

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 15 OF 19

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

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(cont 31)	Exhibit 10: December 5, 2016 Email		11	2587-2593
	Exhibit 11: December 9, 2016 Email		11	2594-2595
	Exhibit 12: December 23, 2016 Email		11	2596-2599
	Exhibit 13: December 27, 2016 Email		11	2600-2603
	Exhibit 14: February 3, 2017, Letter		12	2604-2631
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		12	2632-2641
	Exhibit 16: April 1, 2016 Email		12	2642-2644
	Exhibit 17: May 3, 2016 Email		12	2645-2646
	Exhibit 18: June 21, 2016 Email Exchange		12	2647-2653
	Exhibit 19: July 21, 2016 Email		12	2654-2670
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		12	2671-2680
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		12	2681-2691
	Exhibit 22: Defendants' First Requests for Production on Willard		12	2692-2669
	Exhibit 23: Defendants' Second Request for Production on Willard		12	2700-2707
	Exhibit 24: Defendants' Third Request for Production on Willard		12	2708-2713
	Exhibit 25: Defendants Requests for Admission to Willard		12	2714-2719
	Exhibit 26: Willard Lease		12	2720-2755
	Exhibit 27: Willard Response to Second Set of Interrogatories		12	2756-2764

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(cont 31)	Exhibit 28: Deposition of L. Willard Excerpt		12	2765-2770
	Exhibit 29: April 12, 2013 Letter		12	2771-2773
	Exhibit 30: Declaration of G. Gordon		12	2774-2776
	Exhibit 31: Declaration of C. Kemper		12	2777-2780
32.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	12	2781-2803
	Exhibit 1: Plaintiffs' Initial Disclosures		12	2804-2811
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		12	2812-2820
	Exhibit 3: December 5, 2016 Email		12	2821-2827
	Exhibit 4: December 9, 2016 Email		12	2828-2829
	Exhibit 5: December 23, 2016 Email		12	2830-2833
	Exhibit 6: December 27, 2016 Email		12	2834-2837
	Exhibit 7: February 3, 2017 Letter		13	2838-2865
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	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
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(cont 33)	Exhibit 5: Little Caesar's Sublease		13	2986-3005
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		13	3006-3014
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34.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	13	3021-3058
	Exhibit 1: Plaintiffs' Initial Disclosures		13	3059-3066
	Exhibit 2: November 2014 Email Exchange		13	3067-3076
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	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
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	Exhibit 14: December 23, 2016 Email		15	3346-3349
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(cont 34)	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		15	3382-3391
	Exhibit 18: Wooley Deposition Excerpts		15	3392-3397
	Exhibit 19: Highway 50 Lease		15	3398-3441
	Exhibit 20: April 1, 2016 Email		15	3442-3444
	Exhibit 21: May 3, 2016 Email Exchange		15	3445-3446
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	Exhibit 23: July 21, 2016 Letter		15	3454-3471
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	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		15	3507-3512
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(cont 34)	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		15	3548-3555
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	Exhibit 35: Defendants' Requests for Admission on Willard		15	3562-3567
35.	Plaintiffs' Request for a Brief Extension of Time to Respond to Defendants' Three Pending Motions and to Extend the Deadline for Submissions of Dispositive Motions	12/06/17	15	3568-3572
36.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	16	3573-3576
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	12/07/17	16	3577-3580
38.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	16	3581-3584
39.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	16	3585-3589
40.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	16	3590-3594
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	16	3595-3598

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42.	Notice of Entry of Order re Defendants' Motion for Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	16	3599-3602
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	16	3603-3606
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	16	3607-3640
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	16	3641-3644
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
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52.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	16	3675-3692
	Exhibit 1: Declaration of Larry J. Willard		16	3693-3702
	Exhibit 2: Lease Agreement dated 11/18/05		16	3703-3738
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		16	3739-3741

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	Exhibit 5: 13 Symptoms of Bipolar Disorder		16	3747-3749
	Exhibit 6: Emergency Protective Order dated 1/23/18		16	3750-3752
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		16	3753-3755
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		16	3756-3769
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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
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	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		17	3923-3924
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	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		17	3934-3941
54.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	17	3942-3950

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(cont 54)	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		17	3951-3958
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	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		17	3998-4000
	Exhibit 11: Notice of Withdrawal of Local Counsel		17	4001-4004
55.	Order re Request for Entry of Judgment	06/04/18	17	4005-4009

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

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<u>TRANSCRIPTS</u>				
64.	Transcript of Proceedings – Status Hearing	08/17/15	18	4217-4234
65.	Transcript of Proceedings - Hearing on Motion for Partial Summary Judgment	01/10/17	19	4235-4303
66.	Transcript of Proceedings - Pre-Trial Conference	12/12/17	19	4304-4331
67.	Transcript of Proceedings - Oral Arguments – Plaintiffs’ Rule 60(b) Motion (condensed)	09/04/18	19	4332-4352
<u>ADDITIONAL DOCUMENTS</u>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] ¹	01/04/18	19	4353-4357

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

EXHIBIT 11

EXHIBIT 11

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*
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 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; 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

1 subsequent to Defendants' breach of the Willard Lease.

2 5. The effect on rental value and market value of a commercial property when an
3 anchor tenant terminates the lease and leaves the property "dark" and/or in a state of
4 dishevelment/disrepair, in general and with respect to the properties at issue in this case.

5 6. The standard real estate practices regarding short sales of commercial properties,
6 in general and with respect to the Virginia Property.

7 7. The benefits and regulations regarding 1031 Exchanges, in general and with
8 respect to the properties at issue in this case, including the implications of terminating same.

9 8. The characteristics of a "Triple Net Lease" and the benefits of same to owners of
10 commercial properties, in general and with respect to the properties at issue in this case.

11 9. The standard of practice, procedures and techniques normally used in the
12 marketing of commercial properties, and the factors affecting the price at which commercial
13 properties should be offered for sale or for rent, in general and with respect to the properties at
14 issue in this case.

15 10. Interpretation and analysis of the validity of written appraisals of the properties at
16 issue in this matter, as well as the standard practices and techniques used in appraisals.

17 11. The effect of the cross-collateralization of mortgage loans secured by real
18 property, in general and with respect to the Baring and Highway 50 Properties.

19 12. The significance, in terms of property value and marketability, of personal
20 guaranties that back long-term commercial leases, in general and with respect to the properties at
21 issue in this case.

22 Plaintiffs expressly reserve the right to elicit expert testimony from the employees and
23 representatives of other parties and from experts disclosed by other parties to this action.

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28 ///

1 Respectfully submitted,

2 LAW OFFICES OF BRIAN P. MOQUIN

3
4 DATED: December 2, 2016

By: 

5 BRIAN P. MOQUIN

6 Admitted *Pro Hac Vice*

7 California Bar No. 257583

8 3287 Ruffino Lane

9 San Jose, CA 95148

10 (408) 300-0022

11 (408) 843-1678 (facsimile)

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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

175 E. Main Avenue, Suite 130, Morgan Hill, CA 95037
 (408) 201-0120 / (408) 461-0262 cell / dgluhaich@interorealestate.com

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*

California Bar No. 257583

3287 Ruffino Lane

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 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 12

EXHIBIT 12

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
3287 Ruffino Lane
San Jose, CA 95148

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408.300.0022
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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
J	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
	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
	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
K	1/23	31,398.25	2,442,590.10
	2/23	31,398.25	2,463,650.98
	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 13

EXHIBIT 13

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

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

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

DICKINSON WRIGHT^{PLLC}
 ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
 TENNESSEE TEXAS WASHINGTON D.C. TORONTO

EXHIBIT 14

EXHIBIT 14

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

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 Email Blrvine@dickinsonwright.com



EXHIBIT 15

EXHIBIT 15

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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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.

EXHIBIT 16

EXHIBIT 16



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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 NRCP 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.
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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

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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

Brian P. Moquin, Esq.
Law Offices of Brian P. Moquin
3287 Ruffino Lane
San Jose, CA 95148

skype: brianmoquin
408.300.0022
408.460.7787 cell
408.843.1678 fax

Brian R. Irvine Member

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Reno NV 89501-1991

Phone 775-343-7507

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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

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

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

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

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

DICKINSON WRIGHT, PLLC
 JOHN P. DESMOND
 BRIAN R. IRVINE
 ANJALI D. WEBSTER
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 Reno, NV 89501
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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
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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 17

EXHIBIT 17

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
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LAW OFFICES OF BRIAN P. MOQUIN
 BRIAN P. MOQUIN, ESQ.
 Admitted *Pro Hac Vice*
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 3506 La Castellet Court
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 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 18

EXHIBIT 18

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 Willard Trust Fund;
9 OVERLAND DEVELOPMENT CORPORATION,
10 a California corporation; EDWARD
11 C. WOOLEY and JUDITH A. WOOLEY,
12 individually and as Trustees of
13 the EDWARD C. WOOLEY and JUDITH
14 A. WOOLEY INTERVIVOS REVOCABLE
15 TRUST 2000,

16 Plaintiffs,
17 vs.

Case No. CV14-01712
Dept. No. 6

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

21 Defendants.
22
23
24
25

Pages 1 to 138, inclusive.

DEPOSITION OF EDWARD C. WOOLEY

Thursday, August 20, 2015
Reno, Nevada

REPORTED BY: CHRISTINA AMUNDSON
 CCR #641 (Nevada)
 CSR #11883 (California)

MOLEZZO REPORTERS - 775.322.3334

1 they come back to the property and continue their
2 lease?

3 MR. MOQUIN: Objection, calls for a legal
4 conclusion. You can answer.

5 THE WITNESS: I can answer?

6 BY MS. WEBSTER:

7 Q You can answer the question.

8 A I don't even think that I want to hazard a
9 guess.

10 Q Well, if they paid all their rent and were
11 completely caught up, could they come back to the
12 property and continue the lease?

13 MR. MOQUIN: Same objection.

14 THE WITNESS: So I can say what I think?

15 MR. MOQUIN: Yeah.

16 BY MS. WEBSTER:

17 Q Yes.

18 A You know, with all the grief that they've
19 given me, I don't think I would want them.

20 Q Okay. So is it your position that the
21 lease has been terminated?

22 A No.

23 Q Okay. So it's still a valid and ongoing
24 lease with BHI?

25 A Yes, it is.

1 Q Okay. Are you referring to the 2015
2 appraisal?

3 A Yes.

4 Q Is that the only appraisal that you have on
5 the Highway 50 property?

6 A Yes. I had one way back when I bought it.

7 Q And have you produced that to your lawyer?

8 A No.

9 Q Is that still in your custody or
10 possession?

11 A I'm not sure.

12 Q Okay. Next is, "Please produce any and all
13 documents evidencing your research, evaluation
14 and/or analysis as to the sale value of the
15 property."

16 Have you produced any documents that you
17 have that are responsive to that request to your
18 lawyer?

19 A No. I've never tried to sell the property.

20 Q Okay. And then --

21 A I mean, it was appraised because I was
22 trying to re-fi the loan.

23 Q Okay. The next request is "Please produce
24 any and all documents evidencing your research,
25 evaluation and/or analysis as to the fair market

CERTIFICATE OF WITNESS

I hereby certify under penalty of perjury that I have read the foregoing deposition, made the changes and corrections that I deem necessary, and approve the same as now true and correct.

Dated this _____ day of _____,
2015.

EDWARD C. WOOLEY

-o0o-

1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4

5 I, CHRISTINA MARIE AMUNDSON, a Certified Court
6 Reporter in and for the States of Nevada and
7 California do hereby certify:

8 That I was personally present for the purpose
9 of acting as Certified Court Reporter in the matter
10 entitled herein; that the witness was by me duly
11 sworn;

12 That said transcript which appears hereinbefore
13 was taken in verbatim stenotype notes by me and
14 thereafter transcribed into typewriting as herein
15 appears to the best of my knowledge, skill, and
16 ability and is a true record thereof.

17

18

19 
Christina Amundson, CCR #641 (NV), CSR #11883 (CA)

20

-o0o-

21

22

23

24

25

EXHIBIT 19

EXHIBIT 19

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of December __, 2005 by and between [EDWARD C. WOOLEY and JUDITH A. WOOLEY], a _____, and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, NV 89511

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

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

2. **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 a 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.

3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May 1, 2006 ("Effective Date") and shall expire at midnight on April 30, 2006 ("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 two (2) 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 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.

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 earthquake, 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 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 (I) 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 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 Correction 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 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 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 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 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.

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 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:

With a copy to

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 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 (each, 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, a 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 conversation 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. **Waiver 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 negotiated 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]

JEFFREY LANGAN'S OFC Fax: 9494649261
 JAN-03-06 11:45AM FROM-Intern Reg; Late Service

Jan 3 2006 17:00 P.02
 T-105 P 002/008 F-310

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

LESSOR:

Edward C. Wooley
 EDWARD C. WOOLEY

Judith A. Wooley
 JUDITH A. WOOLEY

Tax Identification No. [REDACTED]

STATE OF California)
 COUNTY OF San Jose) ss

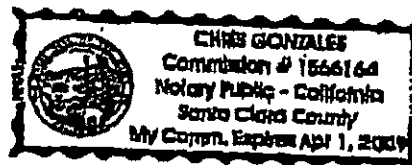
The foregoing instrument was acknowledged before me on Dec 2, 2005 by Chris Gonzales, the Notary Public of Edward C. Wooley, on behalf of the limited liability company.

Judith A. Wooley

Chris Gonzales

Notary Public

My Commission Expires: Apr 1, 2009



JEFFREY LANGAN'S OFC Fax: 9494649261
 JAN-02-06 11:45AM FROM: Interco Rev late Service

Jan 3 2006 17:00 P.03
 Y-105 P-004/005 F-510

LESSEE:

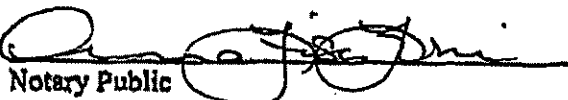
BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: 

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

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 \$272,000.00.

"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.

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Vitt Properties
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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

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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.

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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 Laws 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).

"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.).

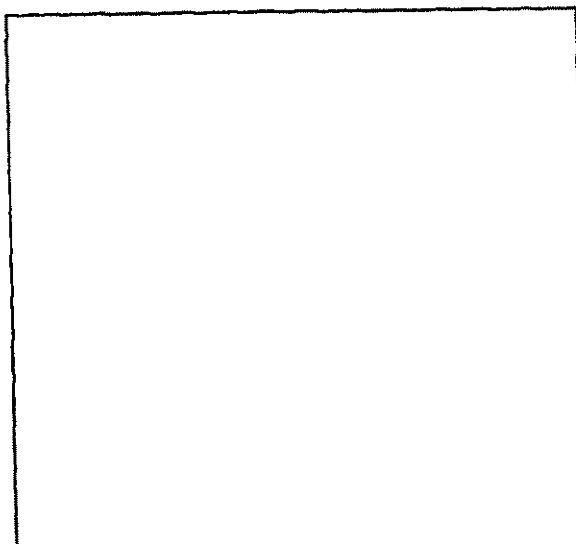
EXHIBIT B

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY

PROPERTY ADDRESS:

PROPERTY LEGAL DESCRIPTION:

EXHIBIT C



**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
AND ESTOPPEL CERTIFICATE**

THIS AGREEMENT, made effective as of _____, 2005, by and
 _____, having a mailing address of _____ ("Lessor"), and
 _____, having a mailing address of _____ ("Lessee") and
 _____ ("Lender"),
 having a mailing address of _____ of
 _____, and/or its participants,
 successors or assigns.

WITNESSETH:

A. WHEREAS, by Lease Agreement dated _____, 2005 (hereinafter
 referred to as the "Lease"), Lessor leased and rented to Lessee the real property having a street
 address of _____, in _____, Nevada, a legal description of
 which is attached as Exhibit A (the "Property"), which Lease is evidenced by a Memorandum of
 Lease dated _____, 2005 and filed of record in the records of the County of
 _____, State of Nevada (the "Official Records") in Book _____, Page _____ as
 Document No. _____; and

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

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

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

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

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

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

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

reasonable judgment of Lender, to complete such foreclosure action under the laws of the state in which the Property is located.

3. In no event shall Lender or any other Purchaser be:

- a. liable for any act or omission of any prior landlord;
- b. liable for the return of any security deposit which has not been delivered to the Purchaser;
- c. subject to any offsets or defenses which the Lessee might have against any prior landlord;
- d. bound by any payment of Base Annual Rental, Base Monthly Rental or Additional Rental which the Lessee might have paid to any prior landlord for more than the current month;
- e. bound by any provisions of the Lease regarding commencement or completion of construction of the Property; or
- f. bound by any warranties of construction provided by Lessor under the Lease.

4. Lessee agrees to give prompt written notice to Lender of any default by the Lessor under the Lease which would entitle Lessee to cancel the Lease or abate the Rental payable thereunder, and agrees that notwithstanding any provision of Lease, no notice of cancellation thereof shall be effective unless Lender has received the notice aforesaid and has failed within 30 days of the date of receipt thereof to cure, or if the default cannot be cured within 30 days, has failed to commence and to pursue diligently the cure of the Lessor's default which gave rise to such right of cancellation or abatement. Lessee further agrees to give such notices to any successor-in-interest of Lender, provided that such successor-in-interest shall have given written notice to Lessee of its acquisition of Lender's interest in the Deed of Trust and designated the address to which such notices are to be sent.

5. Lessee acknowledges that, under the terms of the Deed of Trust, Lessor has assigned to Lender the rentals under the Lease as additional security for said loan, and Lessee hereby expressly consents to and recognizes such Deed of Trust, and agrees to pay the Rental to Lender or its nominee whenever Lender claims or requests the Rental under the terms of said Assignment.

6. Lessee agrees that it will not, without the prior written consent of Lender, do any of the following, and any such purported action without such consent shall be void as against Lender:

- a. make a prepayment in excess of one month of Base Monthly Rental thereunder;

b. subordinate or permit subordination of the Lease to any lien subordinate to the Deed of Trust; or

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

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

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

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

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

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

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

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

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

9. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or otherwise.

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

11. This agreement may be signed in counterparts.

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

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

[Remainder of page intentionally left blank; signatures follow]

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

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

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

Notary Public

LENDER:

.....

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2005,
by _____, the _____
of _____, a _____, for and on
behalf of the _____.

Notary Public

LANDLORD:

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2005,
by _____, the _____
of _____, for and on behalf of the limited liability company.

Notary Public

This instrument was prepared by:

EXHIBIT A TO SNDA

(Legal Description)

Sample Lease
1/4/2006

000160/09959 GBDOS 477142v2

ECW002056

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 15 OF 19

Submitted for all appellants by:

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775-786-6868

RICHARD D. WILLIAMSON (SBN 1001)
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ROBERTSON, JOHNSON, MILLER & WILLIAMSON
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Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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

<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 20

EXHIBIT 20

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 21

EXHIBIT 21

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

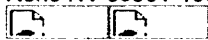


EXHIBIT 22

EXHIBIT 22

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

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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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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
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 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 23

EXHIBIT 23



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, NRCPP 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.

NRCPP 26(e).

Please ensure that Plaintiffs promptly supplement and/or correct their responses to all of Defendants' discovery requests to which NRCPP 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

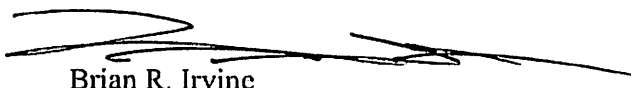
Brian P. Moquin
March 3, 2016
Page 3

- 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.

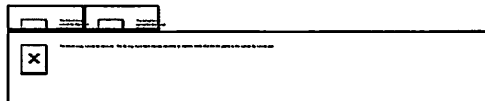
Additionally, my Dropbox account indicates that numerous documents in the "Gluhaich Subpoena" folder were modified yesterday, but none of these documents appear to be new. Can you please provide me with a list of exactly which documents you have provided/are providing to us this week?

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.
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- 2013 Willard State Tax Return.
- 2014 Willard State Tax Return.
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- 2008 Wooley State Tax Return.
- 2009 Wooley State Tax Return.
- 2010 Wooley State Tax Return.
- 2014 Wooley State Tax Return.

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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:

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- 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:

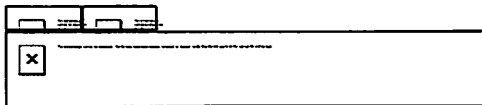
When we spoke on Monday, you represented that you would produce all documents requested by Defendants by Wednesday, March 30. To date, we have not received any documents from you. It has now been nearly one month since we initially asked you to supplement Plaintiffs' responses on March 3, and as you 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.
- 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 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,

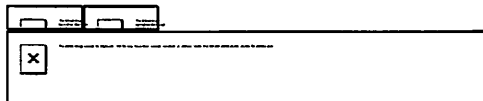
Anjali

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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, OHIO, PENNSYLVANIA, TEXAS, VIRGINIA, WASHINGTON, D.C., 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

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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.

EXHIBIT 24

EXHIBIT 24

1 DISC**2 GORDON SILVER****3 JOHN P. DESMOND****4 Nevada Bar No. 5618****5 BRIAN R. IRVINE****6 Nevada Bar No. 7758****7 KATHLEEN M. BRADY****8 Nevada Bar No. 11525****9 100 West Liberty Street****10 Suite 940****11 Reno, Nevada 89501****12 Tel: (775) 343-7500****13 Fax: (775) 786-0131****14 Email: jdesmond@gordonsilver.com****15 Email: birvine@gordonsilver.com****16 Email: kbrady@gordonsilver.com****17 *Attorneys for Defendants*****18 *Berry Hinckley Industries, and*****19 *Jerry Herbst*****20 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA****21 IN AND FOR THE COUNTY OF WASHOE****22 LARRY J. WILLARD, individually and as**
23 trustee of the Larry James Willard Trust Fund;**24 OVERLAND DEVELOPMENT****25 CORPORATION, a California corporation;****26 EDWARD E. WOOLEY AND JUDITH A.****27 WOOLEY, individually and as trustees of the****28 Edward C. Wooley and Judith A. Wooley****Intervivos Revocable Trust 2000,****Plaintiff,****CASE NO.: CV14-01712****vs.****DEPT. NO.: 6****22 BERRY-HINCKLEY INDUSTRIES, a**
23 Nevada corporation; JERRY HERBST, an
24 individual; and JH, INC., a Nevada
25 corporation,**Defendants.****26 BERRY-HINCKLEY INDUSTRIES, a**
27 Nevada corporation; and JERRY HERBST, an
28 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 EDWARD E. WOOLEY AND JUDITH A. WOOLEY**

8 TO: EDWARD E. WOOLEY AND JUDITH A. WOOLEY

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 Nevada Rules of Civil Procedure, hereby demands that Plaintiff/Counter-defendants
12 EDWARD E. WOOLEY AND JUDITH A. WOOLEY, answer the following Interrogatories,
13 separately and fully, in writing, 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 "Plaintiffs" means EDWARD E. WOOLEY AND JUDITH
20 A. WOOLEY and/or their agents, 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 Plaintiffs, counsel for said Plaintiffs
23 and all agents, employees, investigators, representatives, servants and others who are acting or
24 purporting to act on their behalf or who are in possession of, or may have obtained, information
25 for or on behalf of Plaintiffs.
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 Plaintiffs' possession or control, or can be

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

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

11 if Plaintiffs' 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 Plaintiffs.

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

1 13. When used herein, the term "Amended Complaint" shall refer to the Verified First
2 Amended Complaint filed by Plaintiffs in this action on January 21, 2015.

3 14. When used herein, the term "Lease Agreement" means the December 2, 2005, Lease
4 Agreement between EDWARD C. WOOLEY AND JUDITH A WOOLEY ("WOOLEY"), and
5 Berry-Hinckley Industries ("BHI"), and the subsequent amendments thereto.

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

8 16. When used herein, the term "Property" means 1820 Highway 50 East, Carson City,
9 Nevada.
10

11 17. When used herein, the term "Baring Location" means 1365 Baring Boulevard Sparks,
12 Nevada.
13

14 INTERROGATORIES

15 INTERROGATORY NO. 1

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

18 INTERROGATORY NO. 2

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

21 INTERROGATORY NO. 3

22 Please identify and explain in detail any and all methods you have utilized to advertise
23 the availability of the Property, including but not limited to signage, brochures, websites,
24 newspapers, periodicals or any other similar means since the Lease was allegedly breached.
25

26 ///

27 ///

28

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 explain if and how you are still currently advertising the availability of the Property for sale or lease.

INTERROGATORY NO. 6

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. 7

Please explain in detail how the damages in Paragraphs 33-42 alleged in your Amended Complaint were calculated.

INTERROGATORY NO. 8

Please identify and explain in detail the basis for your allegation in Paragraph 40 of the Amended Complaint that “[a]s a further direct and proximate result of BHI breaching Wooley Lease #1, because the Sparks Property was cross-collateralized with the Highway 50 Property, the Wooley Plaintiffs were forced to sell the Sparks Property at a loss of \$147,847.30.”

INTERROGATORY NO. 9

Please identify and explain in detail the basis for your allegation in Paragraph 41 of the Amended Complaint that “[a]s a further direct and proximate result of BHI breaching Wooley Lease #1, because the Sparks Property was cross-collateralized with the Highway 50 Property and the Wooley Plaintiffs were forced to sell the Sparks Property, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but which is at least \$600,000.00.”

///

1 **INTERROGATORY NO. 10**

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

4 DATED this 21st day of April, 2015.

5 GORDON SILVER

6
7 By: 

8 JOHN P. DESMOND

9 Nevada Bar No. 5618

10 BRIAN R. IRVINE

11 Nevada Bar No. 7758

12 KATHLEEN M. BRADY

13 Nevada Bar No. 11525

14 100 West Liberty Street, Suite 940

15 Reno, Nevada 89501

16 Tel: (775) 343-7500

17 Fax: (775) 786-0131

18 Email: jdesmond@gordonsilver.com

19 Email: birvine@gordonsilver.com

20 Email: kbrady@gordonsilver.com

21 *Attorneys for Defendants,*
22 *Berry Hinckley Industries, and*
23 *Jerry Herbst*
24
25
26
27
28

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 INTERROGATORIES TO EDWARD E. WOOLEY AND JUDITH A. WOOLEY** 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 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: 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,

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
CORPORATION, a California corporation;

4 Counter-defendants.

5
6 **DEFENDANTS/COUNTERCLAIMANTS' SECOND SET OF INTERROGATORIES TO**
7 **EDWARD E. WOOLEY AND JUDITH A. WOOLEY**

8 TO: EDWARD E. WOOLEY AND JUDITH A. WOOLEY

9 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES ("BHI") and JERRY
10 HERBST (collectively, "Defendants"), by and through their attorneys of record, Dickinson
11 Wright, PLLC, and pursuant to Rules 26 and 33 of the Nevada Rules of Civil Procedure, hereby
12 demands that Plaintiffs EDWARD E. WOOLEY AND JUDITH A. WOOLEY, answer the
13 following Interrogatories, separately and fully, in writing, under oath, within thirty (30) days
14 after service.

15 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

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

18 1. The "Wooley Plaintiffs" means Edward C. Wooley and Judith A. Wooley,
19 individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos
20 Revocable Trust 2000.

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

26 3. When used herein, the terms "Document" and "Writing," and the plural forms

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

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

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

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

25 6. Whenever there is a request to identify a Person, provide or state the identity of a
26 Person, provide as to each such Person the following information:

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

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

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

- a. The date appearing on the document, and, if it has no date, the date, or approximate date, on which it was prepared;
- b. The title, label, code number or file number of the document;
- c. The name and current address of the person(s) who signed the documents and, if it was not signed, the name and current address of the person(s) who prepared it;
- d. The name and current address of the person(s) to whom the document was directed and the person(s) to whom a copy of the document was directed;
- e. A general description of the subject matter(s) to which the document relates;
- f. The name and current address of the person(s) having present possession, custody, or control of the document; and
- g. The grounds on which the document has been withheld.

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

- 4 a. The basis of the claim and privilege;
5 b. A general description of the subject of the information and
6 communication;
7 c. The identities of all person(s) with knowledge of the information or
8 communication;
9 d. The date of communication;
10 e. The identities of all persons present when the communication took place;
11 and
12 f. The type of communication (i.e., face-to-face conversation, telephone
13 conversation) and the location of each party to the communication at the time it took
14 place.

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

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

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

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

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

17. “Baring Lease” means the Lease for the Baring Property between the Wooley Plaintiffs and BHI.

INTERROGATORY NO. 1

INTERROGATORY NO. 2

INTERROGATORY NO. 3

INTERROGATORY NO. 4

A.App.3487

1 **INTERROGATORY NO. 5**

2 Please identify any Documents which entitle You to the security deposit from the
3 subtenant at the Highway 50 Property in the amount of \$2,845 as set forth in paragraph 39 of the
4 First Amended Complaint.

5 **INTERROGATORY NO. 6**

6 What is Your current balance due on any and all mortgage loans for the Highway 50
7 Property?

8 **INTERROGATORY NO. 7**

9 Are you presently in default on any mortgage payments for any and all mortgage loans
10 for the Highway 50 Property? If so, when was your last mortgage payment?

11 **INTERROGATORY NO. 8**

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

17 ///

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25 ///

26 ///

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
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, 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 INTERROGATORIES TO EDWARD C. WOOLEY AND JUDITH A. WOOLEY 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

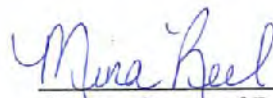
Federal Express (or other overnight delivery) Electronic Notification

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

EXHIBIT 26

EXHIBIT 26

1 DISC**2 GORDON SILVER****3 JOHN P. DESMOND****4 Nevada Bar No. 5618****5 BRIAN R. IRVINE****6 Nevada Bar No. 7758****7 KATHLEEN M. BRADY****8 Nevada Bar No. 11525****9 100 West Liberty Street****10 Suite 940****11 Reno, Nevada 89501****12 Tel: (775) 343-7500****13 Fax: (775) 786-0131****14 Email: jdesmond@gordonsilver.com****15 Email: birvine@gordonsilver.com****16 Email: kbrady@gordonsilver.com****17 *Attorneys for Defendants*****18 *Berry Hinckley Industries, and*****19 *Jerry Herbst*****20 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA****21 IN AND FOR THE COUNTY OF WASHOE****22 LARRY J. WILLARD, individually and as****23 trustee of the Larry James Willard Trust Fund;****24 OVERLAND DEVELOPMENT****25 CORPORATION, a California corporation;****26 EDWARD E. WOOLEY AND JUDITH A.****27 WOOLEY, individually and as trustees of the****28 Edward C. Wooley and Judith A. Wooley****Intervivos Revocable Trust 2000,****Plaintiff,****CASE NO.: CV14-01712****vs.****DEPT. NO.: 6****BERRY-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: EDWARD E. WOOLEY AND JUDITH A. WOOLEY

10 Defendants/Counterclaimants BERRY-HINCKLEY INDUSTRIES and JERRY
11 HERBST, by and through their attorneys of record, Gordon Silver, hereby request pursuant to
12 NRCP 34, that Plaintiff/Counter-Defendants, EDWARD E. WOOLEY AND JUDITH A.
13 WOOLEY, both respond and produce the following documents, within thirty (30) days after
14 service hereof:

15 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

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

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 4. "Document" or "Documents" shall refer to and includes, but is not limited to, any
27
28

1 and all "writings" as that terms is defined by Nevada Revised Statute section 52.225, and also
2 including all other means by which information, correspondence, notes, notations,
3 representations, depictions, or data is stored. This definition includes originals, copies, non-
4 identical copies and preliminary, intermediate, and final drafts or writings, records,
5 correspondence, e-mail, papers, books, pamphlets, periodicals, accounts, letters, photographs,
6 objects, telegrams, notes, minutes, memoranda, interoffice and intra office communications,
7 reports, studies, surveys, forecasts, analyses, estimates, contracts, leases, deeds, licenses,
8 agreements, charts, maps, scale sheets, graphs, indices, calendars, diaries, purchase orders,
9 invoices, receipts, working papers, and records of every kind and description, whether inscribed
10 by hand or mechanical means - such as electronic, microfilm, phonic (such as tape recordings),
11 photographic, video, punched, or other means - and computer records, whether reflected by
12 printout or stored on disk, drum, tape or otherwise.
13

14
15 5. "Relate to," "related to," or "relating to" shall mean constituting, pertaining to,
16 referring to, alluding to, responding to, elaborating upon, concerning, memorializing, supporting,
17 refuting, evidencing, connected with, commenting on, regarding, discussing, showing,
18 describing, reflecting, analyzing, recording, including, mentioning, in respect of, analyzing or
19 bearing on any logical or factual connection with the matter discussed.
20

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

24 7. "Plaintiffs" means Edward C. Wooley and Judith A Wooley, and/or their agents,
25 representatives or employees.

26 8. When used herein, the term "Lease Agreement" means the December 2, 2005,
27 Lease Agreement between Edward C. Wooley and Judith A Wooley ("Wooley"), and Berry-
28

1 Hinckley Industries (“BHI”), and the subsequent amendments thereto.

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

4 10. When used herein, the term “Property” means 1820 Highway 50 East, Carson
5 City, Nevada.
6

7 **REQUEST FOR PRODUCTION OF DOCUMENTS:**

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

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

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

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

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

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

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

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

24 9. Please produce any and all documents identified in response to Interrogatory No.
25 9 in Defendants/Counterclaimants’ First Set of Interrogatories, served concurrently herewith.
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1 10. Please produce any and all documents identified in response to Interrogatory No.
2 10 in Defendants/Counterclaimants' First Set of Interrogatories, served concurrently herewith.

3 11. Please produce any and all documents evidencing any contracts with real estate
4 brokers for the listing and marketing of the Property for sale or lease from January 1, 2013 to
5 present.

6 12. Please produce any and all documents evidencing communications with real
7 estate brokers or other real estate professionals regarding the Property from January 1, 2013
8 through present.

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

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

13 15. Please produce any and all appraisals for the Property from January 1, 2012
14 through present.

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

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

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

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

23 20. Please produce any and all documents evidencing communications and/or
24 correspondence between you, or any of you, and Jerry Herbst and/or Berry-Hinckley, related to
25

1 the Lease Agreement, Guaranty, or any other documents related to the Property, from 2007 to the
2 present.

3 21. Please produce any and all documents regarding and/or evidencing the sale of the
4 Baring Property.

5 DATED this 21st day of April, 2015.

6 GORDON SILVER

7
8
9 By: 

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

23 *Attorneys for Defendants,*
24 *Berry Hinckley Industries, and*
25 *Jerry Herbst*
26
27
28

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 to EDWARD E. WOOLEY AND JUDITH A. WOOLEY 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

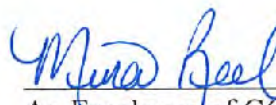
_____ Federal Express (or other overnight delivery)

_____ 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 27

EXHIBIT 27

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

5 Counter-defendants.

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

9 TO: EDWARD E. WOOLEY AND JUDITH A. WOOLEY

10 Defendants/ Counterclaimants Berry-Hinckley Industries ("BHI") and Jerry Herbst
11 (collectively, "Defendants"), by and through their attorneys of record, Dickinson Wright,
12 PLLC, hereby request that pursuant to NRCP 34, Plaintiffs Edward C. Wooley and Judith A.
13 Wooley both respond and produce the following documents, within thirty (30) days of service
14 hereof:

15
16 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

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

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

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

1 3. “Person” shall mean natural persons, firms, proprietorships, associations,
2 partnerships, corporations, governmental entities, and every other type of organization or entity.

3 4. “Document” or “Documents” shall refer to and includes, but is not limited to, any
4 and all “writings” as that terms is defined by Nevada Revised Statute section 52.225, and also
5 including all other means by which information, correspondence, notes, notations,
6 representations, depictions, or data is stored. This definition includes originals, copies, non-
7 identical copies and preliminary, intermediate, and final drafts or writings, records,
8 correspondence, e-mail, papers, books, pamphlets, periodicals, accounts, letters, photographs,
9 objects, telegrams, notes, minutes, memoranda, interoffice and intra office communications,
10 reports, studies, surveys, forecasts, analyses, estimates, contracts, leases, deeds, licenses,
11 agreements, charts, maps, scale sheets, graphs, indices, calendars, diaries, purchase orders,
12 invoices, receipts, working papers, and records of every kind and description, whether inscribed
13 by hand or mechanical means - such as electronic, microfilm, phonic (such as tape recordings),
14 photographic, video, punched, or other means - and computer records, whether reflected by
15 printout or stored on disk, drum, tape or otherwise.

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

21 6. The “Wooley Plaintiffs” means Edward C. Wooley and Judith A. Wooley,
22 individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos
23 Revocable Trust 2000.

24 7. “You” and “your” shall mean the Wooley Plaintiffs, and (i) all of their present
25 and former agents, representatives, accountants, investigators, consultants, and/or attorneys; or
26 (ii) any other person or entity acting on their behalf.

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

3 9. "Highway 50 Property" means that certain real property located at 1820 Highway
4 50 East, Carson City, Nevada (APN 002-368-27).

5 10. "Baring Property" means that certain real property located at 1365 Baring
6 Boulevard, Sparks (APN 030-041-08).

7 11. "Highway 50 Lease" means the December 2005 Lease for the Highway 50
8 Property between the Wooley Plaintiffs and BHI.

9 12. "Baring Lease" means the Lease for the Baring Property between the Wooley
10 Plaintiffs and BHI.

11 **Requests for Production of Documents**

12 1. Please provide any and all Documents identified in response to Interrogatory No.
13 1 in Defendants' Second Set of Interrogatories, served concurrently herewith.

14 2. Please provide any and all Documents identified in response to Interrogatory No.
15 2 in Defendants' Second Set of Interrogatories, served concurrently herewith.

16 3. Please provide any and all Documents identified in response to Interrogatory No.
17 3 in Defendants' Second Set of Interrogatories, served concurrently herewith.

18 4. Please provide any and all Documents identified in response to Interrogatory No.
19 4 in Defendants' Second Set of Interrogatories, served concurrently herewith.

20 5. Please provide any and all Documents identified in response to Interrogatory No.
21 5 in Defendants' Second Set of Interrogatories, served concurrently herewith.

22 6. Please provide any and all Documents identified in response to Interrogatory No.
23 6 in Defendants' Second Set of Interrogatories, served concurrently herewith.

24 7. Please provide any and all Documents identified in response to Interrogatory No.
25 7 in Defendants' Second Set of Interrogatories, served concurrently herewith.

26 8. Please provide any and all Documents identified in response to Interrogatory No.
27

1 8 in Defendants' Second Set of Interrogatories, served concurrently herewith.

2 9. Please provide any and all Documents supporting Your contention that the
3 Highway 50 Property diminished in value by \$2,000,000 as set forth in paragraph 34 of the First
4 Amended Complaint.

5 10. Please provide any and all Documents evidencing the value of the Highway 50
6 Property in between December 2005 and February 2013.

7 11. Please produce documents sufficient to identify any and all commissions that You
8 have paid to any real estate broker, real estate agent, or realty company performing work for You
9 on the Highway 50 Property from 2005 through present.

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

13 13. Please provide any and all of the Wooley Plaintiffs' federal income tax returns
14 from 2005 through 2014. Please include all supporting schedules and statements.

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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 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*

I certify that I am an employee of DICKINSON WRIGHT, and that on this date, pursuant to NRC 5(b), I am serving a true and correct copy of the attached DEFENDANTS/COUNTERCLAIMANTS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO EDWARD C. WOOLEY AND JUDITH A. WOOLEY on the parties as set forth below:

- A.App.3506

EXHIBIT 28

EXHIBIT 28

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 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

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

Counter-defendants.

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

TO: EDWARD E. WOOLEY AND JUDITH A. WOOLEY

Defendants/ Counterclaimants Berry-Hinckley Industries ("BHI") and Jerry Herbst
(collectively, "Defendants"), by and through their attorneys of record, Dickinson Wright,
PLLC, hereby request that pursuant to NRC 34, Plaintiffs Edward C. Wooley and Judith A.
Wooley both respond and produce the following documents, within thirty (30) days of service
hereof:

PRELIMINARY INSTRUCTIONS AND DEFINITIONS

The following preliminary definitions and instructions apply to each of the requests
hereinafter set forth, and Defendants incorporate the same herein by reference.

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

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

3. "Person" shall mean natural persons, firms, proprietorships, associations,

1 partnerships, corporations, governmental entities, and every other type of organization or entity.

2 4. "Document" or "Documents" shall refer to and includes, but is not limited to, any
3 and all "writings" as that terms is defined by Nevada Revised Statute section 52.225, and also
4 including all other means by which information, correspondence, notes, notations,
5 representations, depictions, or data is stored. This definition includes originals, copies, non-
6 identical copies and preliminary, intermediate, and final drafts or writings, records,
7 correspondence, e-mail, papers, books, pamphlets, periodicals, accounts, letters, photographs,
8 objects, telegrams, notes, minutes, memoranda, interoffice and intra office communications,
9 reports, studies, surveys, forecasts, analyses, estimates, contracts, leases, deeds, licenses,
10 agreements, charts, maps, scale sheets, graphs, indices, calendars, diaries, purchase orders,
11 invoices, receipts, working papers, and records of every kind and description, whether inscribed
12 by hand or mechanical means - such as electronic, microfilm, phonic (such as tape recordings),
13 photographic, video, punched, or other means - and computer records, whether reflected by
14 printout or stored on disk, drum, tape or otherwise.

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

20 6. The "Wooley Plaintiffs" means Edward C. Wooley and Judith A. Wooley,
21 individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos
22 Revocable Trust 2000.

23 7. "You" and "your" shall mean the Wooley Plaintiffs, and (i) all of their present
24 and former agents, representatives, accountants, investigators, consultants, and/or attorneys; or
25 (ii) any other person or entity acting on their behalf.
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REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Please provide any and all of the Wooley Plaintiffs' state income tax returns from 2005 through 2014. Please include 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 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' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO EDWARD C. WOOLEY AND JUDITH A. WOOLEY 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
3506 La Castellet Court
San Jose, California 95148

DATED this 2nd day of September, 2015.



An employee of Dickinson Wright, PLLC

EXHIBIT 29

EXHIBIT 29

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'**
FIRST REQUESTS FOR ADMISSIONS

7 Defendants/Counterclaimants Berry-Hinckley Industries ("BHI") and Jerry Herbst
8 (collectively, "Defendants") by and through their attorneys of record, Dickinson Wright, PLLC,
9 hereby requests Plaintiffs EDWARD C. WOOLEY AND JUDITH A. WOOLEY answer the
10 following Requests for Admissions pursuant to NRCP 33, within thirty (30) days after service
11 hereof.

12 **PRELIMINARY INSTRUCTIONS AND DEFINITIONS**

13 The following preliminary definitions and instructions apply to each of the requests
14 hereinafter set forth, and Defendants incorporate the same herein by reference.

15 1. The "Wooley Plaintiffs" means Edward C. Wooley and Judith A. Wooley,
16 individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos
17 Revocable Trust 2000.

18 2. "You" and "your" shall mean the Wooley Plaintiffs, and (i) all of their present
19 and former agents, representatives, accountants, investigators, consultants, and/or attorneys; or
20 (ii) any other person or entity acting on their behalf.

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

23 4. "Highway 50 Property" means that certain real property located at 1820 Highway
24 50 East, Carson City, Nevada (APN 002-368-27).

25 5. "Baring Property" means that certain real property located at 1365 Baring
26 Boulevard, Sparks (APN 030-041-08).

1 6. The "Wooley Plaintiffs" means Edward C. Wooley and Judith A. Wooley,
2 individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos
3 Revocable Trust 2000.

4 7. "Highway 50 Lease" means the December 2005 Lease for the Highway 50
5 Property between the Wooley Plaintiffs and BHI.

6 8. "Baring Lease" means the Lease for the Baring Property between the Wooley
7 Plaintiffs and BHI.

8
9 **Requests for Admission**

10 1. Admit that in the May 2011 Second Amendment to the Highway 50 Lease, You
11 agreed to reduce the base monthly rent to \$20,025.82.

12 2. Admit that BHI was not in default on the Baring Lease at the time that Jackson
13 Oil began operating at the Baring Property.

14 3. Admit that, as of the date You sold the Baring Property, the tenant was not in
15 default of the Baring Lease.

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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
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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*

I certify that I am an employee of DICKINSON WRIGHT, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached DEFENDANTS/COUNTERCLAIMANT'S FIRST REQUESTS FOR ADMISSIONS on the parties as set forth below:

- A.App.3518

EXHIBIT 30

EXHIBIT 30

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

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

25 Attorneys for Defendants,
26 Berry Hinckley Industries, and
27 Jerry Herbst
28

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

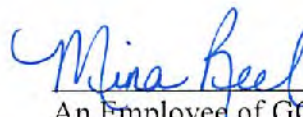
_____ Federal Express (or other overnight delivery)

_____ 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 31

EXHIBIT 31

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

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

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
- 25
- 26
- 27
- 28

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.

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

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

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

16. “Defendants” means BHI and Jerry Herbst.

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

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 d/b/a LJW Enterprises, Inc. and Larry Willard as Trustee of the Willard Family Trust.

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

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

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

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

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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
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Email: Birvine@dickinsonwright.com
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*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

EXHIBIT 32

EXHIBIT 32

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

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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.: 6

BERRY-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 33

EXHIBIT 33

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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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
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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

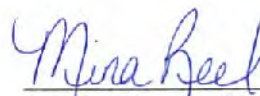
Federal Express (or other overnight delivery) Electronic Notification

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 34

EXHIBIT 34

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



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*Attorney for Defendants
Berry Hinckley Industries and
Jerry Herbst*

CERTIFICATE OF SERVICE

I certify that I am an employee of DICKINSON WRIGHT, PLLC and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached DEFENDANTS/COUNTERCLAIMANTS' 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

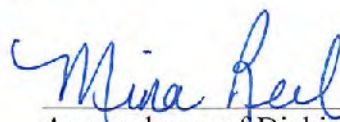
Federal Express (or other overnight delivery) Electronic Notification

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 35

EXHIBIT 35

DISC

DICKINSON WRIGHT, PLLC

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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 NRC 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.

4. Admit that upon the closing of the March 2014 short sale of the Willard Property, You were no longer required to make payments on any mortgage loan You entered into on the Willard Property.

A.App.3565

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



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Berry-Hinckley Industries and
Jerry Herbst*

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8 LAW OFFICES OF BRIAN P. MOQUIN
9 BRIAN P. MOQUIN, ESQ.
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17 *Attorneys for Plaintiffs*
18 LARRY J. WILLARD,
19 OVERLAND 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.

AND RELATED COUNTERCLAIM

Case No. CV14-01712

Dept. 6

**PLAINTIFFS' REQUEST FOR A BRIEF
EXTENSION OF TIME TO RESPOND
TO DEFENDANTS' THREE PENDING
MOTIONS, AND TO EXTEND THE
DEADLINE FOR SUBMISSION OF
DISPOSITIVE MOTIONS**

COME NOW Plaintiffs, by and through their counsel, David C. O'Mara, Esq. and move
this Court for a short extension of time up to and including, December 7, 2017 at 4:29 p.m., to
file responses to the Defendant's three pending motions.

1 This motion is made in good faith and based upon the Memorandum of Points and
 2 Authorities and any and all papers and pleadings filed in this matter, and will not create any
 3 prejudice to the moving parties.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 On November 14, 2017, Defendants filed a Motion to Strike and/or Motion in Limine to
 6 Exclude the Expert Testimony of Daniel Gluhaich. On November 15, 2017, Defendants filed a
 7 Motion for Partial Summary Judgment. Also on November 15, 2017, Defendants filed a Motion
 8 for Sanctions. Plaintiffs' responses to all three motions fell due on December 4, 2017.

9 Counsel has been diligently working for weeks to respond to Defendant's serial motions,
 10 which include seeking dismissal with prejudice of Plaintiffs' case. With the full intention of
 11 submitting said responses, Counsel for Plaintiffs encountered unforeseen computer issues and
 12 contacted opposing counsel who granted an extension until 10 a.m. on December 6, 2017. In the
 13 early morning of December 6, 2017, all of Counsel's work on the responses was erased due to an
 14 application crash. Counsel contacted Defendants requesting a 24-hour extension, but Defendants
 15 were unwilling to do so. Counsel for Plaintiffs is confident that with a one-day extension they
 16 will be able to recreate and submit the oppositions to Defendants' three motions.

17 NRCP 6(b) provides that

18 [w]hen by these rules or by a notice given thereunder or by order of court an act is
 19 required or allowed to be done at or within a specified time, the parties, by written
 20 stipulation of counsel filed in the action, may enlarge the period, or the court for
 21 cause shown may at any time in its discretion (1) with or without motion or notice
 order the period enlarged if request therefor is made before the expiration of the
 period originally prescribed or as extended by a previous order, or (2) upon
 motion made after the expiration of the specified period permit the act to be done
 where the failure to act was the result of excusable neglect.

22 In *Moseley v. Eighth Judicial Dist. Court*, the Nevada Supreme Court determined that "a party
 23 may obtain an extension of time to act under a particular rule when the time to act has expired
 24 and the party seeking an extension demonstrates good faith, a reasonable basis for not complying
 25 within the specified period, and an absence of prejudice to the nonmoving party." *See Moseley*
 26 *v. Eighth Judicial Dist. Court*, 124 Nev. 654, 188 P.3d 1136 (2008). The Court determined that
 27 the key factor in the federal court decisions under FRCP 6(b) "is whether the plaintiff asserted a
 28

1 reasonable basis for not complying.” *Id.* Thus, a short delay in filing responses to the pending
2 motions may be excused if it is shown that the delay was reasonable. In this case, the request is
3 reasonable, because such responses, because of their complexity, would necessitate a reasonable
4 request of 20-30 days, especially given the holiday period. Counsel reached out to Defendants
5 counsel on December 4 for a one-day extension, which was granted. Counsel then requested
6 another one-day extension to remedy computer problems. However, Counsel for Defendant’s
7 granted a five-hour extension to 3:00 p.m. on December 6, 2017, despite Counsel’s request for
8 an extension of 24 hours to recreate the oppositions. Throughout the pendency of this case,
9 Plaintiffs have routinely extended one-week extensions to Defendants whenever requested.

10 The pending motions are dispositive and thus, additional time is necessary to provide the
11 Court with all of the information necessary to make a decision.

12 Therefore, based on the foregoing, a short extension of time is warranted. Counsel
13 requests short continuance to file his oppositions to the pending motions until 4:29 p.m. on
14 December 7, 2017.

15 The deadline for submission of dispositive motions in this case is December 15, 2017.
16 Consequently, in the interests of avoiding any hint of prejudice to Defendants in responding to
17 Plaintiffs’ imminent oppositions, Plaintiffs request that the deadline for submission of dispositive
18 motions be extended in order to provide Defendants with ample time in which to respond.
19 Consequently, Plaintiff further request that the deadline for submission of dispositive motions be
20 extended to December 22, 2017.

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

DATED: December 6, 2017

THE O'MARA LAW FIRM, P.C.



DAVID C. O'MARA, ESQ

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 this 6th day of December 2017.



DAVID C. O'MARA, ESQ