

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 12 OF 19

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 40: <i>Grant, Bargain and Sale Deed</i> by and between Longley Center Partners, LLC and P.A. Morabito & Co., Limited dated October 4, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291753		10	2182-2187
	Exhibit 41: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and Land Venture Partners, LLC dated September 30, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291760		10	2188-2193
	Exhibit 42: <i>Memorandum of Lease</i> dated September 30, 2005 by Berry-Hinckley Industries regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291761		10	2194-2198
	Exhibit 43: <i>Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate</i> by and between Land Venture Partners, LLC, Berry-Hinckley Industries, and M&I Marshall & Isley Bank dated October 3, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc No. 3291766		10	2199-2209
	Exhibit 44: <i>Memorandum of Lease with Options to Extend</i> dated December 1, 2005 by Winner's Gaming, Inc. regarding the Virginia Property, recorded December 14, 2005 in the Washoe County Recorder's Office as Doc. No. 3323645		10	2210-2213

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 50: <i>Assignment of Entitlements, Contracts, Rents and Revenues</i> by and between Berry-Hinckley Industries and First National Bank of Nevada dated June 29, 2007 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3551284		10	2252-2264
	Exhibit 51: <i>UCC Financing Statement</i> regarding the Virginia Property, recorded July 5, 2007 in the Washoe County Recorder's Office as Doc. No 3551285		10	2265-2272
	Exhibit 52: Sales brochure for the Virginia Property prepared by Daniel Gluhaich for marketing purposes in 2012		10	2273-2283
31.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	10	2284-2327
	Exhibit 1: Declaration of Brian R. Irvine		10	2328-2334
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		10	2335-2342
	Exhibit 3: February 12, 2015 Letter		10	2343-2345
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		10	2346-2357
	Exhibit 5: August 28, 2015, Letter		11	2358-2369
	Exhibit 6: March 3, 2016, Letter		11	2370-2458
	Exhibit 7: March 15, 2016 Letter		11	2459-2550
	Exhibit 8: April 20, 2016, Letter		11	2551-2577
	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		11	2578-2586

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

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

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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 34)	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		15	3548-3555
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		15	3556-3561
	Exhibit 35: Defendants' Requests for Admission on Willard		15	3562-3567
35.	Plaintiffs' Request for a Brief Extension of Time to Respond to Defendants' Three Pending Motions and to Extend the Deadline for Submissions of Dispositive Motions	12/06/17	15	3568-3572
36.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	16	3573-3576
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	12/07/17	16	3577-3580
38.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	16	3581-3584
39.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	16	3585-3589
40.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	16	3590-3594
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	16	3595-3598

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

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

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

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

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

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

EXHIBIT 14

EXHIBIT 14



100 WEST LIBERTY STREET, SUITE 940
 RENO, NV 89501-1991
 TELEPHONE: (775) 343-7500
 FACSIMILE: (775) 786-0131
<http://www.dickinsonwright.com>

BRIAN R. IRVINE
 BIRVINE@DICKINSONWRIGHT.COM
 (775) 343-7507

February 3, 2017

VIA E-MAIL – bmoquin@lawprism.com

Brian P. Moquin
 LAW OFFICES OF BRIAN P. MOQUIN
 3287 Ruffino Lane
 San Jose, California 95148

Re: *Willard v. Berry-Hinckley Industries, et al*, Case No. CV14-01712

Dear Mr. Moquin:

As you are aware, 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. Unfortunately, based upon Plaintiffs repeated failure to comply with their obligations under the Nevada Rules of Civil Procedure, Defendants will not be able to complete discovery on time and will not be able to present the Court with the additional dispositive motions they intend to file in time for full consideration and decision, all to Defendants' prejudice. The purpose of this letter is to address Plaintiffs' failure to meet their critical obligations under the Rule of Civil Procedure, and to demand that Plaintiffs agree to stipulate to vacate the current trial date and certain related discovery deadlines in order to permit Defendants to complete discovery and prepare their defense. Put simply, a continuance is the necessary result of Plaintiffs' own actions, and is absolutely required to provide Defendants with due process in this case.

Daniel Gluhaich.

As you are aware, on December 2, 2016, you purported to serve Defendants with a disclosure of Mr. Gluhaich as a non-retained expert. However, the disclosure is wholly deficient and does not comply with the Nevada Rules of Civil Procedure. Specifically, Plaintiffs' disclosure of Mr. Gluhaich indicated that Mr. Gluhaich would offer testimony regarding twelve separate subject matters, and included Mr. Gluhaich's resume, but did 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). You acknowledged this deficiency in our phone call of December 5, 2016. Later that day, you again acknowledged via email Plaintiffs' non-compliance, and informed me that you would provide me with an amended expert witness disclosure for Mr. Gluhaich by December 8, 2016. You also stated that you would inform me of Mr. Gluhaich's availability to be re-deposed as a non-retained expert:

Brian Moquin
February 3, 2017
Page 2

We also discussed your desire to re-depose Dan Gluhaich as an expert as soon as possible; I will check with him as to available dates and will get back to you shortly. To that end, you agreed to allow Plaintiffs to provide an amended expert witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich will be testifying in the interest of minimizing the amount of time needed for the deposition.

(December 5, 2016, email, **Exhibit 1**).

You did not provide us with any amended disclosure by December 8, 2016, and, when I asked again for an amended disclosure, you informed me that “I have had a call outstanding to Mr. Gluhaich for the past few days, as I need to speak with him regarding the details of the supplemental disclosure....” (December 9, 2016, email exchange, **Exhibit 2**). Again, I heard nothing from you regarding an amended disclosure.

On December 23, 2016, I again raised the deficiencies in Mr. Gluhaich’s disclosure. (December 2016 email exchange, **Exhibit 3**). On December 27, 2016, you acknowledged your continued failure to provide Defendants with an amended disclosure, granting Defendants “an open extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until [Defendants] have received Plaintiffs’ amended disclosure, deposed Mr. Gluhaich, and provided any rebuttal expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s).” *Id.*

To date, you have not amended Mr. Gluhaich’s disclosure to comply with NRCPC 16.1(a)(2)(B). Thus, despite the expert disclosure deadline having run more than **two months ago**, Plaintiffs inexplicably continue to fail to comply with the expert disclosure requirements. You were indisputably aware of the fact that Plaintiffs’ disclosures did not comply with the Nevada Rules of Civil Procedure at the time that you served the deficient disclosure or immediately thereafter, as demonstrated by our December 5, 2016, telephonic conversation. (*See also* December 5, 2016, email, **Exhibit 1**). Further, Defendants graciously granted you a 6-day extension to comply with the Nevada Rules of Civil Procedure and provide an amended disclosure. However, more than **two months later**, you have still failed to comply without any justification whatsoever.

Plaintiffs’ 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. Indeed, as you are aware, discovery in this case closes on March 2, 2017. Thus, regardless of what Plaintiffs do at this point, this discovery deadline would need to be extended to enable the Defendants to complete discovery and disclose rebuttal experts in the time permitted by rule, the parties’ joint case conference report, and the stipulation and order on file

Brian Moquin
February 3, 2017
Page 3

with the Court. Further, Defendants plan to file significant additional motions to streamline this case for trial and eliminate all of Plaintiffs' unmeritorious claims and requests for damages, and need to complete discovery related to Mr. Gluhaich's opinions, including the deposition of Mr. Gluhaich and the possible disclosure of rebuttal experts, in order to prepare those motions. As motions must be fully briefed and submitted by March 31, 2017, Defendants will be also unable to comply with this deadline based upon Plaintiffs' dilatory conduct. All of this necessitates a continuance of the trial date and certain discovery and related deadlines that are tied to the trial date.

Damages disclosure.

Additionally, as you are aware, Plaintiffs have also failed to provide Defendants with an NRCP 16.1 disclosure of their complete and current damages. You acknowledged as much in open court.

NRCP 16.1(a)(1)(C) requires a party to provide "a computation of any category of damages claimed by 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 computation is based, including materials bearing on the nature and extent of injuries suffered" This obligation must be met within fourteen (14) days of the early case conference, which must take place within thirty (30) days of the filing of the answer. NRCP 16.1. Courts interpreting the federal counterpart to NRCP 16.1(a)(1)(C) have explained that "the 'category of damages' disclosure requires more than a list of the broad types of damages." *Olaya v. Wal-Mart Stores, Inc.*, 2:11-CV-997-KJD-CWH, 2012 WL 3262875 (D. Nev. Aug. 7, 2012). Indeed, the rule, "by its very terms," requires "a 'computation,' supported by documents." *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 295 (2d Cir. 2006). NRCP 37(c)(1) provides that "[a] party that without substantial justification fails to disclose information required by Rule 16.1 . . . is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed," and "[t]he burden is upon the disclosing party to show that the failure to disclose information or witnesses was justified or harmless." *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 594 (D. Nev. 2011).

While the Court provided you with 15 days from the date of the Court's entry of its order regarding Defendants' summary judgment motion to provide Defendants with your NRCP 16.1 damages, this is obviously an absolute outside time limit to comply with your NRCP 16.1 obligations. Nothing is preventing you from doing so sooner; in fact, Plaintiffs were obligated to meet this requirement within a few months of filing their Nevada complaint. Indeed, it would be patently prejudicial to Defendants to receive Plaintiffs' damages model within mere days of the close of discovery, especially since previous correspondence indicates that you are planning on revising Plaintiffs' damages model significantly (which intention seems to be corroborated by the Wooley damages spreadsheet you provided to me for settlement discussions, as that document certainly contains a new damages model and new calculations). Please promptly

Brian Moquin
February 3, 2017
Page 4

provide a supplemental disclosure with a mathematical computation of damages in each category, and produce the documents or other material upon which such computations are based.

Once again, Plaintiffs' failure to comply with the Nevada Rules of Civil Procedure is significantly prejudicing Defendants. As discussed *supra*, discovery closes in less than four weeks. If Plaintiffs are seeking additional or different damages, Defendants are entitled to conduct discovery and disclose expert testimony opining on those damages. Defendants discussed this in detail with you in December of 2016. (December 2016 email exchange, **Exhibit 3**). At this point, it will be impossible for Defendants' expert to opine on new damages theories under the current discovery deadlines. As with Plaintiffs' deficient disclosure of Mr. Gluhaich, Plaintiffs' failure to provide a timely damages disclosure pursuant to NRCP 16.1 also compromises Defendants' ability to prepare dispositive motions and necessitates a continuance.

Outstanding discovery.

Finally, we ask again that Plaintiffs please provide Defendants with any discoverable information and documentation relating to Mr. Wooley's efforts to re-let the Highway 50 Property or to refinance his loan on that property. You have been promising to disclose these documents for more than 10 months, but have yet to do so. (March 23, 2016, email, **Exhibit 4**).

Based on the foregoing, there is no question that a continuance of the trial date and certain discovery and related deadlines is needed. If you and your clients are not amenable to a continuance, we will have no choice but to pursue all available legal remedies, including but not limited to seeking NRCP 37 sanctions or filing a Motion to Continue the Trial Date. We would like to resolve this issue amicably if possible, and therefore believe that a stipulation to a short continuance is the best solution. Thus, I have attached a draft stipulation for your review. See **Exhibit 5**. In light of the time-sensitive nature of these issues, please respond by no later than the close of business on **Tuesday, February 7, 2017** regarding your willingness to sign the stipulation, so that we can act in a timely manner to preserve our clients' rights if you are not willing to sign.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Brian R. Irvine

BRI: mr
Enclosures
Cc: David O'Mara
david@omaraalaw.net

EXHIBIT 1

EXHIBIT 1

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Monday, December 05, 2016 12:17 PM
To: Mina Reel
Cc: David O'Mara, Esq.; John P. Desmond; Brian R. Irvine; Anjali D. Webster
Subject: Re: Willard Wooley v. BHI
Attachments: 20161205 Wooley Damages Calculation - v1.3.pdf

Brian—

Per our conversation a few minutes ago, attached is a PDF version of the final damages calculation spreadsheet for the Wooley Plaintiffs for use in the ongoing informal settlement negotiations between Tim Herbst and Ed Wooley with Dan Gluhaich evidently serving as intermediary. Please forward this to Tim Herbst as you see fit. Note that I will be tendering supplemental disclosures in the imminent future that will include the actual spreadsheet.

We also discussed your desire to re-depose Dan Gluhaich as an expert as soon as possible; I will check with him as to available dates and will get back to you shortly. To that end, you agreed to allow Plaintiffs to provide an amended expert witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich will be testifying in the interest of minimizing the amount of time needed for the deposition.

Best,
Brian

Brian P. Moquin, Esq.
Law Offices of Brian P. Moquin
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EXHIBIT 2

EXHIBIT 2

Brian R. Irvine

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Friday, December 09, 2016 12:51 PM
To: Brian R. Irvine
Cc: david@omaralaw.net; Anjali D. Webster
Subject: Re: Willard / Wooley v. BHI

Brian—

I have had a call outstanding to Mr. Gluhaich for the past few days, as I need to speak with him regarding the details of the supplemental disclosure. I have attempted to contact him every day but thus far have not received a return call. I will try to contact him again shortly.

With respect to your claim that there are damages in the spreadsheet sent earlier this week that you have never seen before, I have now gone through all the damage claims as related in the Wooley Plaintiffs' Responses to Defendants' First Set of Interrogatories ("the SROG Responses") served on you on July 9, 2015, and here are the differences (decreases in red, increases in green):

- **Highway 50 Property Tax** claim decreased by \$448.99 from \$1,500.00 to \$1,051.01.
- **Highway 50 Insurance** claim decreased by \$3,105.00 from \$3,840.00 claimed in the SROG Responses to \$735.00 due to the fact that only the first payment on the new policy in 2013 was paid directly by the Wooleys, with the remaining payments paid by the property management company and then reimbursed by the Wooleys being reflected in the Property Expenses annual totals.
- **Baring Property Costs of Sale** increased by \$1,381.83 from \$147,847.30 claimed in the SROG Responses to \$149,229.13 — this is because the spreadsheet number includes the \$1,225.34 in property taxes and \$156.49 in sewer use fees that were paid by the Wooleys in advance of closing as indicated on the HUD-1 Settlement Statement for the sale of the Baring Property.
- **Baring Property Diminution in Value** increased by \$30.00 from \$186,522 claimed in the SROG Responses to \$186,552 — this was a typographical error in the SROG responses.
- **Federal Capital Gain Tax Liability** claim decreased by \$34,167.00 from the *estimated* \$378,000.00 claimed in the SROG Responses to the actual amount of \$343,833.00.
- **State Capital Gain Tax Liability** claim increased by \$2,946.00 from the *estimated* \$134,000.00.00 t claimed in the SROG Responses to the actual amount of \$136,946.00.
- **2013 Maintenance Costs** claim decreased by \$2,051.85 from { \$12,374.38 + \$2,500.00 = \$14,874.38 } claimed in the SROG Responses to \$12,822.53 due to reliance on the more accurate end-of-year report contained in the December 2013 Property Management Report.
- **2014 Maintenance Costs** claim decreased by \$5,971.26 from { \$9795.89 + \$6,000.00 = \$15,795.89 } claimed in the SROG Responses to \$9,824.63 due to reliance on the more accurate end-of-year report contained in the December 2013 Property Management Report.
- **Accelerated Rent** claim decreased by \$653,181.35 from \$3,323,543.49 claimed in the SROG Responses to \$2,670,362.14. The larger amount in the SROG Responses had not to take into account the \$5,000.00/month decrease in rent under the terms of the Highway 50 Second Amended Lease Agreement.

These claims were unchanged:

- **Highway 50 Property Diminution in Value** claim of \$2,635,000.00.
- **Special Damages for Attorney Fees for Goldblatt & Associates** claim of \$45,088.
- **Baring Property Diminution in Value** claim of \$186,552.00.

The spreadsheet contains the following additional claims:

- **Carson City Utilities** claim of \$284.48, the invoice for which your office forwarded to my clients when your clients received it.
- **2014 Loss Carry Forward** claim of \$27,293.00 which Plaintiffs had not realized had been incurred until very recently.
- **2015 Property Expenses** claim of \$12,165.99 incurred from January 2015 through December 2016.
- **2016 Property Expenses** claim of \$8,776.74 incurred from January 2016 through September 2016.
- **Highway 50 Appraisal Fee** claim of \$3,000.00 incurred June 10, 2015.

The total additional these claims that were not included in the Wooleys' SROG Responses total \$51,520.21, but of that amount only the claim for Carson City Utilities of \$284.48 was known to the Wooley Plaintiffs when their SROG Responses containing the original damages calculation was tendered.

Overall, the total damages claimed in the spreadsheet decreased by \$660,150.14 from the \$6,882,171.06 claimed in the SROG Responses to \$6,242,963.65. The only supporting documentation regarding the calculations in the spreadsheet that has not yet been formally tendered to you through discovery is the Highway 50 Property Management Report for September 2016, which the Wooleys only recently received.

Hence, contrary to your assertion, the Wooley Plaintiffs have not "changed position" regarding their damages claim, have not added any new categories of damages, and have not failed to meet their obligations under NRCP 16.1(a)(1)(C). Consequently, I cannot see how your clients have been prejudiced — especially given the fact that the total damages claim *decreased* by \$660,155.14 and your clients were already formally provided with all supporting evidence supporting the calculations in the spreadsheet except for a single recent property management report.

After reviewing the analysis above, if you still believe that the Wooley Plaintiffs have not met their obligations under NRCP 16.1(a)(1)(C) or are claiming new categories of damages in the spreadsheet and as a result your clients are prejudiced, please provide me with specific information regarding the perceived deficiencies or prejudicially novel claims and I will rectify any actual deficiencies *post haste*. As I mentioned earlier this week, I will be tendering a supplemental discovery response imminently that will include a copy of the final live spreadsheet in which the damages are calculated as well as a supplemental SROG Response elaborating on how the calculations were made.

With respect to the supplemental expert disclosure, I have been trying to reach Mr. Gluhaich since Tuesday to complete the disclosure but he has not returned my calls. I will be trying to contact him again as soon as I send this reply; if I am successful in reaching him, you will have the supplemental disclosure today. While drafting this response, one of my clients called to tell me that Mr. Gluhaich is in the office today and should be reachable, so I'm confident this will happen today.

In terms of deposition dates, Mr. Gluhaich is available anytime including as early as next week and would like to get this out of the way as soon as possible. I am only not available on Tuesday, December 13th — any other day will work for me. If the deposition will be held in San Jose as it was last time, Mr. Gluhaich will waive the 15 days notice required under NRCP 30(b)(1).

Best,
Brian

Brian P. Moquin, Esq.
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408.843.1678 fax

On Dec 9, 2016, at 8:46 AM, Brian R. Irvine <BR Irvine@dickinson-wright.com> wrote:

Dear Brian-

I did not receive the supplemented expert disclosure for Mr. Gluhaich yesterday that you had promised, nor have I received deposition dates for him. As you know, we have a number of deadlines coming up in the litigation, including the deadline for disclosing rebuttal experts. Obviously, we will be prejudiced by further delay in learning all of the expert opinion testimony that plaintiffs intend to present at trial. Please provide the information immediately.

In addition, in the Wooley plaintiffs' damages spreadsheet you provided me earlier this week, you included new damages calculations that we have never seen before. As you know, we have been demanding that plaintiffs meet their obligations under NRCP 16.1(a)(1)(C) to provide "[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 . . . on which such computation is based" for more than a year. For unknown reasons, plaintiffs have utterly refused to meet this obligation. Given the Wooley plaintiffs' apparent change in position regarding damages, this is concerning to say the least, and continues to prejudice defendants' ability to defend the case. Moreover, it is impossible for us to recommend any settlement to our clients without this information. Please provide NRCP 16.1 damages computations for all plaintiffs, immediately.

Please do not hesitate to contact me with any questions.

Thank you,

Brian Irvine

Brian R. Irvine Member

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7507

Fax 844-670-6009

<image73f6b7.JPG><imageeb6169.JPG> Email BIrvine@dickinsonwright.com
<image37df31.JPG>

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EXHIBIT 3

EXHIBIT 3

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, December 27, 2016 10:09 AM
To: Brian R. Irvine
Cc: David O'Mara, Esq.; John P. Desmond; Anjali D. Webster; Mina Reel
Subject: Re: Willard Wooley v. BHI
Attachments: 2014 Wooley HI State Tax Return -redacted.pdf

Brian—

You are granted an open extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until you have received Plaintiffs' amended disclosure, deposed Mr. Gluhaich, and provided any rebuttal expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s).

Attached is the 2014 Hawaii State Tax return for the Wooleys. The remaining supplemental disclosures as well as the amended expert witness disclosure will be tendered today.

Regards,
 Brian

On Dec 23, 2016, at 10:19 AM, Brian R. Irvine <BIrvine@dickinson-wright.com> wrote:

Dear Brian-

As you know, Plaintiffs disclosed Dan Gluhaich as a lay expert witness on December 2, 2016, the deadline for the disclosure of initial expert witnesses. Plaintiffs' disclosure indicated that Mr. Gluhaich would offer expert testimony in more than ten separate categories, but did not identify any of the actual opinions that Mr. Gluhaich intended to offer at trial.

Defendants disclosed the expert report of Michelle Salazar, also on December 2, 2016. Ms. Salazar's report addressed certain issues with Plaintiffs' damages model (ascertained through the First Amended Complaint and Plaintiffs' responses to interrogatories, rather than through an NRCP 16.1 damages disclosure, which Plaintiffs have never provided) and contained all of the direct (non-rebuttal) opinions that Ms. Salazar intended to offer about Plaintiffs' damages model that existed as of December 2, 2016.

You and I spoke on December 5, 2016. During that phone call, I indicated that we would need significant additional information about Mr. Gluhaich's potential expert testimony, including a supplemental disclosure providing the opinions he intended to offer and an additional deposition of Mr. Gluhaich, before we could prepare and disclose potential expert report(s) rebutting Mr. Gluhaich. During our call, you recognized that the December 2, 2016 disclosure of Mr. Gluhaich did not contain any specific information about the opinions he intended to offer and promised to: (1) provide available deposition dates for Mr. Gluhaich shortly; and (2) provide an amended expert witness disclosure by Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich would be testifying. As of this morning, we have not received any such amended disclosure for Mr. Gluhaich or any deposition dates. Obviously, Plaintiffs' failure to provide this information has made it impossible for Defendants to comply with the January 3, 2017 deadline for disclosing the reports of rebuttal expert witnesses because we simply have no information about the substance of Mr. Gluhaich's opinions that we may wish to rebut. Please confirm that Plaintiffs will grant Defendants an open extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until we have received your amended disclosure, deposed

Mr. Gluhaich and provided any rebuttal expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s). If we do not receive such an extension, we will seek relief from the Court on shortened time next week. As Ms. Salazar's expert report disclosed December 2 was complete, we expect Plaintiffs to meet the January 3, 2017 deadline for disclosing any expert report rebutting her opinions.

In addition, following our discussion on December 5, you emailed me a spreadsheet with a new damages computation for the Wooley plaintiffs, and indicated that I could provide the spreadsheet to my clients for settlement purposes only. However, the "settlement only" spreadsheet contained a new damages model that Plaintiffs had never before utilized in the case; namely, the spreadsheet used a \$7,500 "fair rental value" deduction as part of the "accelerated rent" calculation. Prior to receiving the spreadsheet December 5, we had never seen any calculation of accelerated rent using that number or applying any formula with any discount for fair rental value. In the Wooley plaintiffs' July 2015 response to Interrogatory No. 7, they indicated that "[t]he remaining amount of rent due under the Lease was calculated as the sum of each year's annual payments shown in red in the table above, yielding a total of \$4,420,244.00. The Net Present Value as of March 1, 2013 was then calculated using the 'NPV' formula in the Apple Numbers spreadsheet application, applying a 4% Discount Rate per the terms of the Lease...". No mention was made of any reduction in that accelerated rent figure for "fair rental value" as is set forth in the new spreadsheet. This poses a significant problem because Defendants have not had the ability to conduct discovery about this new computation of damages or the methodology used to arrive at the numbers in the Wooley spreadsheet. And, because we never saw the spreadsheet (or received any other indication of the new methodology) prior to the expert disclosure deadline, Defendants were prejudiced in that they were unable to have an expert examine the methodology and calculation and comment on it in any way.

Damages for both the Wooley plaintiffs and the Willard plaintiffs have been and continue to be a moving target, and we have not been able to retain experts to opine on the Wooley plaintiffs' new damages (nor have Plaintiffs officially disclosed that damages model - the spreadsheet remains "for settlement purposes only" and we accordingly have not provided it to any potential expert(s)). We still have never received an NRCP 16.1 damages computation from either set of Plaintiffs, despite numerous demands. Please ensure that Plaintiffs meet their obligations to provide such computations immediately, or we will seek to preclude Plaintiffs from seeking any non-disclosed damages at trial, including those contained in the Wooley spreadsheet you sent me on December 5. We also reserve the right to provide Plaintiffs' damages disclosure to Ms. Salazar so she can provide new opinions about any new damages model.

Finally, we still do not have any documentation supporting the Wooley plaintiffs' claim for State Capital Gains Liability. Please provide that immediately.

Please do not hesitate to contact me with any questions or concerns.

Brian Irvine

From: Brian Moquin [bmoquin@lawprism.com]
Sent: Monday, December 05, 2016 12:16 PM
To: Mina Reel
Cc: David O'Mara, Esq.; John P. Desmond; Brian R. Irvine; Anjali D. Webster
Subject: Re: Willard Wooley v. BHI

Brian—

Per our conversation a few minutes ago, attached is a PDF version of the final damages calculation spreadsheet for the Wooley Plaintiffs for use in the ongoing informal settlement negotiations between Tim Herbst and Ed Wooley with Dan Gluhaich evidently serving as intermediary. Please forward this to Tim Herbst as you see fit. Note that I will be tendering supplemental disclosures in the imminent future that will include the actual spreadsheet.

We also discussed your desire to re-depose Dan Gluhaich as an expert as soon as possible; I will check with him as to available dates and will get back to you shortly. To that end, you agreed to allow Plaintiffs to provide an amended expert witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich will be testifying in the interest of minimizing the amount of time needed for the deposition.

Best,
Brian

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<imagee66404.JPG><imagea5b9c8.JPG> Email Blrvine@dickinsonwright.com
<imagea86116.JPG>

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EXHIBIT 4

EXHIBIT 4

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Wednesday, March 23, 2016 8:04 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

In an attempt to review what documents have already been produced, I unzipped the discovery responses in the Gluhaich Subpoena folder, inadvertently doing so in the Dropbox share. No new documents were added.

I was waiting for additional State returns from my clients, and am now in possession of all those that they have, which I will send to you shortly.

I am also putting together additional documents related to the Highway 50 property loan, which was taken over by another lender a few months ago. I have asked Mr. Gluhaich to compile a list of all entities that have expressed an interest in that property, expect to receive those documents either today or tomorrow. Once I have received them, I will be able to send updated SROG responses to my clients for verification.

Brian

On 3/22/16 9:56 AM, Anjali D. Webster wrote:

Dear Brian:

Can you please advise the status of the tax returns? Additionally, as noted in my previous email, you represented that you will provide bates stamped copies of all tax returns, including bates stamped copies of those tax returns which have already been produced (none are presently bates stamped) by last Friday. We have not yet received those.

Additionally, my Dropbox account indicates that numerous documents in the "Gluhaich Subpoena" folder were modified yesterday, but none of these documents appear to be new. Can you please provide me with a list of exactly which documents you have provided/are providing to us this week?

Thanks very much,

Anjali

Anjali D. Webster Attorney

100 West Liberty Street
 Suite 940
 Reno NV 89501-1991
 Phone 775-343-7498
 Fax 775-786-0131
 Email AWebster@dickinsonwright.com



From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Monday, March 21, 2016 8:20 AM
To: Anjali D. Webster; david@omaralaw.net

Cc: Brian R. Irvine; Mina Reel

Subject: Re: Willard et al. v. BHI et al.

I'm working on finalizing these for you, will have those in my clients' possession to you mid-morning at the latest.

On 3/17/16 10:24 AM, Anjali D. Webster wrote:

- 2005 Overland Federal Tax Return. You mentioned yesterday that you do not presently have that tax return. Please confirm.
- 2005 Overland State Tax Return.
- 2013 Overland State Tax Return.
- 2014 Overland State Tax Return.
- 2009 Willard State Tax Return.
- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
- 2005 Wooley State Tax Return.
- 2007 Wooley State Tax Return.
- 2008 Wooley State Tax Return.
- 2009 Wooley State Tax Return.
- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

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EXHIBIT 5

EXHIBIT 5

1 **3980**

2 DICKINSON WRIGHT, PLLC

3 JOHN P. DESMOND

4 Nevada Bar No. 5618

5 BRIAN R. IRVINE

6 Nevada Bar No. 7758

7 ANJALI D. WEBSTER

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13 Email: jdesmond@dickinsonwright.com

14 Email: birvine@dickinsonwright.com

15 Email: awebster@dickinsonwright.com

16 *Attorney for Defendants*

17 *Berry Hinckley Industries, and*

18 *Jerry Herbst*

19 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

20 **IN AND FOR THE COUNTY OF WASHOE**

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

23 OVERLAND DEVELOPMENT

24 CORPORATION, a California corporation;

25 EDWARD C. WOOLEY AND JUDITH A.

26 WOOLEY, individually and as trustees of the

27 Edward C. Wooley and Judith A. Wooley

28 Intervivos Revocable Trust 2000,

CASE NO. CV14-01712

DEPT. 6

STIPULATION AND [PROPOSED]
ORDER TO CONTINUE TRIAL

Plaintiff,

vs.

(THIRD REQUEST)

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

1 LARRY J. WILLARD, individually and as
2 trustee of the Larry James Willard Trust Fund;
3 OVERLAND DEVELOPMENT
4 CORPORATION, a California corporation;

5
6 Counter-defendants.

7
8 Plaintiffs Edward C. Wooley and Judith A. Wooley, individually and as trustees of the
9 Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000, Plaintiffs/ Counter-
10 defendants Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, and
11 Overland Development Corporation (collectively, "Plaintiffs"); and Defendants/ Counterclaimants
12 Berry-Hinckley Industries and Jerry Herbst (collectively, "Defendants," and together with Plaintiffs,
13 "the Parties"), by and through their respective attorneys of record, hereby stipulate and agree that
14 good cause exists for this Court to enter an order to vacate the trial date scheduled to begin on May
15 1, 2017, and to re-set certain discovery and related deadlines to comport with the new trial date set
16 by the Court.

17
18 **RECITALS**

19 1. The deadline for the disclosure of initial expert witnesses in this case was December
20 2, 2016.

21 2. On December 2, 2016, Defendants disclosed Michelle Salazar as an expert on certain
22 of Plaintiffs' claimed categories and computations of damages. Defendants' disclosure of Ms.
23 Salazar fully-complied with the requirements of NRCP 16.1 and NRCP 26, including disclosure of:
24 (a) Ms. Salazar's signed written report containing a complete statement of all opinions to be
25 expressed and the basis and reasons therefor, the data or other information considered by the witness
26 in forming the opinions, and any exhibits to be used as a summary of or support for the opinions; and
27 (b) the qualifications of the witness, including a list of all publications authored by the witness
28 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 3. Plaintiffs did not disclose any expert to rebut Ms. Salazar's opinions by the January 3,
2 2017 deadline for disclosing rebuttal experts.

3 4. On December 2, 2016, Plaintiffs disclosed Dan Gluhaich as a non-retained expert.
4 Plaintiffs' disclosure of Mr. Gluhaich indicated that Mr. Gluhaich would offer testimony regarding
5 twelve separate subject matters and included Mr. Gluhaich's resume, but did not include "a summary
6 of the facts and opinions to which the witness is expected to testify" as required by NRCP
7 16.1(a)(2)(B).

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

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

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

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

1 conduct additional fact discovery on any new or revised damages claims or calculations submitted
2 by Plaintiffs.

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

5 10. Because Plaintiffs have not yet provided a complete NRCP 16.1 damages disclosure,
6 Defendants will not be able to complete necessary fact discovery on Plaintiffs' damages, or to
7 disclose an updated expert report of Michelle Salazar within the time currently allowed for
8 discovery. And, because Plaintiffs have not yet provided an expert disclosure of Mr. Gluhaich that
9 includes a summary of the facts and opinions to which the witness is expected to testify as required
10 by NRCP 16.1(a)(2)(B), Defendants will be unable to complete the deposition of Mr. Gluhaich or to
11 retain and disclose experts to rebut Mr. Gluhaich's opinions within the time currently allowed for
12 discovery.

13 11. Moreover, any further extension of the discovery deadlines would prevent the parties
14 from being able to file and submit dispositive motions by March 31, 2017 so such motions can be
15 appropriately considered and decided by the Court prior to trial.

16 12. Therefore, the parties agree that the current trial date of May 1, 2017 must be vacated
17 and rescheduled.

18 13. The parties recognize that this Court has ordered that no further continuances be
19 granted, but in light of the foregoing, agree and stipulate that a brief additional continuance of six
20 months is necessary, and hereby request a continuance of the current trial date and certain discovery
21 deadlines. Undersigned counsel certifies that their respective clients have been advised that a
22 stipulation for continuance is to be submitted on their behalf and that the parties have no objection
23 thereto.

24 **STIPULATION**

25 Based upon the foregoing, the parties hereby stipulate and agree that should this Court enter
26 an order:

- 27 1. Vacating the current trial date of May 1, 2017;

1 2. Requiring the Parties agree to appear and reschedule the trial within five (5) days of
2 the date of this Court's Order approving the Parties' stipulation; and

3 3. Requiring Plaintiffs to serve Defendants with an updated initial expert disclosure of
4 Dan 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.

6 The parties further stipulate and agree that:

7 1. The discovery deadline shall be extended until seventy-five (75) days before the first
8 day of the rescheduled trial; provided, however, that if the 75th day before trial falls on a weekend or
9 holiday, the deadline shall be the following judicial day;

10 2. The deadline to serve, file, and submit for decision any dispositive motions shall be
11 extended until forty-five (45) days before the first day of the rescheduled trial; provided, however,
12 that if the 45th day before trial falls on a weekend or holiday, the deadline shall be the following
13 judicial day.

14 3. The deadline for Defendants to serve a supplemental expert disclosure of Michelle
15 Salazar providing any opinions about any new or revised damages claims or calculations submitted
16 by Plaintiffs shall be extended until sixty (60) days before the close of discovery; provided, however,
17 that if the 60th day before the close of discovery falls on a weekend or holiday, the deadline shall be
18 the following judicial day.

19
20 ///

21
22 ///

23
24 ///

25
26 ///

1 4. The deadline for Defendants to serve any rebuttal expert disclosures shall be
2 extended until forty-five (45) days after Plaintiffs serve Defendants with an updated initial expert
3 disclosure of Dan Gluhaich that is fully-compliant with NRCP 16.1 and NRCP 26. No rebuttal
4 testimony is permitted for the expert report served by Defendants on December 2, 2016 as that
5 deadline expired prior to this Stipulation.

6 **AFFIRMATION**
7 **Pursuant to NRS 239B.030**

8 The undersigned does hereby affirm that the preceding document does not contain the social
9 security number of any person.

10 Dated this __ day of February, 2017.

Dated this __ day of February, 2017.

11 Attorneys for Plaintiffs

Attorneys for Defendants

12
13
14
15 LAW OFFICES OF BRIAN P. MOQUIN
16 Brian P. Moquin
17 3287 Ruffino Lane
18 San Jose, California 95148

19 THE O'MARA LAW FIRM
20 David C. O'Mara
21 311 E. Liberty Street
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23
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26 DICKINSON WRIGHT, PLLC
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28 BRIAN R. IRVINE
ANJALI D. WEBSTER
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Fax: (775) 786-0131

ORDER

This Court, having reviewed the Stipulation to Continue Trial submitted by the parties, and good cause appearing,

IT IS HEREBY ORDERED that good cause exists to vacate the trial date in the above-referenced matter.

IT IS FURTHER ORDERED that the parties shall reset the trial within five (5) days of this Order.

IT IS FURTHER ORDERED that the discovery deadline shall be extended until 75 days before the first day of the rescheduled trial; provided, however, that if the 75th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.

IT IS FURTHER ORDERED that the deadline to serve, file, and submit for decision any dispositive motions shall be extended until 45 days before the first day of the rescheduled trial; provided, however, that if the 45th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.

IT IS FURTHER ORDERED that the deadline for Defendants to serve a supplemental expert disclosure of Michelle Salazar providing any opinions about any new or revised damages claims or calculations submitted by Plaintiffs shall be extended until ninety (60) days before the close of discovery; provided, however, that if the 60th day before the close of discovery falls on a weekend or holiday, the deadline shall be the following judicial day.

///

///

///

///

1 IT IS FURTHER ORDERED that the deadline for Defendants to serve any rebuttal expert
2 disclosures shall be extended until forty-five (45) days after Plaintiffs serve Defendants with an
3 updated initial expert disclosure of Dan Gluhaich that is fully-compliant with NRCP 16.1 and NRCP
4 26. No rebuttal testimony is permitted for the expert report served by Defendants on December 2,
5 2016 as that deadline expired prior to this Stipulation.

6 IT IS SO ORDERED.

7 DATED this ____ day of _____, 2017.

8
9
10 _____
DISTRICT COURT JUDGE

11 *Respectfully submitted by:*

12 DICKINSON WRIGHT, PLLC

13
14
15 _____
JOHN P. DESMOND
16 Nevada Bar No. 5618
BRIAN R. IRVINE
17 Nevada Bar No. 7758
ANJALI D. WEBSTER
18 Nevada Bar No. 12515
100 West Liberty Street, Suite 940
19 Reno, NV 89501
Tel: (775) 343-7500
20 Fax: (775) 786-0131
Email: Jdesmond@dickinsonwright.com
21 Email: Brvine@dickinsonwright.com
22 Email: Awebster@dickinsonwright.com

23 *Attorneys for Defendants*
24 *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 the attached **STIPULATION AND [PROPOSED] ORDER TO CONTINUE TRIAL (THIRD REQUEST)** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices.
- ☒ By electronic service by filing the foregoing with the Clerk of Court using the E Flex system, which will electronically mail the filing to the following individuals.
- ☐ Certified Mail
- ☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the addressee(s) set forth below.
- ☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the addressees) noted below. addressed as follows:
- ☐ By email to the email addresses below.
- ☐ Federal Express (or other overnight delivery)

Brian P. Moquin
LAW OFFICES OF BRIAN P. MOQUIN
3287 Ruffino Lane
San Jose, California 95148
bmoquin@lawprism.com

David C. O'Mara
THE O'MARA LAW FIRM
311 E. Liberty Street
Reno, Nevada 89501
david@omaralaw.net

DATED this ____ day of February, 2017.

An Employee of DICKINSON WRIGHT, PLLC

EXHIBIT 15

EXHIBIT 15

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

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

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

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

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

Plaintiffs,

v.

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

Defendants.

AND RELATED COUNTERCLAIM

Case No. CV14-01712

Dept. No. 6

**PLAINTIFF LARRY J. WILLARD'S
 RESPONSES TO DEFENDANTS' FIRST
 SET OF REQUESTS FOR PRODUCTION
 OF DOCUMENTS**

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce any and all documents identified in response to Interrogatory No. 1 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Respondent has provided documents with Bates Stamps LJW000390 through LJW000437 in response to this Request.

REQUEST FOR PRODUCTION NO. 2:

Please produce any and all documents identified in response to Interrogatory No. 2 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Respondent has provided documents with Bates Stamps LJW000438 through LJW000470 in response to this Request.

REQUEST FOR PRODUCTION NO. 3:

Please produce any and all documents identified in response to Interrogatory No. 3 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Respondent has provided documents with Bates Stamps LJW000428 through LJW000437 in response to this Request.

REQUEST FOR PRODUCTION NO. 4:

Please produce any and all documents identified in response to Interrogatory No. 4 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

All documents within Respondents possession, custody, and control responsive to this Request have been produced in response to other Requests for Production.

REQUEST FOR PRODUCTION NO. 5:

Please produce any and all documents identified in response to Interrogatory No. 5 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Respondent has provided documents with Bates Stamp LJW000471 in response to this Request.

REQUEST FOR PRODUCTION NO. 6:

Please produce any and all documents identified in response to Interrogatory No. 6 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

All documents within Respondents possession, custody, and control responsive to this Request have been produced in response to other Requests for Production.

REQUEST FOR PRODUCTION NO. 7:

Please produce any and all documents identified in response to Interrogatory No. 7 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Respondent has provided documents with Bates Stamps LJW000472 through LJW000506 in response to this Request.

REQUEST FOR PRODUCTION NO. 8:

Please produce any and all documents identified in response to Interrogatory No. 8 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

All documents within Respondents possession, custody, and control responsive to this Request have been produced in response to other Requests for Production.

REQUEST FOR PRODUCTION NO. 9:

Please produce any and all documents identified in response to Interrogatory No. 9 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Respondent has provided documents with Bates Stamps LJW000507 through LJW000558 in response to this Request.

REQUEST FOR PRODUCTION NO. 10:

1 Please produce any and all documents identified in response to Interrogatory No. 10 in
2 Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

4 Respondent has provided documents with Bates Stamps LJW000559 through
5 LJW000563 in response to this Request.

6 **REQUEST FOR PRODUCTION NO. 11:**

7 Please produce any and all documents identified in response to Interrogatory No. 11 in
8 Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

10 Respondent has provided documents with Bates Stamps LJW000564 through
11 LJW000571 in response to this Request.

12 **REQUEST FOR PRODUCTION NO. 12:**

13 Please produce any and all documents identified in response to Interrogatory No. 12 in
14 Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

16 All documents within Respondents possession, custody, and control responsive to this
17 Request have been produced in response to other Requests for Production.

18 **REQUEST FOR PRODUCTION NO. 13:**

19 Please produce any and all documents evidencing any contracts with real estate brokers
20 or other real estate professionals for the listing and marketing of the Property for sale or lease
21 from January 1, 2013 to present.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

23 All documents within Respondents possession, custody, and control responsive to this
24 Request have been produced in response to other Requests for Production.

25 **REQUEST FOR PRODUCTION NO. 14:**

26 Please produce any and all documents evidencing communications with real estate
27 brokers regarding the Property from January 1, 2013 through present.

28 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

1 All documents within Respondents possession, custody, and control responsive to this
2 Request have been produced in response to other Requests for Production.

3 **REQUEST FOR PRODUCTION NO. 15:**

4 Please produce any and all documents evidencing communications with prospective
5 purchasers or lessees of the Property from January 1, 2013 through present.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

7 After conducting a reasonably diligent search, Respondent responds that all documents
8 within Respondents possession, custody, and control responsive to this Request have been
9 produced in response to other Requests for Production.

10 **REQUEST FOR PRODUCTION NO. 16:**

11 Please produce copies of any and all marketing materials prepared in connection with
12 your efforts to sell or lease the Property from January 1, 2013 through present.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

14 Respondent responds that all documents within Respondents possession, custody, and
15 control responsive to this Request have been produced in response to other Requests for
16 Production.

17 **REQUEST FOR PRODUCTION NO. 17:**

18 Please produce any and all appraisals for the Property from January 1, 2012 through
19 present.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

21 After conducting a reasonably diligent search, Respondent responds that all documents
22 within Respondents possession, custody, and control responsive to this Request have been
23 produced in response to other Requests for Production.

24 **REQUEST FOR PRODUCTION NO. 18:**

25 Please produce any and all documents evidencing your research, evaluation and/or
26 analysis as to the sale value of the Property.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

28 After conducting a reasonably diligent search, Respondent responds that all documents

1 within Respondents possession, custody, and control responsive to this Request have been
2 produced in response to other Requests for Production.

3 **REQUEST FOR PRODUCTION NO. 19:**

4 Please produce any and all documents evidencing your research, evaluation and/or
5 analysis as to the fair market rental value of the Property.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

7 After conducting a reasonably diligent search, Respondent responds that all documents
8 within Respondents possession, custody, and control responsive to this Request have been
9 produced in response to other Requests for Production.

10 **REQUEST FOR PRODUCTION NO. 20:**

11 Please produce any and all documents evidencing comparisons of the sale value of other
12 similar real property in the Northern Nevada area.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

14 After conducting a reasonably diligent search, Respondent responds that all documents
15 within Respondents possession, custody, and control responsive to this Request have been
16 produced in response to other Requests for Production.

17 **REQUEST FOR PRODUCTION NO. 21:**

18 Please produce any and all documents evidencing comparisons of the fair market rental
19 value of other similar real property in the Northern Nevada area.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

21 After conducting a reasonably diligent search, Respondent responds that all documents
22 within Respondents possession, custody, and control responsive to this Request have been
23 produced in response to other Requests for Production.

24 **REQUEST FOR PRODUCTION NO. 22:**

25 Please produce any and all documents evidencing communications and/or
26 correspondence between you, or any of you, and Jerry Herbst and/or Berry-Hinckley, related to
27 the Lease Agreement, Interim Operating Agreement or any other documents related to the
28 Property, from 2007 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

After conducting a reasonably diligent search, Respondent responds as follows:
Respondent has produced all documents responsive to this request that are not already within the possession of Propounding Parties.

REQUEST FOR PRODUCTION NO. 23:

Please produce any and all documents supporting your damages calculations in Paragraphs 13-18 of your Verified First Amended Complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Respondent responds that all documents within Respondents possession, custody, and control responsive to this Request have been produced in response to other Requests for Production.

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-referenced matter does not contain the Social Security Number of any person.

LAW OFFICES OF BRIAN P. MOQUIN

DATED: July 9, 2015

By: _____

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

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

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

DATED: July 9, 2015



BRIAN P. MOQUIN

EXHIBIT 16

EXHIBIT 16

Mina Reel

From: Anjali D. Webster
Sent: Friday, April 01, 2016 8:54 AM
To: Brian Moquin; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: RE: Willard et al. v. BHI et al.

Dear Brian:

When we spoke on Monday, you represented that you would produce all documents requested by Defendants by Wednesday, March 30. To date, we have not received any documents from you. It has now been nearly one month since we initially asked you to supplement Plaintiffs' responses on March 3, and as you can see from your below email, we have already agreed to multiple extensions of time. Can you please advise us as to when we can expect to receive these documents?

Thank you,

Anjali

From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Monday, March 21, 2016 8:20 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

I'm working on finalizing these for you, will have those in my clients' possession to you mid-morning at the latest.

On 3/17/16 10:24 AM, Anjali D. Webster wrote:

- 2005 Overland Federal Tax Return. You mentioned yesterday that you do not presently have that tax return. Please confirm.
- 2005 Overland State Tax Return.
- 2013 Overland State Tax Return.
- 2014 Overland State Tax Return.
- 2009 Willard State Tax Return.
- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
- 2005 Wooley State Tax Return.

- 2007 Wooley State Tax Return.
- 2008 Wooley State Tax Return.
- 2009 Wooley State Tax Return.
- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

EXHIBIT 17

EXHIBIT 17

Subject: Re: Willard et al v. BHI et al

Date: 5/3/2016 9:33 AM

From: "Brian Moquin" <bmoquin@lawprism.com>

To: "Anjali D. Webster" <AWebster@dickinson-wright.com>, "david@omaralaw.net" <david@omaralaw.net>

Cc: "Brian R. Irvine" <BIrvine@dickinson-wright.com>, "Mina Reel" <MReel@dickinson-wright.com>

Presently I have no commitments this week.

I am waiting for my clients to verify the supplemental responses, which I anticipate should be completed sometime this afternoon.

Brian

On 5/2/16 1:55 PM, Anjali D. Webster wrote:

Dear Brian:

Please find attached the Stipulation and Order signed by the Court. Pursuant to the Stipulation and Order (and local rules), we must reschedule the trial within the next five days. What is your or Mr. O'Mara's availability this week? My assistant has left a message with the Court's chambers regarding the Court's availability and I will let you know their schedule as soon as we hear anything.

Also, can you please advise on the status of Plaintiffs' documents responsive to Defendants' continuing discovery requests?

Thanks very much,

Anjali

The information contained in this e-mail, including any attachments, is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

Anjali D. Webster Attorney

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7498

Fax 775-786-0131

Email AWebster@dickinsonwright.com

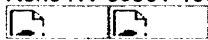


EXHIBIT 18

EXHIBIT 18

Mina Reel

From: David O'Mara, Esq. <david@omaralaw.net>
Sent: Tuesday, June 21, 2016 9:26 AM
To: Brian R. Irvine; Brian Moquin
Cc: Mina Reel; Anjali D. Webster
Subject: RE: Willard et al v. BHI et al

Brian,

I apologize, after Anjali's last email it slipped my mind. I don't think we need to include the entire JCCR, but just file the new deadlines. It isn't that big of deal so I will sign the document today/tomorrow when I am in the office.

As for the other issue, Mr. Moquin can address that.

David

From: Brian R. Irvine [<mailto:BIrvine@dickinson-wright.com>]
Sent: Tuesday, June 21, 2016 9:22 AM
To: Brian Moquin <bmoquin@lawprism.com>; David O'Mara, Esq. <david@omaralaw.net>
Cc: Mina Reel <MReel@dickinson-wright.com>; Anjali D. Webster <AWebster@dickinson-wright.com>
Subject: RE: Willard et al v. BHI et al

Dear Brian and David-

We have a few trailing discovery issues that we would like to clear up.

First, we are still waiting on the supplemental discovery responses that Anjali Webster discussed with Brian at the beginning of May. Please let us know where we stand on receiving those responses and documents, which we have been requesting for several months.

Second, we would like to file something with the Court containing new discovery and motion deadlines. We drafted and sent you on June 10 the attached amended Joint Case Conference Report that would set those deadlines based off of the new trial date. If you would like to propose revisions, please feel free to do so. Otherwise, if it is acceptable, please sign it and let us know when we can pick it up for filing.

Please let us know if you have any questions.

Thank you,

Brian

Brian R. Irvine Member

100 West Liberty Street Phone 775-343-7507
 Suite 940
 Reno NV 89501-1991 Fax 775-786-0131
 Email BIrvine@dickinsonwright.com

 
DICKINSON WRIGHT PLLC
 ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO TENNESSEE
 WASHINGTON D.C. TORONTO | DICKINSONWRIGHT.COM

From: Anjali D. Webster
Sent: Friday, June 10, 2016 10:49 AM
To: Brian Moquin; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: RE: Willard et al v. BHI et al

Dear Brian:

Please find attached a proposed amended Joint Case Conference Report for your review and signature, which reflects new discovery dates based on the new trial date. Please let me know if you would like to make any changes.

Also, can you please advise on the status of Plaintiffs' supplemental responses as discussed in the appended email?

Thank you,

Anjali

From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Tuesday, May 03, 2016 9:23 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al v. BHI et al

Presently I have no commitments this week.

I am waiting for my clients to verify the supplemental responses, which I anticipate should be completed sometime this afternoon.

Brian

On 5/2/16 1:55 PM, Anjali D. Webster wrote:

Dear Brian:

Please find attached the Stipulation and Order signed by the Court. Pursuant to the Stipulation and Order (and local rules), we must reschedule the trial within the next five days. What is your or Mr. O'Mara's availability this week? My assistant has left a message with the Court's chambers regarding the Court's availability and I will let you know their schedule as soon as we hear anything.

Also, can you please advise on the status of Plaintiffs' documents responsive to Defendants' continuing discovery requests?

Thanks very much,

Anjali

The information contained in this e-mail, including any attachments, is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

Anjali D. Webster Attorney

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7498
Fax 775-786-0131
Email AWebster@dickinsonwright.com

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Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, June 21, 2016 1:36 PM
To: Brian R. Irvine; david@omaralaw.net
Cc: Mina Reel; Anjali D. Webster
Subject: Re: Willard et al v. BHI et al

I am in the process of rebuilding the database in which I keep all the evidence related to the case; the metadata was corrupted during a power outage. The process is taking longer than I anticipated, but I expect it to finish sometime tonight, immediately after which I will send the supplemental responses.

I defer to Mr. O'Mara with respect to the JCCR.

Brian

On 6/21/16 9:21 AM, Brian R. Irvine wrote:

Dear Brian and David-

We have a few trailing discovery issues that we would like to clear up.

First, we are still waiting on the supplemental discovery responses that Anjali Webster discussed with Brian at the beginning of May. Please let us know where we stand on receiving those responses and documents, which we have been requesting for several months.

Second, we would like to file something with the Court containing new discovery and motion deadlines. We drafted and sent you on June 10 the attached amended Joint Case Conference Report that would set those deadlines based off of the new trial date. If you would like to propose revisions, please feel free to do so. Otherwise, if it is acceptable, please sign it and let us know when we can pick it up for filing.

Please let us know if you have any questions.

Thank you,

Brian

Brian R. Irvine Member

100 West Liberty Street
 Suite 940
 Reno NV 89501-1991
 Phone 775-343-7507
 Fax 775-786-0131
 Email Blrvine@dickinsonwright.com

[Profile](#) [V-Card](#)

DICKINSON WRIGHT PLLC
 ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO TENNESSEE
 WASHINGTON D.C. TORONTO | DICKINSONWRIGHT.COM

From: Anjali D. Webster
Sent: Friday, June 10, 2016 10:49 AM

To: Brian Moquin; david@omaralaw.net

Cc: Brian R. Irvine; Mina Reel

Subject: RE: Willard et al v. BHI et al

Dear Brian:

Please find attached a proposed amended Joint Case Conference Report for your review and signature, which reflects new discovery dates based on the new trial date. Please let me know if you would like to make any changes.

Also, can you please advise on the status of Plaintiffs' supplemental responses as discussed in the appended email?

Thank you,

Anjali

From: Brian Moquin [<mailto:bmoquin@lawprism.com>]

Sent: Tuesday, May 03, 2016 9:23 AM

To: Anjali D. Webster; david@omaralaw.net

Cc: Brian R. Irvine; Mina Reel

Subject: Re: Willard et al v. BHI et al

Presently I have no commitments this week.

I am waiting for my clients to verify the supplemental responses, which I anticipate should be completed sometime this afternoon.

Brian

On 5/2/16 1:55 PM, Anjali D. Webster wrote:

Dear Brian:

Please find attached the Stipulation and Order signed by the Court. Pursuant to the Stipulation and Order (and local rules), we must reschedule the trial within the next five days. What is your or Mr. O'Mara's availability this week? My assistant has left a message with the Court's chambers regarding the Court's availability and I will let you know their schedule as soon as we hear anything.

Also, can you please advise on the status of Plaintiffs' documents responsive to Defendants' continuing discovery requests?

Thanks very much,

Anjali

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Anjali D. Webster Attorney

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7498
Fax 775-786-0131
Email AWebster@dickinsonwright.com

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EXHIBIT 19

EXHIBIT 19



100 WEST LIBERTY STREET, SUITE 940
 RENO, NV 89501-1991
 TELEPHONE: (775) 343-7500
 FACSIMILE: (775) 786-0131
<http://www.dickinsonwright.com>

BRIAN R. IRVINE
 BIRVINE@DICKINSONWRIGHT.COM
 (775) 343-7507

July 21, 2016

VIA E-MAIL AND U.S. MAIL

Brian P. Moquin
 LAW OFFICES OF BRIAN P. MOQUIN
 3287 Ruffino Lane
 San Jose, CA 95148

Re: *Willard v. Berry-Hinckley Industries, et al., Case No. CV14-01712*

Dear Mr. Moquin:

This will follow up on my letter dated March 3, 2016 regarding your clients' failure to produce numerous documents in response to Defendants' discovery requests. That letter (without enclosures) is attached for your convenience. You have been promising to provide us with Plaintiffs' responses to Defendants' discovery requests for many months (*see* attached emails), but we still have received no such responses. Plaintiffs' refusal to timely respond continues to prejudice Defendants' ability to prepare this case for trial, and Defendants reserve the right to seek any and all relief available to them as a result of Plaintiffs' discovery misconduct, including filing motions to compel or motions seeking substantive sanctions such as striking categories of damages. Please provide responses immediately.

Very truly yours,

Brian R. Irvine

BRI:mr
 Enclosures
 cc: David O'Mara
david@omaralaw.net

RENO 65540-1 9876v1



100 WEST LIBERTY STREET, SUITE 940
 RENO, NV 89501-1991
 TELEPHONE: (775) 343-7500
 FACSIMILE: (775) 786-0131
<http://www.dickinsonwright.com>

BRIAN R. IRVINE
 BIRVINE@DICKINSONWRIGHT.COM
 (775) 343-7507

March 3, 2016

VIA E-MAIL and U.S. Mail

Brian P. Moquin
 LAW OFFICES OF BRIAN P. MOQUIN
 3506 La Castellet Court
 San Jose, California 95148
bmoquin@lawprism.com

Re: *Willard v. Berry-Hinckley Industries, et al.*, Case No. CV14-01712

Dear Mr. Moquin:

We still have not received responses from your clients with respect to the following discovery requests:

- The Wooley Plaintiffs' state income tax returns from 2005 through 2014, as requested in Defendants' September 2, 2015, requests for production of documents;
- Willard's state income tax returns from 2005 through 2014, as requested in Defendants' September 2, 2015, requests for production of documents;
- Overland's state income tax returns from 2005 through 2014, as requested in Defendants' September 2, 2015, requests for production of documents;
- Overland's federal tax returns for the following years, as requested in Defendants' requests for production of documents: 2005, 2006, 2007, 2008, 2009, 2013, 2014 and/or any other years not produced in this case from 2005-2014;
- Willard's federal tax returns for the following years, as requested in Defendants' requests for production of documents: 2005, 2006, 2007, 2008, 2013, 2014 and/or any other years not produced in this case from 2005-2014;
- The Wooley Plaintiffs' federal tax returns for the following years, as requested in Defendants' requests for production of documents: 2005, 2006, 2007, 2008, 2009, 2010 and/or any other years not produced in this case from 2005-2014.

Please provide us with responses to the aforementioned discovery requests immediately, as well as responses to any discovery requests not mentioned herein to which Plaintiffs have not yet responded.

Brian P. Moquin
March 3, 2016
Page 2

Additionally, the Nevada Rules of Civil Procedure require you to update or supplement your discovery responses throughout the litigation to ensure that they are accurate and up-to-date. Specifically, NRCp 26(e) provides:

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 learns that in some material respect the information disclosed is 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. With respect to the 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.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production or request for admission, if the party learns that the response is in some material 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.

NRCp 26(e).

Please ensure that Plaintiffs promptly supplement and/or correct their responses to all of Defendants' discovery requests to which NRCp 26(e) applies, including, but not limited to, the following discovery requests:

- Interrogatory No. 1 in Defendants' First Set of Interrogatories to the Wooley Plaintiffs: please identify in detail any and all measures you have taken, if any, to re-let or sell the Property since the Lease was allegedly breached.

DICKINSON WRIGHT PLLC

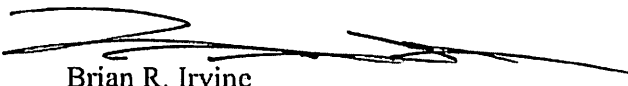
Brian P. Moquin
March 3, 2016
Page 3

- Interrogatory No. 2 in Defendants' First Set of Interrogatories to the Wooley Plaintiffs: please identify any persons or entities who expressed interest in leasing or purchasing the Property since the Lease was allegedly breached.
- Interrogatory No. 3 in Defendants' First Set of Interrogatories to the Wooley Plaintiffs: please identify and explain in detail any and all methods you have utilized to advertise the availability of the Property for lease or sale, including but not limited to signage, brochures, websites, newspapers, or any other similar means since the Lease was allegedly breached.
- Interrogatory No. 5 in Defendants' First Set of Interrogatories to the Wooley Plaintiffs: please explain if and how you are still currently advertising the availability of the Property for sale or lease.
- Interrogatory No. 6 in Defendants' First Set of Interrogatories to the Wooley Plaintiffs: please identify any and all brokers or other real estate professionals you engaged to assist with your efforts to re-let or sell the Property.
- Interrogatory No. 6 in Defendants' Second Set of Interrogatories to the Wooley Plaintiffs: what is your current balance due on any and all mortgage loans for the Highway 50 Property?
- Interrogatory No. 7 in Defendants' Second Set of Interrogatories to the Wooley Plaintiffs: are you presently in default on any mortgage payments for any and all mortgage loans for the Highway 50 Property? If so, when was your last mortgage payment?
- All corresponding requests for production of documents.

For each of the above-referenced Interrogatories, we have not received any updated information since we took Mr. Wooley's deposition last year.

For your convenience and ease of reference, all of Defendants' discovery requests have been attached to this Letter.

Sincerely,



Brian R. Irvine

BRI:mr
Enclosures

cc: David O'Mara
david@omaralaw.net

Brian R. Irvine

From: Anjali D. Webster
Sent: Thursday, March 17, 2016 10:25 AM
To: Brian Moquin; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Willard et al. v. BHI et al.
Attachments: RENO-#7086-v1-Letter_to_Moquin_re_Supplemental_Responses.pdf; BRI Letter 03 03 16.pdf

Dear Mr. Moquin:

This email serves to confirm that, per our telephone conversation, you will provide us the following documents by tomorrow: (1) those documents responsive to Brian Irvine's letters, attached; and (2) bates-stamped tax returns for all years requested by Plaintiffs, both federal and state.

With regard to the latter category, we are missing the following tax returns from Plaintiffs:

- 2005 Overland Federal Tax Return. You mentioned yesterday that you do not presently have that tax return. Please confirm.
- 2005 Overland State Tax Return.
- 2013 Overland State Tax Return.
- 2014 Overland State Tax Return.
- 2009 Willard State Tax Return.
- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
- 2005 Wooley State Tax Return.
- 2007 Wooley State Tax Return.
- 2008 Wooley State Tax Return.
- 2009 Wooley State Tax Return.
- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

Please promptly provide these documents.

Thanks very much,

Anjali

Brian R. Irvine

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Wednesday, March 23, 2016 8:04 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

In an attempt to review what documents have already been produced, I unzipped the discovery responses in the Gluhaich Subpoena folder, inadvertently doing so in the Dropbox share. No new documents were added.

I was waiting for additional State returns from my clients, and am now in possession of all those that they have, which I will send to you shortly.

I am also putting together additional documents related to the Highway 50 property loan, which was taken over by another lender a few months ago. I have asked Mr. Gluhaich to compile a list of all entities that have expressed an interest in that property, expect to receive those documents either today or tomorrow. Once I have received them, I will be able to send updated SROG responses to my clients for verification.

Brian

On 3/22/16 9:56 AM, Anjali D. Webster wrote:

Dear Brian:

Can you please advise the status of the tax returns? Additionally, as noted in my previous email, you represented that you will provide bates stamped copies of all tax returns, including bates stamped copies of those tax returns which have already been produced (none are presently bates stamped) by last Friday. We have not yet received those.

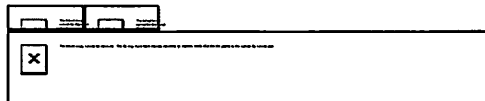
Additionally, my Dropbox account indicates that numerous documents in the "Gluhaich Subpoena" folder were modified yesterday, but none of these documents appear to be new. Can you please provide me with a list of exactly which documents you have provided/are providing to us this week?

Thanks very much,

Anjali

Anjali D. Webster Attorney

100 West Liberty Street
 Suite 940
 Reno NV 89501-1991
 Phone 775-343-7498
 Fax 775-786-0131
 Email AWebster@dickinsonwright.com



From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Monday, March 21, 2016 8:20 AM
To: Anjali D. Webster; david@omaralaw.net

Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

I'm working on finalizing these for you, will have those in my clients' possession to you mid-morning at the latest.

On 3/17/16 10:24 AM, Anjali D. Webster wrote:

- 2005 Overland Federal Tax Return. You mentioned yesterday that you do not presently have that tax return. Please confirm.
- 2005 Overland State Tax Return.
- 2013 Overland State Tax Return.
- 2014 Overland State Tax Return.
- 2009 Willard State Tax Return.
- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
- 2005 Wooley State Tax Return.
- 2007 Wooley State Tax Return.
- 2008 Wooley State Tax Return.
- 2009 Wooley State Tax Return.
- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

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Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

Brian R. Irvine

From: Anjali D. Webster
Sent: Friday, April 01, 2016 8:54 AM
To: Brian Moquin; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: RE: Willard et al. v. BHI et al.

Dear Brian:

When we spoke on Monday, you represented that you would produce all documents requested by Defendants by Wednesday, March 30. To date, we have not received any documents from you. It has now been nearly one month since we initially asked you to supplement Plaintiffs' responses on March 3, and as you can see from your below email, we have already agreed to multiple extensions of time. Can you please advise us as to when we can expect to receive these documents?

Thank you,

Anjali

From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Monday, March 21, 2016 8:20 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

I'm working on finalizing these for you, will have those in my clients' possession to you mid-morning at the latest.

On 3/17/16 10:24 AM, Anjali D. Webster wrote:

- 2005 Overland Federal Tax Return. You mentioned yesterday that you do not presently have that tax return. Please confirm.
- 2005 Overland State Tax Return.
- 2013 Overland State Tax Return.
- 2014 Overland State Tax Return.
- 2009 Willard State Tax Return.
- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
- 2005 Wooley State Tax Return.

- 2007 Wooley State Tax Return.
- 2008 Wooley State Tax Return.
- 2009 Wooley State Tax Return.
- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

Brian R. Irvine

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, April 05, 2016 8:54 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

Sorry, I ran into some technical issues. I need to depart for a hearing now but will be able to put a bow on the documents this afternoon.

Brian

On 4/1/16 8:53 AM, Anjali D. Webster wrote:

Dear Brian:

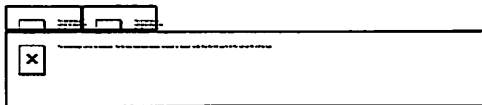
When we spoke on Monday, you represented that you would produce all documents requested by Defendants by Wednesday, March 30. To date, we have not received any documents from you. It has now been nearly one month since we initially asked you to supplement Plaintiffs' responses on March 3, and as you can see from your below email, we have already agreed to multiple extensions of time. Can you please advise us as to when we can expect to receive these documents?

Thank you,

Anjali

Anjali D. Webster Attorney

100 West Liberty Street
 Suite 940
 Reno NV 89501-1991
 Phone 775-343-7498
 Fax 775-786-0131
 Email AWebster@dickinsonwright.com



From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Monday, March 21, 2016 8:20 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

I'm working on finalizing these for you, will have those in my clients' possession to you mid-morning at the latest.

On 3/17/16 10:24 AM, Anjali D. Webster wrote:

- 2005 Overland Federal Tax Return. You mentioned yesterday that you do not presently have that tax return. Please confirm.

- 2005 Overland State Tax Return.
- 2013 Overland State Tax Return.
- 2014 Overland State Tax Return.
- 2009 Willard State Tax Return.
- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
- 2005 Wooley State Tax Return.
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- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

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Brian R. Irvine

From: Anjali D. Webster
Sent: Friday, April 08, 2016 10:06 AM
To: Brian R. Irvine; Mina Reel
Subject: FW: Dropbox

Anjali D. Webster Attorney

Dickinson Wright PLLC
100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7498
Fax 775-786-0131
Email AWebster@dickinsonwright.com

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

From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Friday, April 08, 2016 9:55 AM
To: Anjali D. Webster
Subject: Dropbox

My Dropbox installation isn't working right, and numerous reinstallations hasn't fixed the issue. I'm burning a DVD of the supplemental response and mailing it to you today.

Brian

Brian R. Irvine

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, May 03, 2016 9:23 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al v. BHI et al

Presently I have no commitments this week.

I am waiting for my clients to verify the supplemental responses, which I anticipate should be completed sometime this afternoon.

Brian

On 5/2/16 1:55 PM, Anjali D. Webster wrote:

Dear Brian:

Please find attached the Stipulation and Order signed by the Court. Pursuant to the Stipulation and Order (and local rules), we must reschedule the trial within the next five days. What is your or Mr. O'Mara's availability this week? My assistant has left a message with the Court's chambers regarding the Court's availability and I will let you know their schedule as soon as we hear anything.

Also, can you please advise on the status of Plaintiffs' documents responsive to Defendants' continuing discovery requests?

Thanks very much,

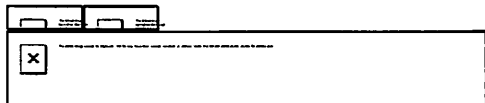
Anjali

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Anjali D. Webster Attorney

100 West Liberty Street
Suite 940
Reno NV 89501-1991
Phone 775-343-7498
Fax 775-786-0131
Email AWebster@dickinsonwright.com



Brian R. Irvine

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, June 21, 2016 1:36 PM
To: Brian R. Irvine; david@omaralaw.net
Cc: Mina Reel; Anjali D. Webster
Subject: Re: Willard et al v. BHI et al

I am in the process of rebuilding the database in which I keep all the evidence related to the case; the metadata was corrupted during a power outage. The process is taking longer than I anticipated, but I expect it to finish sometime tonight, immediately after which I will send the supplemental responses.

I defer to Mr. O'Mara with respect to the JCCR.

Brian

On 6/21/16 9:21 AM, Brian R. Irvine wrote:

Dear Brian and David-

We have a few trailing discovery issues that we would like to clear up.

First, we are still waiting on the supplemental discovery responses that Anjali Webster discussed with Brian at the beginning of May. Please let us know where we stand on receiving those responses and documents, which we have been requesting for several months.

Second, we would like to file something with the Court containing new discovery and motion deadlines. We drafted and sent you on June 10 the attached amended Joint Case Conference Report that would set those deadlines based off of the new trial date. If you would like to propose revisions, please feel free to do so. Otherwise, if it is acceptable, please sign it and let us know when we can pick it up for filing.

Please let us know if you have any questions.

Thank you,

Brian

Brian R. Irvine Member

100 West Liberty Street
 Suite 940
 Reno NV 89501-1991
 Phone 775-343-7507
 Fax 775-786-0131
 Email Blrvine@dickinsonwright.com

[Profile](#) [V-Card](#)

DICKINSON WRIGHT

MINNESOTA • FLORIDA • ILLINOIS • MISSISSIPPI • NEVADA • NEW YORK • PENNSYLVANIA
 WASHINGTON • CALIFORNIA

From: Anjali D. Webster
Sent: Friday, June 10, 2016 10:49 AM

To: Brian Moquin; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: RE: Willard et al v. BHI et al

Dear Brian:

Please find attached a proposed amended Joint Case Conference Report for your review and signature, which reflects new discovery dates based on the new trial date. Please let me know if you would like to make any changes.

Also, can you please advise on the status of Plaintiffs' supplemental responses as discussed in the appended email?

Thank you,

Anjali

From: Brian Moquin [<mailto:bmoquin@lawprism.com>]
Sent: Tuesday, May 03, 2016 9:23 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al v. BHI et al

Presently I have no commitments this week.

I am waiting for my clients to verify the supplemental responses, which I anticipate should be completed sometime this afternoon.

Brian

On 5/2/16 1:55 PM, Anjali D. Webster wrote:

Dear Brian:

Please find attached the Stipulation and Order signed by the Court. Pursuant to the Stipulation and Order (and local rules), we must reschedule the trial within the next five days. What is your or Mr. O'Mara's availability this week? My assistant has left a message with the Court's chambers regarding the Court's availability and I will let you know their schedule as soon as we hear anything.

Also, can you please advise on the status of Plaintiffs' documents responsive to Defendants' continuing discovery requests?

Thanks very much,

Anjali

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Anjali D. Webster Attorney

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7498
Fax 775-786-0131
Email AWebster@dickinsonwright.com

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EXHIBIT 20

EXHIBIT 20

DISC

GORDON SILVER

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

KATHLEEN M. BRADY

Nevada Bar No. 11525

100 West Liberty Street

Suite 940

Reno, Nevada 89501

Tel: (775) 343-7500

Fax: (775) 786-0131

Email: jdesmond@gordonsilver.comEmail: birvine@gordonsilver.comEmail: kbrady@gordonsilver.com*Attorneys for Defendants**Berry Hinckley Industries, and**Jerry Herbst***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,

Plaintiff,

CASE NO.: CV14-01712

vs.

DEPT. NO.: 6BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; JERRY HERBST, an
individual; and JH, INC., a Nevada
corporation,

Defendants.

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

Counterclaimants

1 vs.

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

5 Counter-defendants

6 **DEFENDANTS/COUNTERCLAIMANTS' FIRST SET OF INTERROGATORIES**

7 **TO LARRY J. WILLARD**

8 TO: LARRY J. WILLARD

9 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY
10 HERBST, by and through their attorneys of record, Gordon Silver, and pursuant to Rules 26 and
11 33 of the Federal Rules of Civil Procedure, hereby demands that Plaintiff/Counter-defendant
12 LARRY J. WILLARD, answer the following Interrogatories, separately and fully, in writing,
13 under oath, within thirty (30) days after service.
14

15 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

16 The following preliminary definitions and instructions apply to each of the requests
17 hereinafter set forth, and Defendant incorporates the same herein by reference.
18

19 1. When used herein, the term "Plaintiff" means Larry J. Willard and/or his agents,
20 representatives or employees.

21 2. When used herein, the terms "you" and "your", their plural, or any synonym thereof, are
22 intended to and shall embrace and include, in addition to the Plaintiff, counsel for said Plaintiff
23 and all agents, employees, investigators, representatives, servants and others who are acting or
24 purporting to act on its behalf or who are in possession of, or may have obtained, information for
25 or on behalf of Plaintiff.
26

27 3. When used herein, the terms "document" and "writing," and the plural forms thereof,
28 shall mean all written, typewritten, printed, recorded, or graphic matters, however produced or

1 reproduced, of every kind and description, pertaining in any way to the subject matter of this
2 action. The terms "document" and "writing" shall include, but are not limited to, any books,
3 pamphlets, periodicals, memoranda, letters, correspondence, telegrams, applications, leases,
4 memoranda of understanding, agreements, contracts, permits, articles, bylaws, financial records,
5 security instruments, checks, bank statements, receipts, invoices, bids, proposals, offers,
6 counteroffers, time records, accounting records, minutes, records of meetings, reports, notes,
7 diaries, logs, tapes, transcripts, recordings, records of phone calls, work papers, charts, drawings,
8 photographs, films, medical and hospital records and reports, x-ray photographs, or any other
9 handwritten, recorded, transcribed, punched, taped, filmed or graphic matter, however produced
10 or reproduced, in Plaintiff's possession, custody or control, or to which Plaintiffs have or have
11 had access. Documents shall also include any drafts or variations or markings to original
12 documents.
13

14
15 4. Whenever there is a request to identify or state the identity of a documents, provide as to
16 such document the following information:

- 17 a. The date of its preparation;
18 b. The names, title and address of each author and signatory;
19 c. The name, title and address of each addressee and each other person receiving a copy
20 thereof;
21 d. Its present and/or last known custodian and location; and
22 e. Its title and/or all identifying or categorizing designations.
23

24 5. When used herein, the term "person," its plural or any synonym thereof, is intended to
25 and shall embrace and include any individual, partnership, corporation, trust, estate, company,
26 association, government agency (federal, state, local or foreign), or any other entity.

27 6. Whenever there is a request to identify a person, provide or state the identity of a person,
28

1 provide as to each such person the following information:

- 2 a. His or her name, date of birth, gender and social security number;
- 3 b. His or her present or last known home address;
- 4 c. His or her present business address, business telephone, name of employer, and
- 5 job title; and
- 6 d. His, her or its status or relationship with each of the parties to this action.

7

8 7. All information is to be divulged which is in Plaintiff's possession or control, or can be

9 ascertained upon reasonable investigation of areas within your control. The knowledge of

10 Plaintiff's attorneys is deemed to be Plaintiff's knowledge, so that, apart from privileged matters,

11 if Plaintiff's attorneys have knowledge of the information sought to be elicited herein, said

12 knowledge must be incorporated into your answers, even if such information is unknown to

13 Plaintiff.

14

15 8. In the event you withhold from identification any document as privileged, you are

16 requested to provide a list of documents withheld and state the following information with

17 respect to each document withheld:

- 18 a. The date appearing on the document, and, if it has no date, the date, or
- 19 approximate date, on which it was prepared;
- 20 b. The title, label, code number or file number of the document;
- 21 c. The name and current address of the person(s) who signed the documents
- 22 and, if it was not signed, the name and current address of the person(s) who prepared it;
- 23 d. The name and current address of the person(s) to whom the document was
- 24 directed and the person(s) to whom a copy of the document was directed;
- 25 e. A general description of the subject matter(s) to which the document relates;
- 26
- 27
- 28

1 f. The name and current address of the person(s) having present possession,
2 custody, or control of the document; and

3 g. The grounds on which the document has been withheld.

4 9. With respect to any non-documentary information or communications, required to be
5 identified or described by these requests as to which a claim of privilege is asserted, separately
6 state the following:
7

8 a. The basis of the claim and privilege;

9 b. A general description of the subject of the information and communication;

10 c. The identities of all person(s) with knowledge of the information or
11 communication;

12 d. The date of communication;

13 e. The identities of all persons present when the communication took place; and

14 f. The type of communication (i.e., face-to-face conversation, telephone
15 conversation) and the location of each party to the communication at the time it took place.
16

17 10. Pursuant to FRCP 26(e)(1)(A), you are under a duty to supplement to these
18 interrogatories as follows:

19 "in a timely manner if the party learns in some material respect the disclosure or
20 response is incomplete or incorrect and if the additional or corrective information
21 has not otherwise been made known to the other parties during discovery or in
writing."

22 11. If you object to any portion of the Interrogatories, state the specific ground for such
23 objection and respond to the request to the extent to which there is no objection.

24 12. If you do not know or have the information requested in any or all of the following
25 discovery, please identify the person who, to the best of your knowledge, would know or have
26 the answer or information requested.
27
28

14. When used herein, the term “Lease” means the November 18, 2005, Lease Agreement between OVERLAND DEVELOPMENT CORPORATION INC. dba LJW ENTERPRISES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST (“Willard”), and Berry-Hinckley Industries (“BHI”), and the subsequent amendments thereto.

15. When used herein, the term "Lease Guarantee" means the March 9, 2007, Guaranty Agreement executed by Jerry Herbst for the benefit of BHI.

16. When used herein, the term "Property" means 7695-7699 S. Virginia Street Reno, Nevada.

INTERROGATORY NO. 1

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

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

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

INTERROGATORY NO. 4

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

INTERROGATORY NO. 5

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

INTERROGATORY NO. 6

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

INTERROGATORY NO. 7

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

INTERROGATORY NO. 8

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

INTERROGATORY NO. 9

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

INTERROGATORY NO. 10

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

1 **INTERROGATORY NO. 11**

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

5 **INTERROGATORY NO. 12**

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

8 DATED this 2nd day of April, 2015.

9 GORDON SILVER

10
11 By: 

12 JOHN P. DESMOND
Nevada Bar No. 5618
13 BRIAN R. IRVINE
Nevada Bar No. 7758
14 KATHLEEN M. BRADY
Nevada Bar No. 11525
100 West Liberty Street, Suite 940
15 Reno, Nevada 89501
Tel: (775) 343-7500
16 Fax: (775) 786-0131
Email: jdesmond@gordonsilver.com
17 Email: birvine@gordonsilver.com
18 Email: kbrady@gordonsilver.com

19 *Attorneys for Defendants,*
20 *Berry Hinckley Industries, and*
21 *Jerry Herbst*

CERTIFICATE OF SERVICE

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to NRCPC 5(b), I am serving a true and correct copy of the attached DEFENDANTS/COUNTERCLAIMANTS' FIRST SET OF INTERROGATORIES TO LARRY J. WILLARD on the parties as set forth below:

XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Via E-Mail

_____ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

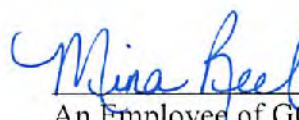
_____ Federal Express (or other overnight delivery)

_____ Electronic Notification

addressed as follows:

David C. O'Mara
THE O'MARA LAW FIRM, P.C.
311 E. Liberty Street
Reno, Nevada 89501

DATED this 22nd day of April, 2015.



An Employee of GORDON SILVER

EXHIBIT 21

EXHIBIT 21

DISC

DICKINSON WRIGHT, PLLC

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

ANJALI D. WEBSTER

Nevada Bar No. 12515

100 West Liberty Street, Suite 940

Reno, NV 89501

Tel: (775) 343-7500

Fax: (775) 786-0131

Email: Jdesmond@dickinsonwright.comEmail: Brvine@dickinsonwright.comEmail: Awebster@dickinsonwright.com*Attorney for Defendants**Berry Hinckley Industries and**Jerry Herbst***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.

1 LARRY J. WILLARD, individually and as
2 trustee of the Larry James Willard Trust Fund;
3 OVERLAND DEVELOPMENT
4 CORPORATION, a California corporation;

Counter-defendants.

5
6 **DEFENDANTS/COUNTERCLAIMANTS' SECOND SET OF INTERROGATORIES**
7 **TO LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION**

TO: LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION

8 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY
9 HERBST, by and through their attorneys of record, DICKINSON WRIGHT, PLLC, and
10 pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, hereby demands that
11 Plaintiffs/Counter-defendants LARRY J. WILLARD and OVERLAND DEVELOPMENT
12 CORPORATION, answer the following Interrogatories, separately and fully, in writing,
13 under oath, within thirty (30) days after service.
14

15 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

16 The following preliminary definitions and instructions apply to each of the requests
17 hereinafter set forth, and Defendant incorporates the same herein by reference.

18 1. "Willard" means Larry J. Willard individually and/or as Trustee of the Larry
19 James Willard Trust.
20

21 2. "Overland" means Overland Development Corporation, Inc. dba LJW Enterprises
22 Inc.

23 3. "Willard Plaintiffs" means Willard and Overland.

24 4. When used herein, the terms "you" and "your", their plural, or any synonym
25 thereof, are intended to and shall embrace and include, in addition to the Willard Plaintiffs,
26

1 counsel for said Plaintiffs and all agents, employees, investigators, representatives, servants and
2 others who are acting or purporting to act on its behalf or who are in possession of, or may have
3 obtained, information for or on behalf of Plaintiffs.

4 5. When used herein, the terms "document" and "writing," and the plural forms
5 thereof, shall mean all written, typewritten, printed, recorded, or graphic matters, however
6 produced or reproduced, of every kind and description, pertaining in any way to the subject
7 matter of this action. The terms "document" and "writing" shall include, but are not limited to,
8 any books, pamphlets, periodicals, memoranda, letters, correspondence, telegrams, applications,
9 leases, memoranda of understanding, agreements, contracts, permits, articles, bylaws, financial
10 records, security instruments, checks, bank statements, receipts, invoices, bids, proposals, offers,
11 counteroffers, time records, accounting records, minutes, records of meetings, reports, notes,
12 diaries, logs, tapes, transcripts, recordings, records of phone calls, work papers, charts, drawings,
13 photographs, films, medical and hospital records and reports, x-ray photographs, or any other
14 handwritten, recorded, transcribed, punched, taped, filmed or graphic matter, however produced
15 or reproduced, in Plaintiff s possession, custody or control, or to which Plaintiffs have or have
16 had access. Documents shall also include any drafts or variations or markings to original
17 documents.
18

19
20 6. Whenever there is a request to identify or state the identity of a documents,
21 provide as to such document the following information:
22

- 23 a. The date of its preparation;
24 b. The names, title and address of each author and signatory;
25 c. The name, title and address of each addressee and each other person
26 receiving a copy thereof;
27

1 d. Its present and/or last known custodian and location; and

2 e. Its title and/or all identifying or categorizing designations.

3 7. When used herein, the term "person," its plural or any synonym thereof, is
4 intended to and shall embrace and include any individual, partnership, corporation, trust, estate,
5 company, association, government agency (federal, state, local or foreign), or any other entity.

6
7 8. Whenever there is a request to identify a person, provide or state the identity of a
8 person, provide as to each such person the following information:

9 a. His or her name, date of birth, gender and social security number;

10 b. His or her present or last known home address;

11 c. His or her present business address, business telephone, name of
12 employer, and job title; and

13
14 d. His, her or its status or relationship with each of the parties to this action.

15 9. All information is to be divulged which is in Plaintiffs' possession or control, or
16 can be ascertained upon reasonable investigation of areas within your control. The knowledge of
17 Plaintiffs' attorneys is deemed to be Plaintiffs' knowledge, so that, apart from privileged matters,
18 if Plaintiffs' attorneys have knowledge of the information sought to be elicited herein, said
19 knowledge must be incorporated into your answers, even if such information is unknown to
20 Plaintiffs.

21
22 10. In the event you withhold from identification any document as privileged, you are
23 requested to provide a list of documents withheld and state the following information with
24 respect to each document withheld:

25 a. The date appearing on the document, and, if it has no date, the date, or
26 approximate date, on which it was prepared;

- 1 b. The title, label, code number or file number of the document;
- 2 c. The name and current address of the person(s) who signed the documents
- 3 and, if it was not signed, the name and current address of the person(s) who prepared it;
- 4 d. The name and current address of the person(s) to whom the document was
- 5 directed and the person(s) to whom a copy of the document was directed;
- 6 e. A general description of the subject matter(s) to which the document
- 7 relates;
- 8 f. The name and current address of the person(s) having present possession,
- 9 custody, or control of the document; and
- 10 g. The grounds on which the document has been withheld.
- 11 11. With respect to any non-documentary information or communications, required to
- 12 be identified or described by these requests as to which a claim of privilege is asserted,
- 13 separately state the following:
- 14 a. The basis of the claim and privilege;
- 15 b. A general description of the subject of the information and
- 16 communication;
- 17 c. The identities of all person(s) with knowledge of the information or
- 18 communication;
- 19 d. The date of communication;
- 20 e. The identities of all persons present when the communication took place;
- 21 and
- 22 f. The type of communication (i.e., face-to-face conversation, telephone
- 23 conversation) and the location of each party to the communication at the time it took place.
- 24
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in a timely manner if the party learns in some material respect the disclosure or response is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during discovery or in writing.

14. If you do not know or have the information requested in any or all of the foregoing discovery, please identify the person who, to the best of your knowledge, would know the answer or information requested.

16. “Defendants” means BHI and Jerry Herbst.

18. "Operation and Management Agreement" means the May 1, 2013, Operation and Management Agreement made and entered into by and between BHI and Overland Corporation, J.W. Enterprises, Inc. and Larry Willard as Trustee of the Willard Family Trust.

20. "Willard Lease" means the November 18, 2005, Lease Agreement between the d Plaintiffs and BHI for lease of the Willard Property.

Page 6 of 10

INTERROGATORY NO. 1

INTERROGATORY NO. 2

INTERROGATORY NO. 3

INTERROGATORY NO. 4

INTERROGATORY NO. 5

Please identify and explain in detail the factual basis for Your contention that Defendants are responsible for the claimed accounting fees associated with Willard's Bankruptcy filing.

1 referred to in Paragraph 17 of the First Amended Complaint, which was subsequently dismissed
2 voluntarily.

3 **INTERROGATORY NO. 6**

4 Please identify the outstanding balance due and owing on any and all mortgage loans for
5 the Willard Property as of the date of the short sale identified in paragraph 15 of the Amended
6 Complaint.
7

8 **INTERROGATORY NO. 7**

9 Please identify and describe in detail the claimed City of Reno fines referred to in
10 paragraph 13 of the First Amended Complaint.
11

12 **INTERROGATORY NO. 8**

13 Please identify the date that You contend that the Operation and Management Agreement
14 terminated.

15 **INTERROGATORY NO. 9**

16 With regard to each of the Requests for Admission propounded concurrently herewith,
17 for each Request wherein your answer is anything other than an unequivocal "admit," please
18 state the basis for your failure to admit and the facts that support your response, including the
19 names of all witnesses and the identity or a description of all documents or evidence supporting a
20 response.
21

22
23 ///

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25
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AFFIRMATION
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 2nd day of July, 2015.

DICKINSON WRIGHT, PLLC



JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
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Email: Birvine@dickinsonwright.com
Email: Awebster@dickinsonwright.com

*Attorney for Defendants
Berry-Hinckley Industries and
Jerry Herbst*

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X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

Via Facsimile (Fax)

Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

addressed as follows:

Brian P. Moquin
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, California 95148

Mina Reel

Page 10 of 10

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 12 OF 19

Submitted for all appellants by:

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

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

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 40: <i>Grant, Bargain and Sale Deed</i> by and between Longley Center Partners, LLC and P.A. Morabito & Co., Limited dated October 4, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291753		10	2182-2187
	Exhibit 41: <i>Grant, Bargain and Sale Deed</i> by and between P.A. Morabito & Co., Limited and Land Venture Partners, LLC dated September 30, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291760		10	2188-2193
	Exhibit 42: <i>Memorandum of Lease</i> dated September 30, 2005 by Berry-Hinckley Industries regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc. No. 3291761		10	2194-2198
	Exhibit 43: <i>Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate</i> by and between Land Venture Partners, LLC, Berry-Hinckley Industries, and M&I Marshall & Isley Bank dated October 3, 2005 regarding the Virginia Property, recorded October 13, 2005 in the Washoe County Recorder's Office as Doc No. 3291766		10	2199-2209
	Exhibit 44: <i>Memorandum of Lease with Options to Extend</i> dated December 1, 2005 by Winner's Gaming, Inc. regarding the Virginia Property, recorded December 14, 2005 in the Washoe County Recorder's Office as Doc. No. 3323645		10	2210-2213

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 30)	Exhibit 50: <i>Assignment of Entitlements, Contracts, Rents and Revenues</i> by and between Berry-Hinckley Industries and First National Bank of Nevada dated June 29, 2007 regarding the Virginia Property, recorded February 24, 2006 in the Washoe County Recorder's Office as Doc. No. 3551284		10	2252-2264
	Exhibit 51: <i>UCC Financing Statement</i> regarding the Virginia Property, recorded July 5, 2007 in the Washoe County Recorder's Office as Doc. No 3551285		10	2265-2272
	Exhibit 52: Sales brochure for the Virginia Property prepared by Daniel Gluhaich for marketing purposes in 2012		10	2273-2283
31.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	10	2284-2327
	Exhibit 1: Declaration of Brian R. Irvine		10	2328-2334
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		10	2335-2342
	Exhibit 3: February 12, 2015 Letter		10	2343-2345
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		10	2346-2357
	Exhibit 5: August 28, 2015, Letter		11	2358-2369
	Exhibit 6: March 3, 2016, Letter		11	2370-2458
	Exhibit 7: March 15, 2016 Letter		11	2459-2550
	Exhibit 8: April 20, 2016, Letter		11	2551-2577
	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		11	2578-2586

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

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

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

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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(cont 34)	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		15	3548-3555
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		15	3556-3561
	Exhibit 35: Defendants' Requests for Admission on Willard		15	3562-3567
35.	Plaintiffs' Request for a Brief Extension of Time to Respond to Defendants' Three Pending Motions and to Extend the Deadline for Submissions of Dispositive Motions	12/06/17	15	3568-3572
36.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	16	3573-3576
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	12/07/17	16	3577-3580
38.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	16	3581-3584
39.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	16	3585-3589
40.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	16	3590-3594
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	16	3595-3598

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

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

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

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

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

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

EXHIBIT 22

EXHIBIT 22

DISC

GORDON SILVER

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

KATHLEEN M. BRADY

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100 West Liberty Street

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Email: jdesmond@gordonsilver.comEmail: birvine@gordonsilver.comEmail: kbrady@gordonsilver.com*Attorneys for Defendants**Berry Hinckley Industries, and**Jerry Herbst***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,

Plaintiff,

CASE NO.: CV14-01712

vs.

DEPT. NO.: 6BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; JERRY HERBST, an
individual; and JH, INC., a Nevada
corporation,

Defendants.

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

Counterclaimants

1 vs.

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

5
6 Counter-defendants

7 **DEFENDANTS/COUNTERCLAIMANTS' FIRST SET OF REQUESTS FOR**
8 **PRODUCTION OF DOCUMENTS**

9 TO: LARRY J. WILLARD

10 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY
11 HERBST, by and through their attorneys of record, Gordon Silver, hereby requests that
12 Plaintiff/Counter-Defendant, LARRY J. WILLARD, both respond and produce the following
13 documents, within thirty (30) days after service hereof:

14 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

15 1. "Communication" or "Communications" shall mean (a) any form of data
16 transmission, including letters, faxes, emails, and all other transmission of data via
17 telecommunications, (b) all meetings of two or more persons and all documents describing such
18 meetings, (c) all telephone conversations and telephone conferences, and (d) all situations in
19 which ideas are discussed, interpreted or exchanged among two or more persons.
20

21 2. "Correspondence" shall mean any writing or document relating to any
22 communication, including but not limited to letters, emails, notes, telephone message pads, text
23 messages, transcriptions, faxes, and memoranda.

24 3. "Person" shall mean natural persons, firms, proprietorships, associations,
25 partnerships, corporations, governmental entities, and every other type of organization or entity.
26

27 4. "Document" or "Documents" shall refer to and includes, but is not limited to, any
28 and all "writings" as that terms is defined by Nevada Revised Statute section 52.225, and also

1 including all other means by which information, correspondence, notes, notations,
2 representations, depictions, or data is stored. This definition includes originals, copies, non-
3 identical copies and preliminary, intermediate, and final drafts or writings, records,
4 correspondence, e-mail, papers, books, pamphlets, periodicals, accounts, letters, photographs,
5 objects, telegrams, notes, minutes, memoranda, interoffice and intra office communications,
6 reports, studies, surveys, forecasts, analyses, estimates, contracts, leases, deeds, licenses,
7 agreements, charts, maps, scale sheets, graphs, indices, calendars, diaries, purchase orders,
8 invoices, receipts, working papers, and records of every kind and description, whether inscribed
9 by hand or mechanical means - such as electronic, microfilm, phonic (such as tape recordings),
10 photographic, video, punched, or other means - and computer records, whether reflected by
11 printout or stored on disk, drum, tape or otherwise.
12

13 5. “Relate to,” “related to,” or “relating to” shall mean constituting, pertaining to,
14 referring to, alluding to, responding to, elaborating upon, concerning, memorializing, supporting,
15 refuting, evidencing, connected with, commenting on, regarding, discussing, showing,
16 describing, reflecting, analyzing, recording, including, mentioning, in respect of, analyzing or
17 bearing on any logical or factual connection with the matter discussed.
18

19 6. “You” and “your”, refer to the named Plaintiffs in this action, and (i) all of their
20 present and former agents, representatives, accountants, investigators, consultants, and/or
21 attorneys; or (ii) any other person or entity acting on their behalf.
22

23 7. “Plaintiff” means Larry J. Willard and/or his agents, representatives or
24 employees.
25

26 8. When used herein, the term “Lease Agreement” means the November 18, 2005,
27 Lease Agreement between OVERLAND DEVELOPMENT CORPORATION INC. dba LJW
28 ENTERPRISES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES

1 WILLARD TRUST ("Willard"), and Berry-Hinckley Industries ("BHI"), and the subsequent
2 amendments thereto.

3 9. When used herein, the term "Lease Guarantee" means the March 9, 2007,
4 Guaranty Agreement executed by Jerry Herbst for the benefit of BHI.

5 10. When used herein, the term "Property" means 7695-7699 S. Virginia Street Reno,
6 Nevada.
7

8 **REQUEST FOR PRODUCTION OF DOCUMENTS:**

9 1. Please produce any and all documents identified in response to Interrogatory No.
10 1 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

11 2. Please produce any and all documents identified in response to Interrogatory No.
12 2 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

13 3. Please produce any and all documents identified in response to Interrogatory No.
14 3 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

15 4. Please produce any and all documents identified in response to Interrogatory No.
16 4 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

17 5. Please produce any and all documents identified in response to Interrogatory No.
18 5 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

19 6. Please produce any and all documents identified in response to Interrogatory No.
20 6 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

21 7. Please produce any and all documents identified in response to Interrogatory No.
22 7 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

23 8. Please produce any and all documents identified in response to Interrogatory No.
24 8 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

25 9. Please produce any and all documents identified in response to Interrogatory No.
26
27
28

1 9 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

2 10. Please produce any and all documents identified in response to Interrogatory No.
3 10 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

4 11. Please produce any and all documents identified in response to Interrogatory No.
5 11 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

6 12. Please produce any and all documents identified in response to Interrogatory No.
7 12 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

8 13. Please produce any and all documents evidencing any contracts with real estate
9 brokers or other real estate professionals for the listing and marketing of the Property for sale or
10 lease from January 1, 2013 to present.

11 14. Please produce any and all documents evidencing communications with real
12 estate brokers regarding the Property from January 1, 2013 through present.

13 15. Please produce any and all documents evidencing communications with
14 prospective purchasers or lessees of the Property from January 1, 2013 through present.

15 16. Please produce copies of any and all marketing materials prepared in connection
16 with your efforts to sell or lease the Property from January 1, 2013 through present.

17 17. Please produce any and all appraisals for the Property from January 1, 2012
18 through present.

19 18. Please produce any and all documents evidencing your research, evaluation
20 and/or analysis as to the sale value of the Property.

21 19. Please produce any and all documents evidencing your research, evaluation
22 and/or analysis as to the fair market rental value of the Property.

23 20. Please produce any and all documents evidencing comparisons of the sale value
24 of other similar real property in the Northern Nevada area.

22. Please produce any and all documents evidencing communications and/or correspondence between you, or any of you, and Jerry Herbst and/or Berry-Hinckley, related to the Lease Agreement, Guaranty, Interim Operating Agreement or any other documents related to the Property, from 2007 to the present.

23. Please produce any and all documents regarding the short sale of the Property, including, but not limited to communications regarding the sort sale, transactional documents for the short sale, and tax documents generated as a result of the sort sale.

24. Please produce any and all documents supporting your damages calculations in Paragraphs 13-18 of your Verified First Amended Complaint.

DATED this 21st day of April, 2015.

GORDON SILVER

By:

JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
KATHLEEN M. BRADY
Nevada Bar No. 11525
100 West Liberty Street, Suite 940
Reno, Nevada 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: jdesmond@gordonsilver.com
Email: birvine@gordonsilver.com
Email: kbrady@gordonsilver.com

*Attorneys for Defendants,
Berry Hinckley Industries, and
Jerry Herbst*

CERTIFICATE OF SERVICE

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to NRCp 5(b), I am serving a true and correct copy of the attached **DEFENDANTS/COUNTERCLAIMANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** on the parties as set forth below:

☒ XXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

☐ Certified Mail, Return Receipt Requested

☐ Via Facsimile (Fax)

☐ Via E-Mail

☐ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

☐ Federal Express (or other overnight delivery)

☐ Electronic Notification

addressed as follows:

David C. O'Mara
THE O'MARA LAW FIRM, P.C.
311 E. Liberty Street
Reno, Nevada 89501

DATED this 22nd day of April, 2015.



An Employee of GORDON SILVER

EXHIBIT 23

EXHIBIT 23

DISC

DICKINSON WRIGHT, PLLC

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

ANJALI D. WEBSTER

Nevada Bar No. 12515

100 West Liberty Street, Suite 940

Reno, NV 89501

Tel: (775) 343-7500

Fax: (775) 786-0131

Email: Jdesmond@dickinsonwright.comEmail: Brvine@dickinsonwright.comEmail: Awebster@dickinsonwright.com*Attorney for Defendants**Berry Hinckley Industries and**Jerry Herbst***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

1 LARRY J. WILLARD, individually and as
2 trustee of the Larry James Willard Trust Fund;
3 OVERLAND DEVELOPMENT
4 CORPORATION, a California corporation;

Counter-defendants.

5
6 **DEFENDANTS/COUNTERCLAIMANTS' SECOND SET OF REQUESTS FOR**
7 **PRODUCTION OF DOCUMENTS**

TO: LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION

8 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY
9 HERBST, by and through their attorneys of record, DICKINSON WRIGHT, PLLC, hereby
10 requests that Plaintiffs/Counter-Defendants, LARRY J. WILLARD, both respond and produce
11 the following documents, within thirty (30) days after service hereof:
12

13 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

14 1. "Communication" or "Communications" shall mean (a) any form of data
15 transmission, including letters, faxes, emails, and all other transmission of data via
16 telecommunications, (b) all meetings of two or more persons and all documents describing such
17 meetings, (c) all telephone conversations and telephone conferences, and (d) all situations in
18 which ideas are discussed, interpreted or exchanged among two or more persons.
19

20 2. "Correspondence" shall mean any writing or document relating to any
21 communication, including but not limited to letters, emails, notes, telephone message pads, text
22 messages, transcriptions, faxes, and memoranda.

23 3. "Person" shall mean natural persons, firms, proprietorships, associations,
24 partnerships, corporations, governmental entities, and every other type of organization or entity.

25 4. "Document" or "Documents" shall refer to and includes, but is not limited to, any
26 and all "writings" as that terms is defined by Nevada Revised Statute section 52.225, and also
27
28

1 including all other means by which information, correspondence, notes, notations,
2 representations, depictions, or data is stored. This definition includes originals, copies, non-
3 identical copies and preliminary, intermediate, and final drafts or writings, records,
4 correspondence, e-mail, papers, books, pamphlets, periodicals, accounts, letters, photographs,
5 objects, telegrams, notes, minutes, memoranda, interoffice and intra office communications,
6 reports, studies, surveys, forecasts, analyses, estimates, contracts, leases, deeds, licenses,
7 agreements, charts, maps, scale sheets, graphs, indices, calendars, diaries, purchase orders,
8 invoices, receipts, working papers, and records of every kind and description, whether inscribed
9 by hand or mechanical means - such as electronic, microfilm, phonic (such as tape recordings),
10 photographic, video, punched, or other means - and computer records, whether reflected by
11 printout or stored on disk, drum, tape or otherwise.
12

13 5. "Relate to," "related to," or "relating to" shall mean constituting, pertaining to,
14 referring to, alluding to, responding to, elaborating upon, concerning, memorializing, supporting,
15 refuting, evidencing, connected with, commenting on, regarding, discussing, showing,
16 describing, reflecting, analyzing, recording, including, mentioning, in respect of, analyzing or
17 bearing on any logical or factual connection with the matter discussed.
18

19 6. "Willard" means Larry J. Willard individually and/or as Trustee of the Larry
20 James Willard Trust.

21 7. "Overland" means Overland Development Corporation, Inc. dba LJW Enterprises
22 Inc.
23

24 8. "Willard Plaintiffs" means Willard and Overland.

25 9. "You" and "your" refer to the Willard Plaintiffs, and (i) all of their present and
26 former agents, representatives, accountants, investigators, consultants, and/or attorneys; or (ii)
27 any other person or entity acting on their behalf.
28

10. "BHI" means Berry-Hinckley Industries, a Nevada corporation.

11. "Defendants" means BHI and Jerry Herbst.

12. "First Amended Complaint" means the Verified First Amended Complaint filed by Plaintiffs in Case No. CV14-01712 on January 21, 2015.

13. "Operation and Management Agreement" means the May 1, 2013, Operation and Management Agreement made and entered into by and between BHI and Overland Corporation d/b/a LJW Enterprises, Inc. and Larry Willard as Trustee of the Willard Family Trust.

14. "Willard Property" means that certain real property located at 7695-77699 S. Virginia Street, Reno, Nevada (APN 043-011-48).

15. "Willard Lease" means the November 18, 2005, Lease Agreement between the Willard Plaintiffs and BHI for lease of the Willard Property.

16. "Willard Guaranty" means the March 9, 2007, Guaranty Agreement between Jerry Herbst and the Willard Plaintiffs.

17. "Answer to Counterclaim" means the Willard Plaintiffs' answer to Defendants' Counterclaim in Case No. CV14-01712 filed on May 27, 2015.

Requests for Production of Documents

1. Please provide any and all Documents identified in response to Interrogatory No. 1 in Defendants' Second Set of Interrogatories, served concurrently herewith.

2. Please provide any and all Documents identified in response to Interrogatory No. 2 in Defendants' Second Set of Interrogatories, served concurrently herewith.

3. Please provide any and all Documents identified in response to Interrogatory No. 3 in Defendants' Second Set of Interrogatories, served concurrently herewith.

4. Please provide any and all Documents identified in response to Interrogatory No. 4 in Defendants' Second Set of Interrogatories, served concurrently herewith.

5. Please provide any and all Documents identified in response to Interrogatory No. 5 in Defendants' Second Set of Interrogatories, served concurrently herewith.

6. Please provide any and all Documents identified in response to Interrogatory No. 6 in Defendants' Second Set of Interrogatories, served concurrently herewith.

1 7. Please provide any and all Documents identified in response to Interrogatory No.
2 7 in Defendants' Second Set of Interrogatories, served concurrently herewith.

3 8. Please provide any and all Documents identified in response to Interrogatory No.
4 8 in Defendants' Second Set of Interrogatories, served concurrently herewith.

5 9. Please provide any and all Documents identified in response to Interrogatory No.
6 9 in Defendants' Second Set of Interrogatories, served concurrently herewith.

7 11. Please provide any and all of Willard's federal income tax returns from 2005
8 through 2014. Please include all supporting schedules and statements.

9 12. Please provide any and all of Overland's federal income tax returns from 2005
10 through 2014. Please include all supporting schedules and statements.

11 13. Please produce documents sufficient to identify any and all commissions that You
12 have paid to any real estate broker, real estate agent, or realty company performing work for You
13 on the Willard Property from 2005 through present.

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15 ///

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23 ///

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25 ///

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27 ///

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29 ///

AFFIRMATION
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 Two day of July, 2015.

DICKINSON WRIGHT, PLLC



JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: jdesmond@dickinsonwright.com
Email: birvine@dickinsonwright.com
Email: awebster@dickinsonwright.com

*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' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS on the parties as set forth below:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

Certified Mail, Return Receipt Requested

Via Facsimile (Fax)

X Via E-Mail

Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

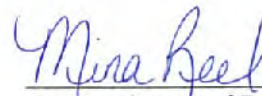
Federal Express (or other overnight delivery) Electronic Notification

addressed as follows:

David C. O'Mara
THE O'MARA LAW FIRM, P.C.
311 E. Liberty Street
Reno, Nevada 89501

Brian P. Moquin
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, California 95148

DATED this 2nd day of July, 2015.



An employee of Dickinson Wright, PLLC

EXHIBIT 24

EXHIBIT 24

DISC

DICKINSON WRIGHT, PLLC

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

ANJALI D. WEBSTER

Nevada Bar No. 12515

100 West Liberty Street, Suite 940

Reno, NV 89501

Tel: (775) 343-7500

Fax: (775) 786-0131

Email: Jdesmond@dickinsonwright.comEmail: Brivine@dickinsonwright.comEmail: Awebster@dickinsonwright.com*Attorney for Defendants**Berry Hinckley Industries and**Jerry Herbst***IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA****IN AND FOR THE COUNTY OF WASHOE**

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

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

1 LARRY J. WILLARD, individually and as
2 trustee of the Larry James Willard Trust Fund;
3 OVERLAND DEVELOPMENT
4 CORPORATION, a California corporation;

Counter-defendants.

5
6 **DEFENDANTS/COUNTERCLAIMANTS' THIRD SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

7 TO: LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION

8 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY
9 HERBST, by and through their attorneys of record, DICKINSON WRIGHT, PLLC, hereby
10 requests that Plaintiffs/Counter-Defendants, LARRY J. WILLARD, both respond and produce
11 the following documents, within thirty (30) days after service hereof:
12

13 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

14 1. "Communication" or "Communications" shall mean (a) any form of data
15 transmission, including letters, faxes, emails, and all other transmission of data via
16 telecommunications, (b) all meetings of two or more persons and all documents describing such
17 meetings, (c) all telephone conversations and telephone conferences, and (d) all situations in
18 which ideas are discussed, interpreted or exchanged among two or more persons.
19

20 2. "Correspondence" shall mean any writing or document relating to any
21 communication, including but not limited to letters, emails, notes, telephone message pads, text
22 messages, transcriptions, faxes, and memoranda.

23 3. "Person" shall mean natural persons, firms, proprietorships, associations,
24 partnerships, corporations, governmental entities, and every other type of organization or entity.

25 4. "Document" or "Documents" shall refer to and includes, but is not limited to, any
26 and all "writings" as that terms is defined by Nevada Revised Statute section 52.225, and also
27
28

1 including all other means by which information, correspondence, notes, notations,
2 representations, depictions, or data is stored. This definition includes originals, copies, non-
3 identical copies and preliminary, intermediate, and final drafts or writings, records,
4 correspondence, e-mail, papers, books, pamphlets, periodicals, accounts, letters, photographs,
5 objects, telegrams, notes, minutes, memoranda, interoffice and intra office communications,
6 reports, studies, surveys, forecasts, analyses, estimates, contracts, leases, deeds, licenses,
7 agreements, charts, maps, scale sheets, graphs, indices, calendars, diaries, purchase orders,
8 invoices, receipts, working papers, and records of every kind and description, whether inscribed
9 by hand or mechanical means - such as electronic, microfilm, phonic (such as tape recordings),
10 photographic, video, punched, or other means - and computer records, whether reflected by
11 printout or stored on disk, drum, tape or otherwise.
12

13 5. "Relate to," "related to," or "relating to" shall mean constituting, pertaining to,
14 referring to, alluding to, responding to, elaborating upon, concerning, memorializing, supporting,
15 refuting, evidencing, connected with, commenting on, regarding, discussing, showing,
16 describing, reflecting, analyzing, recording, including, mentioning, in respect of, analyzing or
17 bearing on any logical or factual connection with the matter discussed.
18

19 6. "Willard" means Larry J. Willard individually and/or as Trustee of the Larry
20 James Willard Trust.

21 7. "Overland" means Overland Development Corporation, Inc. dba LJW Enterprises
22 Inc.
23

24 8. "Willard Plaintiffs" means Willard and Overland.

25 9. "You" and "your" refer to the Willard Plaintiffs, and (i) all of their present and
26 former agents, representatives, accountants, investigators, consultants, and/or attorneys; or (ii)
27 any other person or entity acting on their behalf.
28

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Please provide any and all of Willard's state income tax returns from 2005 through 2014.
Please include all supporting schedules and statements.

REQUEST FOR PRODUCTION NO. 2:

Please provide any and all of Overland's state income tax returns from 2005 through 2014. Please produce all supporting schedules and statements.

AFFIRMATION

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 2nd day of September, 2015.

DICKINSON WRIGHT, PLLC



JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: Jdesmond@dickinsonwright.com
Email: Brivine@dickinsonwright.com
Email: Awebster@dickinsonwright.com

*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' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS on the parties as set forth below:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

Certified Mail, Return Receipt Requested

Via Facsimile (Fax)

X Via E-Mail

Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

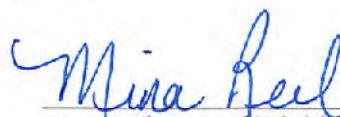
Federal Express (or other overnight delivery) Electronic Notification

addressed as follows:

David C. O'Mara
THE O'MARA LAW FIRM, P.C.
311 E. Liberty Street
Reno, Nevada 89501

Brian P. Moquin
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, California 95148

DATED this 2nd day of September, 2015.



An employee of Dickinson Wright, PLLC

EXHIBIT 25

EXHIBIT 25

DISC

DICKINSON WRIGHT, PLLC

JOHN P. DESMOND

Nevada Bar No. 5618

BRIAN R. IRVINE

Nevada Bar No. 7758

ANJALI D. WEBSTER

Nevada Bar No. 12515

100 West Liberty Street, Suite 940

Reno, NV 89501

Tel: (775) 343-7500

Fax: (775) 786-0131

Email: jdesmond@dickinsonwright.comEmail: birvine@dickinsonwright.comEmail: awebster@dickinsonwright.com*Attorney for Defendants**Berry-Hinckley Industries and**Jerry Herbst***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
CORPORATION, a California corporation;

Counter-defendants.

DEFENDANTS/COUNTERCLAIMANTS' FIRST REQUESTS FOR ADMISSIONS

Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY HERBST, by and through their attorneys of record, DICKINSON WRIGHT. PLLC, hereby requests Plaintiffs/Counter-defendants LARRY J. WILLARD and OVERLAND DEVELOPMENT CORPORATION answer the following Requests for Admissions pursuant to NRCP 33, within thirty (30) days after service hereof.

PRELIMINARY INSTRUCTIONS AND DEFINITIONS

1. "BHI" means Berry-Hinckley Industries, a Nevada corporation.
2. "Defendants" means BHI and Jerry Herbst.
3. "First Amended Complaint" means the Verified First Amended Complaint filed by Plaintiffs in Case No. CV14-01712 on January 21, 2015.
4. "Operation and Management Agreement" means the May 1, 2013, Operation and Management Agreement made and entered into by and between BHI and Overland Corporation d/b/a LJW Enterprises, Inc. and Larry Willard as Trustee of the Willard Family Trust.
5. "Willard Property" means that certain real property located at 7695-77699 S. Virginia Street, Reno, Nevada (APN 043-011-48).
6. "Willard" means Larry J. Willard individually and/or as Trustee of the Larry James Willard Trust.
7. "Overland" means Overland Development Corporation, Inc. dba LJW Enterprises Inc.
8. "Willard Plaintiffs" means Willard and Overland.

12. "Answer to Counterclaim" means the Willard Plaintiffs' answer to Defendants' Counterclaim in Case No. CV14-01712 filed on May 27, 2015.

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AFFIRMATION

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 2nd day of July, 2015.

DICKINSON WRIGHT, PLLC



JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
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Email: jdesmond@dickinsonwright.com
Email: birvine@dickinsonwright.com
Email: awebster@dickinsonwright.com

*Attorney for Defendants
Berry-Hinckley Industries and
Jerry Herbst*

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' FIRST REQUESTS FOR ADMISSIONS on the parties as set forth below:

- X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices

Certified Mail, Return Receipt Requested

Via Facsimile (Fax)

- ☒
- Via E-Mail

Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered

Federal Express (or other overnight delivery) Electronic Notification

addressed as follows:

David C. O'Mara
THE O'MARA LAW FIRM, P.C.
311 E. Liberty Street
Reno, Nevada 89501

Brian P. Moquin
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, California 95148

DATED this 2nd day of July, 2015.

Mira Reel

An employee of Dickinson Wright, PLLC

EXHIBIT 26

EXHIBIT 26

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of November 18, 2005 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 425 Mestro Drive, Reno, NV 89511

In consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

Certain Defined Terms. Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.

Lease of Property; Use; Possession. In consideration of the Rentals and other Monetary Obligations to be paid by Lessee and of the other terms, covenants and conditions on Lessee's part to be kept and performed, Lessor hereby leases to Lessee, and Lessee hereby takes and leases, the Property (as such term is defined in Exhibit A attached hereto and which Property is located at the address set forth in Exhibit B attached hereto and situated on the real property legally described in Exhibit B attached hereto), subject to the Permitted Encumbrances, all Legal Requirements (including any existing violation thereof), and the condition of the Property as of the Effective Date; *provided, however*, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any Permitted Encumbrance which may have expired or been terminated. During the Lease Term, the Property shall be used solely for the operation of s Permitted Facility, and related purposes such as ingress, egress and parking.

To the maximum extent permitted by law, Lessee waives the implied warranty of suitability of the Property and Lessee acknowledges that it has accepted the Property "as is," in its current condition, with no representations, warranties or covenants, express or implied, on the part of the Lessor with respect to condition of the same or the suitability of the Property for Lessee's intended use.

Lease Term; Extension. The initial term of this Lease ("Initial Term") shall commence February 24, 2006 ("Effective Date") and shall expire at midnight on August 23, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this

Sample Lease
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Lease shall terminate on the last day of the Initial Term or, if applicable, the last day of the Extension Term then in effect.

4. Rental and Other Monetary Obligations.

A. *Base Monthly Rental.* During the Initial Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental; *provided, however,* if the Effective Date is a date other than the first day of the month, Lessee shall pay to Lessor (or any other party designated by Lessor) on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month. During the Extension Terms, if any, Lessee shall pay the Rental (including the Base Monthly Rental) in the manner set forth in this Section 4. Unless otherwise specifically stated to the contrary herein, Lessee shall perform all its obligations under this Lease at its sole cost and expense and shall pay all Rental and any other Monetary Obligation due hereunder when due and payable, without notice or demand.

B. *Adjustments.* On the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rent Adjustment. The "Rent Adjustment" shall be an amount equal to two percent (2%) of the Base Annual Rental in effect immediately prior to the applicable Adjustment Date. The Adjustment Date shall be on the annual anniversary of the Effective Date.

C. *Additional Rental.* Lessee shall pay and discharge, as additional rental ("Additional Rental"), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Base Annual Rental or Base Monthly Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within five (5) days after Lessor's demand for payment thereof or, if later, when the same are due. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

D. *Payment of Rental and Other Monetary Obligations.* All Rental and other Monetary Obligations which Lessee is required to pay hereunder shall be the unconditional obligation of Lessee and shall be payable in full when due without any setoff, abatement, deferment, deduction or counterclaim whatsoever, except as set forth herein. All payments of Base Monthly Rental and any other Monetary Obligations payable to Lessor shall be remitted to Lessor at Lessor's address set forth in the first paragraph of this Lease or such other address as Lessor may designate pursuant to Section 24 hereof.

E. *Late Payment Charge.* Lessee acknowledges that late payment by Lessee to Lessor of Rental will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix in advance.

Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the Property. Therefore, if any payment which is required to be made by Lessee to Lessor pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, then Lessee shall pay to Lessor, as a late payment charge, five percent (5%) of the amount of the delinquent payment.

Additionally, if any payment which is required to be made by Lessee pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, such payment shall bear interest at the Default Rate until received by Lessor. The late payment charge and default interest shall be paid to Lessor at the time of payment of the delinquent amount. The late payment charge and the default interest charge shall compensate Lessor for the expenses incurred by Lessor in financing, collecting and processing the late payment. The parties agree that the late charge and the default interest charge represent a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Lessee.

5. **Gaming.** Lessor hereby conditionally assigns to Lessee all leases, written or oral, and all agreements for use or occupancy of the Property together with any and all extensions and renewals thereof and any and all further leases, subleases, lettings or agreements (including subleases thereof and tenancies following attornment) upon or covering the use or occupancy of the Property all of which leases, agreements, subleases and tenancies are herein sometimes collectively referred to as the "Assigned Leases"; (ii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or which may now or hereafter become due from or out of the Assigned Leases or any part thereof, including, but not limited to, security deposits, minimum rents, additional rents, parking rents, deficiency rents and liquidated damages following default, any premium payable by any tenant upon the exercise of a cancellation privilege contained in its Lease; all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property; any and all rights and claims of any kind which Lessor has or hereafter may have against the tenants under the Assigned Leases and any subtenants and other occupants of the Property; any award granted Lessor after the date hereof in any court proceeding involving any tenant in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by any tenant in lieu of rent (any and all such moneys, rights and claims identified in this paragraph are herein sometimes referred to as the "Rents" and sometimes as the "Rent"); and (iii) all of the rights, powers and privileges of Lessor (A) to accept prepayment of more than one (1) monthly installment of the Rent thereunder, and (B) except with respect to the Assigned Lease, (I) to cancel, terminate or accept the surrender of any Assigned Lease, and (II) to amend, modify or abridge any of the terms, covenants or conditions of any Assigned Lease. The assignment contained in this Section 5 and Lessee's interest in the Assigned Leases shall become void and of no further force or effect upon the expiration or early termination of this Lease and upon such event, Lessor shall be the sole party with any interest as a landlord or lessor in the Assigned Leases. Furthermore, Lessee shall have no right to collect any amounts under the Assigned Leases upon the occurrence and continuance of an Event of Default and all such amounts shall be paid to Lessor during any such period.

6. **Nevada Gaming Control Board.** Lessor will follow all laws of the State of Nevada and cooperate with WGI in making application to the Nevada Gaming Control Board as may be required.

7. **Rentals To Be Net to Lessor.** The Base Annual Rental payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the Rentals specified during the Lease Term, and all Costs and obligations of every kind and nature whatsoever relating to the Property shall be performed and paid by Lessee, including but not limited to all impositions, operating charges, maintenance charges, construction costs and any other charges, costs and expenses now existing or that arise or may be contemplated under the Permitted Encumbrances or otherwise, all maintenance and repair expenses, all utility expenses, all Taxes, all premiums for insurance required to be maintained by Lessee pursuant to the terms hereof and all other expenses, charges, assessments and costs associated with the Property or otherwise provided to be paid by Lessee pursuant to the terms of this Lease. All such charges, costs and expenses shall constitute Additional Rental and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Base Annual Rental. It is the intention of the parties except as expressly provided herein that this Lease shall not be terminable for any reason by Lessee, and that Lessee shall in no event be entitled to any abatement of, or reduction in, Rental payable under this Lease, except as otherwise expressly provided herein. Any present or future law to the contrary shall not alter this agreement of the parties.

8. **Taxes and Assessments.** Lessee shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance, one hundred percent (100%) of the following (collectively, "Taxes"): all taxes and assessments of every type or nature assessed against or imposed upon the Property or Lessee during the Lease Term, including without limitation, all ad valorem taxes, assessments and special assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, or any tax or charge levied in lieu of such taxes and assessments; all taxes, charges, license fees and or similar fees imposed by reason of the use of the Property by Lessee; and all excise, transaction, privilege, license, sales, use and other taxes upon the Rental or other Monetary Obligations hereunder, the leasehold estate of either party or the activities of either party pursuant to this Lease, and all interest, surcharges or service or other fees payable in connection with the foregoing.

Within thirty (30) days after each tax and assessment payment is required by this Section to be paid and upon request of Lessor, Lessee shall, upon prior written request of Lessor, provide Lessor with evidence reasonably satisfactory to Lessor that such payment was made in a timely fashion. Lessee may, at its own expense, contest or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that (A) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (B) no monetary Event of Default has occurred, (C) Lessee shall promptly provide Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceeding, and (D) Lessee shall indemnify and hold Lessor harmless against any loss, Costs or damages arising from or related to such contest.

Sample Lease
1/4/2006

If Lessee shall fail to pay any Taxes when due and before any delinquency, penalty or interest is imposed on such Taxes, Lessor shall have the right to pay the same after notice to Lessee, in which case Lessee shall repay in full such amount to Lessor with Lessee's next Base Monthly Rental installment together with interest at the Default Rate.

9. **Utilities.** Lessee shall contract, in its own name, for and pay when due (and hold Lessor free and harmless from) all charges for the connection and use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term. All utility charges, assessments and fees for the last year of the Lease shall be prorated as of the termination date of this Lease. No full or partial utility deprivation including, but not limited to, blackout, brownout, or rationing, nor any loss of or damage to improvements related to disruption or failure of any utility service shall give rise to any abatement of Rentals nor give rise to any right of Lessee to offset Rentals or to terminate the Lease, unless caused by the gross negligence or willful misconduct of Lessor or its agents, employees or contractors (but not of any other tenants or occupants of the Property). Lessor shall reasonably cooperate with Lessee, but without out-of-pocket expense to Lessor, in Lessee's efforts to restore utility service to the Property; provided, however, that if the utility service was disrupted due to Lessor's gross negligence or willful misconduct, then the cost of such restoration shall be borne by Lessor.

10. **Insurance.** Throughout the Lease Term, Lessee shall maintain, at its sole expense, the following types and amounts of insurance:

A. Insurance against loss or damage to the Property and all buildings and improvements thereon under an "all risk" insurance policy, which shall include coverage against all risks of direct physical loss, including loss by fire, lightning, and other risks normally included in the standard ISO special form (which shall include coverage for all risks commonly insured for properties similar to the Property in the Reno, Nevada area, including insurance coverage for damage caused by earthquakes, flood, tornado, windstorm and other disasters for which insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Lessor from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an increased cost of construction endorsement, debris removal coverage and a waiver of subrogation endorsement in favor of Lessor. While any portion of the improvements on the Property is being rebuilt on the Land, Lessee shall provide such property insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy in an amount equal to 100% of the full insurable replacement value of the improvements on the Property or such portion as is being rebuilt. The insurance policy shall insure Lessee as loss payee. No parties other than Lessor, Lessor's Lender and Lessee may be named as insureds or loss payees on such property insurance policy.

B. Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury, liquor liability coverage (to the extent liquor is sold or manufactured at the Property), garage liability coverage including

Sample Lease
1/4/2006

without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Property or adjoining ways, streets, parking lots or sidewalks. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Section 15 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee, Lessor or Lessor's Lender because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 general aggregate per location, or such higher limits as Lessor may reasonably require from time to time or as may be required by the Permitted Encumbrances, and shall be of form and substance satisfactory to Lessor.

C. Workers' compensation insurance in the statutorily mandated limits covering all persons employed by Lessee on the Property or any persons employed by Lessee in connection with any work done on or about any Property for which claims for death or bodily injury could be asserted against Lessor, Lessee or the Property, together with Employers Liability Insurance with limits of not less than \$100,000 per accident or disease and \$500,000 aggregate by disease.

D. Rental value insurance, equal to 100% of the Base Annual Rental (as may adjusted hereunder) for a period of not less than twelve (12) months; which insurance shall be carved out of Lessee's business interruption coverage for a separate rental value insurance payable to Lessor, or if rental value insurance is included in Lessee's business interruption coverage, the insurer shall provide priority payment to any Rental obligations, and such obligations shall be paid directly to Lessor. Such insurance is to follow form of the real property "all risk" coverage and is not to contain a co-insurance clause.

E. Comprehensive Boiler & Machinery Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus, if any, located in or about the Property in an amount not less than the actual replacement cost of the Property. Such insurance should be in an amount of the lesser of 25% of the 100% replacement cost or \$5,000,000.00.

All insurance policies shall:

(i) Provide (1) for a waiver of subrogation by the insurer as to claims against Lessor, Lessor's Lenders and their employees, officers and agents, (2) that the insurer shall not deny a claim and that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Lessee, its officers, directors, employees or agents, or anyone acting for Lessee or any sublessee or other occupant of the Property, and (3) that any losses otherwise payable thereunder shall be payable notwithstanding any act or omission of Lessor, Lessor's Lenders or Lessee which might, absent such provision, result in a forfeiture of all or a part of such insurance payment;

(ii) Be primary and provide that any "other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lessor and the insurance policy shall not be brought into contribution with insurance maintained by Lessor;

(iii) intentionally omitted

(iv) Contain a standard non-contributory mortgagee clause or endorsement in favor of any Lessor's Lender designated by Lessor;

(v) Provide that the policy of insurance shall not be terminated, cancelled or amended without at least thirty (30) days' prior written notice to Lessor and to any Lessor's Lender covered by any standard mortgagee clause or endorsement;

(vi) Provide that the insurer shall not have the option to restore the Property if Lessor elects to terminate this Lease in accordance with the terms hereof;

(vii) Be in amounts sufficient at all times to satisfy any coinsurance requirements thereof;

(viii) Except for workers' compensation insurance referred to in Section 10.C above, name Lessor and any Lessor Affiliate requested by Lessor, as an "additional insured" (and, with respect to any Lessor's Lender designated by Lessor, as an "additional insured mortgagee") with respect to general liability insurance, and as a "named insured" with respect to real property and "loss payee" with respect to all real property and rent value insurance, as appropriate and as their interests may appear;

(ix) Be evidenced by delivery to Lessor and any Lessor's Lender designated by Lessor of an Acord Form 28 for property coverage (or any other form requested by Lessor) and an Acord Form 25 for liability, workers' compensation and umbrella coverage (or any other form requested by Lessor); provided that in the event that either such form is no longer available, such evidence of insurance shall be in a form reasonably satisfactory to Lessor and any lender designated by Lessor; such certificates of insurance shall be delivered to Lessor prior to the Effective Date; and

(x) Be issued by insurance companies licensed to do business in the states where the Property is located and which are rated A:VIII or better by Best's Insurance Guide or are otherwise approved by Lessor.

It is expressly understood and agreed that (1) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by Lessee, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Lessee shall immediately obtain new or additional insurance reasonably satisfactory

to Lessor and any lender designated by Lessor; (II) the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease; and (III) Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any servicer or lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times.

Lessee shall pay as they become due all premiums for the insurance required by this Section 10. In the event that Lessee fails to comply with any of the foregoing requirements of this Section 10 within ten (10) days of the giving of written notice by Lessor to Lessee, Lessor shall be entitled to procure such insurance. Any sums expended by Lessor in procuring such insurance shall be Additional Rental and shall be repaid by Lessee, together with interest thereon at the Default Rate, from the time of payment by Lessor until fully paid by Lessee immediately upon written demand therefor by Lessor.

Anything in this Section 10 to the contrary notwithstanding, any insurance which Lessee is required to obtain pursuant to this Section 10 may be carried under a "blanket" policy or policies covering other properties or liabilities of Lessee provided that such "blanket" policy or policies that otherwise comply with the provisions of this Section 10 and specify the location of the Property.

11. Intentionally Omitted

12. **Compliance With Laws, Restrictions, Covenants, Encumbrances and Agreements.** It is expressly understood and agreed that the obligations of Lessee under this Section shall survive the expiration or earlier termination of this Lease for any reason.

A. *Legal and Gaming Law Compliance.* Lessee's use and occupation of the Property, the use and occupation of the Property by any other person (including but not limited to any subtenants and WGI) and the condition of the Property, shall, at Lessee's sole cost and expense, comply with all Legal Requirements (including without limitation the Americans with Disabilities Act and all Legal Requirements related to gaming operations and the sales of tobacco and liquor on the Property). Lessee shall promptly file, or cause to be filed, and provide to Lessor any notices, reports or other filings that Lessee or any other Person is required to file or provide to any Governmental Authorities regarding the business operations conducted on or from the Property, including but not limited to those described in Subsection D(iii) hereof and those required by Governmental Authorities with respect to gaming operations and the sales of tobacco and liquor on the Property, including any filings required to be made in connection with the change of ownership or control of Lessee and, within fifteen (15) days of Lessee's receipt of written notice from Lessor of any planned or actual change in the ownership or control of Lessor or any planned or actual change in the ownership of the Property.

B. *Acts Resulting in Increased Insurance Rates.* Lessee will use its commercially reasonable efforts to prevent any act or condition to exist on or about the Property which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase.

Lessee shall comply with all orders and directives of any insurance companies issuing liability, fire, or extended coverage insurance pursuant to Section 10 hereof, and Lessee shall not do, bring, or keep anything in or about the Property that will cause a cancellation of any insurance covering the Property.

C. *Prevention of Nuisance.* Lessee shall not commit nor cause or permit to be committed any public or private nuisance on the Property.

D. *Environmental.*

(i) *Covenants.* All uses and operations on or of the Property, including the use and operation of UST's on the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto. Lessee shall keep the Property or cause the Property to be kept free and clear of all Environmental Liens, whether due to any act or omission of Lessee or any other Person. Lessee hereby represents and warrants that Lessee shall not install and shall not permit any person to install any asbestos containing materials ("ACM") or materials or equipment containing polychlorinated biphenyl ("PCBs") in the Property, and to the extent any ACM, PCBs or other Hazardous Materials are on or in the Property, the same shall be maintained, stored and used in accordance with all Legal Requirements.

(ii) *Notification Requirements.* Lessee shall immediately notify Lessor in writing upon Lessee obtaining actual knowledge of (1) any Releases or Threatened Releases in, on, under or from the Property other than in Permitted Amounts, or migrating towards any of the Property; (2) any non-compliance with any Environmental Laws related in any way to any of the Property; (3) any actual or potential Environmental Lien; (4) any required or proposed Remediation of environmental conditions relating to any of the Property required by applicable Governmental Authorities; and (5) any written or oral notice or other communication which Lessee becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances or USTs, or Remediation thereof at or on the Property, other than in Permitted Amounts, possible liability of any Person relating to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Subsection D.

(iii) *Reports and Investigations.* Lessee shall promptly supply Lessor with copies of all reports of any testing of the Property conducted by or at the request of Lessor or any Governmental Authorities and all submissions by Lessee to any Governmental Authority concerning environmental matters, the USTs, or Hazardous Materials. Lessee shall furnish to Lessor certificates of enrollment issued by the State of Nevada, Division of Environmental Protection, for each UST at the Property no later than October 30 of each year, and gasoline storage tank permits issued by the Department of Air Quality Management of the County

Sample Lease
1/4/2006

in which the Property is located with respect to each UST on the Property no later than May 5 of each year, and such other certificates or permits as may be issued or required by any other Governmental Authority; all of the foregoing shall evidence continuing compliance of each UST on the Property with all applicable Legal Requirements. Additionally, upon Lessor's reasonable request in the event that Lessor reasonably suspects that Contamination (as hereafter defined) may have occurred or be occurring at the Property, Lessee agrees to perform, at Lessee's sole expense, an environmental assessment of the Property, including soil borings, to confirm whether such Contamination is occurring. Additionally, at least ninety (90) days prior to the expiration of the Lease Term, Lessee agrees to perform an environmental assessment of the Property in order to define the nature and extent of Contamination, if any.

(iv) *Indemnification.* Lessee shall indemnify, defend, protect and hold each of the Indemnified Parties free and harmless from and against any and all Losses, arising from or caused in whole or in part, directly or indirectly, by any of the following, unless arising from or caused by the gross negligence or willful misconduct of the Indemnified Party requesting indemnification: (a) the use, storage, transportation, disposal, release, discharge or generation of Hazardous Materials to, in, on, under or about the Property (whether occurring before or after the date hereof) (any of the foregoing in violation of Legal Requirements is "Contamination"), including diminution in value of the Property; and (b) the cost of any required or necessary repair, remediation, cleanup or detoxification and the preparation of any closure or other required plans or reports, whether such action is required or necessary prior to or following transfer of title to the Property (such acts are sometimes referred to herein as "Corrective Action"), and (c) Lessee's failure to comply with any Legal Requirements. Lessee's obligations to perform Corrective Action shall include, without limitation, and whether foreseeable or unforeseeable, all cost of any investigation (including consultants and attorneys fees and testing) required or necessary repair, remediation, restoration clean up, detoxification or decontamination of the Property and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the Term of this Lease. This agreement to indemnify, defend, protect and hold harmless each of the Indemnified Parties shall be in addition to any other obligations or liabilities Lessee may have to Lessor or the Indemnified Parties, if any, at common law under all statutes and ordinances or otherwise and survive the termination of the Lease.

In the event that Lessee is required to perform Corrective Action to address any Contamination, Lessee shall perform such activities in a diligent manner. In the event that Lessee has not completed its Corrective Action (if necessary), as required herein, by the expiration of the Lease Term, Lessor shall grant Lessee, and its consultants, contractors and agents a revocable license, at no cost to Lessee except as set forth in the succeeding sentence, to enter upon the Property from and after the date of expiration of the Lease Term to conduct Corrective Action and to place and remove all necessary equipment and

Sample Lease
1/4/2006

improvements on the Property sufficient to satisfy the requirements of all Governmental Authorities regarding the Contamination. If such post-expiration Corrective Action will unreasonably interfere with a reasonably foreseeable intended commercial use of the Property (i.e., if Lessor cannot reasonably lease the Property for reasonable commercial uses at reasonable market rents), the Lease Term shall be extended until sixty (60) days after the Corrective Action has been performed such that post-expiration Corrective Action by Lessee no longer unreasonably interferes with a reasonably foreseeable commercial use of the Property, and Lessee agrees to keep Lessor apprised of the anticipated completion date of the Corrective Action.

E. *Intentionally Omitted.*

F. *Dealer Requirements.* In addition to the requirements set forth in this Lease, Lessee, in its use, occupancy and maintenance of the Property shall comply with all requirements of its Dealer Agreements with Dealer. Lessee hereby consents to Lessor providing information it obtains to Dealer and to Lessor obtaining from Dealer information which Dealer receives relating to Lessee's operation of its business on the Property.

G. *WGI Agreements.* Lessee represents that the WGI Agreement is in full force and effect, and that the WGI Agreement permits WGI to operate gaming machines on the Property. Lessee shall abide by all the terms and conditions of the WGI Agreement, and Lessee represents and warrants that WGI has approved this Lease, if WGI has such approval rights under the WGI Agreement.

H. *Winner's Corner.* Lessee shall at all times operate the gas station and convenience store on the Property under the trade name "Winner's Corner" and/or under a major oil brand (such as Chevron, BP, Amoco, Shell, Sun Oil, or the such).

13. *Maintenance; Repairs and Reconstruction.* Lessee shall, at its sole cost and expense, be responsible for keeping all of the buildings, structures, improvements and signs erected on the Property in good and substantial order, condition, and repair, including but not limited to replacement, maintenance and repair of all structural or load-bearing elements, roofs, walls, foundations, gutters and downspouts, heating, ventilating and air conditioning systems, any building security and monitoring system, windows, walls, doors, electrical and other utility systems and equipment, mechanical equipment, plumbing and all other components of the buildings, mowing of lawns and care, weeding and replacement of plantings; replacing, resurfacing and striping of walkways, driveways and parking areas, and adjacent public sidewalks; removal of snow and ice from the Property and adjacent public sidewalks, removal of trash, maintenance of utility lines and exterior lighting and signage on Property, and any maintenance, repairs or replacements (or fees or reserves therefor) as may be required by any Permitted Encumbrances. All such replacements, maintenance and repair shall keep the Property in good repair and in a clean, safe, and sanitary condition and in compliance with all Legal Requirements and insurance regulations. Lessee must make all repairs, corrections, replacements, improvements or alterations necessitated by age, Lessee's use, or natural elements

Sample Lease
1/4/2006

or as required pursuant to Governmental Authorities or Legal Requirements. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs, corrections, improvements or alterations at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition or repair, or which would otherwise require Lessor to make repairs, corrections, improvements, replacements or alterations. If the buildings or any improvements on the Property violate any Permitted Encumbrances or Legal Requirements, then Lessee shall, upon the written demand of a Governmental Authority or the written demand of a party to or beneficiary of any Permitted Encumbrance, repair, restore, relocate and/or rebuild the same in accordance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances.

Lessee shall, at its sole cost and expense, be responsible to repair or reconstruct damage or destruction to any buildings, structures or improvements erected on the Property from acts of God or any other catastrophes or causes. Any such repairs or reconstruction shall restore the buildings and all improvements on the Property to substantially the same condition immediately prior to such damages or destruction and this Lease shall remain in full force and effect, provided, however, that Lessee shall have the right to replace the improvements with different structures so long as (a) the value of the Property with such different structures is no less than the value of the Property immediately prior to the date of casualty and the different square footage of the new buildings is no less than the buildings existing as of the date hereof, and (b) the new structure can be built and occupied in compliance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances. Such repair, restoration, relocation and rebuilding (all of which are herein called a "repair") shall be commenced within a reasonable time however no more than thirty (30) days after the later of (i) the date that such damage or destruction occurred, (ii) the date that all permits and other approvals necessary to authorize such rebuilding have been issued following reasonable pursuit of the same by Lessee, and (iii) the date that any insurance proceeds payable to Lessor or its lender in conjunction with such damage or destruction, if any, have been made available to Lessee as set forth herein; thereafter, the repair shall be diligently pursued to completion. Lessee shall give Lessor at least fifteen (15) days written notice prior to commencing the repair to permit the Lessor to post appropriate notices of non-responsibility, and all such repair work shall be subject to the provisions of Section 14 hereof related to alterations, improvements and additions to the Property.

The proceeds of any insurance maintained under Section 10 hereof shall be made available to Lessee for payment of costs and expense of repair.

14. Waste; Alterations and Improvements; Trade Fixtures and Equipment. Lessee shall not commit actual or constructive waste upon the Property. During the Lease Term, Lessee may construct any additions or improvements to the Property and make such structural or non-structural alterations to the Property as are reasonably necessary or desirable for Lessee's use of the Property for a Permitted Facility. All improvements, alterations, or additions shall be constructed by Lessee at Lessee's sole cost and expense. Prior to the commencement of construction of any additions, improvements, or alterations to the Property, Lessee shall give Lessor at least fifteen (15) days written notice to allow Lessor to post appropriate notices of non-responsibility. Notwithstanding anything herein to the contrary, without Lessor's prior written

Sample Lease
1/4/2006

consent, Lessee shall not make any alterations that will decrease the value or function of the improvements located on the Property.

Lessee's right to make any alterations, improvements and additions shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate Governmental Authorities, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner. All alterations, improvements or other construction by Lessee shall be in compliance with all Legal Requirements, and all alterations and improvements shall be done and performed in good and workmanlike manner, using new and first quality materials. All costs of any such improvements shall be paid by Lessee.

Upon completion of any such work, Lessee shall submit to Lessor as-built plans of any structural, mechanical or interior utility improvements and alterations made, a sworn construction statement, lien waivers from all persons or entities providing materials, services or equipment for the work completed and, if available, an endorsement to Lessor's policy of title insurance or other evidence from a title company confirming the absence of any liens or other matters of record related to the work performed.

Unless expressly released by Lessor in writing, all improvements or alterations shall be and remain, at the time of expiration or other termination of this Lease, the property of Lessor without payment or offset unless such improvements are not attached to the Property. Notwithstanding anything herein to the contrary, all plumbing, electrical, HVAC equipment, doors, ceiling and floor tiles, and wall coverings shall become the property of Lessor and remain in place on the Property upon expiration or other termination of this Lease.

During the Lease Term, Lessee shall have the right to locate in the Property such personal property, furniture, trade fixtures, and equipment (hereafter referred to as "Fixtures and Equipment") as shall be considered by Lessee to be appropriate or necessary to Lessee's use and occupancy of the Property.

All Fixtures and Equipment shall be provided by Lessee at Lessee's own cost and expense. During the term of this Lease, Lessee may remove any Fixtures and Equipment installed by Lessee, and any and all such Fixtures and Equipment shall remain the sole property of Lessee. Lessee shall perform (and pay all costs associated with) any and all restoration necessitated by the removal of Lessee's Fixtures and Equipment, including but not limited to damage resulting from removal of any of Lessee's signs in or about the Property.

Lessee shall keep the Property free and clear of all mechanic's, materialmen or similar liens, including, but not limited to, those resulting from the construction of alterations, improvements, additions, trade fixtures, and equipment performed by or for Lessee.

Lessee shall have the right to contest the correctness or validity of any such lien if, Lessee first procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the state in which the Property are located in an amount required by Legal Requirements to remove such lien. The bond or its equivalent shall meet all applicable requirements of the state in which the Property are located. In the event that any lien does so

attach, and is not released within thirty (30) days after written notice to Lessee thereof, Lessor, in its sole discretion, may pay and discharge the same and relieve the Property therefrom, and Lessee agrees to repay and reimburse Lessor as Additional Rental upon demand for the amount so paid by Lessor. On final determination of the lien or claim of lien Lessee will immediately pay any judgment rendered, and all costs and charges, and shall cause the lien to be released or satisfied. In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is in its best interest to do so.

15. Indemnification. Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor's agents and employees from all claims for any damage or injury to the full extent permitted by law. Lessee agrees that Lessor shall not be responsible or liable to Lessee or Lessee's employees, agents, customers or invitees for bodily injury, personal injury or property damage occasioned by the acts or omissions of any other lessee or such lessee's employees, agents, contractors, customers or invitees. In addition to other specific indemnification provisions set forth in this Lease, Lessee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Lessee's use and occupancy of the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee or any Person thereon, with supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Lessee, its officers, employees, agents or other Persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

16. Quiet Enjoyment: So long as Lessee shall pay the Rental and other Monetary Obligations herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Lessee shall have, subject and subordinate to Lessor's rights herein, the right to the peaceful and quiet occupancy of the Property, subject to the Permitted Encumbrances, Laws and the WGI Agreement and any use or occupancy agreements, leases or licenses now affecting the Property or hereinafter made by Lessee.

17. Inspection; Right of Entry. Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and to inspect the same; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease or by law; to show the Property to prospective brokers, agents, buyers, or persons interested in an exchange, at any time; and to show the Property to prospective tenants within two hundred forty (240) days prior to the expiration of this Lease or any time during the option period and to place upon the Property any "to let" or "for lease" signs at any time within two hundred forty (240) days prior to the expiration of this Lease. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but, subject to Section 37, excluding damages arising as a result of the negligence or intentional misconduct of Lessor.

18. Condemnation and Casualty.

A. *Damage or Destruction to the Property; No Abatement of Rent.* If the Property is damaged or destroyed as a result of fire or other casualty Lessee shall promptly restore the Property pursuant to the terms of Section 13 hereof. Notwithstanding the partial or total destruction of the Property and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of Rentals or of any other obligation of Lessee hereunder including, without limitation, payment of operating expenses, insurance premiums and Taxes, by reason of such damage or destruction unless the Lease is terminated by virtue of another provision of this Lease.

B. *Option to Terminate.* If the Property is damaged or destroyed during the last one (1) year of the Lease Term to the extent that the Property is untenable, Lessee may terminate this Lease as of the date of such damage or destruction by giving written notice to Lessor of such election within thirty (30) days following the date of such fire or other casualty, in which case, all insurance proceeds related to the Property (other than attributable to Lessee's Fixtures and Equipment) will be paid over to Lessor, or if required by Lessor's Lender, to such lender.

C. *Termination Upon Taking.* If as a consequence of a Taking, (i) any part of the convenience store building on the Property; or (ii) twenty-five percent (25 %) or more of the parking area at the Property shall be taken and Lessee determines in its reasonable discretion that such Taking will have a material adverse impact on the ability of Lessee to conduct its normal business operations from the Property, then, within thirty (30) days after the date on which Lessee receives written notice of such Taking, Lessee may terminate this Lease by written notice to Lessor which termination shall be effective as of the date the condemning authority takes actual possession of the portion of the Property that is subject to the Taking. If Lessee terminates this Lease, Lessor shall promptly refund to Lessee all unearned Annual Base Rental and other amounts paid in advance by Lessee.

D. *Obligation to Restore.* If a Taking does not result in a termination of this Lease pursuant to Subsection C hereof, Lessee shall restore the Property to a condition similar in physical appearance to that which existed immediately prior to the Taking to the extent possible such that Lessee can conduct its normal business operations. Lessee shall commence such restoration within ninety (90) days after the occurrence of the taking and shall complete such restoration within six (6) months after the occurrence of the taking.

E. *Condemnation Award.* Any condemnation award payable during the term of this Lease shall belong to and be paid to Lessor, including but not limited to awards payable with respect to damage to either the fee or leasehold estates, except that Lessee shall receive from the award the following:

- i. If Lessee exercises its rights to terminate this Lease, the portion of the award, if any, attributable to Lessee's Equipment or Fixtures that are taken in the Taking and the unamortized cost of any leasehold improvements made to the Property by Lessee after the date hereof that are taken in the Taking.

ii. The portion of the award, if any, attributable to severance damages for the repair or restoration of the Property (herein called "repair"), but only if Lessee does not exercise Lessee's right to terminate the Lease and further provided, that such damages shall be deposited and disbursed in accordance with the provisions hereof related to the handling of insurance proceeds that are applied to a repair of the Property and Lessee shall promptly commence and diligently complete the repair so that upon completion the Property will have a character and commercial value as nearly as possible equal to the value of the Property immediately prior to the taking, and further provided that, in the event such damages are insufficient to cover the cost of repair, then any amounts required over the amount thereof that are required to complete said repair shall be promptly deposited with the disbursing entity by Lessee in advance of commencing the repair.

iii. Additionally, if this Lease is terminated as a result of any such taking, Lessee shall be permitted to recover its relocation expenses and the going concern value of Lessee's business from the condemning authority (but not from Lessor or the portion of the award otherwise payable to Lessor) as provided by law.

19. Intentionally Deleted.

20. Default, Conditional Limitations, Remedies and Measure of Damages.

A. *Event of Default.* Each of the following shall be an event of default by Lessee under this Lease (each, an "Event of Default"):

(i) If any Rental or other Monetary Obligation due under this Lease is not paid within five (5) Business Days of notice it is past due, provided, however, that if within the first twelve (12) months of the Lease Term, Lessor has given two (2) such notices to Lessee, then a default shall be deemed to have occurred when such failure has continued for three (3) business days after the same is due, without notice thereof by Lessor to Lessee; and further, provided, however, that after the first twelve (12) months of the Lease Term, if Lessor has given such notice to Lessee within the preceding twelve (12) months, then a default shall be deemed to have occurred when such failure has continued for three (3) Business Days after the same is due, without notice thereof by Lessor to Lessee;

(ii) if there is an Insolvency Event;

(iii) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; *provided, however*, if any such failure does not involve the payment of any Monetary Obligation, does not place any rights or property of Lessor in immediate jeopardy, as determined by Lessor in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of thirty (30) days shall

have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such thirty (30) day period, as determined by Lessor in its reasonable discretion, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30) day period. If Lessee shall fail to correct or cure such failure within such period and said period is not extended by the parties, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(iv) if Lessee shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution; or

B. *Remedies.* Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:

(i) To terminate this Lease, whereupon Lessee's right to possession of the Property shall cease and this Lease, except as to Lessee's liability, shall be terminated. Upon such termination, Lessor shall be entitled to recover liquidated damages equal to the total of (i) the cost of recovering possession of the Property; (ii) the unpaid Rental earned at the time of termination, plus interest at the Default Rate thereon; (iii) late charges and interest at the Default Rate on the unpaid Rental; (iv) the present value of the balance of the Base Annual Rental for the remainder of the Lease Term using a discount rate of four percent (4%), less the present value of the reasonable rental value of the Property for the balance of the Term remaining after a one-year period following repossession using a discount rate of four percent (4%); (v) costs of operating the Property until relet and the reasonable costs of performing any obligations of Lessee under this Lease to be performed upon termination or expiration of this Lease (including but not limited to the Lessee's obligations under Sections 12.D and 27 hereof); and (vi) any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default.

(ii) To the extent not prohibited by applicable law, to reenter and take possession of the Property (or any part thereof) without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor's

Sample Lease
1/4/2006

rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate, and Lessor may recover liquidated damages as set forth in Subsection (i) above.

(iii) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.

(iv) To relet the Property or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor may, in its sole discretion, determine, which other Monetary Obligations include, without limitation, all commercially reasonable repossession costs, brokerage commissions, attorneys' fees and expenses and repair costs. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(v) To recover from Lessee all Costs paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(vi) To immediately or at any time thereafter, and with or without notice, at Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor's right to exercise any or all remedies set forth herein.

(vii) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease.

(viii) To seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

All powers and remedies given by this Section to Lessor, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to

exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

C. *Default by Lessor.* Lessor shall be in default under this Lease if Lessor fails or refuses to perform any obligation of Lessor under the terms of this Lease, and if the failure to perform the obligation is not cured within thirty (30) days after notice of the default has been given by Lessee to Lessor. If the default cannot reasonably be cured within thirty (30) days, then Lessor shall not be in default if Lessor commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

Lessee, at any time after expiration of the cure period provided above and a subsequent written notice to Lessor, may cure the default at Lessor's cost. If Lessee at any time, as a result of Lessor's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Lessee shall be due immediately from Lessor to Lessee at the time the sum is paid, and if paid at a later date shall bear interest at the rate of twelve percent (12%) per annum from the date the sum is paid by Lessee until the date Lessee is reimbursed by Lessor. Any amounts due from Lessor to Lessee pursuant to this Section 15 may be deducted or offset against Lessee's Base Monthly Rental.

21. *Mortgage, Subordination and Attornment.* Lessor's interest in this Lease and/or the Property shall not be subordinate to any liens or encumbrances placed upon the Property by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. Notwithstanding the terms of or the parties to the WGI Agreement and any other agreements pursuant to which Persons other than Lessee have the right to occupy any portion of the Property, such agreements shall, as between Lessor and Lessee, be treated as an instrument subordinate to Lessor's interest in the Property and this Lease. Lessee shall keep the Property free from any liens for work performed, materials furnished or obligations incurred by Lessee. NOTICE IS HEREBY GIVEN THAT LESSEE IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST, SECURITY INTEREST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PROPERTY OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID.

This Lease at all times shall automatically be subordinate to the lien of any and all Deeds of Trust now or hereafter placed upon the Property by Lessor, provided, that the holder of such interest shall not disturb Lessee's use and enjoyment of Lessee's rights under this Lease so long as Lessee is not in default hereunder. Lessee covenants and agrees to execute and deliver, upon demand, such further instruments which are acceptable to Lessee, subordinating this Lease to the lien of any or all such Deeds of Trust as shall be desired by Lessor, or any present or proposed Deeds of Trust; provided, that the terms and provisions of any such instrument are commercially reasonable. The Lessee acknowledges that the terms and provisions of the Instrument attached hereto as Exhibit C are commercially reasonable.

Sample Lease
1/4/2006

If any Lessor's Lender, mortgagee, receiver or other secured party elects to have this Lease and the interest of Lessee hereunder be superior to any such Deed of Trust and evidences such election by notice given to Lessee, then this Lease and the interest of Lessee hereunder shall be deemed superior to any such Deed of Trust, whether this Lease was executed before or after such Deed of Trust and in that event such mortgagee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of such Deed of Trust and had been assigned to such mortgagee, receiver or other secured party.

In the event any purchaser or assignee of any mortgagee or deed of trust holder at a foreclosure sale acquires title to the Property, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as Lessor under this Lease, Lessee shall attorn to mortgagee or deed of trust holder or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, if the Successor Lessor in its sole discretion elects to recognize Lessee's tenancy under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue after the date that such Successor Lessor acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Lessee shall give written notice to any Lessor's Lender of whom Lessee is notified of in writing of any breach or default by Lessor of any of its obligations under this Lease and give such lender or mortgagee the same rights to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto. Upon request by Lessor, Lessee shall authorize Lessor to release to Lessee's financial statements delivered to Lessor pursuant to this Lease to such Lessor's Lender.

22. **Estoppel Certificate and Other Documents.** At any time, and from time to time, each party shall, promptly and in no event later than ten (10) days after a request from the other execute, acknowledge and deliver to the requesting party, as the case may be, a certificate in the form supplied by the requesting party, certifying: (A) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor; (B) the commencement and expiration dates of the Lease Term; (C) the date to which the Rentals have been paid under this Lease and the amount thereof then payable; (D) whether there are then any existing defaults by Lessee or Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (E) that no notice has been received by the certifying party of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (F) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee; and; (G) and any other information reasonably requested by the requesting party.

Lessor and Lessee further agree to reasonably negotiate execute all reasonable documents, including without limitation, estoppel certificates, non-disturbance certificates and other documents requested by WGI, any Lessor's Lender or any lender of Lessee in connection

with a loan to be obtained by Lessor or Lessee, or in connection with a sale, assignment, sublease or other disposition of the Lessor's interest under this Lease.

23. **Assignment/Subletting.** Lessee's interest in this Lease shall not, voluntarily, involuntarily, or by operation of law, be assigned to any third person or entity without the prior written consent of Lessor which will not be unreasonably withheld conditioned or delayed.

In the event of an assignment of Lessee's interest under this Lease to a third person or entity which has been approved by the Lessor, the original Lessee shall be relieved from any and all further obligations under the terms of this Lease upon delivery to Lessor of an originally executed assumption of all of Lessee's obligations under this Lease by the assignee, and upon cure of all then existing defaults of Lessee under the terms of this Lease.

Other than for the WGI Agreement and any Replacement WGI Agreement, and any other agreements pursuant to which experienced and reputable operators are permitted to occupy discreet portions of the convenience store building located on the site for uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances (such other agreements are referred to herein as "Permitted Subleases"), Lessee may not sublease all or any part of the Property without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned, or delayed. In no event will any Permitted Subleases, or any other subleases that Lessor consents to relieve Lessee of any liability hereunder during the period of any such subletting. Additionally, Lessee shall give Lessor at least thirty (30) days advance notice of any proposed Permitted Sublease, which notice shall be accompanied by a copy of the form of the Permitted Sublease.

Each Permitted Sublease, and any other sublease that Lessor may consent to pursuant to the foregoing paragraph shall provide that (i) the term thereof will not exceed the Initial Term hereof and any extensions of the Initial Term that are permitted hereunder; (ii) the sublease and subtenant shall be subject to and bound by all the terms and conditions of this Lease (except that the Lessee shall continue to pay all Rental and Monetary Obligations hereunder and Lessee shall collect any rents owed by the subtenant pursuant to the sublease); (iii) the sublease shall state that, at Lessor's election, the subtenant will attorn to Lessor and recognize Lessor as Lessee's successor under the sublease for the balance of the sublease term if this Lease is surrendered by Lessee or terminated by reason of Lessee's default.

24. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease (collectively called "Notices") shall be in writing and given by any one of the following: (A) hand delivery, (B) express overnight delivery service, (C) certified or registered mail, return receipt requested or (D) facsimile, provided that a copy of such facsimile is also sent via certified or registered mail, return receipt requested, or by overnight delivery service, within one Business Day of the transmission of such facsimile, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next Business Day, if delivered by a reputable express overnight delivery service, (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt

Sample Lease
1/4/2006

requested, or (iv) transmission, if delivered by facsimile pursuant to the requirements of Section 24.D above. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:

If to Lessee:	Berry-Hinckley Industries Attn: Paul A. Morabito 425 Maestro Drive Reno, NV 89511 Telephone: (775) 689-1222 Facsimile: (775) 689-1232
With a copy to:	Hodgson Russ LLP Attn: Sujata Yalamanchili One M&T Plaza, Suite 2000 Buffalo, NY 14023 Telephone: (716) 848-1657 Facsimile: (716) 849-0349
If to Lessor:	Overland Development Corporation Inc. Attn: Larry Willard 133 Glenridge Avenue Los Gatos, CA 95030
With a copy to	Sam Chuck, Esq. Rossi, Hamerslough, Reischl & Chuck 1960 The Alameda, Suite 200 San Jose, CA 95126 Telephone: (408) 261-4252 Facsimile: (408) 261-4292

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

25. **Holdover.** If Lessee remains in possession of the Property after the expiration of the term hereof, Lessee, at Lessor's option and within Lessor's sole discretion, may be deemed a Lessee on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease.

26. **Intentionally Omitted.**

27. **Surrender.** At the expiration of the Lease Term, Lessee may remove from the Property all of Lessee's Fixtures and Equipment. Lessee shall repair any damage caused by such removal and shall leave the Property broom clean and in good and working condition and repair inside and out, and comply with all of the requirements of Section 12.D hereof. Lessor may, in

Sample Lease
1/4/2006

its sole discretion, elect to retain or dispose of in any manner any Fixtures or Equipment, personal property and vehicles to which Lessee is entitled but which Lessee does not remove from the Property pursuant to this Section within ten (10) days after notice, provided, however, that upon demand, Lessee shall reimburse Lessor for all costs incurred by Lessor in removing any Fixtures and Equipment and any all personal property, vehicles and inventory, Hazardous Materials, USTs and related equipment, located in or about the Property that are left therein by Lessee or in restoring the Property to the condition required by this Lease.

28. **Financial Statements; Compliance Certificate.** Once per calendar year, and within 120 days after the end of Lessee's fiscal year, Lessee shall furnish to Lessor audited financial statements of Lessee for the immediately preceding fiscal year. Lessor shall maintain such statements in confidence but may disclose any financial statements furnished by Lessee to Lessor's lawyers, any prospective purchaser of the Property who has entered into a signed purchase agreement with Lessor, prospective and existing lenders of Lessor, and to Lessor's consultants and accountants; Lessor shall advise such permitted recipients that the financial statements furnished to them are to be held in confidence. In no event shall Lessor knowingly disclose Lessee's financial statements to competitors of Lessee.

29. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform (esch, a "Force Majeure Event") shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

30. **No Merger.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of the Property by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (A) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (B) the fee estate or ownership of the Property or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

31. **Characterization.** Lessor and Lessee acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

32. **Easements.** During the Lease Term, Lessor shall not have the right to grant easements on, over, under and above the Property without the prior consent of Lessee, which consent will not be unreasonably withheld, conditioned or delayed.

33. **Bankruptcy. Intentionally Omitted.**

34. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other Costs in addition to any other relief to which it may be entitled. In addition, the prevailing party shall, upon demand, be entitled to all attorneys' fees and all other Costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

35. **Memorandum of Lease.** Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor's standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, s description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public. Further, upon Lessor's request, Lessee agrees to execute and acknowledge a termination of lease and/or quit claim deed in recordable form to be held by Lessor until the expiration or sooner termination of the Lease Term.

36. **No Broker.** Lessor and Lessee represent and warrant to each other that they have had no converssion or negotiations with any broker concerning the leasing of the Property. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

37. **Wsaiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** Lessor and Lessee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought by either of the parties hereto against the other or its successors with respect to any matter arising out of or in connection with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Property, and/or any claim for injury or damage, or any emergency or statutory remedy. This waiver by the parties hereto of any right either may have to a trial by jury has been negotisted and is an essential aspect of their bargain. Furthermore, Lessee hereby knowingly, voluntarily and intentionally waives the right it may have to seek punitive, consequential, special and indirect damages from Lessor, Lessor's Lenders, and any of the Affiliates, officers, directors, members, managers or employees of Lessor, Lessor's Lenders, or any of their successors with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought with respect to any matter arising out of or in connection with this Lease or any document contemplated herein or related hereto. The waiver by Lessee of any right it may have to seek punitive, consequential, special and indirect damages has been negotiated by the parties hereto and is an essential aspect of their bargain.

38. **Miscellaneous.**

A. *Time Is of the Essence.* Time is of the essence with respect to each and every provision of this Lease.

B. *Waiver and Amendment.* No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an amount less than the Rental and other Monetary Obligations stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.

C. *Successors Bound.* Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

D. *Captions.* Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Severability.* The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

F. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease; provided such documents are reasonably acceptable to each parties' counsel.

G. *Entire Agreement.* This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

H. *Forum Selection; Jurisdiction; Venue; Choice of Law.* For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Nevada. Lessee consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Nevada in accordance with applicable law. Furthermore, Lessee waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section shall limit or restrict the right of Lessor to commence any proceeding in the federal or state courts located in

the state where each Property is located to the extent Lessor deems such proceeding necessary or advisable to exercise remedies available under this Lease.

I. *Counterparts.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

J. *Prohibited Persons and Transactions.* Lessee and Lessor (each a "Representing Party") represents to its current knowledge to the other that the Representing Party is not a person or entity, nor owns property or interests in property, which is blocked pursuant to Executive Order 13224 signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism" or under any rules and regulations related thereto.

39. *Intentionally Omitted.*

40. *Amendments to Accommodate Sale to Tenants In Common.* At the request of Lessor, Lessee shall execute any amendments to this Lease that Lessor deems reasonably necessary to accommodate Lessor's sale of the Property to tenants in common (and subsequent management of the Property by such tenants in common or a manager appointed by them), provided that such amendments do not materially and negatively impact Lessee's obligations hereunder.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

Larry Willard
LARRY WILLARD

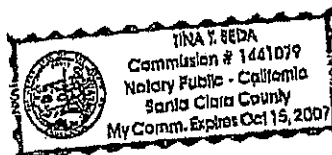
Tax Identification No. [REDACTED]

STATE OF California)
COUNTY OF Santa Clara) ss

The foregoing instrument was acknowledged before me on 12/2/05 by Larry Willard, the President of Overland, on behalf of the limited liability company.

Tina J. Seda
Notary Public

My Commission Expires: 10-15-07



STATE OF CALIFORNIA
COUNTY OF Santa Clara

) S.S.

On December 2, 2005 before me,

Tina T. Seda

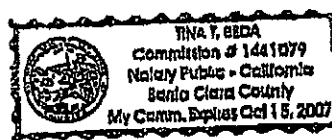
a Notary Public in and for said County and State, personally
appeared

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(ies) and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of
which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

Signature Tina T. Seda



(This area for official notarial seal)

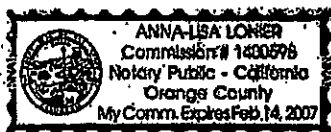
LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporationBy: Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

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

The foregoing instrument was acknowledged before me on 1/4/06 by Paul Morabito, as Chief Executive Officer of BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, on behalf of the corporation.


Notary Public

My Commission Expires: 2/14/07

Sample Lease
12/20/2005

28

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EXHIBIT A

DEFINED TERMS

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

"*Additional Rental*" has the meaning set forth in Section 4.C.

"*Adjustment Date*" means _____, and every anniversary thereafter during the Initial Term, and any Extension Term.

"*Affiliate*" means any Person which directly or indirectly controls, is under common control with or is controlled by any other Person. For purposes of this definition, "controls", "under common control with", and "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

"*Base Annual Rental*" means \$1,464,375.00.

"*Base Monthly Rental*" means an amount equal to 1/12 of the applicable Base Annual Rental.

"*Business Day*" means Monday through Friday, except those days on which the United States Postal Service does not deliver regular first-class mail.

"*Casualty*" means any loss of or damage to any property included within or related to any Property or arising from an adjoining property caused by fire, flood or other casualty.

"*Condemnation*" means a Taking and/or a Requisition.

"*Costs*" means all reasonable costs and expenses incurred by a Person, including without limitation, reasonable attorneys' fees and expenses, court costs, expert witness fees, costs of tests and analyses, repair and maintenance, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, brokerage fees, escrow fees, title insurance and other insurance premiums, appraisal fees, stamp taxes, recording fees and transfer taxes or fees, as the circumstances require.

"*Dealer*" means any Person that supplies gasoline and/or diesel fuel to Lessee at the Property for sale to third parties, or its successor or assigns.

"*Dealer Agreement*" means a written agreement or other document granting Lessee the right to operate a gas station operation under the flag, brand or trade name of a Dealer.

"*Default Rate*" means 18% per annum or the highest rate permitted by law, whichever is less.

A-1

Sample Lease
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1/4/2006

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"Deed of Trust" means any and all deeds of trust, mortgages or other liens to secure debts or other security instruments here and after placed by Lessor on the Property or any part thereof (except the Lessee's personal property or trade fixtures), and to any and all renewals, modifications, consolidations, replacements, extensions or substitutions of any such instruments.

"Effective Date" has the meaning set forth in Section 3 of this Lease.

"Environmental Laws" means federal, state and local laws, ordinances, common law requirements and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees having the effect of law in effect now or in the future and including all amendments, that relate to Hazardous Materials, Regulated Substances, USTs, and/or the protection of human health or the environment, or relating to liability for or Costs of Remediation or prevention of Releases, and apply to Lessee and/or the Property.

"Environmental Liens" means liens that may be imposed pursuant to Environmental Laws, including but not limited to Nevada Revised Statutes Chapters 459 and 618.

"Event of Default" has the meaning set forth in Section 20.A.

"Expiration Date" has the meaning set forth in Section 3.

"Extension Option" has the meaning set forth in Section 3.

"Extension Term" has the meaning set forth in Section 3.

"Force Majeure Event" has the meaning set forth in Section 29.

"Governmental Authority" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, any state or any political subdivision thereof (including but not limited to the Nevada Department of Environmental Protection, the Nevada Gaming Control Board and the Nevada Gaming Commission) with authority to adopt, modify, amend, interpret, give effect to or enforce any federal, state and local laws, statutes, ordinances, rules or regulations, including common law, or to issue court orders.

"Hazardous Materials" includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants which pose a hazard to the Property or to Persons on or about the Property, cause the Property to be in violation of any local, state or federal law or regulation, (including without limitation, any Environmental Law), or are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", "pollutants", or words of similar import under any applicable local, state or federal law or under the regulations adopted, orders issued, or publications promulgated pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq.*; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, *et seq.*; and

Sample Lease
1/4/2006

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(iv) regulations adopted and publications promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) underground storage tanks; and (d) any other Regulated Substances, chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of any adjoining property.

"Indemnified Parties" means Lessor, any Lessor's Lenders and their members, managers, officers, directors, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns, including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Lessor or any Lessor's Lenders, as applicable.

"Initial Term" has the meaning set forth in Section 3.

"Insolvency Event" means (a) Lessee's (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against Lessee (i) seeking to adjudicate it a bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against Lessee, either such proceeding shall remain undismissed for a period of one hundred twenty (120) days or any of the actions sought in such proceeding shall occur; or (c) Lessee taking any corporate action to authorize any of the actions set forth above in this definition.

"Law(s)" means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted Governmental Authority, court or agency, now or hereafter enacted or in effect.

"Lease Term" shall have the meaning described in Section 3.

"Legal Requirements" means the requirements of all present and future Laws (including without limitation, Environmental Laws and Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all judicial and administrative interpretations thereof, including any judicial order, consent, decree or judgment, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Lessee or to the Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of to the Property, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of the Property.

"Lessor's Lender" means any lender of Lessor that has a lien on the Property, including any lenders named in any Deed of Trust.

Sample Lease
1/4/2006

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"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, diminutions in value, fines, penalties, interest, charges, fees, judgments, awards, amounts paid in settlement and damages of whatever kind or nature, inclusive of bodily injury and property damage to third parties (including, without limitation, attorneys' fees and other Costs of defense).

"Monetary Obligations" means all Rental and all other sums payable or reimbursable by Lessee under this Lease to Lessor, to any third party on behalf of Lessor, or to any Indemnified Party.

"Notices" has the meaning set forth in Section 24.

"Permitted Amounts" shall mean, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Law and is customarily employed in, or associated with, similar businesses located in the states where the Property is located.

"Permitted Encumbrances" shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements, survey exceptions, parties in possession and other matters of title that affect the Property as of the date of Lessor's acquisition thereof and those items which hereafter affect title as permitted under this Lease, including but not limited to those identified in the owner's policy of title insurance issued to Lessor by First American Title Insurance Company or an agent thereof in conjunction with Lessor's acquisition of the Property.

"Permitted Facility" means a gas station with convenience store (and restaurant and postal unit operations within a convenience store), and uses incidental or related thereto including but not limited to a car wash, quick lube/oil change facility, the operation of gaming devices within the convenience store and offices for Lessee's operations, together with uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances.

"Permitted Sublease" has the meaning set forth in Section 23.

"Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Property" means, that parcel or parcels of real estate located at the address set forth in Exhibit B and legally described on Exhibit B attached hereto (which parcels may be fee estates or easement estates), together with all rights, privileges, and appurtenances associated therewith, all buildings, fixtures and other improvements now or hereafter located on such parcels of real estate (whether or not affixed to such real estate).

Sample Lease
1/4/2006

00016009959 GBDOS 469445v4

"Regulated Substances" means "petroleum" and "petroleum-based substances" or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

"Release" means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs.

"Remediation" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

"Rental" means, collectively, the Base Annual Rental and the Additional Rental.

"Rent Adjustment" has the meaning set forth in Section 4.B.

"Successor Lessor" has the meaning set forth in Section 21.

"Taking" means (a) any taking or damaging of all or a portion of the Property (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special, or (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means, or (b) any de facto condemnation that constitutes a compensable taking under applicable law. The Taking shall be considered to have taken place as of the later of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the law applicable to the Property.

"Threatened Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding any Property which may result from such Release.

"USTs" means any one or combination of tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

"WGI" means Winner's Gaming, Inc.

"WGI Agreement" means any and all agreements of Lessee with WGI pursuant to which WGI currently operates gaming machines or devices and related equipment (or the technological evolution thereof) on the Property and any Substitute WGI Agreement (as defined in Section 12.F).

Sample Lease
1/4/2006

000160/09359 GBDPCS 469445v4

EXHIBIT B**ADDRESS AND LEGAL DESCRIPTION OF PROPERTY**

PROPERTY ADDRESS: 7695 - 7699 S. Virginia Street, Reno, Nevada (APN 043-011-48)

PROPERTY LEGAL DESCRIPTION:**Parcel I**

The land referred to herein is situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South Half (S 1/2) of the Northwest Quarter (NW 1/4) of Section 6, Township 19 North, Range 20 East, M.D.M., and being more particularly described as follows:

Commencing at the Southwest corner as Parcel "C", a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, on file in the County Records Office, 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 side South 69°21'09" West, a distance of 21.41 feet to the true point of beginning.

Thence along the said Northerly line of Longley Lane South 69°21'09" West, a distance of 301.22 feet to the Easterly line of U.S. 395; thence along said Easterly line North 21°04'38" West, a distance of 653.04 feet; thence leaving said Easterly line 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 0.78 feet; thence North 84°51'10" East, a distance of 213.17 feet to the Westerly line of South Virginia Street; thence along said Westerly line South 20°39'19" East, a distance of 257.92 feet; thence leaving said westerly line of South Virginia North 89°40'18" West, a distance of 275.76 feet; thence South 00°16'56" West, a distance of 406.67 feet to the true point of beginning.

Parcel II

A non-exclusive easement for ingress, egress and access by and for vehicular 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.

Note: The above metes and bounds legal description appeared previously in that certain document recorded August 27, 1996, in Book 4656, Page 716, as Instrument No. 2024695.

Sample Lease
1/4/2006

B-1

000160/09959 GBDOS 469445v4

EXHIBIT 27

EXHIBIT 27

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

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

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

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

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

Plaintiffs,

v.

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

Defendants.

AND RELATED COUNTERCLAIM

Case No. CV14-01712

Dept. No. 6

**PLAINTIFFS LARRY J. WILLARD AND
 OVERLAND DEVELOPMENT
 CORPORATION'S RESPONSES TO
 DEFENDANTS' SECOND SET OF
 INTERROGATORIES**

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Please state the name, address, and telephone number of all of Your employees and/or agents who were or are involved in the transactions and events which are the subject of the pleadings.

RESPONSE TO INTERROGATORY NO. 1:

1. Samuel A. Chuck, Rossi, Hamerslough, Reischl & Chuck, 1960 The Alameda, Suite 200, San Jose, CA 95126. Tel. (408) 261-4252.

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

3. L. Steven Goldblatt, Goldblatt Law Firm, 22 Martin Street, Gilroy, CA 95020. Tel. (408) 500-6448.

INTERROGATORY NO. 2:

Please identify the provision in the Willard Lease which supports your contention in paragraph 9 of the First Amended Complaint that the rental rate in the Willard Lease increases by two percent per month.

RESPONSE TO INTERROGATORY NO. 2:

Respondent responds that paragraph 9 contains a typographical error and should have read that the Willard Lease increases by two percent per *year*.

INTERROGATORY NO. 3:

Please identify the most recent mortgage payment You have made on the Willard Property. Please state all facts with particularity, identify all witnesses by name, address, and telephone number, and documents by date, title, author, and custodian that support such allegations.

RESPONSE TO INTERROGATORY NO. 3:

The most recent mortgage payment made by Respondent on the Willard Property was made on or about February 11, 2013 in the amount of \$87,077.52.

Witnesses who can corroborate this Response are as follows:

1 1. Larry J. Willard, c/o Brian P. Moquin, Esq., Law Offices of Brian P. Moquin,
2 3287 Ruffino Lane, San Jose, CA 95148. Tel. (408) 300-0022.

3 2. Mitra Ehsanipour, CPA, 205 Park Road #207, Burlingame, CA 94010. Tel. (650)
4 348-9444.

5 3. Mike Burns, c/o Thomas Caudill, Esq., Law Office of Thomas Caudill, 1025
6 North Fourth Street, San Jose, CA 95112. Tel. (408) 298-4844.

7 **INTERROGATORY NO. 4:**

8 Please explain in detail the factual basis for Your contention in paragraph 11 of the First
9 Amended Complaint that the Willard Plaintiffs agreed to amend the Willard Lease through
10 shortening the lease term by 30 months in return for Herbst personally guaranteeing that BHI
11 would make all lease payments through the term of the lease.

12 **RESPONSE TO INTERROGATORY NO. 4:**

13 Respondent and his counsel, Samuel A. Chuck, engaged in lengthy negotiations with
14 Defendants at the time that Jerry Herbst was planning to acquire Berry-Hinckley Industries and
15 take over the Willard Lease. As part of those negotiations, Herbst offered to personally
16 guarantee timely payments and performance of the obligations of Berry-Hinckley Industries
17 under the Willard Lease in return for Respondent forgoing 30 months of the lease term.

18 **INTERROGATORY NO. 5:**

19 Please identify and explain in detail the factual basis for Your contention that Defendants
20 are responsible for the claimed accounting fees associated with Willard's Bankruptcy filing
21 referred to in Paragraph 17 of the First Amended Complaint, which was subsequently dismissed
22 voluntarily.

23 **RESPONSE TO INTERROGATORY NO. 5:**

24 Due to Defendants' default, Respondent was placed in an untenable financial position
25 where he was liable for \$87,077.52 per month in mortgage payments on the Willard Property but
26 had no income. As a direct and proximate result, on the advice of counsel, Willard filed for
27 bankruptcy protection, which required Willard to retain the services of an accountant, Mitra
28 Ehsanipour, to assist in preparing the bankruptcy schedules. Such expense was a foreseeable

1 consequence of Defendants' default, and are expressly recoverable under Section 20(B)(v) of the
2 Willard Lease.

3 **INTERROGATORY NO. 6:**

4 Please identify the outstanding balance due and owing on any and all mortgage loans for
5 the Willard Property as of the date of the short sale identified in paragraph 15 of the Amended
6 Complaint.

7 **RESPONSE TO INTERROGATORY NO. 6:**

8 Respondent is informed and believes the total outstanding balance including interest and
9 penalties was \$13,699,802.70.

10 **INTERROGATORY NO. 7:**

11 Please identify and describe in detail the claimed City of Reno fines referred to in
12 paragraph 13 of the First Amended Complaint.

13 **RESPONSE TO INTERROGATORY NO. 7:**

14 Respondent responds that Propounding Party has already received copies of all notices of
15 fines issued by the City of Reno, and in fact forwarded all such notices of fines to Respondent.

16 **INTERROGATORY NO. 8:**

17 Please identify the date that You contend that the Operation and Management Agreement
18 terminated.

19 **RESPONSE TO INTERROGATORY NO. 8:**

20 June 1, 2013.

21 **INTERROGATORY NO. 9:**

22 With regard to each of the Requests for Admission propounded concurrently herewith,
23 for each Request wherein your answer is anything other than an unequivocal "admit," please
24 state the basis of your failure to admit and the facts that support your response, including the
25 names of all witnesses and the identity or description of all documents or evidence supporting a
26 response.

27 **RESPONSE TO INTERROGATORY NO. 9:**

28 With respect to Request for Admission No. 1, the initial lease entered into by the Willard

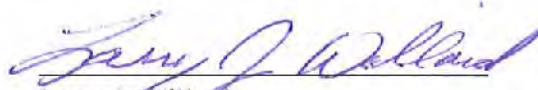
1 Plaintiffs on December 2, 2005 was for twenty years in duration, commencing January 2006 and
2 ending in January 2026.

3 With respect to Request for Admission No. 2, to the extent that the Request does not
4 account for the initial twenty-year lease duration, Respondent's explanation is the same as for
5 Request for Admission No. 1.

VERIFICATION

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

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

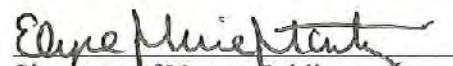

Larry J. Willard

On August 14th, 2015, before me, Elyce Marie Martinez, ^{Notary Public}, personally appeared Larry J. Willard, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.




Signature of Notary Public

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-referenced matter does not contain the Social Security Number of any person.

LAW OFFICES OF BRIAN P. MOQUIN

DATED: August 18, 2015

By: 

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

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

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

DATED: August 18, 2015



BRIAN P. MOQUIN

EXHIBIT 28

EXHIBIT 28

1 IN THE SECOND JUDICIAL DISTRICT COURT

2 OF THE STATE OF NEVADA

3 IN AND FOR THE COUNTY OF WASHOE

4 ---o0o---

5
6 LARRY J. WILLARD, individually
7 and as trustee of the Larry
8 James Trust Fund; OVERLAND
9 DEVELOPMENT CORPORATION, a
10 California corporation;
11 et al.,

12 Plaintiffs,

13 vs.

Case No. CV14-01712

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

Dept. No. 6

17 Defendants.

18 _____
19 And Related Counterclaim.

20 _____/

21 DEPOSITION OF LARRY WILLARD

22 AUGUST 21, 2015

23 RENO, NEVADA

24 Reported by:

JULIE ANN KERNAN, CCR #427, RPR

25 MOLEZZO REPORTERS (775) 322-3334

1 APPEARANCES

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

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

1 Q Okay.

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

5 Q Okay.

6 A And that was --

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

9 A Not a penny. Not a red cent.

10 Q But as a result of this sale --

11 A Uh-hum.

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

14 A That's right.

15 Q And --

16 A That's correct.

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

19 A The hundred 50, yeah.

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

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

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

1
2
3 ---o0o---

4 CERTIFICATE OF WITNESS

5
6 I hereby certify under penalty of perjury
7 that I have read the foregoing deposition, made the
8 changes and corrections that I deem necessary, and
9 approve the same as now true and correct.

10
11 Dated this day of ,
12 2015.

13
14
15 _____
16 LARRY WILLARD
17
18
19
20
21
22
23
24
25

1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

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

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

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

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

20
21 DATED: At Reno, Nevada, this 24th day of August, 2015.

22
23
24 
25 JULIE ANN KERNAN, CCR #427

EXHIBIT 29

EXHIBIT 29



April 12, 2013

VIA EMAIL & REGULAR MAIL:

Email: l.steven.goldblatt@gmail.com

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

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

Dear Mr. Goldblatt:

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

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

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

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR | LAS VEGAS, NEVADA 89169
T: 702.796.5555 | F: 702.369.2666
gordonsilver.com

103565-002/1888559.doc

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

A.App.2772

BHI-WW000177

Gordon Silver

Attorneys and Counselors at Law

April 12, 2013

Page 2

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

Very truly yours,

GORDON SILVER

A handwritten signature in black ink, appearing to be "G/M/G", written over a horizontal line.

GERALD M. GORDON, ESQ.

MMW/crs

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

EXHIBIT 30

EXHIBIT 30

DICKINSON WRIGHT
 JOHN P. DESMOND
 Nevada Bar No. 5618
 BRIAN R. IRVINE
 Nevada Bar No. 7758
 ANJALI D. WEBSTER
 Nevada Bar No. 12515
 100 West Liberty Street, Suite 940
 Reno, NV 89501
 Tel: (775) 343-7500
 Fax: (775) 786-0131
 Email: Jdesmond@dickinsonwright.com
 Email: Brvine@dickinsonwright.com
 Email: Awebster@dickinsonwright.com

*Attorney for Defendants
 Berry Hinckley Industries, and
 Jerry Herbst*

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.

**DECLARATION OF
 GERALD M. GORDON**

BERRY-HINCKLEY INDUSTRIES, a Nevada
 corporation; and JERRY HERBST, an
 individual; and JH, INC., a Nevada
 Corporation,

Defendants.

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

Counterclaimants,
 vs

LARRY J. WILLARD, individually and as

1 trustee of the Larry James Willard Trust Fund;
2 OVERLAND DEVELOPMENT
3 CORPORATION, a California corporation;

4 Counter-defendants.

5 I, GERALD M. GORDON, pursuant to NRS 53.045, declare and state as follows:

6 1. I am an attorney and founding partner of Garman Turner Gordon. I make this
7 Declaration in support of Defendants'/Counterclaimants' Opposition to Larry Willard and
8 Overland Development Corporation's Motion for Summary Judgment.

9 2. I have personal knowledge of the facts contained in this Declaration and am
10 competent to testify to the same if called upon by this Court.

11 3. In 2013, I represented Berry-Hinckley Industries ("BHI") in connection with
12 certain issues regarding its lease of the property located at 7695 and 7699 South Virginia Street
13 in Reno, Nevada (the "Virginia Property").

14 4. On May 16, 2013, I received a call from Mr. Willard's attorney, Steven Goldblatt,
15 who, on behalf of Mr. Willard, directed BHI to vacate the Virginia Property.

16 5. Because Mr. Willard directed BHI to vacate the premises, BHI immediately
17 began to wind down its operations and work toward complying with Mr. Willard's demand. BHI
18 subsequently ceased operations and vacated the Virginia Property in late May of 2013.

19 6. Neither during the conversation with Mr. Goldblatt on May 16, 2013, nor in any
20 other communications with Mr. Goldblatt, was I informed of any alleged breach of the Operation
21 and Management Agreement. I never received written notice of any alleged breach of the
22 Operation and Management Agreement..

23 I declare under penalty of perjury that the foregoing is true and correct.

24 DATED this 3rd day of November, 2017.

25
26 
27 GERALD M. GORDON
28

EXHIBIT 31

EXHIBIT 31

DICKINSON WRIGHT
 JOHN P. DESMOND
 Nevada Bar No. 5618
 BRIAN R. IRVINE
 Nevada Bar No. 7758
 ANJALI D. WEBSTER
 Nevada Bar No. 12515
 100 West Liberty Street, Suite 940
 Reno, NV 89501
 Tel: (775) 343-7500
 Fax: (775) 786-0131
 Email: jdesmond@dickinsonwright.com
 Email: birvine@dickinsonwright.com
 Email: awebster@dickinsonwright.com

*Attorney for Defendants
 Berry Hinckley Industries, and
 Jerry Herbst*

**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.

DECLARATION OF CHRIS KEMPER

BERRY-HINCKLEY INDUSTRIES, a Nevada
 corporation; and JERRY HERBST, an
 individual; and JH, INC., a Nevada
 Corporation,

Defendants.

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

Counterclaimants,
 vs.

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

3 Counter-defendants.
4

5 I, CHRIS KEMPER, pursuant to NRS 53.045, declare and state as follows:

6 1. I am an employee of Terrible Herbst, Inc. ("THI"). THI is part of the Herbst
7 family of companies, as was Berry-Hinckley Industries ("BHI"). As part of my work for THI, I
8 was involved in the management of BHI and have personal knowledge of its operations.

9 2. I have personal knowledge of the facts contained in this Declaration and am
10 competent to testify to the same if called upon by this Court.

11 3. In 2013, I was partially responsible for, among other things, the management and
12 administration of several leases, including BHI's lease of the property located at 7695 and 7699
13 South Virginia Street in Reno, Nevada (the "Virginia Property").

14 4. I am informed and believe that on or about May 16, 2013, BHI was directed by
15 Mr. Willard to vacate the Virginia Property.

16 5. Upon being told to vacate the premises, BHI began to wind down its operations to
17 comply with Mr. Willard's demand. BHI then ceased its operations and vacated the Virginia
18 Property in late May of 2013.

19 6. I am informed and believe that BHI was never notified of any alleged breach of
20 the Operation and Management Agreement.

21 7. I am informed and believe that BHI never received written notice of any alleged
22 breach of the Operation and Management Agreement nor an opportunity to remedy any alleged
23 breach.

24 ///

25 ///

26 ///

27 ///

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 13 day of November, 2017.

3
4 
CHRIS KEMPER

1 **2475/2245**

2 DICKINSON WRIGHT PLLC

3 JOHN P. DESMOND

4 Nevada Bar No. 5618

5 BRIAN R. IRVINE

6 Nevada Bar No. 7758

7 ANJALI D. WEBSTER

8 Nevada Bar No. 12515

9 100 West Liberty Street, Suite 940

10 Reno, NV 89501

11 Tel: (775) 343-7500

12 Fax: (775) 786-0131

13 Email: Jdesmond@dickinsonwright.com

14 Email: Brvine@dickinsonwright.com

15 Email: Awebster@dickinsonwright.com

16 *Attorney for Defendants*

17 *Berry Hinckley Industries, and*

18 *Jerry Herbst*

19 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

20 **IN AND FOR THE COUNTY OF WASHOE**

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

CASE NO. CV14-01712

DEPT. 6

Plaintiff,

vs.

DEFENDANTS'/COUNTERCLAIMANTS'
MOTION TO STRIKE AND/OR MOTION
IN LIMINE TO EXCLUDE THE EXPERT
TESTIMONY OF DANIEL GLUHAICH

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
CORPORATION, a California corporation;

Counter-defendants.

Defendants/Counterclaimants Berry-Hinckley Industries (“BHI”) and Jerry Herbst (collectively, “Defendants”), by and through their counsel of record, Dickinson Wright PLLC, hereby file this Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich. This Motion is supported by the attached memorandum of points and authorities, the Declaration of Brian Irvine, attached as **Exhibit 9**, and all papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should strike Plaintiffs’ purported expert designation of Daniel Gluhaich and preclude Mr. Gluhaich from offering any expert opinion testimony in this case.

In the alternative, the Court should preclude Mr. Gluhaich from testifying regarding the valuation of the properties at issue. Mr. Gluhaich’s testimony is inadmissible because he lacks the specialized knowledge to give an opinion concerning the market value of the properties at issue in this case. Specifically, Plaintiffs have provided no evidence that Mr. Gluahich has any type of training in the valuation of property or that he has specialized experience with valuing similar real estate in the areas where the specific properties at issue in this case are located.

Moreover, Mr. Gluhaich’s opinions are inadmissible because they are based entirely upon inadmissible hearsay appraisal reports. Indeed, Mr. Gluhaich has provided no independent analysis and merely parrots the opinions contained in various appraisal reports. Thus, Plaintiffs are attempting to use Mr. Gluhaich merely as a conduit for the admission of otherwise inadmissible hearsay. This is improper and the Court should enter an order precluding Mr. Gluhaich from testifying concerning such opinions at the trial in this case.

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II. FACTS AND PROCEDURAL BACKGROUND

Plaintiffs commenced this action on August 8, 2014. (Complaint, on file herein). Plaintiffs are the lessors of two properties under two separate lease agreements, the Highway 50 property and the Virginia property. *Id.* ¶¶ 10-20; 29-45. Defendants are the lessees and guarantor under the lease agreements. *Id.* ¶¶ 11, 23, 30, 48.

On December 12, 2014, Plaintiffs provided their initial disclosures. (Initial Disclosures, **Exhibit 1**.)¹ However, despite Defendants' repeated requests, Plaintiffs never provided a damages disclosure as required by NRCP 16.1(a)(1)(C). *See generally* (Opposition to Wooley's Motion for Summary Judgment, on file herein.)

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

Plaintiffs admitted to the impropriety of their disclosure, reiterating in an email to Defendants that Defendants had agreed to "allow Plaintiffs to provide an amended expert witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich will be testifying..." (December 5, 2016, email, **Exhibit 3**). However, Plaintiffs did not provide an amended disclosure on December 8, 2016, or any time

¹All exhibits to this Motion are also exhibits to Defendants' respective Oppositions to Willard and Wooley's Motions and were authenticated in Brian Irvine's declarations to those Oppositions. The exhibits pertinent to this Motion have been attached hereto for ease of reference.

²In contrast, Defendants disclosed Michelle Salazar as an expert and served Plaintiffs with Ms. Salazar's report, which included, as required under NRCP 16.1(a)(2)(B) "a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all 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 thereafter. (Decl. of B. Irvine, Exhibit 1 to Opposition to Willard Motion, on file herein; Exhibit
2 1 to Opposition to Wooley Motion, on file herein).

3 On December 9, 2016, Defendants' counsel wrote that Defendants did not receive the
4 amended disclosure, or dates pursuant to which Defendants could depose Gluhaich. (December
5 9, 2016, email, **Exhibit 4**). Defendants admonished that "[o]bviously, we will be prejudiced by
6 further delay in learning all of the expert opinion testimony that plaintiffs intent to present at
7 trial. Please provide that information immediately." *Id.*

8 On December 23, 2016, Defendants' counsel discussed Plaintiffs' continued failure to
9 properly disclose an expert or even work with Defendants on expert deposition dates, even
10 though Defendants had provided Plaintiffs an extension. (December 23, 2016, email, **Exhibit 5**).
11 Defendants also stated that this conduct was prejudicing Defendants and making it impossible
12 for Defendants to comply with discovery deadlines. *Id.*

13 On December 27, 2016, Plaintiffs' counsel responded. (December 27, 2016, email,
14 **Exhibit 6**). Plaintiffs stated that Defendants "are granted an open extension for submitting any
15 expert reports rebutting the opinions of Mr. Gluhaich until [they] have received Plaintiffs'
16 amended disclosure, deposed Mr. Gluhaich, and provided any rebuttal expert(s) with sufficient
17 opportunity to review that material and prepare rebuttal report(s)." *Id.* However, Plaintiffs did
18 not provide any amended disclosure or any suggested deposition dates. *Id.*

19 In spite of the rapidly impending trial date (at the time, May 2, 2017) and close of
20 discovery (at the time, March 2, 2017), Plaintiffs did not supplement his improper disclosure of
21 Gluhaich or properly disclose any expert. (Decl. of B. Irvine, Exhibit 1 to Opposition to Willard
22 Motion, on file herein; Exhibit 1 to Opposition to Wooley Motion, on file herein). On February
23 3, 2017, Defendants wrote Plaintiffs, prefacing their letter by stating that "as of the date of this
24 letter, we have less than thirty (30) days to complete discovery, less than sixty (60) days to
25 fully-brief and submit dispositive motions to the Court for decision and less than three months
26 until the current trial date." (February 3, 2017, letter, **Exhibit 7**). Defendants wrote this letter to
27 inform Plaintiffs that because of their failure to comply with their obligations, Defendants
28

1 would not be able to timely complete discovery or submit dispositive motions, all to
2 Defendants' prejudice, and to inform Plaintiffs that their conduct necessitated yet another
3 continuance. *Id.*

4 In the letter, Defendants first addressed Plaintiffs' obstinate refusal to comply with
5 expert disclosure requirements. *Id.* Defendants reminded Plaintiffs that Plaintiffs "were
6 indisputably aware of the fact that Plaintiffs' disclosures did not comply with the Nevada Rules
7 of Civil Procedure at the time [they] served the deficient disclosure or immediately thereafter, as
8 demonstrated by [the parties'] December 5, 2016, telephonic conversation." *Id.* However,
9 despite Defendants granting a 6-day extension, Plaintiffs had still failed to comply with the
10 Nevada Rules of Civil Procedure "more than **two months later**" and "without any justification
11 whatsoever." *Id.*

12 Defendants further informed Plaintiffs that their "failure to comply with the Nevada
13 Rules of Civil Procedure in the first instance, or to rectify their failure by providing an amended
14 disclosure, is severely prejudicing Defendants." *Id.* With the close of discovery being one month
15 away, "regardless of what Plaintiffs do at this point, this discovery deadline would need to be
16 extended to enable the Defendants to complete discovery and disclose rebuttal experts in the
17 time permitted by the rule, the parties' joint case conference report, and the stipulation and order
18 on file with the Court." *Id.*

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

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

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

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

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

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

17 Second, Plaintiffs stipulated that this Court should enter an order which, in pertinent
18 part, requires "Plaintiffs to serve Defendants with an updated initial expert disclosure of Dan
19 Gluhaich that is fully-compliant with NRCP 16.1 and NRCP 26 within thirty (30) days of the
20 date of the Order approving this Stipulation." *Id.* Plaintiffs also stipulated to other pertinent
21 deadlines:

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

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

Id.

 This Court entered an Order consistent with the stipulation on February 9, 2017. *Id.*
However, the Plaintiffs have done **nothing** in this case since the entry of this Court's Order or
the stipulation of the parties. (Decl. of B. Irvine, Exhibit 1 to Opposition to Willard Motion, on
file herein; Exhibit 1 to Opposition to Wooley Motion, on file herein). Plaintiffs have failed to
provide any proper disclosure of Mr. Gluhaich or any other expert pursuant to NRCP

1 16.1(a)(2)(B) and the February 9, 2017 Stipulation and Order. Instead, Plaintiffs chose to do
2 nothing in this case until filing their motions for summary judgment on October 17, 2017, which
3 are largely supported by the previously undisclosed, purported expert opinions of Mr. Gluhaich.
4 *See id.*³

5 On October 17, 2017, Plaintiffs filed the above-referenced Motions for Summary
6 Judgment. Among other things, in each Motion Plaintiffs seek diminution in value damages and
7 accelerated rent damages, each of which are based entirely upon the expert opinion of Mr.
8 Gluhaich. (Wooley's Motion for Summ. J. at 9-13, on file herein.) Mr. Gluhaich is not a
9 qualified appraiser. *See* (Aff. of D. Gluhaich re Wooley, on file herein.) Instead, Mr. Gluhaich is
10 a California real estate agent and a Nevada real estate broker. *Id.* ¶ 2.

11 With respect to the Highway 50 property, Plaintiffs claim that the diminution in value is
12 \$2,665,000. *Id.* at 13. To arrive at this figure, Plaintiffs point to a 2007 appraisal, which
13 concluded that the value was \$3,430,000. *Id.* at 12. However, rather than use the appraiser as an
14 expert, Plaintiffs improperly rely upon Mr. Gluhaich who opines the appraisal presents the
15 correct valuation of the property. *Id.*; (Aff. of D. Gluhaich re Wooley ¶ 6, on file herein.)
16 Plaintiffs then rely upon a 2015 appraisal, which concluded that the fair market value of the
17 Highway 50 property as of June 19, 2015, was \$765,000. (Wooley's Motion for Summ. J. at 12,
18 on file herein.) However, rather than use the appraiser as an expert, Plaintiffs improperly rely
19 upon Mr. Gluhaich who opines that the appraisal presents the correct valuation of the property.
20 *Id.*; (Aff. of D. Gluhaich re Wooley ¶ 9, on file herein.)

21 Similarly, with respect to the Virginia property, Plaintiffs claim that the diminution in
22 value is \$27,589,685.48. (Willard's Motion for Summ. J. at 20, on file herein.) To arrive at this
23 figure, Mr. Gluhaich opines, based entirely on an appraisal, that the value of the property on
24 June 1, 2014 was \$19,700,000. *Id.*; (Aff. of D. Gluhaich re Willard ¶ 9, on file herein.) Mr.
25 Gluhaich further opines, based entirely on a different appraisal, that the fair market value of the

26 ³ The parties set a trial date of January 29, 2018, meaning that, per the February 9, 2017
27 Stipulation and Order, discovery will close on November 15, 2017.

property without the lease was \$4,270,000. *Id.*; (Aff. of D. Gluhaich re Willard ¶ 16, on file herein.) However, as with the Wooley opinion, Plaintiffs do not attempt to use the actual appraisers as experts in this case. Plaintiffs then purport to apply interest to arrive at their calculation of \$27 million in damages.

Because Plaintiffs have willfully refused to provide an appropriate disclosure of Mr. Gluhaich pursuant to NRCP 16.1(a)(2)(B), which must include a summary of the facts and opinions to which the witness is expected to testify, this Court should strike Plaintiffs' prior inadequate disclosure of Mr. Gluhaich and preclude Plaintiffs from offering any expert opinions from Mr. Gluhaich in this case pursuant to NRCP 16.1(e)(3).

In the alternative, Mr. Gluhaich should be precluded from testifying as an expert in this case because he lacks the necessary qualifications and his "opinions" merely parrot the opinions of other professionals without any independent analysis. Defendants now seek to exclude Mr. Gluhaich from testifying as to his "opinions" concerning the diminution in value theory for damages.

III. ARGUMENT

A. *Motion to Strike*

NRCP 16.1(a)(2)(B) requires that a non-retained expert⁴ must provide, *inter alia*, a summary of the facts and opinions to which the witness is expected to testify. "A summary is defined as a brief account that states the main points of a larger body of information." *Nicastle v. Adams County Sheriff's Office*, No. 10-cv-00816-REB-KMT, 2011 WL 1674954 at *1 (D. Colo. May 3, 2011). Generic disclosures that do not provide specific facts regarding each non-retained

⁴ It is unlikely that Mr. Gluhaich is truly a non-retained expert here, as several of his opinions are not based upon his work as a commercial broker for the Plaintiffs but are instead opinions based upon information received from counsel and formulated solely to support Plaintiffs' litigation position. *See, e.g., Goodman v. Staples, The Office Superstore*, 644 F.3d 817, 826 (9th Cir. 2011); *Downey v. Bob's Disc. Furniture Holdings, Inc.*, 633 F.3d 1, 7 (1st Cir. 2011) (if an expert "draws the opinion from facts supplied by others, in preparation for trial" he is a retained expert under the Federal Rules). Given the scope of Mr. Gluhaich's offered opinions, Plaintiffs should have disclosed a complete report for a retained expert pursuant to NRCP 16.1(a)(2)(B). However, it is undisputed that Plaintiffs' December 2016 disclosure of Mr. Gluhaich failed to meet the requirements for either retained or non-retained experts.

expert's opinion are inadequate. *Langermann v. Prop. & Cas. Ins. Co.*, 2015 WL 4714512 at *4 (D. Nev. 2015). References to broad categories as to what the expert will testify are likewise insufficient. *See Jones v. Colorado Cas. Ins. Co.*, 2015 WL 6123125 at *3 (D. Ariz. 2015).

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

If an attorney fails to reasonably comply with **any** provision in [NRCP 16.1], or if an attorney or a party fails to comply with an **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:

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

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

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

Further, NRCP 37(c)(1) provides that "[a] party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial...any witness or information not so disclosed." NRCP 37(c)(1) also provides that "[i]n addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make a disclosure." *Id.* Thus, this Court may exclude Mr. Gluhaich's expert opinions pursuant to NRCP 37.

Here, Plaintiffs abuses of the entire discovery process warrant dismissal of their entire case, and show that, at a minimum, that this Court should exclude Gluhaich:

- 1 • Plaintiffs never properly disclosed an expert, a fact to which they have stipulated.
2 (February 9, 2017, Stipulation and Order, on file herein).
- 3 • Plaintiffs ignored this Court's Order directing them to serve compliant expert disclosures,
4 and affirming the parties' agreed-upon timeline that was to be triggered by Plaintiffs
5 submitting compliant expert and damages disclosures. (February 9, 2017, Stipulation and
6 Order, on file herein; *see also* May 2, 2016, Stipulation and Order, on file herein). Again,
7 Plaintiffs have never made **any** attempts to comply, including since signing the February
8 9, 2017, Stipulation and Order. (Declaration of B. Irvine, Exhibit 1 to Opposition to
9 Willard Motion, on file herein; Exhibit 1 to Opposition to Wooley Motion, on file
10 herein).
- 11 • Defendants repeatedly and graciously provided Plaintiffs with extensions to comply with
12 their obligations. *See* (February 9, 2017, Stipulation and Order, on file herein); December
13 2016 correspondence, *supra* pp. 3-4.
- 14 • Plaintiffs acknowledged and agreed that, upon their finally providing compliant
15 disclosures, Defendants would obviously need time to respond to those disclosures
16 through additional fact discovery and retention of experts. *See id.*; *supra*. The parties
17 agreed to a timeline, which this Court confirmed. *Id.*
- 18 • Yet, Plaintiffs did absolutely nothing to provide Defendants with any of the court-
19 ordered, required disclosures, including a proper disclosure of a summary of the facts and
20 opinions to which Gluhaich is expected to testify. (Decl. of B. Irvine, Exhibit 1 to
21 Opposition to Willard Motion, on file herein; Exhibit 1 to Opposition to Wooley Motion,
22 on file herein).
- 23 • Then, less than one month before the close of discovery, Plaintiffs sought summary
24 judgment on a brand-new, never-disclosed model of damages, which are based upon the
25 opinions of Gluhaich, an expert who was never properly disclosed (and whose opinions
26 were also based solely upon information that was available to Wooley throughout this
27 entire litigation), and therefore Defendants never had the opportunity to rebut.

21 The history of Plaintiffs' abuses with regard to the non-disclosure are obvious and show
22 that they deliberately refused to comply the NRCP and this Court's Orders in an effort to prevent
23 Defendants from properly preparing their defense.⁵ Accordingly, the exclusion of Mr. Gluhaich
24

25 ⁵ Although it is clear that Plaintiffs' failure to disclose Gluhaich was intentional, the Ninth
26 Circuit has held that exclusion of an expert's testimony for failure to comply with disclosure
27 obligations is an appropriate sanction even in the absence of a showing of bad faith or
28 willfulness. *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

1 is plainly warranted pursuant to NRCP 37(c)(1) or NRCP 16.1(e)(3)(B). Indeed, the Advisory
 2 Committee Notes to FRCP 37(c)(1) has described it as a “self-executing,” “automatic” sanction
 3 to “provide[] a strong inducement for disclosure of material,” and “Courts have upheld the use
 4 of the sanction even when a litigant’s entire cause of action or defense has been precluded.” *Yeti*
 5 *by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1105–06 (9th Cir. 2001).

6 Moreover, Plaintiffs cannot show that there was substantial justification for their failure
 7 to disclose Gluhaich, or that such failure was harmless.⁶ Plaintiffs acknowledged immediately
 8 after their initial purported “disclosure” that the disclosure did not comply with Nevada law. *See*
 9 (December 5, 2016, email (three days after disclosures due) (wherein Plaintiffs’ counsel stated
 10 that “[Defendants] agreed to allow Plaintiffs to provide an amended witness disclosure by mid-
 11 afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr.
 12 Gluhaich will be testifying....”); *see also* (December 23, 2016, email, **Exhibit 5**; December 27,
 13 2016, email, **Exhibit 6**). Plaintiffs expressly agreed that they failed to comply with NRCP
 14 16.1(a)(2)(B) and agreed to the entry of a Court order requiring them to properly disclose an
 15 expert by March 11, 2017. (February 9, 2017, Stipulation and Order, on file herein). Yet,
 16 Plaintiffs did not even attempt to provide a proper disclosure of Gluhaich at any time in 2017.
 17 Then, on October 17, 2017, less than four weeks prior to the close of discovery, Plaintiffs filed
 18 their Motions for Summary Judgment, referring to Gluhaich as the Plaintiffs’ “designated
 19 expert”, without even acknowledging their disclosure noncompliance, much less providing
 20 justification for it. Further, even a cursory review of Gluhaich’s Declaration demonstrates that
 21 the purported facts and opinions that he provided could have been timely disclosed in December
 22 of 2016, further demonstrating that there was no justification other than willful noncompliance.
 23 *See generally* (Gluhaich Declarations (relying exclusively on events that occurred in 2015 or
 24 earlier). Plaintiffs’ Summary Judgment Motions and Gluhaich’s supporting affidavits were filed
 25 at a stage in the case where it was too late for Defendants to properly explore or rebut Gluhaich’s

26
 27 ⁶ The burden is on the party facing sanctions under Rule 37 to prove harmlessness. *Torres v. City*
 28 *of Los Angeles*, 548 F.3d 1197, 1213 (9th Cir. 2008)

1 conclusions and bases therefor, a fact that Plaintiffs acknowledged in February with
2 approximately four weeks left in discovery. (February 9, 2017, Stipulation and Order, on file
3 herein). There is no justification for Plaintiffs continued refusal to comply with the NRCP or this
4 Court's Orders.

5 Also, Plaintiffs' conduct was not harmless to Defendants and instead was highly
6 prejudicial and requires the exclusion of Mr. Gluhaich. Defendants have simply been unable to
7 evaluate what opinions Mr. Gluhaich might offer, to depose him as an expert or to retain their
8 own rebuttal experts and submit rebuttal expert reports. Instead, Defendants were blindsided by
9 Plaintiffs Summary Judgment Motions and Mr. Gluhaich's never-before-seen opinions proffered
10 in support of those Motions. And, Defendants did everything in their power to prevent this
11 precise scenario from occurring through the February 9, 2017 Stipulation and Order, which set
12 forth a specific schedule for expert disclosures and discovery. As Plaintiffs chose to completely
13 ignore that schedule, there is clear harm to both Defendants and this Court. *See, e.g.,*
14 *Langermann*, 2015 WL 4724512, at *5 (failing "to comply with a scheduling order is not
15 harmless, and re-opening discovery after the expiration of the deadlines only encourages cavalier
16 treatment of deadlines"); *Wong v. Regents of Univ. of California*, 410 F.3d 1052, 1062 (9th Cir.
17 2005) ("If Wong had been permitted to disregard the deadline for identifying expert witnesses,
18 the rest of the schedule laid out by the court months in advance, and understood by the parties,
19 would have to have been altered as well. Disruption to the schedule of the court and other parties
20 in that manner is not harmless. Courts set such schedules to permit the court and the parties to
21 deal with cases in a thorough and orderly manner, and they must be allowed to enforce them,
22 unless there are good reasons not to. The district court did not abuse its discretion here in
23 refusing to permit Wong to supplement his disclosure with the additional expert witnesses and in
24 barring testimony by and relying upon those witnesses.").

25 ***B. Motion in Limine***

26 A motion in limine is the proper procedural mechanism to obtain a pretrial evidentiary
27 ruling in a particular area. *United States v. Heller*, 551 F.3d 1108, 1111 (9th Cir. 2009); *see also*
28

1 *State ex rel. Dep't of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d
 2 1095, 1098 (1976). This Court has the inherent authority to consider and decide motions in
 3 limine as part of its authority to manage trials. *See Luce v. United States*, 469 U.S. 38, 41, 105 S.
 4 Ct. 460, 463, 83 L. Ed. 2d 443 (1984); *Beehn v. Eppard*, 321 Ill. App. 3d 677, 680, 747 N.E.2d
 5 1010 (Ill. App. Ct. 1st Dist. 2001). In ruling on a motion in limine, the district court has broad
 6 discretion to determine the admissibility of evidence. *See Nevada Aggregates & Asphalt Co.*, 92
 7 Nev. at 376, 551 P.2d at 1098; *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005) (“A
 8 district court’s ruling on a motion in limine is reviewed for an abuse of discretion.”).

9 The Court should preclude Mr. Gluhaich from testifying as an expert witness in this
 10 case. The admissibility of expert testimony is governed by NRS 50.275, which provides as
 11 follows: “If scientific, technical or other specialized knowledge will assist the trier of fact to
 12 understand the evidence or to determine a fact in issue, a witness qualified as an expert by
 13 special knowledge, skill, experience, training or education may testify to matters within the
 14 scope of such knowledge.” Thus, to testify as an expert witness under NRS 50.275, the witness
 15 must satisfy the following three requirements: (1) the person must be qualified in an area of
 16 “scientific, technical or other specialized knowledge” (the qualification requirement); (2) the
 17 person’s specialized knowledge must “assist the trier of fact to understand the evidence or to
 18 determine a fact in issue,” (the assistance requirement); and (3) the person’s testimony must be
 19 limited “to matters within the scope of [his or her specialized] knowledge” (the limited scope
 20 requirement). *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

21 In this case, Mr. Gluhaich’s opinions are inadmissible because he lacks the specialized
 22 knowledge necessary to give his opinions, and his opinions are not the product of a reliable
 23 methodology. Indeed, Mr. Gluhaich merely adopts the “opinions” contained in several
 24 inadmissible hearsay appraisal reports. It is settled that an expert cannot merely parrot the
 25 opinions and conclusions of others, which then shields the person actually rendering the opinion
 26 from cross examination. *See Cholakyan v. Mercedes-Benz, USA, LLC*, 281 F.R.D. 534, 544
 27 (C.D. Cal. 2012).

1 **1. Mr. Gluhaich is Not Qualified to Opine on Fair Market Value**

2 “The threshold test for the admissibility of testimony by a qualified expert is whether the
3 expert’s specialized knowledge will assist the trier of fact to understand the evidence or
4 determine a fact in issue.” *Perez v. State*, 129 Nev. Adv. Op. 90, 313 P.3d 862, 866 (2013)
5 (citing *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987)). The Nevada Supreme
6 Court has identified several nonexclusive factors that are useful in determining whether a
7 witness “‘is qualified in an area of scientific, technical, or other specialized knowledge’ and
8 therefore may testify as an expert.” *Id.* at 866-67 (quoting *Hallmark v. Eldridge*, 124 Nev. 492,
9 189, P.3d 646 (2008)). “Those factors include ‘(1) formal schooling and academic degrees, (2)
10 licensure, (3) employment experience, and (4) practical experience and specialized training.’”
11 *Id.* (quoting *Hallmark*, 124 Nev. at 499, 189 P.3d at 650-51). “The question whether a particular
12 witness is qualified as an expert and should be permitted to give opinion evidence is to be
13 determined by the trial court in its discretion.” *Hardison v. State*, 84 Nev. 125, 128, 437 P.2d
14 868, 870 (1968); *Higgs v. State*, 125 Nev. 1043, 17, 222 P.3d 648, 658 (2010).

15 In this case, Mr. Gluhaich does not appear to have the requisite specialized knowledge.
16 At a minimum, Plaintiffs have failed to present evidence to support Mr. Gluhaich’s alleged
17 expertise. In his Affidavit, Mr. Gluhaich appears to contend he is qualified to render an opinion
18 on value based solely on the fact that he is a real estate broker licensed by the State of Nevada
19 since 2001. *See* (Aff. of D. Gluhaich re Wooley ¶ 1, on file herein.) However, Mr. Gluhaich
20 provides no information regarding his experience or training in valuing real estate generally or
21 his specific experience with valuing similar properties in the vicinity of the properties at issue in
22 this case.

23 Mr. Gluhaich’s status as a real estate broker, in and of itself, is insufficient to qualify
24 him to provide an opinion regarding fair value. *See In re Donoway*, 139 B.R. 156, 158 (Bankr.
25 D. Md. 1992); *Stickell v. City of Baltimore*, 252 Md. 464, 475, 250 A.2d 541, 547 (1969) (“As
26 we have indicated, he is probably an extremely competent real estate broker, but we do not
27 believe that, as such, he is automatically qualified to testify as an expert appraiser.”).
28

1 Instead, courts permitting real estate brokers to provide an opinion on fair value have
2 typically required the proffered expert to have some training in real estate valuation and
3 significant experience as a broker in the specific area where the property at issue is located. *See*
4 *Dwire v. Sullivan*, 138 N.H. 428, 432, 642 A.2d 1359, 1361 (1994) (stating that the real estate
5 broker took several courses in real estate marketing valuation.); *Cincinnati v. Banks*, 143 Ohio
6 App. 3d 272, 282, 757 N.E.2d 1205, 1213 (2001) (testimony admissible where real estate
7 brokers had “specialized knowledge” concerning the market for downtown real estate);
8 *Arkansas State Highway Comm’n v. Sargent*, 241 Ark. 783, 410 S.W.2d 381 (1967) (finding
9 that a real estate broker was qualified where he had made appraisals in the past and had taken a
10 course in appraisal work).

11 In this case, Plaintiffs have provided no evidence that Mr. Gluhaich has any experience
12 or training with respect to valuing real estate. Indeed, Mr. Gluhaich’s Affidavit does not indicate
13 what, if any, experience or training he has in this area. (Aff. of D. Gluhaich re Wooley, on file
14 herein.) Similarly, in connection with the deficient disclosure of Mr. Gluhaich as a non-retained
15 expert, Plaintiff’s provided Mr. Gluhaich’s resume. (Plaintiffs’ Initial Disclosure of Expert
16 Witnesses, **Exhibit 2**.) However, Mr. Gluhaich’s resume contains no indication that Mr.
17 Gluhaich has any relevant knowledge or experience. *See id.*

18 Moreover, given Plaintiffs’ failure to properly disclose Mr. Gluhaich as an expert,
19 Defendants have had no ability to depose Mr. Gluhaich as an expert to determine whether or not
20 he is qualified to provide an opinion on valuation and to explore his proffered opinions.
21 However, prior to the time Mr. Gluhaich was disclosed as a potential expert, Defendants
22 deposed Mr. Gluhaich as a fact witness. (Dep. of D. Gluhaich re Wooley, **Exhibit 8**.) The
23 testimony given during this fact deposition raises serious doubts about Mr. Gluhaich’s
24 qualifications to testify as an expert in this case.

25 Mr. Gluhaich has worked on twelve to thirteen deals involving gas stations in his career.
26 *Id.* at 20:15-23. But, he has only worked on four to five since 2010. *Id.* at 47:6-13. Similarly,
27 Mr. Gluhaich does not engaged in a lot of lease transactions. *Id.* at 18: 2219:6. Given Mr.

1 Gluhaich's minimal experience with properties similar to those at issue in this case and his lack
2 of experience with leasing, he is not qualified to provide an expert opinion on valuation of such
3 properties or the fair rental value of a property.

4 Furthermore, Mr. Gluhaich does not appear to have much experience with real estate in
5 Northern Nevada generally, or in Carson City and Reno specifically. Since approximately 2005,
6 Mr. Gluhaich divided his work evenly between Nevada and California. *Id.* at 19:18-21 ("I would
7 say close to 50 percent"). And, with respect to his work in Nevada, Mr. Gluhaich spends about
8 sixty percent of his time with Las Vegas properties and the remaining forty percent in Northern
9 Nevada. *Id.* at 19:22-20:2. Thus, Mr. Gluhaich only works in Northern Nevada about twenty
10 percent of the time (50% x 40/100). And, Mr. Gluhaich has never lived in Northern Nevada. *Id.*
11 at 46:9-10.

12 Within Northern Nevada, Mr. Gluhaich did not specify the amount of time he spends
13 working in Reno, Sparks, Carson City, Fernley, Winnemucca, Elko or any other Northern
14 Nevada city, which all have very different real estate markets. Indeed, at the time of his
15 deposition on August 25, 2015, Mr. Gluhaich only had one active listing in Reno and one active
16 listing in Carson City. *Id.* at 46:11-18. Given Mr. Gluhaich's minimal time spent working in
17 Northern Nevada as a whole, and his lack of active listings in Reno and Carson City, he does
18 not appear to have sufficient relevant experience or knowledge to qualify him to provide expert
19 testimony in this case.

20 Indeed, if Mr. Gluhaich had the requisite experience and qualifications to value real
21 estate, he would not have needed to rely on expert appraisals as the broker of record for
22 Plaintiffs in this case. Instead, he would have just provided such valuation services himself.
23 However, Mr. Gluhaich admits that the Wooley Plaintiffs commissioned an appraisal of the
24 Highway 50 property in 2006 while Mr. Gluhaich was the broker of record. (Aff. of D. Gluhaich
25 re Wooley ¶ 5, on file herein.) Similarly, Mr. Gluhaich admits that the Willard Plaintiffs
26 commissioned an appraisal of the Virginia Property in 2008 while Mr. Gluhaich was the broker
27 of record. (Aff. of D. Gluhaich re Willard ¶¶ 4- 5, on file herein.) Thus, rather than having the
28

required expertise to provide an opinion on valuation, it appears that Mr. Gluhaich is acting merely as a conduit to present the inadmissible hearsay opinions of the individuals who conducted the underlying appraisals. This is impermissible and his testimony must be excluded from evidence.

2. Mr. Gluhaich Does Not Satisfy the Assistance Requirement Because His Proffered Testimony is Based Entirely on the Opinions of Others

The “assistance” requirement dictates that the expert have “specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue.” NRS 50.275; *Perez v. State*, 129 Nev. Adv. Op. 90, 313 P.3d 862, 867 (2013). “The ‘assistance’ requirement has two components: whether the testimony is (1) relevant and (2) the product of reliable methodology. *Perez*, 313 P.3d at 867 (citing *Hallmark*, 124 Nev. at 500, 189 P.3d at 651). The Nevada Supreme Court has articulated the following five factors to use in evaluating whether an expert’s opinion is the product of reliable methodology:

whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization.

Perez, 313 P.3d at 869 (citing *Hallmark*, 124 Nev. at 500–01, 189 P.3d at 651–52) (footnotes omitted)). “These ‘factors may be afforded varying weights and may not apply equally in every case.’” *Id.* (quoting *Higgs v. State*, 126 Nev. —, —, 222 P.3d 648, 660 (2010)).

In this case, Mr. Gluhaich’s “opinion” is not based on a reliable methodology. Instead, Plaintiffs appear to be using Mr. Gluhaich to circumvent the rules of evidence, which preclude the admission of the appraisals as hearsay.

In general, hearsay is an out-of-court “statement offered in evidence to prove the truth of the matter asserted.” NRS 51.035. A “statement” can be either oral or written. NRS 51.045. Hearsay is inadmissible unless the statement falls within an applicable hearsay exception. NRS 51.065.

1 The appraisal reports are inadmissible hearsay because they are written out-of-court
 2 statements offered for the truth of the matter asserted, *i.e.* the alleged value of the properties at
 3 issue. Indeed, it is settled that expert reports, such as appraisal reports, are inadmissible. *State,*
 4 *Dep't of Roads v. Whitlock*, 262 Neb. 615, 618, 634 N.W.2d 480, 483 (2001) (“An expert’s
 5 written appraisal report is an out-of-court statement offered for the truth of the matter
 6 asserted.”); *see also Engebretsen v. Fairchild Aircraft Corp.*, 21 F.3d 721, 728 (6th Cir. 1994);
 7 *Wright v. Premier Elkhorn Coal Co.*, 16 S.W.3d 570, 572 (Ky. Ct. App. 1999); *Wilkerson v.*
 8 *Allied Van Lines, Inc.*, 360 Pa. Super. 523, 536, 521 A.2d 25, 32 (1987).

9 Due to the hearsay nature of expert reports, “one expert may not give the opinion of
 10 another expert who does not testify.” *Tokio Marine & Fire Ins. Co. v. Norfolk & W. Ry. Co.*,
 11 172 F.3d 44 (4th Cir. 1999) (citing *Weaver v. Phoenix Home Life Mut. Ins. Co.*, 990 F.2d 154,
 12 159 (4th Cir. 1993)); *Cholakyan v. Mercedes-Benz, USA, LLC*, 281 F.R.D. 534, 544 (C.D. Cal.
 13 2012) (“An expert’s sole or primary reliance on the opinions of other experts raises serious
 14 reliability questions.). “The hearsay quality of a report may not be cured merely by having
 15 another expert testify that he agrees with its conclusions.” *See id.* Indeed, an expert “may not
 16 serve as a mere conduit for the admission of otherwise inadmissible hearsay.” *I-CA Enterprises,*
 17 *Inc. v. Palram Americas, Inc.*, 235 Cal. App. 4th 257, 286, 185 Cal. Rptr. 3d 24, 47 (2015)
 18 (citations omitted); *Estate of Cape v. United States*, 2013 WL 4522933, at *2 (E.D. Wis. Aug.
 19 27, 2013).

20 “By contrast, an expert can appropriately rely on the opinions of others if other evidence
 21 supports his opinion and the record demonstrates that the expert conducted an independent
 22 evaluation of that evidence.” *Cholakyan v. Mercedes-Benz, USA, LLC*, 281 F.R.D. 534, 544
 23 (C.D. Cal. 2012); *TK-7 Corp. v. Estate of Barbouti*, 993 F.2d 722, 732 (10th Cir. 1993) (“Dr.
 24 Boswell’s lack of familiarity with the methods and the reasons underlying Werber’s projections
 25 virtually precluded any assessment of the validity of the projections through cross-examination
 26 of Dr. Boswell.”). But, an expert cannot “certify the truth of a prior expert’s opinion” or merely
 27 vouch for the opinions of another expert. *In re Lake States Commodities, Inc.*, 272 B.R. 233,
 28

242 (Bankr. N.D. Ill. 2002); *Estate of Cape*, 2013 WL 4522933, at *2 (citing *Loeffel Steel Prods., Inc. v. Delta Brands, Inc.*, 387 F.Supp.2d 794, 808 (N.D. Ill. 2005)).

In this case, Mr. Gluhaich has merely adopted the opinions contained in the various appraisal reports and has conducted no independent evaluation or analysis. First, with respect to the Highway 50 property, Mr. Gluhaich offers the following opinions:

- “In my opinion, the 2006 Appraisal presents a thorough, detailed, professional, and highly compelling analysis of the market value of the Highway 50 Property as leased. I believe that the conclusion reached therein that the fair market value of the Highway 50 Property as leased was \$3,430,000.00 as of August 8, 2006 is well supported both by the facts and analyses included in the 2006 Appraisal and by my personal knowledge of the commercial real estate market in Northern Nevada. Based on my knowledge of the market and my experience serving as broker for the Wooley Plaintiffs regarding the Highway 50 Property, my professional opinion is that the fair market value of the Highway 50 Property immediately prior to BHI’s breach of the Highway 50 Lease on March 1, 2013 was \$3,430,000.00.” (Aff. of D. Gluhaich re Wooley ¶ 6, on file herein.)
- “Based on my review of the 2015 Appraisal, my experience in marketing the Highway 50 Property following the breach of the Highway 50 Lease by BHI, and my knowledge of the commercial real estate market in Northern Nevada, I believe the ‘as is’ fair market value figure of \$765,000.00 to be accurate and well supported. It is my professional opinion that the ‘as is’ fair market value of the Highway 50 Property immediately following the breach of the Highway 50 Lease by BHI on March 1, 2013 was \$765,000.00.” *Id.* ¶ 10.

Second, with respect to the Virginia Property, Mr. Gluhaich offers the following opinions:

- “In my opinion, the 2008 Appraisal presents a thorough, detailed, professional, and highly compelling analysis of the market value of the Highway 50 Property as leased. I believe that CBRE’s conclusion that the market value of the Virginia Property as leased was \$19,700,000.00 as of October 1, 2007 is well supported both by the facts and analyses included in the 2008 Appraisal and by my personal knowledge of the commercial real estate market in Northern Nevada. Based on my knowledge of the market and my experience in listing the Virginia Property, my professional opinion is that the fair market value of the Virginia Property immediately prior to BHI’s breach of the Virginia Lease on June 1, 2013 was \$19,700,000.00.” (Aff. of D. Gluhaich re Willard ¶ 9, on file herein.)
- “The 2014 Appraisal used three approaches in determining market value: a cost approach, an income approach, and a sales comparison approach. It concluded that the fair market value of the Virginia Property ‘as is’ was \$4,270,000. [Ex.

31.5] Based on my review of the 2014 Appraisal, my experience in marketing the Virginia Property following the breach of the Virginia Lease by BHI, and my knowledge of the commercial real estate market in Northern Nevada, I believe the ‘as is’ fair market value figure of \$4,270,000.00 to be accurate and well supported.” *Id.* ¶ 16.

- “Based on my personal knowledge of the offers received from parties interested in leasing portions of the Virginia Property prior to the short sale, my review of the 2014 Appraisal, and my knowledge of the commercial real estate market in Northern Nevada, my professional opinion is that the fair rental value figure of \$38,208.00 per month as determined in the 2014 Appraisal is accurate and well supported.” *Id.* ¶ 18.

In each opinion, Mr. Gluhaich merely refers to the expert appraisal and then states that he believes the appraisal is well supported based on his review of the report and his “experience” or “knowledge.” Mr. Gluhaich provides no independent evaluation or examination and does not even attempt to corroborate the appraisals. He does not identify any facts upon which he relied, any methodology he applied to such facts, or any other basis as to how he reached his “opinions.” He also fails to describe what experience or knowledge allows him to calculate a reliable estimate of fair market value. In other words, Mr. Gluhaich does nothing more than impermissibly vouch for the correctness of the appraisals. *See Estate of Cape*, 2013 WL 4522933, at *2. Indeed, by seeking to have Mr. Gluhaich merely certify the appraisals as correct, Plaintiffs are improperly attempting to use Mr. Gluhaich as a mere conduit to admit the otherwise inadmissible appraisal reports. *See I-CA Enterprises, Inc. v. Palram Americas, Inc.*, 235 Cal. App. 4th at 286, 185 Cal. Rptr. 3d at 47 (2015). Such improper expert opinions are prejudicial as they prevents Defendants from cross-examining the expert that actually rendered the opinions set forth in the appraisals. Because Mr. Gluhaich is merely parroting the opinions of others, his testimony is inadmissible and it must be excluded.

Mr. Gluhaich’s testimony is also inadmissible for a related reason. Mr. Gluhaich was unable to provide any explanation as to how he formed his opinions. (Aff. of D. Gluhaich re Wooley, on file herein; Aff. of D. Gluhaich re Willard, on file herein.) A trial court may exclude a witness from testifying regarding the fair market value of property when he is unable to explain his results in terms of the normal methods of appraisal. *See Stickell*, 252 Md. At 474,

1 250 A.2d at 547. Indeed, an expert opinion that does nothing to substantiate the opinion is
2 worthless, and therefor inadmissible. *Minasian v. Standard Chartered Bank, PLC*, 109 F.3d
3 1212, 1216 (7th Cir. 1997). Here, because Mr. Gluhaich has not even attempted to explain how
4 he reached his opinions, his opinions are worthless and inadmissible as a matter of law.

5 **IV. CONCLUSION**

6 Based on the foregoing, Mr. Gluhaich's testimony regarding the valuation of the
7 properties at issue is inadmissible. Defendants respectfully request that the Court enter an Order
8 precluding Mr. Gluhaich from testifying as to the opinions at issue in this Motion.

9 **AFFIRMATION**

10 **Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document does not contain the
12 social security number of any person.
13

14 DATED this 14th day of November, 2017.

15 DICKINSON WRIGHT

16
17 /s/ Brian Irvine
18 DICKINSON WRIGHT
19 JOHN P. DESMOND
Nevada Bar No. 5618
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24 *Attorney for Defendants Berry Hinckley*
25 *Industries, and Jerry Herbst*
26
27
28

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 MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH** 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 14th day of November, 2017

/s/ Mina Reel
An employee of DICKINSON WRIGHT

EXHIBIT TABLE

Exhibit	Description	Pages⁷
1	Plaintiff Initial Disclosures	7
2	Plaintiffs' Initial Disclosure of Expert Witnesses	8
3	December 5, 2016, email	6
4	December 9, 2016, email	1
5	December 23, 2016, email	3
6	December 27, 2016, email	4
7	February 3, 2017, letter	27
8	Deposition Excerpts of D. Gluhaich	8
9	Declaration of Brian Irvine	3

⁷ Exhibit Page counts are exclusive of exhibit slip sheets.

EXHIBIT 1

EXHIBIT 1

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 7 Fax: 775/323-4082

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 9 Admitted *Pro Hac Vice*
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 12 3506 La Castellet Court
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17 *Attorneys for Plaintiffs*

18 *LARRY J. WILLARD, OVERLAND*
 19 *DEVELOPMENT CORPORATION,*
 20 *EDWARD C. WOOLEY, and JUDITH A. WOOLEY*

21 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
 22 **IN AND FOR THE COUNTY OF WASHOE**

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

Plaintiffs,

v.

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

Defendants.

Case No. CV14-01712

Dept. No. 6

PLAINTIFFS' INITIAL 16.1
PRODUCTION OF DOCUMENTS AND
LIST OF WITNESSES

1 COME NOW Plaintiffs, by and through undersigned counsel, and, pursuant to NRCP
2 16.1, herewith produce the following documents and list of witnesses:

3
4 **A. DOCUMENTS**

5 1. Virginia Avenue Lease Agreement dated December 2, 2005, Bates Stamp Nos.
6 LJW000001-LJW000035.

7 2. Virginia Avenue Lease Extension Option dated January 18, 2006, Bates Stamp
8 Nos. LJW000036-LJW000076.

9 3. Virginia Avenue Deed of Trust dated January 25, 2006, Bates Stamp
10 LJW000077-LJW000081.

11 4. Virginia Avenue Purchase Deed of Trust dated March 28, 2006, Bates Stamp
12 Nos. LJW000082-LJW000106.

13 5. Herbst Proposal dated February 17, 2007, Bates Stamp Nos. LJW000107-
14 LJW000121.

15 6. Virginia Avenue Amendment to Lease dated March 9, 2007, Bates Stamp Nos.
16 LJW000122-LJW000126.

17 7. Herbst Guaranty for Virginia Avenue Property dated March 9, 2007, Bates
18 Stamp Nos. LJW000127-LJW000130.

19 8. Letter from Sam Chuck to Yalamanchili dated March 19, 2007, Bates Stamp
20 Nos. LJW000131-LJW000179.

21 9. Deed of Trust dated June 29, 2007, Bates Stamp Nos. LJW000180-LJW000211.

22 10. Complaint in *Willard v. Morabito*, Bates Stamp Nos. LJW000212-LJW000225.

23 11. Deed of Trust dated March 28, 2008, Bates Stamp Nos. LJW000226-
24 LJW000250.

25 12. BHI Financials for FY2012, Bates Stamp Nos. LJW000251-LJW000253.

26 13. Business Partners March 2013 Statement, Bates Stamp No. LJW000254.

27 14. Letter from Gordon to Goldblatt dated March 18, 2013, Bates Stamp Nos.
28 LJW000255-LJW000256.

- 1 15. Letter from Gordon to Goldblatt dated March 28, 2013, Bates Stamp Nos.
2 LJW000257-LJW000258.
- 3 16. Letter from Gordon to Goldblatt dated April 12, 2013, Bates Stamp Nos.
4 LJW000259-LJW000260.
- 5 17. Interim Operating and Management Agreement, Bates Stamp Nos. LJW000261-
6 LJW000264.
- 7 18. Willard Notice of Chapter 11 Bankruptcy, Bates Stamp Nos. LJW000265-
8 LJW000267.
- 9 19. Declaration of REO Manager, Business Partners, Bates Stamp Nos.
10 LJW000268-LJW000278.
- 11 20. Motion by NCUAB, Bates Stamp Nos. LJW000279-LJW000284.
- 12 21. Declaration of Larry J. Willard to Dismiss Bankruptcy, Bates Stamp Nos.
13 LJW000285-LJW000288.
- 14 22. Letter from Desmond to Goldblatt, Bates Stamp Nos. LJW000289-LJW000293.
- 15 23. Notice of Intent to Foreclose, Bates Stamp Nos. LJW000294-LJW000296.
- 16 24. Real Estate Report for 7693 S. Virginia Avenue, Bates Stamp Nos. LJW000297-
17 LJW000331.
- 18 25. Purchase and Sale Agreement, Bates Stamp Nos. LJW000332-LJW000337.
- 19 26. Closing Statement, Bates Stamp No. LJW000338.
- 20 27. Nevada Energy Invoices Facimile, Bates Stamp Nos. LJW000339-LJW000352.
- 21 28. Nevada Energy Screenshots of Usage for BHI, Bates Stamp Nos. LJW000353-
22 LJW000355.
- 23 29. Letter from Desmond to Moquin dated July 16, 2004, Bates Stamp Nos.
24 LJW000356-LJW000389.
- 25 30. Baring Blvd. Purchase Agreement, Bates Stamp Nos. ECW000001-
26 ECW000022.
- 27 31. Baring Blvd. Lease Agreement, Bates Stamp Nos. ECW000023-ECW000057.
- 28 32. Baring Blvd. Note, Bates Stamp Nos. ECW000058-ECW000092.

- 1 32. Baring Blvd. Amendment to Lease, Bates Stamp Nos. ECW000093-
2 ECW000099.
- 3 33. Herbst Guaranty for Baring Blvd. Property, Bates Stamp Nos. ECW000100-
4 ECW000103.
- 5 34. Assignment of Baring Blvd. Lease to Jackson Foods, Bates Stamp Nos.
6 ECW000104-ECW110.
- 7 35. Letter from Jackson Foods dated April 2, 2013, Bates Stamp Nos. ECW000111-
8 ECW000112.
- 9 36. Letter from Jackson Foods dated May 20, 2013, Bates Stamp No. ECW000113.
- 10 37. Settlement Statement on Baring Blvd. Property, Bates Stamp Nos. ECW000114-
11 ECW000115.
- 12 38. Highway 50 Purchase Agreement, Bates Stamp Nos. ECW002001-ECW002013.
- 13 39. Highway 50 Lease Agreement, Bates Stamp Nos. ECW002014-ECW002056.
- 14 40. Highway 50 Amendment to Lease, Bates Stamp Nos. ECW002057-
15 ECW002063.
- 16 41. Herbst Guaranty for Highway 50 Property, Bates Stamp Nos. ECW002064-
17 ECW002067.
- 18 42. Highway 50 Memorandum of Lease, Bates Stamp Nos. ECW002068-
19 ECW002070.
- 20 43. Letter from Sam Chuck dated February 29, 2008, Bates Stamp nos.
21 ECW002071-ECW002075.
- 22 44. Highway 50 Second Amendment to Lease, Bates Stamp Nos. ECW002076-
23 ECW002077.
- 24 45. BHI Sublease to Little Caesars, Bates Stamp Nos. ECW002078-ECW002096.
- 25 46. Letter from McDade to Gluhaich dated October 17, 2012, Bates Stamp Nos.
26 ECW002097-ECW002101.
- 27 47. Letter from Desmond to Goldblatt dated June 3, 2013, Bates Stamp No.
28 ECW002102.

1 48. Letter from Desmond to Zlotoff, Bates Stamp Nos. ECW2103-ECW002104.

2 49. E-mail from Baron to Wooley dated January 21, 2014, Bates Stamp No.
3 ECW002105.

4 50. E-mail from Baron to Wooley dated April 17, 2014, Bates Stamp Nos.
5 ECW002106-ECW002107.

6 **B. LIST OF WITNESSES**

7
8 1. Plaintiff Larry J. Willard, c/o David C. O'Mara, Esq., The O'Mara Law Firm,
9 311 E. Liberty Street, Reno, NV 89501; tel. 775.323.1321.

10 2. Plaintiff Edward C. Wooley, c/o David C. O'Mara, Esq., The O'Mara Law
11 Firm, 311 E. Liberty Street, Reno, NV 89501; tel. 775.323.1321.

12 3. Plaintiff Judith A. Wooley, c/o David C. O'Mara, Esq., The O'Mara Law Firm,
13 311 E. Liberty Street, Reno, NV 89501; tel. 775.323.1321.

14 4. Defendant Jerry Herbst, c/o John P. Desmond, Esq., Gordon Silver, 100 W.
15 Liberty Street, Suite 940, Reno, NV 89501; tel. 775.343.7505.

16 5. Timothy P. Herbst, Berry-Hinckley Industries, 425 Maestro Drive, Suite 200,
17 Reno, NV 89511; tel. 775.689.1222.

18 6. Troy D. Herbst, Berry-Hinckley Industries, 425 Maestro Drive, Suite 200, Reno,
19 NV 89511; tel. 775.689.1222.

20 7. Daniel Gluhaich, 175 E. Main Ave., Suite 130, Morgan Hill, CA 95037; tel.
21 408.201.0120

22 8. Paul A. Morabito, 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA
23 90069; telephone number unknown.

24 9. Terrilyn Baron, MUFJ Union Bank, N.A., 30343 Canwood Street, Suite 100,
25 Agoura Hills, CA 91301; tel. 818.865.3236.

26 10. Stephen J. Morse, Retail Petroleum Consultants, Inc., 4565 Costa De Oro,
27 Oxnard, CA 93035; tel. 805.815.4350.

28 11. Mike Burns, Business Partners, LLC, 20131 Prairie Street, 2nd Floor,

1 Chatsworth, CA 91311; tel. 818.836.6323.

2 12. John D. Jackson, Jackson Food Stores, Inc., 3450 E. Commercial Court,
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4 13. Gerald Gordon, Esq., Gordon Silver, 3960 Howard Hughes Parkway, Ninth
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6 14. Stanley A. Zlotoff, Esq., Bluer & Zlotoff Law Offices, 300 S. 1st Street # 215,
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8 15. L. Steven Goldblatt, Esq., 22 Martin Street, Gilroy, CA 95020; tel.
9 408.848.4396.

10 16. Samuel A. Chuck, Esq., Rossi, Hammerslough, Reischl & Chuck, 1960 The
11 Alameda, Suite 200, San Jose, CA 95126; tel. 408.261.4252.

12 17. Sujata Yalamanchili, Esq., Hodgson Russ LLP, One M&T Plaza, Suite 2000,
13 Buffalo, NY 14203; tel. 716.848.1657.

14 Plaintiff hereby reserves the right to supplement this 16.1 production and list of
15 witnesses as additional information becomes available through discovery.

16 **AFFIRMATION**

17 (Pursuant to NRS 239B.030)

18 The undersigned does hereby affirm that the preceding document filed in the above
19 referenced matter does not contain the Social Security Number of any person.

20 THE O'MARA LAW FIRM, P.C.

21 DATED: December 12, 2014

22 
23 DAVID C. O'MARA, ESQ.

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by personal delivery to the addressed as follows:

John Desmond, Esq.
100 W. Liberty St., Ste. 940
Reno, NV 89501
Telephone: 775.343.7500
Fax: 775.786.0131
DATED: December 12, 2014

Daniella

EXHIBIT 2

EXHIBIT 2

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

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

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

Plaintiffs,

v.

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

Defendants.

Case No. CV14-01712

Dept. 6

**PLAINTIFFS' INITIAL DISCLOSURE
 OF EXPERT WITNESSES**

Pursuant to the Court's Scheduling Order and NRCP 16.1(a)(2), Plaintiffs Larry J. Willard and Overland Development Corporation ("the Willard Plaintiffs") and Edward C. Wooley, and Judith A. Wooley ("the Wooley Plaintiffs") (collectively, "Plaintiffs") hereby disclose their list of expert witnesses they intent to call at trial in the instant matter. None of the witnesses listed below have been retained.

I. Daniel Gluhaich

Address:

Daniel Gluhaich
175 E. Main Avenue, Suite 130
Morgan Hill, CA 95037
(408) 201-0120

Mr. Gluhaich has already been deposed by Defendants as a fact witness for Plaintiffs. Mr. Gluhaich's curriculum vitae is attached hereto, and includes his expert witness fee schedule.

Mr. Gluhaich will be called by Plaintiffs as an expert witness to testify regarding the following issues:

1. The real estate market conditions and fair market value, and the recognized industry practice for assessing same, of the Highway 50 Property at the time it was purchased by the Wooley Plaintiffs, at the point in time just prior to Defendants' breach of the Highway 50 Lease, and subsequent to Defendants' breach of the Highway 50 Lease.

2. The real estate market conditions and fair market value, and the recognized industry practice for assessing same, of the Baring Property at the time it was purchased by the Wooley Plaintiffs, at the time it was sold by the Wooley Plaintiffs.

3. The real estate market conditions and fair rental value, and the recognized industry practice for assessing same, of the Highway 50 Property at the point in time just prior to Defendants' breach of the Highway 50 Lease and subsequent to Defendants' breach of the Highway 50 Lease.

4. The real estate market conditions and fair market value, and the recognized industry practice for assessing same, of the Virginia Property at the time it was purchased by the Willard Plaintiffs, at the point in time just prior to Defendants' breach of the Willard Lease, and

subsequent to Defendants' breach of the Willard Lease.

5. The effect on rental value and market value of a commercial property when an anchor tenant terminates the lease and leaves the property "dark" and/or in a state of dishevelment/disrepair, in general and with respect to the properties at issue in this case.

6. The standard real estate practices regarding short sales of commercial properties, in general and with respect to the Virginia Property.

7. The benefits and regulations regarding 1031 Exchanges, in general and with respect to the properties at issue in this case, including the implications of terminating same.

8. The characteristics of a "Triple Net Lease" and the benefits of same to owners of commercial properties, in general and with respect to the properties at issue in this case.

9. The standard of practice, procedures and techniques normally used in the marketing of commercial properties, and the factors affecting the price at which commercial properties should be offered for sale or for rent, in general and with respect to the properties at issue in this case.

10. Interpretation and analysis of the validity of written appraisals of the properties at issue in this matter, as well as the standard practices and techniques used in appraisals.

11. The effect of the cross-collateralization of mortgage loans secured by real property, in general and with respect to the Baring and Highway 50 Properties.

12. The significance, in terms of property value and marketability, of personal guaranties that back long-term commercial leases, in general and with respect to the properties at issue in this case.

Plaintiffs expressly reserve the right to elicit expert testimony from the employees and representatives of other parties and from experts disclosed by other parties to this action.

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Respectfully submitted,

LAW OFFICES OF BRIAN P. MOQUIN

DATED: December 2, 2016

By: 

BRIAN P. MOQUIN

Admitted *Pro Hac Vice*

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Attorneys for Plaintiffs

Daniel Gluhaich

175 E. Main Avenue, Suite 130, Morgan Hill, CA 95037
(408) 201-0120 / (408) 461-0262 cell / dgluhaich@interorealestate.com

I am a real estate professional, licensed as an agent in California since 1987 and as a broker in Nevada since 2001. I specialize in transactions involving commercial and industrial properties. I also have extensive experience in real estate development and have served as an expert witness in litigation involving commercial real estate.

EDUCATION

1979	Diploma, Gilroy High School, Gilroy, CA
1981	Associate of Science, Crop Science, Hartnell junior College, Salinas, CA
1983	Bachelor of Science, Crop Science, California Polytechnic State University, San Luis Obispo, CA

REAL ESTATE CAREER

1987	Completed Real Estate Program, Anthony School, San Jose, CA
1987 – Pres.	Licensed Real Estate Agent, California Department of Real Estate
1987 – 1991	Real Estate Agent, Fox & Carskadon
1991 – 1997	Real Estate Agent, Contempo Realty, Gilroy, CA
1997 – Pres.	Real Estate Agent, Intero Real Estate Services, Morgan Hill, CA
2001 – Pres.	Licensed Real Estate Broker, Nevada Real Estate Division
2001 – Pres.	Vice President, Colliers International, Las Vegas, NV

PROFESSIONAL ACCOMPLISHMENTS

- Closed over \$1 billion worth of transactions
- Closed over 1,200 escrows
- Ranked #1 Producer in 1989 at Cornish & Carey Morgan Hill
- Ranked Top 60 out of 900 agents in 1989 at Cornish & Carey
- Ranked #1 Producer in 1995 and 1997 for Contempo Realty out of 850 agents
- Ranked #4 Producer in the world by Century 21 in 1999 and 2000 out of more than 100,000 agents

COMMERCIAL REAL ESTATE EXPERIENCE

- Extensive experience with commercial/industrial leasing
- Experience leasing retail space in shopping centers
- Sold numerous commercial and industrial properties
- Sold several thousand acres of crop, grazing, and undeveloped land
- Brokered sales of retail centers, professional office buildings, and industrial buildings
- Coordinated numerous build-to-suit properties
- Handled numerous 1031 tax deferred exchanges and reverse exchanges

REAL ESTATE DEVELOPMENT EXPERIENCE

- Partner in development of 80+ spec homes from Hollister, CA to Los Altos Hills, CA
- Partner in construction of 21,000 sq.ft. industrial building
- Partner in 30-acre industrial park in Gilroy, CA to build ~350,000 – 400,000 sq. ft. of metal and tilt-up buildings

Daniel Gluhaich

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EXPERT WITNESS EXPERIENCE

I possess the qualifications to testify as an expert witness regarding issues including commercial real estate sales and purchases, corporate leasing, real estate appraisal analysis, fair market and fair rental value, 1031 tax deferred exchanges, reverse exchanges, triple net leasing, as well as the duties and standard of care required of California real estate agents and Nevada real estate agents and brokers. I have been actively monitoring and analyzed real estate market conditions in Northern California since 1987 and in Las Vegas and Northern Nevada since 2001.

As of December 2016, I have been retained as an expert witness in two real estate litigation cases in Nevada. In both cases, I was retained to provide an expert opinion regarding the market value and the diminution in value of commercial properties.

FEE SCHEDULE FOR EXPERT WITNESS SERVICES

Case Review/Consulting	\$ 400.00/hour
Appearance for Deposition as Expert Witness	\$ 450.00/hour
Expert Report Research and Drafting	\$ 400.00/hour
Research and Preparation for Trial Appearances	\$ 400.00/hour
Expert Witness Appearance at Trial	\$ 450.00/hour
Travel by Car Outside San Francisco Bay Area	\$ 0.57/mile
Travel by Air	Round-Trip Ticket Cost + 10% Handling Fee
Reproduction, Document Prep, Other Expenses	At Cost
Per Diem for Engagements Requiring Overnight Stays	\$ 335.00/day

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-referenced matter does not contain the Social Security Number of any person.

LAW OFFICES OF BRIAN P. MOQUIN

DATED: December 2, 2016

By:  _____

BRIAN P. MOQUIN
Admitted *Pro Hac Vice*
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3287 Ruffino Lane
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(408) 300-0022
(408) 843-1678 (facsimile)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

DATED: December 2, 2016



BRIAN P. MOQUIN

EXHIBIT 3

EXHIBIT 3

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Monday, December 05, 2016 12:17 PM
To: Mina Reel
Cc: David O'Mara, Esq.; John P. Desmond; Brian R. Irvine; Anjali D. Webster
Subject: Re: Willard Wooley v. BHI
Attachments: 20161205 Wooley Damages Calculation - v1.3.pdf

Brian—

Per our conversation a few minutes ago, attached is a PDF version of the final damages calculation spreadsheet for the Wooley Plaintiffs for use in the ongoing informal settlement negotiations between Tim Herbst and Ed Wooley with Dan Gluhaich evidently serving as intermediary. Please forward this to Tim Herbst as you see fit. Note that I will be tendering supplemental disclosures in the imminent future that will include the actual spreadsheet.

We also discussed your desire to re-depose Dan Gluhaich as an expert as soon as possible; I will check with him as to available dates and will get back to you shortly. To that end, you agreed to allow Plaintiffs to provide an amended expert witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich will be testifying in the interest of minimizing the amount of time needed for the deposition.

Best,
Brian

Brian P. Moquin, Esq.
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WOOLEY CALCULATION OF DAMAGES

v1.3 BPM 12/05/2016

1820 E. William Street, Highway 50, Carson City, NV
 Plaintiffs Edward C. and Judith A. Willard

I. CALCULATION PARAMETERS

REF	DESCRIPTION	VALUE	Evidence ¹
A	Default Interest Rate:	18%	Exh. 2-32
B	Discount Rate:	4%	Exh. 2-17
C	Interest Through:	12/5/2016	
D	Hwy 50 Lease Term Start:	11/30/2005	Exh. 2-1
E	Hwy 50 Lease Term End:	12/1/2025	Exh. 2-1
F	Hwy 50 Date of Breach:	3/1/2013	EW ¶¶ 20-23; Exh. 21
G	Baring Purchase Price:	\$ 3,286,552.00	EW ¶ 5; Exh. 3-1
H	Baring Fair Market Value:	\$ 3,100,000.00	EW ¶ 30; Exh. 28
I	Hwy 50 Purchase Price:	\$ 3,400,000.00	EW ¶ 3; Exh. 1-1
J	Hwy 50 Fair Market Value:	\$ 765,000.00	EW ¶ 43; Exh. 42
K	Hwy 50 Fair Rental Value:	\$ 7,500.00	DG ¶ 11
L	B&J Pizza Sublease Rent/Mo:	\$ 2,485.80	EW ¶ 31; Exh. 20-2

II. COSTS AND LOSSES

REF	DATE	DESCRIPTION	AMOUNT	INTEREST THRU 12/5/2016	TOTAL	EVIDENCE ¹
A	3/1/13	Hwy 50 Diminution in Value	\$ 2,635,000.00	\$ 1,786,746.58	\$ 4,421,746.58	EW ¶ 43; Exhs. 1, 42
B	7/15/13	Hwy 50 Property Tax	1,051.01	642.18	1,693.19	EW ¶ 32; Exh. 31
C	7/28/13	Hwy 50 Insurance	735.00	444.38	1,179.38	EW ¶ 25; Exh. 23
D	9/12/13	Carson City Utilities	284.48	165.54	450.02	EW ¶ 26; Exh. 24
E	12/31/13	2013 Property Expenses	12,822.53	6,766.08	19,588.61	EW ¶ 39; Exh. 38
F	3/6/14	Goldblatt & Associates	45,088.00	22,346.35	67,434.35	EW ¶ 33; Exh. 22
G	5/20/14	Baring Costs of Sale	149,229.13	68,440.98	217,670.11	EW ¶ 30; Exh. 28
H	5/20/14	Baring Diminution in Value	186,552.00	85,558.37	272,110.37	EW ¶ 30; Exhs. 3, 28
I	12/31/14	2014 Property Expenses	9,824.63	3,415.74	13,240.37	EW ¶ 40; Exh. 39
J	1/1/15	2014 Fed Cap Gain Tax	343,833.00	119,371.28	463,204.28	EW ¶ 31; RB ¶ 6; Exh. 29
K	1/1/15	2014 Hawaii Cap Gain Tax	136,946.00	47,544.65	184,490.65	EW ¶ 31; RB ¶ 8; Exh. 30
L	1/1/15	2014 Loss Carry Forward	27,293.00	9,475.53	36,768.53	EW ¶ 31; RB ¶ 7; Exh. 29
M	6/10/15	Hwy 50 Appraisal Fee	3,000.00	804.82	3,804.82	EW ¶ 43; Exh. 42-81
N	12/31/15	2015 Property Expenses	12,165.99	2,039.89	14,205.88	EW ¶ 41; Exh. 40
O	9/30/16	2016 Property Expenses	8,776.74	285.66	9,062.40	EW ¶ 42; Exh. 41
P			\$3,572,601.51	\$2,154,048.04	\$5,726,649.55	

¹ Evidence Key: EW = Aff. Edward C. Wooley; RB = Aff. Robert W. Bianchi; DG = Aff. Daniel Gluhaich; Exh. = Exhibit

III. NET PRESENT VALUE OF LEASE

REF	MONTH	RENT	NET PRESENT VALUE (RUNNING TOTAL)
A	3/13	\$ 20,426.34	\$ 20,358.48
	4/13	20,426.34	40,649.32
B	5/13	20,834.87	61,277.22
	6/13	20,834.87	81,836.59
	7/13	20,834.87	102,327.66
	8/13	20,834.87	122,750.65
	9/13	20,834.87	143,105.79
	10/13	20,834.87	163,393.31
	11/13	20,834.87	183,613.43
	12/13	20,834.87	203,766.36
	1/14	20,834.87	223,852.35
	2/14	20,834.87	243,871.60
	3/14	20,834.87	263,824.35
	4/14	20,834.87	283,710.81
C	5/14	21,251.57	303,927.61
	6/14	21,251.57	324,077.24
	7/14	21,251.57	344,159.93
	8/14	21,251.57	364,175.90
	9/14	21,251.57	384,125.38
	10/14	21,251.57	404,008.57
	11/14	21,251.57	423,825.71
	12/14	21,251.57	443,577.02
	1/15	21,251.57	463,262.70
	2/15	21,251.57	482,882.98
	3/15	21,251.57	502,438.08
	4/15	21,251.57	521,928.21
D	5/15	22,314.15	542,324.86
	6/15	22,314.15	562,653.74
	7/15	22,314.15	582,915.09
	8/15	22,314.15	603,109.13
	9/15	22,314.15	623,236.07
	10/15	22,314.15	643,296.15
	11/15	22,314.15	663,289.58
	12/15	22,314.15	683,216.59
	1/16	22,314.15	703,077.40
	2/16	22,314.15	722,872.22
	3/16	22,314.15	742,601.28
	4/16	22,314.15	762,264.80
E	5/16	23,429.86	782,842.90
	6/16	23,429.86	803,352.63
	7/16	23,429.86	823,794.22
	8/16	23,429.86	844,167.90

IV. FAIR RENTAL VALUE

REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
A	3/13	\$ 0.00	\$ 0.00
	4/13	0.00	0.00
	5/13	0.00	0.00
	6/13	0.00	0.00
	7/13	0.00	0.00
	8/13	0.00	0.00
	9/13	0.00	0.00
	10/13	0.00	0.00
	11/13	0.00	0.00
	12/13	0.00	0.00
	1/14	0.00	0.00
	2/14	0.00	0.00
B	3/14	7,500.00	6,180.20
	4/14	7,500.00	12,269.07
	5/14	7,500.00	18,267.96
	6/14	7,500.00	24,178.19
	7/14	7,500.00	30,001.08
	8/14	7,500.00	35,737.92
	9/14	7,500.00	41,389.97
	10/14	7,500.00	46,958.50
	11/14	7,500.00	52,444.74
	12/14	7,500.00	57,849.89
	1/15	7,500.00	63,175.17
	2/15	7,500.00	68,421.75
	3/15	7,500.00	73,590.79
	4/15	7,500.00	78,683.45
	5/15	7,500.00	83,700.84
	6/15	7,500.00	88,644.09
	7/15	7,500.00	93,514.28
	8/15	7,500.00	98,312.50
	9/15	7,500.00	103,039.80
	10/15	7,500.00	107,697.25
	11/15	7,500.00	112,285.87
	12/15	7,500.00	116,806.67
	1/16	7,500.00	121,260.67
	2/16	7,500.00	125,648.84
	3/16	7,500.00	129,972.17
	4/16	7,500.00	134,231.60
	5/16	7,500.00	138,428.08
	6/16	7,500.00	142,562.55
	7/16	7,500.00	146,635.92
	8/16	7,500.00	150,649.09

REF	MONTH	RENT	NET PRESENT VALUE (RUNNING TOTAL)
	9/16	\$ 23,429.86	\$ 864,473.90
	10/16	23,429.86	884,712.43
	11/16	23,429.86	904,883.72
	12/16	23,429.86	924,988.00
	1/17	23,429.86	945,025.49
	2/17	23,429.86	964,996.41
	3/17	23,429.86	984,900.98
	4/17	23,429.86	1,004,739.43
F	5/17	24,601.35	1,025,500.59
	6/17	24,601.35	1,046,192.77
	7/17	24,601.35	1,066,816.22
	8/17	24,601.35	1,087,371.14
	9/17	24,601.35	1,107,857.78
	10/17	24,601.35	1,128,276.35
	11/17	24,601.35	1,148,627.09
	12/17	24,601.35	1,168,910.22
	1/18	24,601.35	1,189,125.96
	2/18	24,601.35	1,209,274.54
	3/18	24,601.35	1,229,356.19
	4/18	24,601.35	1,249,371.11
G	5/18	25,831.42	1,270,316.96
	6/18	25,831.42	1,291,193.23
	7/18	25,831.42	1,312,000.14
	8/18	25,831.42	1,332,737.92
	9/18	25,831.42	1,353,406.81
	10/18	25,831.42	1,374,007.03
	11/18	25,831.42	1,394,538.81
	12/18	25,831.42	1,415,002.37
	1/19	25,831.42	1,435,397.96
	2/19	25,831.42	1,455,725.78
	3/19	25,831.42	1,475,986.07
	4/19	25,831.42	1,496,179.05
H	5/19	27,122.99	1,517,311.23
	6/19	27,122.99	1,538,373.22
	7/19	27,122.99	1,559,365.22
	8/19	27,122.99	1,580,287.49
	9/19	27,122.99	1,601,140.25
	10/19	27,122.99	1,621,923.72
	11/19	27,122.99	1,642,638.16
	12/19	27,122.99	1,663,283.77
	1/20	27,122.99	1,683,860.79
	2/20	27,122.99	1,704,369.45
	3/20	27,122.99	1,724,809.97
	4/20	27,122.99	1,745,182.59

REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
	9/16	\$ 7,500.00	\$ 154,602.95
	10/16	7,500.00	158,498.38
	11/16	7,500.00	162,336.24
	12/16	7,500.00	166,117.38
	1/17	7,500.00	169,842.65
	2/17	7,500.00	173,512.86
	3/17	7,500.00	177,128.84
	4/17	7,500.00	180,691.37
	5/17	7,500.00	184,201.26
	6/17	7,500.00	187,659.27
	7/17	7,500.00	191,066.19
	8/17	7,500.00	194,422.75
	9/17	7,500.00	197,729.71
	10/17	7,500.00	200,987.80
	11/17	7,500.00	204,197.74
	12/17	7,500.00	207,360.24
	1/18	7,500.00	210,476.01
	2/18	7,500.00	213,545.73
	3/18	7,500.00	216,570.08
	4/18	7,500.00	219,549.74
	5/18	7,500.00	222,485.37
	6/18	7,500.00	225,377.61
	7/18	7,500.00	228,227.11
	8/18	7,500.00	231,034.50
	9/18	7,500.00	233,800.40
	10/18	7,500.00	236,525.42
	11/18	7,500.00	239,210.17
	12/18	7,500.00	241,855.25
	1/19	7,500.00	244,461.24
	2/19	7,500.00	247,028.71
	3/19	7,500.00	249,558.24
	4/19	7,500.00	252,050.39
	5/19	7,500.00	254,505.71
	6/19	7,500.00	256,924.75
	7/19	7,500.00	259,308.03
	8/19	7,500.00	261,656.10
	9/19	7,500.00	263,969.46
	10/19	7,500.00	266,248.64
	11/19	7,500.00	268,494.13
	12/19	7,500.00	270,706.44
	1/20	7,500.00	272,886.05
	2/20	7,500.00	275,033.46
	3/20	7,500.00	277,149.13
	4/20	7,500.00	279,233.53

REF	MONTH	RENT	NET PRESENT VALUE (RUNNING TOTAL)
I	5/20	\$ 28,479.14	\$ 1,766,502.77
	6/20	28,479.14	1,787,752.12
	7/20	28,479.14	1,808,930.87
	8/20	28,479.14	1,830,039.26
	9/20	28,479.14	1,851,077.53
	10/20	28,479.14	1,872,045.90
	11/20	28,479.14	1,892,944.60
	12/20	28,479.14	1,913,773.88
	1/21	28,479.14	1,934,533.95
	2/21	28,479.14	1,955,225.06
	3/21	28,479.14	1,975,847.42
	4/21	28,479.14	1,996,401.27
	5/21	29,903.09	2,017,911.12
	6/21	29,903.09	2,039,349.50
	7/21	29,903.09	2,060,716.66
	8/21	29,903.09	2,082,012.83
	9/21	29,903.09	2,103,238.25
	10/21	29,903.09	2,124,393.16
	11/21	29,903.09	2,145,477.78
	12/21	29,903.09	2,166,492.35
J	1/22	29,903.09	2,187,437.11
	2/22	29,903.09	2,208,312.28
	3/22	29,903.09	2,229,118.11
	4/22	29,903.09	2,249,854.80
K	5/22	31,398.25	2,271,556.00
	6/22	31,398.25	2,293,185.10
	7/22	31,398.25	2,314,742.34
	8/22	31,398.25	2,336,227.96
	9/22	31,398.25	2,357,642.21
	10/22	31,398.25	2,378,985.31
	11/22	31,398.25	2,400,257.50
	12/22	31,398.25	2,421,459.02
	1/23	31,398.25	2,442,590.10
	2/23	31,398.25	2,463,650.98
L	3/23	31,398.25	2,484,641.89
	4/23	31,398.25	2,505,563.06
	5/23	32,968.16	2,527,457.31
	6/23	32,968.16	2,549,278.82
	7/23	32,968.16	2,571,027.84
	8/23	32,968.16	2,592,704.60
	9/23	32,968.16	2,614,309.34
	10/23	32,968.16	2,635,842.31
	11/23	32,968.16	2,657,303.74
	12/23	32,968.16	2,678,693.87

REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
	5/20	\$ 7,500.00	\$ 281,287.13
	6/20	7,500.00	283,310.38
	7/20	7,500.00	285,303.73
	8/20	7,500.00	287,267.62
	9/20	7,500.00	289,202.49
	10/20	7,500.00	291,108.76
	11/20	7,500.00	292,986.87
	12/20	7,500.00	294,837.21
	1/21	7,500.00	296,660.22
	2/21	7,500.00	298,456.28
	3/21	7,500.00	300,225.80
	4/21	7,500.00	301,969.16
	5/21	7,500.00	303,686.77
	6/21	7,500.00	305,378.99
	7/21	7,500.00	307,046.20
	8/21	7,500.00	308,688.78
	9/21	7,500.00	310,307.07
	10/21	7,500.00	311,901.46
	11/21	7,500.00	313,472.28
	12/21	7,500.00	315,019.89
	1/22	7,500.00	316,544.62
	2/22	7,500.00	318,046.83
	3/22	7,500.00	319,526.83
	4/22	7,500.00	320,984.96
	5/22	7,500.00	322,421.54
	6/22	7,500.00	323,836.90
	7/22	7,500.00	325,231.33
	8/22	7,500.00	326,605.16
	9/22	7,500.00	327,958.69
	10/22	7,500.00	329,292.21
	11/22	7,500.00	330,606.02
	12/22	7,500.00	331,900.42
	1/23	7,500.00	333,175.69
	2/23	7,500.00	334,432.12
	3/23	7,500.00	335,669.97
	4/23	7,500.00	336,889.54
	5/23	7,500.00	338,091.08
	6/23	7,500.00	339,274.86
	7/23	7,500.00	340,441.15
	8/23	7,500.00	341,590.20
	9/23	7,500.00	342,722.27
	10/23	7,500.00	343,837.61
	11/23	7,500.00	344,936.47
	12/23	7,500.00	346,019.09

REF	MONTH	RENT	NET PRESENT VALUE (RUNNING TOTAL)
	1/24	\$ 32,968.16	\$ 2,700,012.93
	2/24	32,968.16	2,721,261.17
	3/24	32,968.16	2,742,438.82
	4/24	32,968.16	2,763,546.10
	5/24	34,616.57	2,785,635.13
	6/24	34,616.57	2,807,650.76
	7/24	34,616.57	2,829,593.26
M	8/24	34,616.57	2,851,462.86
	9/24	34,616.57	2,873,259.80
	10/24	34,616.57	2,894,984.32
	11/24	34,616.57	2,916,636.67
	12/24	34,616.57	2,938,217.09
	1/25	34,616.57	2,959,725.81
	2/25	34,616.57	2,981,163.07
	3/25	34,616.57	3,002,529.11
	4/25	34,616.57	3,023,824.17
N	5/25	35,308.90	3,045,472.97
	6/25	35,308.90	3,067,049.84
	7/25	35,308.90	3,088,555.03
	8/25	35,308.90	3,109,988.78
	9/25	35,308.90	3,131,351.31
	10/25	35,308.90	3,152,642.88
	11/25	35,308.90	3,173,863.70
O	TOTALS:	\$ 4,161,031.80	\$ 3,173,863.70

REF	MONTH	FAIR RENTAL VALUE	NET PRESENT VALUE (RUNNING TOTAL)
	1/24	\$ 7,500.00	\$ 347,085.71
	2/24	7,500.00	348,136.57
	3/24	7,500.00	349,171.89
	4/24	7,500.00	350,191.92
	5/24	7,500.00	351,196.87
	6/24	7,500.00	352,186.97
	7/24	7,500.00	353,162.44
	8/24	7,500.00	354,123.50
	9/24	7,500.00	355,070.35
	10/24	7,500.00	356,003.21
	11/24	7,500.00	356,922.28
	12/24	7,500.00	357,827.77
	1/25	7,500.00	358,719.87
	2/25	7,500.00	359,598.80
	3/25	7,500.00	360,464.73
	4/25	7,500.00	361,317.87
	5/25	7,500.00	362,158.40
	6/25	7,500.00	362,986.51
	7/25	7,500.00	363,802.38
	8/25	7,500.00	364,606.19
	9/25	7,500.00	366,947.05
	10/25	7,500.00	473,731.96
	11/25	7,500.00	473,731.96
C	TOTALS:	\$1,057,500.00	\$ 473,731.96

V. ACCELERATED RENT

REF	DESCRIPTION	AMOUNT
A	NET PRESENT VALUE OF REMAINING LEASE TERM RENT: \$	3,173,863.70
B	NET PRESENT VALUE OF FAIR RENTAL VALUE:	-473,731.96
C	RENTAL INCOME FROM B&H PIZZA, 3/13 - 2/14:	-29,769.60
D	Total:	\$ 2,670,362.14

VI. TOTAL DAMAGES

REF	DESCRIPTION	DAMAGE AMOUNT	INTEREST THRU 12/5/2016	AMOUNT WITH INTEREST
A	ACCELERATED RENT: \$	2,670,362.14	\$ 1,810,725.02	\$ 4,481,087.16
B	COSTS AND LOSSES:	3,572,601.51	2,154,048.04	5,726,649.55
C	TOTALS:	\$ 6,242,963.65	\$ 3,964,773.06	\$ 10,207,736.71

VII. INTEREST ACCRUAL RATE

INTEREST PER DAY:	\$3,078.72
INTEREST PER MONTH:	\$93,644.45
INTEREST PER YEAR:	\$1,123,733.46

EXHIBIT 4

EXHIBIT 4

Mina Reel

From: Brian R. Irvine
Sent: Friday, December 09, 2016 8:46 AM
To: Brian Moquin
Cc: david@omaralaw.net; Anjali D. Webster
Subject: Willard / Wooley v. BHI

Dear Brian-

I did not receive the supplemented expert disclosure for Mr. Gluhaich yesterday that you had promised, nor have I received deposition dates for him. As you know, we have a number of deadlines coming up in the litigation, including the deadline for disclosing rebuttal experts. Obviously, we will be prejudiced by further delay in learning all of the expert opinion testimony that plaintiffs intend to present at trial. Please provide the information immediately.

In addition, in the Wooley plaintiffs' damages spreadsheet you provided me earlier this week, you included new damages calculations that we have never seen before. As you know, we have been demanding that plaintiffs meet their obligations under NRCP 16.1(a)(1)(C) to provide "[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 . . . on which such computation is based" for more than a year. For unknown reasons, plaintiffs have utterly refused to meet this obligation. Given the Wooley plaintiffs' apparent change in position regarding damages, this is concerning to say the least, and continues to prejudice defendants' ability to defend the case. Moreover, it is impossible for us to recommend any settlement to our clients without this information. Please provide NRCP 16.1 damages computations for all plaintiffs, immediately.

Please do not hesitate to contact me with any questions.

Thank you,

Brian Irvine

Brian R. Irvine Member

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 Phone 775-343-7507
 Fax 844-670-6009
 Email BIrvine@dickinsonwright.com

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DICKINSON WRIGHT^{PLLC}
 ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
 TENNESSEE TEXAS WASHINGTON D.C. TORONTO

EXHIBIT 5

EXHIBIT 5

Mina Reel

From: Brian R. Irvine
Sent: Friday, December 23, 2016 10:19 AM
To: Brian Moquin
Cc: David O'Mara, Esq.; John P. Desmond; Anjali D. Webster; Mina Reel
Subject: RE: Willard Wooley v. BHI

Dear Brian-

As you know, Plaintiffs disclosed Dan Gluhaich as a lay expert witness on December 2, 2016, the deadline for the disclosure of initial expert witnesses. Plaintiffs' disclosure indicated that Mr. Gluhaich would offer expert testimony in more than ten separate categories, but did not identify any of the actual opinions that Mr. Gluhaich intended to offer at trial.

Defendants disclosed the expert report of Michelle Salazar, also on December 2, 2016. Ms. Salazar's report addressed certain issues with Plaintiffs' damages model (ascertained through the First Amended Complaint and Plaintiffs' responses to interrogatories, rather than through an NRCP 16.1 damages disclosure, which Plaintiffs have never provided) and contained all of the direct (non-rebuttal) opinions that Ms. Salazar intended to offer about Plaintiffs' damages model that existed as of December 2, 2016.

You and I spoke on December 5, 2016. During that phone call, I indicated that we would need significant additional information about Mr. Gluhaich's potential expert testimony, including a supplemental disclosure providing the opinions he intended to offer and an additional deposition of Mr. Gluhaich, before we could prepare and disclose potential expert report(s) rebutting Mr. Gluhaich. During our call, you recognized that the December 2, 2016 disclosure of Mr. Gluhaich did not contain any specific information about the opinions he intended to offer and promised to: (1) provide available deposition dates for Mr. Gluhaich shortly; and (2) provide an amended expert witness disclosure by Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich would be testifying. As of this morning, we have not received any such amended disclosure for Mr. Gluhaich or any deposition dates. Obviously, Plaintiffs' failure to provide this information has made it impossible for Defendants to comply with the January 3, 2017 deadline for disclosing the reports of rebuttal expert witnesses because we simply have no information about the substance of Mr. Gluhaich's opinions that we may wish to rebut. Please confirm that Plaintiffs will grant Defendants an open extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until we have received your amended disclosure, deposed Mr. Gluhaich and provided any rebuttal expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s). If we do not receive such an extension, we will seek relief from the Court on shortened time next week. As Ms. Salazar's expert report disclosed December 2 was complete, we expect Plaintiffs to meet the January 3, 2017 deadline for disclosing any expert report rebutting her opinions.

In addition, following our discussion on December 5, you emailed me a spreadsheet with a new damages computation for the Wooley plaintiffs, and indicated that I could provide the spreadsheet to my clients for settlement purposes only. However, the "settlement only" spreadsheet contained a new damages model that Plaintiffs had never before utilized in the case; namely, the spreadsheet used a \$7,500 "fair rental value" deduction as part of the "accelerated rent" calculation. Prior to receiving the spreadsheet December 5, we had never seen any calculation of accelerated rent using that number or applying any formula with any discount for fair rental value. In the Wooley plaintiffs' July 2015 response to Interrogatory No. 7, they indicated that "[t]he remaining amount of rent due under the Lease was calculated as the sum of each year's annual payments shown in red in the table above, yielding a total of \$4,420,244.00. The Net Present Value as of March 1, 2013 was then calculated using the 'NPV' formula in the Apple Numbers spreadsheet application, applying a 4% Discount Rate per the terms of the Lease...". No mention was made of any reduction in that accelerated rent figure for "fair rental value" as is set forth in the new spreadsheet. This poses a significant problem because Defendants have not had the ability to conduct discovery about this new computation of damages or the methodology used to arrive at the numbers in the Wooley spreadsheet. And, because we never saw the spreadsheet (or received any other indication of the new methodology) prior to the expert disclosure deadline, Defendants were prejudiced in that they were unable to have an expert examine the methodology and calculation and comment on it in any way.

Damages for both the Wooley plaintiffs and the Willard plaintiffs have been and continue to be a moving target, and we have not been able to retain experts to opine on the Wooley plaintiffs' new damages (nor have Plaintiffs officially disclosed that damages model - the spreadsheet remains "for settlement purposes only" and we accordingly have not provided it to any potential expert(s)). We still have never received an NRCP 16.1 damages computation from either set of Plaintiffs, despite numerous demands. Please ensure that Plaintiffs meet their obligations to provide such computations immediately, or we will seek to preclude Plaintiffs from seeking any non-disclosed damages at trial, including those contained in the Wooley spreadsheet you sent me on December 5. We also reserve the right to provide Plaintiffs' damages disclosure to Ms. Salazar so she can provide new opinions about any new damages model.

Finally, we still do not have any documentation supporting the Wooley plaintiffs' claim for State Capital Gains Liability. Please provide that immediately.

Please do not hesitate to contact me with any questions or concerns.

Brian Irvine

From: Brian Moquin [bmoquin@lawprism.com]
Sent: Monday, December 05, 2016 12:16 PM
To: Mina Reel
Cc: David O'Mara, Esq.; John P. Desmond; Brian R. Irvine; Anjali D. Webster
Subject: Re: Willard Wooley v. BHI

Brian—

Per our conversation a few minutes ago, attached is a PDF version of the final damages calculation spreadsheet for the Wooley Plaintiffs for use in the ongoing informal settlement negotiations between Tim Herbst and Ed Wooley with Dan Gluhaich evidently serving as intermediary. Please forward this to Tim Herbst as you see fit. Note that I will be tendering supplemental disclosures in the imminent future that will include the actual spreadsheet.

We also discussed your desire to re-depose Dan Gluhaich as an expert as soon as possible; I will check with him as to available dates and will get back to you shortly. To that end, you agreed to allow Plaintiffs to provide an amended expert witness disclosure by mid-afternoon Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich will be testifying in the interest of minimizing the amount of time needed for the deposition.

Best,
 Brian

Brian P. Moquin, Esq.
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 Fax 844-670-6009
 Email Blrvine@dickinsonwright.com



EXHIBIT 6

EXHIBIT 6

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, December 27, 2016 10:09 AM
To: Brian R. Irvine
Cc: David O'Mara, Esq.; John P. Desmond; Anjali D. Webster; Mina Reel
Subject: Re: Willard Wooley v. BHI
Attachments: 2014 Wooley HI State Tax Return -redacted.pdf

Brian—

You are granted an open extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until you have received Plaintiffs' amended disclosure, deposed Mr. Gluhaich, and provided any rebuttal expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s).

Attached is the 2014 Hawaii State Tax return for the Wooleys. The remaining supplemental disclosures as well as the amended expert witness disclosure will be tendered today.

Regards,
 Brian

On Dec 23, 2016, at 10:19 AM, Brian R. Irvine <BIrvine@dickinson-wright.com> wrote:

Dear Brian-

As you know, Plaintiffs disclosed Dan Gluhaich as a lay expert witness on December 2, 2016, the deadline for the disclosure of initial expert witnesses. Plaintiffs' disclosure indicated that Mr. Gluhaich would offer expert testimony in more than ten separate categories, but did not identify any of the actual opinions that Mr. Gluhaich intended to offer at trial.

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You and I spoke on December 5, 2016. During that phone call, I indicated that we would need significant additional information about Mr. Gluhaich's potential expert testimony, including a supplemental disclosure providing the opinions he intended to offer and an additional deposition of Mr. Gluhaich, before we could prepare and disclose potential expert report(s) rebutting Mr. Gluhaich. During our call, you recognized that the December 2, 2016 disclosure of Mr. Gluhaich did not contain any specific information about the opinions he intended to offer and promised to: (1) provide available deposition dates for Mr. Gluhaich shortly; and (2) provide an amended expert witness disclosure by Thursday, December 8, 2016 to include the facts and conclusions to which Mr. Gluhaich would be testifying. As of this morning, we have not received any such amended disclosure for Mr. Gluhaich or any deposition dates. Obviously, Plaintiffs' failure to provide this information has made it impossible for Defendants to comply with the January 3, 2017 deadline for disclosing the reports of rebuttal expert witnesses because we simply have no information about the substance of Mr. Gluhaich's opinions that we may wish to rebut. Please confirm that Plaintiffs will grant Defendants an open extension for submitting any expert reports rebutting the opinions of Mr. Gluhaich until we have received your amended disclosure, deposed

Mr. Gluhaich and provided any rebuttal expert(s) with sufficient opportunity to review that material and prepare rebuttal report(s). If we do not receive such an extension, we will seek relief from the Court on shortened time next week. As Ms. Salazar's expert report disclosed December 2 was complete, we expect Plaintiffs to meet the January 3, 2017 deadline for disclosing any expert report rebutting her opinions.

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Please do not hesitate to contact me with any questions or concerns.

Brian Irvine

From: Brian Moquin [bmoquin@lawprism.com]

Sent: Monday, December 05, 2016 12:16 PM

To: Mina Reel

Cc: David O'Mara, Esq.; John P. Desmond; Brian R. Irvine; Anjali D. Webster

Subject: Re: Willard Wooley v. BHI

Brian—

Per our conversation a few minutes ago, attached is a PDF version of the final damages calculation spreadsheet for the Wooley Plaintiffs for use in the ongoing informal settlement negotiations between Tim Herbst and Ed Wooley with Dan Gluhaich evidently serving as intermediary. Please forward this to Tim Herbst as you see fit. Note that I will be tendering supplemental disclosures in the imminent future that will include the actual spreadsheet.

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Best,
Brian

Brian P. Moquin, Esq.
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[<imagee66404.JPG><imagea5b9c8.JPG>](#) Email BIrvine@dickinsonwright.com
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