law and ignored this Court's orders to unfairly ambush Defendants and deprive them of their
ability to defend this case. Willard has not been prosecuting this case (indeed, forcing Willard to
provide even basic responses to Defendants' discovery has proven to be an arduous task), but
rather has been lying in wait to strategically reveal his relief, and new bases for it, at the
eleventh hour to the prejudice of Defendants and this Court's time and docket. Defendants
respectfully submit that Willard's wanton disregard for clear Nevada law, this Court's orders,
and Defendants' rights to prepare a defense necessitates dismissal of this case with prejudice.

a. Governing law.

NRCP 16.1(a)(1)(A)(C) provides that "a party must, without awaiting a discovery
request, provide to other parties...[a] computation of any category of damages claimed by the

disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such a computation is based, including materials bearing on the nature and extent of injuries suffered....” “The use of the word ‘must’ means that the rule’s requirements are mandatory.” *Vanguard Piping v. Eighth Jud. Dist. Ct.*, 129 Nev. ___, ___, 309 P.3d 1017, 1020 (2013) (discussing the NRCP 16.1(a)(1)(D) requirements).

Further, “the rule requires a computation supported by documents.... A plaintiff is required to provide its assessment of damages in its initial disclosure in light of the information currently available to it in sufficient detail so as to enable each defendant to understand the contours of its potential exposure and make informed decisions as to settlement and discovery.” 10 Fed. Proc., L. Ed. § 26:44 (discussing FRCP 26); *see generally Vanguard Piping*, 129 Nev. at ___, 309 P.3d at 1020 (“Because of the similarity in the language, federal cases interpreting [the FRCP corollary to NRCP 16.1(A)(1)(D)] are strong persuasive authority.”). Indeed, it is the plaintiff’s burden to prove damages, *see generally Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543-44 (1994) (“The party seeking damages has the burden of proving the fact that he was damaged and the amount thereof.”), and “the plaintiff cannot shift to the defendant the burden of attempting to determine the amount of the plaintiff’s damages.” 10 Fed. Proc., L. Ed. § 26:44.

Also pertinent, NRCP 16.1(a)(2)(B) requires that a non-retained expert must provide, *inter alia*, a summary of the facts and opinions to which the witness is expected to testify. References to broad categories as to what the expert will testify are insufficient. *See Jones v. Colorado Cas. Ins. Co.*, 2015 WL 6123125, at *3 (D. Ariz. 2015).

Further, NRCP 26(e) requires that:

A party who has made a disclosure under Rule 16.1 or 16.2 or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under Rule 16.1(a) or 16.2(a) if the party

1 learns that in some material respect the information disclosed is
 2 incomplete or incorrect and if the additional or corrective
 3 information has not otherwise been made known to the other
 4 parties during the discovery process or in writing. With respect to
 5 testimony of an expert from whom a report is required under Rule
 16.1(a)(2)(B) the duty extends both to information contained in
 the report and to information provided through a deposition of the
 expert, and any additions or other changes to this information
 shall be disclosed by the time the party's disclosures under Rule
 16.1(a)(3) are due.

6 (2) A party is under a duty seasonably to amend a prior
 7 response to an interrogatory, request for production or request for
 8 admission, if the party learns that the response is in some material
 9 respect incomplete or incorrect and if the additional or corrective
 information has not otherwise been made known to the other
 parties during the discovery process or in writing.

10 Failure to comply with NRCP 16.1's requirements results in sanctions. Pursuant to
 11 NRCP 16.1(e)(3):

12 If an attorney fails to reasonably comply with **any** provision in
 13 [NRCP 16.1], or if an attorney or a party fails to comply with an
 14 **order** entered pursuant to [NRCP 16.1(d)], the court, upon motion
 or upon its own initiative, **shall** impose upon a party or a party's
 attorney, or both, appropriate sanctions in regard to the failure(s)
 as are just, including the following:

15 (A) Any of the sanctions available pursuant to Rule 37(b)(2) and
 Rule 37(f);

16 (B) An order prohibiting the use of any witness, document or
 17 tangible thing which should have been disclosed, produced,
 exhibited, or exchanged pursuant to Rule 16.1(a).

18 (Emphases added). In turn, NRCP 37(b)(2) provides that a court may make an order (B)
 19 refusing to allow the disobedient party to support or oppose designated claims or defenses, or
 20 prohibiting that party from introducing designated matters into evidence; or (C) striking out
 21 pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or
 22 rendering a judgment by default against the disobedient party.

23 Further, NRCP 37(c)(1) provides that "[a] party that without substantial justification
 24 fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior
 25 response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless,
 26 permitted to use as evidence at a trial...any witness or information not so disclosed." NRCP
 27 37(c)(1) also provides that "[i]n addition to or in lieu of this sanction, the court, on motion and
 28

1 after affording an opportunity to be heard, may impose other appropriate sanctions. In addition
2 to requiring payment of reasonable expenses, including attorney's fees, caused by the failure,
3 these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C)
4 and may include informing the jury of the failure to make a disclosure." *Id.* Thus, this Court
5 may dismiss the case, or, at an absolute minimum, may exclude the improperly-sought
6 damages, expert opinion, and appraisals, pursuant to NRCP 37.

7 Similarly, pursuant to NRCP 41(b), "[f]or failure of the plaintiff to comply with [the
8 Nevada Rules of Civil Procedure] or any order of court, a defendant may move for dismissal of
9 an action or of any claim against the defendant." In addition to this rule-based authority, the
10 Nevada Supreme Court has also recognized that "the court has inherent power to enter defaults
11 and dismiss actions for abusive litigation practices." *Blanco v. Blanco*, 129 Nev. ___, ___, 311
12 P.3d 1170, 1174 (2013).

13 **b. Willard's conduct demands dismissal with prejudice.**

14 Defendants respectfully submit that Willard's conduct demands dismissal with
15 prejudice. The Nevada Supreme Court has recognized that NRCP 37(b)(2)(C) provides a district
16 court with authority to impose, among other things, case-concluding sanctions for
17 noncompliance with its orders, and the Court also has inherent power to dismiss actions for
18 abusive litigation practices. *Id.* "Procedural due process considerations require that such case-
19 concluding discovery sanctions be just and that they relate to the claims at issue in the violated
20 discovery order." *Id.* Further, the Court must consider pertinent factors, including, but not
21 limited to, the extent of the offending party's willfulness, whether the non-offending party
22 would be prejudiced by imposition of a lesser sanction, whether dismissal is too severe for the
23 particular discovery abuse, the feasibility and fairness of less severe sanctions, the policy
24 favoring adjudication of cases on their merits, and the need for deterring similar abusive
25 conduct. *Id.* Dismissal should only be used in the most extreme of cases. *Id.*

26 Defendants respectfully submit that such factors require dismissal. Willard's damages
27 disclosures are so central to this litigation, and to Defendants' rights and ability to defend this
28

1 case, that dismissal of the entire case is necessary. Further, Willard's violation was indisputably
2 willful. In addition to the plain language of NRCP 16.1, Willard has been on direct notice for
3 three years that he has not complied with NRCP 16.1(a)(1)(C), yet has not attempted to rectify
4 his wrongdoing. *Supra* pp. 2-15. This Court has ordered Willard to provide his damages
5 disclosures, but Willard has blatantly disregarded these orders. (January 10, 2017, Transcript at
6 68, on file herein; May 30, 2017, Order, on file herein); *see also Perez v. Siragusa*, 2008 WL
7 2704402 at *4 (E.D.N.Y. July 3, 2008) (dismissal pursuant to FRCP 37 and 41, noting that
8 "[n]on-compliance with discovery orders will be deemed willful when the court's orders have
9 been clear, when the party has understood them and when the party's noncompliance is not due
10 to factors beyond the party's control."). Willard has acknowledged in open court and in two
11 stipulations that he has not complied with NRCP 16.1, yet has not even attempted to do so. *See*,
12 *e.g.*, (January 10, 2017, Transcript, on file herein; February 9, 2017, Stipulation, on file herein;
13 May 2, 2016, Stipulation, on file herein). This is the epitome of willful conduct—and Willard's
14 bad faith motives in waiting to ambush Defendants with these damages are plainly evidenced by
15 his eleventh-hour Motion requesting brand-new, different, relief for \$40 million more than
16 originally sought based upon information that has been in Willard's possession for the entire
17 pendency of this case.

18 Willard's failure to properly disclose an expert is similarly willful. Willard
19 acknowledged immediately after his initial purported "disclosure" that the disclosure did not
20 comply with Nevada law. *See* (December 5, 2016, email (three days after disclosures due)
21 (wherein Plaintiffs' counsel stated that "[Defendants] agreed to allow Plaintiffs to provide an
22 amended witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts
23 and conclusions to which Mr. Gluhaich will be testifying..."); *see also* (December 23, 2016,
24 email, **Exhibit 12**; December 27, 2016, email, **Exhibit 13**). Willard expressly agreed that he
25 failed to comply with NRCP 16.1(a)(2)(B) and agreed to the entry of a Court order requiring
26 him to properly disclose an expert by March 11, 2017. (February 9, 2017, Stipulation and Order,
27 on file herein). Yet, Willard did not even attempt to provide a proper disclosure of Gluhaich at
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1 any time in 2017. Notwithstanding the foregoing, on October 17, 2017, four weeks prior to the
2 close of discovery, Willard filed the present Motion, referring to Gluhaich as “the Willard
3 Plaintiffs’ designated expert,” (Motion at 20), without even acknowledging his noncompliance,
4 much less providing justification for it. Even the most cursory review of Gluhaich’s Declaration
5 demonstrates that all of the purported facts and opinions that he provided could have been
6 timely disclosed in December of 2016. *See generally* (Gluhaich Declaration (relying exclusively
7 on events that occurred in 2014 or earlier). This Motion and Gluhaich’s affidavit were filed at a
8 stage in the case where it was too late for Defendants to properly explore or rebut Gluhaich’s
9 conclusions and bases therefore, a fact that Willard acknowledged in February with
10 approximately four weeks left in discovery. (February 9, 2017, Stipulation and Order, on file
11 herein).

12 In addition, it is clear that Willard’s failure to disclose the appraisals upon which his
13 newly-requested relief is based is willful. In his Motion, Willard relies upon an appraisal from
14 2008 to determine the purported “original” fair market value of the property. (Motion at 19).
15 According to Willard, this appraisal was “commissioned in 2008 by the Willard Plaintiffs.” *Id.*
16 Indeed, Gluhaich avers that “in September 2008 Willard commissioned an appraisal of the
17 Virginia Property...from CB Richard Ellis..., a copy of which was sent directly to me by Jason
18 Buckholz of CBRE on October 17, 2008.” (Gluhaich Decl. ¶5). Willard also relied upon, *inter*
19 *alia*, an appraisal from 2014 to establish the purported “fair rental value” of the property in
20 2014 for purposes of his newly-sought liquidated damages relief, and the purported “post-
21 breach” value of the property in 2014. *Id.* at 19-20. Gluhaich averred that “The 2014 Appraisal
22 was issued on February 11, 2014,” and he “received [this appraisal] directly from Rob Cashell.”
23 (Gluhaich Decl. ¶15). Gluhaich’s purported opinions were heavily based on these appraisals.
24 (Gluhaich Decl. ¶9 (“In my opinion, the 2008 Appraisal presents a thorough, detailed,
25 professional, and highly compelling analysis of the market value of the Virginia Property as
26 leased.”); ¶16 (relying on the appraisal to opine on the purported “as-is” fair market value); ¶17
27 (relying upon the appraisal to establish the purported fair market rental value)). However, these
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1 appraisals were never disclosed to Defendants at any time before the present motion. (Decl. of
2 B. Irvine, **Exhibit 1**). This is despite the fact that Defendants requested Willard to “produce any
3 and all appraisals for the Property from January 1, 2012, through present,” (Willard Responses
4 to Defendants’ First RFPs, **Exhibit 15**; March 3, 2016, letter, **Exhibit 6** (reminding Plaintiffs of
5 their obligations to supplement)), and that Willard had an obligation to disclose this material
6 pursuant to NRCP 16.1(a)(1)(C). Given that Willard freely admits that these appraisals were
7 commissioned prior to the commencement of the case, and were in his possession, this is clearly
8 willful omission.

9 Finally, it should be noted that this is part of a larger pattern and practice by Willard: as
10 this Court is already aware, Defendants have been forced to file multiple motions to compel
11 responses to their written discovery. (Orders Granting Motions to Compel, on file herein).
12 Further, Defendants have had to continually request that Willard comply with his basic
13 discovery obligations in this case, as Willard has appeared to demonstrate doing no interest in
14 doing this unprompted. *Supra* p. 15.

15 With respect to the prejudice to Defendants, this factor should be presumed, based upon
16 Willard’s repeated and willful delay in providing necessary information to Defendants. *Cf.*
17 *generally Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) (concluding that
18 “appellants’ continued discovery abuses and failure to comply with the district court’s first
19 sanction order evidences their willful and recalcitrant disregard of the judicial process, which
20 presumably prejudiced [the non-offending party]”); *Hamlett v. Reynolds*, 114 Nev. 863, 865, 963
21 P.2d 457, 458 (1998) (cited in *Foster* as “upholding the district court’s strike order where the
22 defaulting party’s ‘constant failure to follow [the court’s] orders was unexplained and
23 unwarranted”); *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217, 1236 (9th
24 Cir.2006) (cited in *Foster* as “holding that, with respect to discovery abuses, ‘[p]rejudice from
25 unreasonable delay is presumed’ and failure to comply with court orders mandating discovery
26 ‘is sufficient prejudice’”); *Perez*, 2008 WL 2704402 at *6 (“The behavior exhibited by plaintiffs
27 has prejudiced defendants by delaying the resolution of the claims and increasing the costs of
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1 litigation. The parties have not made any progress with discovery or moved closer to trial
2 readiness. This factor...weighs in favor of dismissing the action.”).

3 In fact, this is Willard’s **second** case against Defendants for the same purported breach:
4 as set forth in Defendants’ Motion for Partial Summary Judgment, Willard already improperly
5 attempted to prosecute this case against Defendants in California, which was ultimately
6 dismissed for a lack of personal jurisdiction. Defendants are entitled to resolution, not to
7 Willard languidly holding Defendants in litigation while simultaneously failing to meet his
8 obligations under the NRCPP to provide threshold information necessary to defend this case.
9 Finally, the liquidated damages provision, the diminution in value damages, and default interest
10 on both are all brand new requests that rely upon different bases and methodology than
11 Willard’s prior request for relief, and would all require rebuttal expert opinions and additional
12 fact discovery, including depositions.

13 Further, dismissal is not too severe for the particular discovery abuse: as noted,
14 Willard’s damages disclosure is central to this case, and dismissal is not too severe for Willard’s
15 repeated and willful noncompliance with Court orders and Nevada law. The feasibility and
16 fairness of less severe sanctions also favor dismissal. Willard was sanctioned for other
17 discovery violations on three occasions and remains undeterred, demonstrating that less severe
18 sanctions have no effect on his recalcitrant conduct. (Orders Granting Motions to Compel and
19 Motion for Contempt and Sanctions, on file herein). Willard’s conduct has also already caused
20 three continuances of the trial date, all to accommodate for Willard’s continued disregard for
21 Nevada discovery procedure. (Stipulations and Orders, on file herein). As this has happened
22 three times, lesser sanctions and continuances clearly have no effect on Willard’s conduct. Nor
23 would a less severe sanction be fair to Defendants, who have been continually prejudiced by
24 Willard’s willful disregard of his obligations despite their continued efforts to work with
25 Willard and provide extensions to Willard.

26 With respect to the policy favoring adjudication of cases on their merits, it is **Willard**
27 who frustrated this policy by refusing to provide Defendants with his damages calculations or
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1 proper expert disclosure, not Defendants. **Defendants** served multiple rounds of written
2 discovery upon Willard in an attempt to obtain information on Willard's damages; **Defendants**
3 took depositions; and **Defendants** requested compliant disclosures throughout this case so that
4 they could address the merits. *Supra* pp. 2-15; (Defendants' First Set of Interrogatories on
5 Willard, **Exhibit 20**; Second Set, **Exhibit 21**; Defendants' First Requests for Production on
6 Willard, **Exhibit 22**; Second Set, **Exhibit 23**; Third Set, **Exhibit 24**; Requests for Admission,
7 **Exhibit 25**). Willard should not be permitted to hide behind the policy of adjudicating cases on
8 the merits when it is he who has frustrated this policy throughout the litigation. Defendants
9 cannot reach the merits when they must spend the entire case asking Willard for threshold
10 information and receiving no meaningful responses. Again, this is Willard's **second** time
11 prosecuting this case against Defendants without undertaking the necessary conduct to reach the
12 merits.

13 The need to deter similar abusive conduct also weighs heavily in favor of dismissal.
14 Respectfully, this Court should be affronted by Willard's conduct in this litigation, particularly
15 with respect to his blatant disregard of the NRCP and this Court's express orders. The discovery
16 rules are in place for a reason, and are mandatory. Compliance with this Court's orders is also
17 mandatory. If Willard is permitted to continue prosecuting his case without severe consequence,
18 this type of abusive litigation practice will continue to the prejudice of defending parties and
19 will make a mockery of the Nevada Rules of Civil Procedure and of court orders. *Cf. generally*
20 *Foster*, 126 Nev. at 66, 227 P.3d at 1049 (noting that "[i]n light of appellants' repeated and
21 continued abuses, the policy of adjudicating cases on the merits would not have been furthered
22 in this case, and the ultimate sanctions were necessary to demonstrate to future litigants that
23 they are not free to act with wayward disregard of a court's orders."); *see also Langermann v.*
24 *Prop. & Cas. Ins. Co.*, 2015 WL 4714512 at *5 (D. Nev. 2015) (failing "to comply with a
25 scheduling order is not harmless, and re-opening discovery after the expiration of the deadlines
26 only encourages cavalier treatment of deadlines"). The Plaintiffs' cavalier disregard for this
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1 Court's orders and docket, Nevada law, and Defendants' rights to prepare a defense necessitates
2 dismissal.

3 Accordingly, based on the foregoing, Defendants respectfully request dismissal with
4 prejudice.

5 c. **Alternatively, at an absolute minimum, Willard's newly-requested relief,**
6 **never-properly-disclosed expert, and newly-disclosed appraisals should be**
7 **excluded.**

8 If this Court is not inclined to dismiss this case with prejudice, Defendants respectfully
9 request that this Court enter an Order precluding Willard from seeking his newly-requested
10 damages, from offering any testimony from his never-properly-disclosed expert, and from using
11 the newly-disclosed appraisals. This Court should instead require Willard to proceed on only the
12 theories and relief sought throughout.

13 As noted, pursuant to NRCP 37(c)(1), a party is prohibited from using as evidence at
14 trial "any witness or information not so disclosed" unless the party can show there was
15 substantial justification for the failure, or unless such failure was harmless. Further, NRCP
16 16.1(e)(3)(B) provides for discretionary exclusion of evidence if an attorney "fails to reasonably
17 comply with any provision of [NRCP 16.1]." Here, exclusion is plainly warranted pursuant to
18 NRCP 37(c)(1) or NRCP 16.1(e)(3)(B). *Cf. generally Yeti by Molly, Ltd. v. Deckers Outdoor*
19 *Corp.*, 259 F.3d 1101, 1105–06 (9th Cir. 2001) (explaining that the Advisory Committee Notes
20 to FRCP 37(c)(1) describe it as a "self-executing," "automatic" sanction to "provide[] a strong
21 inducement for disclosure of material," and "Courts have upheld the use of the sanction even
22 when a litigant's entire cause of action or defense has been precluded.").

23 Further, Willard would not be able to satisfy his burden that his failures are harmless or
24 substantially justified. *Id.* (offending party's burden to prove exceptions). Willard has provided
25 no justification whatsoever; he has not even acknowledged his wrongdoing. Further, it cannot
26 be overemphasized that Willard could have easily complied at any time during this litigation, as
27 everything discussed and sought in Willard's motion is based upon information that has been
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1 available to Willard during this entire litigation. Clearly, this falls short of a substantial
2 justification.

3 With respect to harmlessness, courts have held that the concept of “harmless” is fairly
4 limited, *see, e.g., AVX Corp. v. Cabot Corp.*, 251 F.R.D. 70, 78–80 (D. Mass. 2008), and that a
5 failure is not harmless when it would disrupt the schedule of the parties and the court. *See Wong*
6 *v. Regents of Univ. of California*, 410 F.3d 1052, 1062 (9th Cir. 2005) (“If Wong had been
7 permitted to disregard the deadline for identifying expert witnesses, the rest of the schedule laid
8 out by the court months in advance, and understood by the parties, would have to have been
9 altered as well. Disruption to the schedule of the court and other parties in that manner is not
10 harmless. Courts set such schedules to permit the court and the parties to deal with cases in a
11 thorough and orderly manner, and they must be allowed to enforce them, unless there are good
12 reasons not to. The district court did not abuse its discretion here in refusing to permit Wong to
13 supplement his disclosure with the additional expert witnesses and in barring testimony by and
14 relying upon those witnesses.”); *Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175, 1180
15 (9th Cir. 2008), *as amended* (Sept. 16, 2008) (“Later disclosure of damages would have most
16 likely required the court to create a new briefing schedule and perhaps re-open discovery, rather
17 than simply set a trial date. Such modifications to the court’s and the parties’ schedules supports
18 a finding that the failure to disclose was not harmless.”).

19 Here, as the parties stipulated and this Court confirmed when faced with a similar
20 timeline in February, the timing of Defendants’ newly-requested relief and purported expert
21 would necessitate the reopening of discovery, a new briefing schedule, and a fourth
22 continuance. (February 9, 2017, Stipulation and Order, on file herein). Indeed, Willard has
23 raised multiple brand new issues which Defendants would be required to address through
24 additional discovery, many of which would require expert testimony. For example, Defendants
25 were entitled to rebut (1) the fair market value of the property as leased; (2) the fair market
26 value of the property as-is; and (3) the fair market rental value of the property. Defendants
27 would also be required additional time to address new legal issues presented by Willard’s
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1 motion, such as whether the liquidated damages provision would be an unenforceable penalty
2 (which would require discovery on the amount of damages that Willard would otherwise
3 purportedly receive upon full performance of the lease), or the scope of applicability of default
4 interest. Defendants have been completely precluded from developing these critical defenses
5 due to Willard's deliberate misconduct. This is not harmless, but rather patently prejudicial to
6 Defendants.

7 Accordingly, at an absolute minimum, Defendants request exclusion of Willard's
8 untimely-disclosed new request for relief, purported expert, and appraisals. *See, e.g., Morrow v.*
9 *Las Vegas Metro. Police Dep't*, 2015 WL 4068419, at *2 (Nev. App. June 29, 2015) ("By
10 waiting until the final two days of discovery to divulge her treatment at the Surgical Arts Center
11 and the Pain Institute of Nevada, Morrow failed to comply with the provisions governing initial
12 disclosures in NRCP 16.1, provided incomplete responses to LVMPD's requests for production
13 and interrogatories, and failed to amend her disclosures and responses notwithstanding
14 continued visits to the providers during the pendency of her underlying action for a period of
15 nearly two years. We conclude that the district court did not abuse its discretion by striking
16 Morrow's fifth and sixth supplemental disclosures.").

17 **2. Willard is not entitled to the requested relief as a matter of law.**

18 Even if this Court is inclined to permit Willard to proceed notwithstanding his egregious
19 and prejudicial conduct, Willard is not entitled to summary judgment as a matter of law. While
20 Willard's conduct has completely deprived Defendants of the opportunity to prepare defenses to
21 his brand new model of damages, brand new purported expert, and brand new documentation,
22 Defendants can address certain striking and fundamental errors that preclude Willard's right to
23 relief.

24 First, if this Court excludes even **one** of the new items discussed *supra*, Willard cannot
25 obtain judgment on his new claim for liquidated damages as a matter of law. It is a plaintiff's
26 burden to prove the elements of his or her claim, including damages. *See Gibellini v. Klindt*, 110
27 Nev. 1201, 1206, 885 P.2d 540, 543-44 (1994) ("The party seeking damages has the burden of
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1 proving the fact that he was damaged and the amount thereof.”). Here, Wooley’s inability to
 2 prove his damages negates any entitlement to summary judgment. *See generally Harrington v.*
 3 *Syufy Enterprises*, 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997) (stating, in the context of a
 4 negligence claim, that “[t]o establish entitlement to judgment as a matter of law, defendant need
 5 only negate one element of plaintiff’s case”).

6 Specifically, a necessary variable of the liquidated damages provision in the Lease is the
 7 reasonable rental value of the property. (Lease 20(B)(i), **Exhibit 26**). Willard bears the burden
 8 of proof to establish that amount, as he does with all of his claimed damages. *See Gibellini*, 110
 9 Nev. at 1206, 885 P.2d at 543. However, proof of this variable is dependent upon Gluhaich’s
 10 expert opinion, which in turn, relies upon a previously undisclosed appraisal. *See, e.g.*, (Motion
 11 at 19; Willard Declaration ¶ 70 (“The fair rental value of the Virginia Property of \$38,206 was
 12 obtained from the 2014 Appraisal as corroborated by the expert opinion of Danial Gluhaich.”);
 13 Gluhaich Declaration (¶¶ 17, 18 (offering his “professional opinion” as to the fair rental value;
 14 relying upon the appraisal to establish the purported fair market rental value)). For the reasons
 15 that are detailed in Defendants’ Motion to Strike Gluhaich as an Expert and Motion in Limine
 16 filed concurrently herewith, pursuant to settled law, neither Gluhaich’s opinions nor the
 17 appraisals are admissible. Thus, unless this Court is willing to permit Willard to proceed with
 18 **each and every** untimely, bad-faith, disclosure, Willard is not entitled to his liquidated damages
 19 as a matter of law. *See Schneider v. Cont’l Assur. Co.*, 110 Nev. 1270, 1273, 885 P.2d 572, 575
 20 (1994) (“Evidence introduced in support of or opposition to a motion for summary judgment
 21 must be admissible evidence.”).

22 Finally, with respect to Willard’s brand new request for diminution in value damages,
 23 Willard is not entitled to these unforeseeable consequential damages as a matter of law. Further,
 24 the discussions regarding the inadmissibility of Gluhaich’s opinions and the appraisals also
 25 preclude this claim as a matter of law, as does the NRCP 16.1 discussion *supra*. Yet even
 26 considering Willard’s claim, Willard apparently completely ignores the fact that he sold the
 27 property in a short sale. As of the date of the sale, Willard owed \$13,699,802.70 on the
 28

property. (Willard Response to Second Set of Interrogatories at 6, **Exhibit 27**). Yet, by Willard's own admission, and as this Court is aware from Defendants' Motion for Partial Summary Judgment, Willard's lenders forgave any remaining debt owed on Willard's property after the short sale. (Deposition of L. Willard at 89, **Exhibit 28**). Thus, regardless of the sale price, Willard had nearly \$14 million of debt forgiven, which is not factored into Willard's equation at all. Given the debt forgiveness, Willard would have been in the same position whether the property sold for \$1 or for \$13 million. Willard also benefitted from Defendants paying, according to Willard's complaint, \$122,031.25 in rent per month, increasing by two percent per annum, from January of 2006 to March of 2013. (FAC ¶¶ 9, 12, on file herein). Willard also expressly withdrew his claim for his purported lost down payment. (May 30, 2017, Order, on file herein). And Willard does not consider that during his alleged time period, this country underwent a significant recession. It is clear from even a cursory consideration of these factors that Willard's rudimentary subtraction of \$4,270,000 from \$19,700,000 is a wholly inaccurate depiction of Willard's purported diminution in value damages, if any. It is also clear that Willard cannot apply default interest, which, at best, would apply to certain lease breaches, to consequential damages. Rather, this claim merely serves as another example of Willard overreaching in an impermissible attempt to profit well beyond his actual purported losses. *See* 22 Am. Jur. 2d *Damages* §48 ("As a general rule, a non-breaching party is not entitled, through the award of damages, to achieve a better or superior position to the one it would reasonably have occupied had the breach not occurred.").

3. Willard is not entitled to judgment on BHI's counterclaim as a matter of law.

Finally, Willard seeks summary judgment on BHI's Counterclaims for (1) breach of contract; and (2) declaratory relief. Willard's Motion should be denied because the evidence, at a minimum, creates a genuine issue of material fact as to BHI's Counterclaims.

a. The Operation Agreement.

On April 12, 2013, BHI, through its counsel, informed Willard that it would vacate the Virginia Property on April 30, 2013, and that it would coordinate with Willard to turn over the

1 property. (April 12, 2013, Letter, **Exhibit 29**.) Willard “appealed to BHI through Gluhaich to
2 remain on the Virginia Property until [it was] able to find a buyer or a new tenant so that the
3 Virginia Property would retain its value.” (Aff. of L. Willard ¶ 21, on file herein.) As such,
4 Willard asked BHI to continue to operate the convenience store and service station. *Id.*

5 On May 1, 2013, BHI entered into an Operation and Management Agreement (the
6 “Operation Agreement”) with Overland Development Corporation and Larry Willard as trustee
7 of the Willard Trust. (Operation Agreement, Exhibit 13 to the Motion.) The Agreement was
8 entered into on a month to month basis. *Id.* § 1. In consideration for BHI continuing to operate,
9 Willard agreed to pay BHI \$10,000 per month, and Plaintiff would be entitled to all Net Profits.
10 *Id.* ¶ 4. However, if the Net Profits were negative or insufficient to pay the \$10,000 fee, Plaintiff
11 was obligated to pay BHI the balance of the negative Net Profits plus the \$10,000 fee. *Id.* The
12 first payment was due on July 20, 2013. *Id.*

13 In addition, pursuant to the terms of the Operation Agreement, BHI had “no obligation
14 to make the rent payments set forth in the lease.” *Id.* § 5. The plain language of the contract
15 further provided as follows:

16 [Plaintiff] acknowledge[d] and agree[d] that the continuous operation of the
17 Location by the Operator and payment of the Net Profits to Owner (if any)
18 constitutes sufficient consideration for Operator’s occupation of the Location and
19 shall be in lieu of any obligation to pay rent under the Lease during the term of
20 this Agreement.

21 *Id.*

22 In the event of any default of the terms of the Operation Agreement, the non-defaulting
23 party was required to provide the defaulting party with notice of the default. *Id.* § 8. If the
24 defaulting party failed to remedy the default within three days, the non-defaulting party had the
25 option to terminate the Operation Agreement upon written notice. *Id.*

26 On or about May 16, 2013, Willard asked BHI to vacate the premises. (Decl. of G.
27 Gordon, **Exhibit 30**.) Because Willard directed BHI to vacate the premises, BHI ceased
28 operations and vacated the property in late May of 2013. (Decl. of C. Kemper, **Exhibit 31**.)

1 **b. There are a Genuine Issues of Material Fact Regarding BHI's**
2 **Counterclaims.**

3 BHI's first claim for relief is breach of contract. BHI's claim is based on Willard's
4 failure to pay BHI the amount of negative Net Profits plus the balance of the \$10,000 fee as was
5 required by Section 4 of the Operation Agreement. (Counterclaim ¶ 17, on file herein.) BHI's
6 second claim for relief seeks a declaratory judgment that BHI and Mr. Herbst are not
7 responsible for the rental payments to Willard during the time period in which the Operation
8 Agreement was in place. *Id.* ¶ 23.

9 In its Motion, Willard argues that it is entitled to summary judgment because BHI
10 allegedly breached the Operation Agreement. (Motion for Summary Judgment at 10-12, on file
11 herein.) Specifically, Willard argues that various breaches occurred as of May 26, 2013 (the
12 date Mr. Willard visited the Virginia Property and observed the alleged breaches). *Id.* at 11
13 (citing Aff. of L. Willard ¶ 22, on file herein). However, Willard ignores the fact that it is
14 Willard that breached the contract first, prior to the time Mr. Willard visited the property.

15 Specifically, on May 16, 2013, Plaintiff breached the Operation Agreement by telling
16 BHI to vacate the premises. (Decl. of G. Gordon, **Exhibit 30**.) Because Willard directed BHI to
17 vacate the premises, BHI began to wind down its operations to comply with Plaintiff's demand.
18 (Decl. of C. Kemper, **Exhibit 31**.) Regardless, because Willard breached the contract on May
19 16, 2013, BHI is entitled to its expectation damages for operating the property during the month
20 of May 2013. At a minimum, there is an issue of fact regarding breach of the Operation
21 Agreement. *See* (Decl. of G. Gordon, **Exhibit 30**; Decl. of C. Kemper, **Exhibit 31**.)

22 Similarly, because Willard breached the contract, BHI is entitled to a declaratory
23 judgment that it is not responsible for the rental payments that Willard claims were incurred
24 during the time period the Operation Agreement was in place. Section 5 of the Operation
25 Agreement specifically provides that BHI had "no obligation to make the rent payments set
26 forth in the lease." (Operation Agreement § 5, Exhibit 13 to the Motion.)

27 In addition to the fact that Willard breached the Operation Agreement first, Willard
28 failed to provide BHI with three-day's notice to remedy any alleged breach as was required

1 under the terms of the Operation Agreement. Therefore, Willard simply was not permitted to
2 unilaterally terminate the contract.

3 Pursuant to the plain terms of the Operation Agreement, Willard was required to provide
4 written notice to Defendant of any alleged default. (Operation Agreement § 8, Exhibit 13 to the
5 Motion.) Willard would then only be entitled to terminate the Operation Agreement if BHI
6 failed to remedy the alleged default within three days. *Id.*

7 In this case, Willard never notified BHI of the alleged breaches set forth in Willard's
8 Motion. (Decl. of C. Kemper, **Exhibit 31**.) Indeed, there is no evidence in the record that
9 Willard ever provided BHI with such notice. To the contrary, the first time BHI was informed
10 of these alleged breaches was in Willard's Motion for Summary Judgment. However, under the
11 plain terms of the contract, BHI had three days to remedy any alleged default. (Operation
12 Agreement § 8, Exhibit 13 to the Motion.) Because Willard failed to provide the contractually
13 required notice and opportunity to cure, it cannot avoid its contractual obligations based on its
14 belated argument that BHI breached the agreement.

15 Finally, Plaintiff attempts to cast doubt on the accuracy of BHI's profit and loss
16 statement. (Motion at 12-13) (citing Exhibit 22.2). Willard seems to suggest that the profit and
17 loss statement is the result of "fraudulent accounting." However, Willard's attempt to attack the
18 accuracy of the profit and loss statement does nothing but highlight a factual dispute concerning
19 Defendant's damages as a result of the breach. Willard's speculation that the statement is
20 inaccurate simply fails to demonstrate that there are no genuine issues of material fact
21 concerning the accuracy of the profit and loss statement.

22 Based on the foregoing, Willard has failed to meet his moving burden of demonstrating
23 that there are no genuine issues of material fact. Even if Willard had met this burden, BHI has
24 presented evidence of a factual dispute regarding what party first breached the contract and the
25 damages BHI incurred as a result of Willard's breach.

26 ///

27 ///

Based on the foregoing, not only is Willard not entitled to summary judgment, but this case should be dismissed with prejudice for Willard's repeated recalcitrant conduct throughout this case. Accordingly, Defendants respectfully request that this Court deny Willard's Motion and dismiss this case with prejudice, or, alternatively, exclude Willard's newly-requested damages, never-disclosed expert, and newly-disclosed appraisals consistent with the arguments herein and the relief requested in Defendants' Motion for Sanctions, Motion to Strike Gluhaich, and Motion in Limine.

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 13th day of November, 2017.

DICKINSON WRIGHT

/s/ Brian R. Irvine
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Attorney for Defendants Berry Hinckley Industries, and Jerry Herbst

CERTIFICATE OF SERVICE

I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date, pursuant to NRCP 5(b); I am serving a true and correct copy of the attached **DEFENDANTS'/COUNTERCLAIMANTS' OPPOSITION TO LARRY WILLARD AND OVERLAND DEVELOPMENT CORPORATION'S MOTION FOR SUMMARY JUDGMENT** on the parties through the Second Judicial District Court's e-filing system to the following:

Brian P. Moquin
LAW OFFICES OF BRIAN P. MOQUIN
3287 Ruffino Lane
San Jose, California 95148

David C. O'Mara
THE O'MARA LAW FIRM
311 E. Liberty Street
Reno, Nevada 89501

DATED this 13th day of November, 2017

/s/ Mina Reel
An employee of DICKINSON WRIGHT

EXHIBIT TABLE

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5	August 28, 2015, letter	11
6	March 3, 2016, letter	88
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15	Willard Responses to Defendants' First Set of Requests for Production of Documents	9
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18	June 21, 2016, email exchange	6
19	July 21, 2016, letter	16
20	Defendants' First Set of Interrogatories on Willard	9

¹ Exhibit Page counts are exclusive of exhibit slip sheets.

Exhibit	Description	Pages¹
21	Defendant's Second Set of Interrogatories on Willard	10
22	Defendants' First Requests for Production on Willard	7
23	Defendants' Second Requests for Production on Willard	7
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