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,

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and TIMOTHY P. HERBST, as Special Administrator of the ESTATE OF JERRY HERBST, deceased,

Respondents.

No. 83640
District Court Case No. CV14-01712

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APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 1 OF 18

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 0950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
RICHARD D. WILLIAMSON (SBN 9932)
JONATHAN JOEL TEW (SBN 11874)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS LARRY J. WILLARD, et al.

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 1)	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel – Brian P. Moquin, Esq.	10/28/14	1	202-206
	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brian P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340
	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547
	Exhibit 9: Seller's Final Closing Statement		3	548-549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 15)	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		4	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Larry J. Willard	08/30/16	4	798-806
18.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	807-837
	Exhibit 1: *Purchase and Sale Agreement* dated July 1, 2005 for Purchase of the Highway 50 Property		4	838-851

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 2: *Lease Agreement* dated December 2, 2005 for the Highway 50 Property		4	852-895
	Exhibit 3: *Three Year Adjustment Term Note* dated January 19, 2007 in the amount of $2,200,00.00 for the Highway 50 Property		4	896-900
	Exhibit 4: *Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	901-918
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		5	919-934
	Exhibit 6: *First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property		5	935-942
	Exhibit 7: *Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property		5	943-947
	Exhibit 8: *Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property		5	948-950
	Exhibit 9: *Purchase and Sale Agreement* Dated July 14, 2006 for the Baring Property		5	951-973
	Exhibit 10: *Lease Agreement* dated June 6, 2006 for the Baring Property		5	974-1009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 11: *Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,00.00 for the Baring Property		5	1010-1028
	Exhibit 12*: Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1029-1046
	Exhibit 13: *First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property		5	1047-1054
	Exhibit 14: *Guaranty Agreement* dated March 12, 2007 for the Baring Property		5	1055-1059
	Exhibit 15: *Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1060-1071
	Exhibit 16: *Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1072-1079
	Exhibit 17: *Substitution of Attorney* forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1080-1084
	Exhibit 18: *Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California Case		5	1085-1088
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and		5	1089-1093

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Brian Moquin re Joint Stipulation in California Case			
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court Property		5	1094-1100
	Exhibit 21: *Request for Dismissal* without prejudice filed May 19, 2014 in the California case		5	1101-1102
	Exhibit 22: *Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1103-1111
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1112-1113
	Exhibit 24: *Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property		5	1114-1116
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1117-1152
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1153-1155
	Exhibit 27: *Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property		6	1156-1168

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 28: *Lease Agreement* dated November 18, 2005 for the Virginia Property		6	1169-1204
	Exhibit 29: *Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property		6	1205-1207
	Exhibit 30: *Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1208-1225
	Exhibit 31: *Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1226-1230
	Exhibit 32: *Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1231-1245
	Exhibit 33: *Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1246-1271
	Exhibit 34: *Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1272-1273
	Exhibit 35: *Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1274-1275

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 36: *Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property		6	1276-1281
	Exhibit 37: *Guaranty Agreement* dated March 9, 2007 for the Virginia Property		6	1282-1286
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1287-1291
	Exhibit 39: Letter dated March 18,2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1292-1294
	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1295-1297
	Exhibit 41: *Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1298-1302
	Exhibit 42: *Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1303-1305
	Exhibit 43: *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 2013		6	1306-1309
	Exhibit 44: *Declaration in Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013,		6	1310-1314

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Northern District of California Bankruptcy Court Case No. 13-53293 CN			
	Exhibit 45: *Substitution of Attorney* forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1315-1319
	Exhibit 46: *Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1320-1327
	Exhibit 47: *Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00		6	1328-1334
	Exhibit 48: *Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1335-1354
	Exhibit 49: *Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1355-1356
	Exhibit 50: *Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property		6	1357-1358
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland		6	1359-1360

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000,000.00			
19.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1361-1380
	Exhibit 1: Declaration of John P. Desmond		6	1381-1384
20.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgement	12/20/16	7	1385-1390
	Exhibit 1: Expert Report of Michelle Salazar		7	1391-1424
21.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1425-1443
22.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgement in Favor of Defendants	02/02/17	7	1444-1451
	Exhibit 1: January 19-25, 2017, Email Exchange		7	1452-1454
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1455-1479
23.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1480-1488
24.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1489-1512

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
25.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1513-1516
	Exhibit 1: May 30, 2017 Order		7	1517-1541
26.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1542-1549
27.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1550-1557
28.	Affidavit of Larry Willard	10/18/17	7	1558-1574
29.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1575-1602
	Contents of DVD of Exhibits (filed manually)		7	1603-1615
30.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	8	1616-1659
	Exhibit 1: Declaration of Brian R. Irvine		8	1660-1666
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		8	1667-1674
	Exhibit 3: February 12, 2015 Letter		8	1675-1677
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		8	1678-1689
	Exhibit 5: August 28, 2015, Letter		8	1690-1701
	Exhibit 6: March 3, 2016, Letter		8	1702-1790
	Exhibit 7: March 15, 2016 Letter		9	1791-1882
	Exhibit 8: April 20, 2016, Letter		9	1883-1909

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		9	1910-1918
	Exhibit 10: December 5, 2016 Email		9	1919-1925
	Exhibit 11: December 9, 2016 Email		9	1926-1927
	Exhibit 12: December 23, 2016 Email		9	1928-1931
	Exhibit 13: December 27, 2016 Email		9	1932-1935
	Exhibit 14: February 3, 2017, Letter		9	1936-1963
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		9	1964-1973
	Exhibit 16: April 1, 2016 Email		9	1974-1976
	Exhibit 17: May 3, 2016 Email		9	1977-1978
	Exhibit 18: June 21, 2016 Email Exchange		9	1979-1985
	Exhibit 19: July 21, 2016 Email		9	1986-2002
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		9	2003-2012
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		9	2013-2023
	Exhibit 22: Defendants' First Requests for Production on Willard		9	2024-2031
	Exhibit 23: Defendants' Second Request for Production on Willard		9	2032-2039

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 24: Defendants' Third Request for Production on Willard		10	2040-2045
	Exhibit 25: Defendants Requests for Admission to Willard		10	2046-2051
	Exhibit 26: Willard Lease		10	2052-2087
	Exhibit 27: Willard Response to Second Set of Interrogatories		10	2088-2096
	Exhibit 28: Deposition of L. Willard Excerpt		10	2097-2102
	Exhibit 29: April 12, 2013 Letter		10	2103-2105
	Exhibit 30: Declaration of G. Gordon		10	2106-2108
	Exhibit 31: Declaration of C. Kemper		10	2109-2112
31.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	10	2113-2135
	Exhibit 1: Plaintiffs' Initial Disclosures		10	2136-2143
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		10	2144-2152
	Exhibit 3: December 5, 2016 Email		10	2153-2159
	Exhibit 4: December 9, 2016 Email		10	2160-2161
	Exhibit 5: December 23, 2016 Email		10	2162-2165
	Exhibit 6: December 27, 2016 Email		10	2166-2169
	Exhibit 7: February 3, 2017 Letter		10	2170-2197

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 31)	Exhibit 8: Deposition Excerpts of D. Gluhaich		10	2198-2207
	Exhibit 9: Declaration of Brian Irvine		10	2208-2211
32.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	10	2212-2228
	Exhibit 1: Highway 50 Lease		10	2229-2272
	Exhibit 2: Declaration of Chris Kemper		10	2273-2275
	Exhibit 3: Wooley Deposition at 41		10	2276-2281
	Exhibit 4: Virginia Lease		11	2282-2317
	Exhibit 5: Little Caesar's Sublease		11	2318-2337
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		11	2338-2346
	Exhibit 7: Willard Deposition at 89		11	2347-2352
33.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	11	2353-2390
	Exhibit 1: Plaintiffs' Initial Disclosures		11	2391-2398
	Exhibit 2: November 2014 Email Exchange		11	2399-2408
	Exhibit 3: January 2015 Email Exchange		11	2409-2414
	Exhibit 4: February 12, 2015 Letter		11	2415-2417
	Exhibit 5: Willard July 2015 Interrogatory Reponses		11	2418-2429

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 6: Wooley July 2015 Interrogatory Responses		11	2430-2439
	Exhibit 7: August 28, 2015 Letter		11	2440-2451
	Exhibit 8: March 3, 2016 Letter		12	2452-2540
	Exhibit 9: March 15, 2016 Letter		12	2541-2632
	Exhibit 10: April 20, 2016 Letter		12	2633-2659
	Exhibit 11: December 2, 2016 Expert Disclosure		12	2660-2668
	Exhibit 12: December 5, 2016 Email		12	2669-2675
	Exhibit 13: December 9, 2016 Email		12	2676-2677
	Exhibit 14: December 23, 2016 Email		12	2678-2681
	Exhibit 15: December 27, 2016 Email		12	2682-2685
	Exhibit 16: February 3, 2017 Letter		13	2686-2713
	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		13	2714-2723
	Exhibit 18: Wooley Deposition Excerpts		13	2724-2729
	Exhibit 19: Highway 50 Lease		13	2730-2773
	Exhibit 20: April 1, 2016 Email		13	2774-2776
	Exhibit 21: May 3, 2016 Email Exchange		13	2777-2778
	Exhibit 22: June 21, 2016 Email Exchange		13	2779-2785

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 23: July 21, 2016 Letter		13	2786-2802
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		13	2803-2812
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		13	2813-2822
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		13	2823-2830
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		13	2831-2838
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		13	2839-2844
	Exhibit 29: Defendants' Requests for Admission on Wooley		13	2845-2850
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		13	2851-2860
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		13	2861-2871
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		13	2872-2879
	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		13	2880-2887
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		13	2888-2893
	Exhibit 35: Defendants' Requests for Admission on Willard		13	2894-2899

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
34.	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	13	2900-2904
35.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	13	2905-2908
36.	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	13	2909-2912
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	13	2913-2916
38.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	13	2917-2921
39.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	13	2922-2926
40.	Order Granting Defendants' Motion for Partial Summary Judgment	01/04/18	14	2927-2931
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	14	2932-2935
42.	Notice of Entry of Order re Defendants' Motion to Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	14	2936-2939

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	14	2940-2943
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	14	2944-2977
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	14	2978-2981
46.	Order Denying Plaintiffs' Motion to Partially Dismiss Plaintiffs' Complaint as Moot	03/06/18	14	2982-2985
47.	Notice of Entry of Order re Order Denying Motion to Partially Dismiss Complaint	03/06/18	14	2986-2989
48.	Request for Entry of Judgment	03/09/18	14	2990-2998
49.	Notice of Withdrawal of Local Counsel	03/15/18	14	2999-3001
50.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	14	3002-3004
51.	Opposition to Request for Entry of Judgment	03/26/18	14	3005-3010
52.	Reply in Support of Request for Entry of Judgment	03/27/18	14	3011-3016
53.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	14	3017-3019
54.	Notice of Entry of Order re Order Granting Defendants' Motion to Dismiss Counterclaims	04/16/18	14	3020-3023
55.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	14	3024-3041

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 55)	Exhibit 1: Declaration of Larry J. Willard		14	3042-3051
	Exhibit 2: Lease Agreement dated 11/18/05		14	3052-3087
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		14	3088-3090
	Exhibit 4: Operation and Management Agreement dated 5/1/13		14	3091-3095
	Exhibit 5: 13 Symptoms of Bipolar Disorder		14	3096-3098
	Exhibit 6: Emergency Protective Order dated 1/23/18		14	3099-3101
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		14	3102-3104
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		14	3105-3118
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		14	3119-3147
56.	Opposition to Rule 60(b) Motion for Relief	05/18/18	15	3148-3168
	Exhibit 1: Declaration of Brian R. Irvine		15	3169-3172
	Exhibit 2: Transcript of Hearing, January 10, 2017		15	3173-3242

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 56)	Exhibit 3: Transcript of Hearing, December 12, 2017		15	3243-3271
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		15	3272-3280
	Exhibit 5: Attorney status according to the California Bar		15	3281-3282
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		15	3283-3290
57.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	15	3291-3299
	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		15	3300-3307
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		15	3308-3311
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		15	3312-3314
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		15	3315-3324
	Exhibit 5: Receipt		15	3325-3326
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018		15	3327-3331

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 57)	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		15	3332-3338
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		15	3339-3343
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		15	3344-3346
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		15	3347-3349
	Exhibit 11: Notice of Withdrawal of Local Counsel		15	3350-3353
58.	Order re Request for Entry of Judgment	06/04/18	15	3354-3358
59.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	15	3359-3367
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		15	3368-3385
60.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	16	3386-3402
61.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	16	3403-3409
62.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	16	3410-3441

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
63.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	16	3442-3478
64.	Judgment	12/11/18	16	3479-3481
65.	Notice of Entry of Order re Judgment	12/11/18	16	3482-3485
66.	Notice of Appeal	12/28/18	16	3486-3489
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		16	3490-3524
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		16	3525-3557
	Exhibit 3: Judgment, entered December 11, 2018		16	3558-3561
67.	Motion to Substitute Proper Party	02/22/19	16	3562-3576
68.	Addendum to Motion to Substitute Proper Party	02/26/19	16	3577-3588
69.	Opinion	08/06/20	16	3589-3597
70.	Notice of Related Action	08/19/20	16	3598-3601
	Exhibit 1: Conditional Guilty Plea in Exchange for a Stated Form of Discipline		16	3602-3612
	Exhibit 2: Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing		16	3613-3623

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 70)	Exhibit 3: Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney from Practicing Law in Nevada		17	3624-3632
71.	Order to Set Status Conference	09/18/20	17	3633-3634
72.	Order Denying Rehearing	11/03/20	17	3635
73.	Order Denying En Banc Reconsideration	02/23/21	17	3636-3637
74.	Notice of Association of Counsel	03/29/21	17	3638-3640
75.	Request for Status Conference	03/30/21	17	3641-3645
76.	Notice of Submission of Proposed Order	05/21/21	17	3646-3649
	Exhibit 1: [Plaintiffs' proposed] Order Granting in Part and Denying in Part the Willard Plaintiffs' Rule 60(b)(1) Motion for Relief		17	3650-3664
77.	Notice of Submission of Proposed Order	05/21/21	17	3665-3668
	Exhibit 1: [Defendants' proposed] Order Denying Plaintiffs' Rule 60(b) Motion for Relief on Remand		17	3669-3714
78.	Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/09/21	17	3715-3722
79.	Defendants' Opposition to Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/23/21	17	3723-3735
80.	Reply in Support of Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/29/21	17	3736-3742
81.	Order Denying Motion to Strike	09/10/21	17	3743-3749

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
82.	Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief	09/13/21	17	3750-3795
83.	Notice of Filing Cost Bond	10/11/21	17	3796-3798
84.	Notice of Appeal	10/11/21	17	3799-3802
	Exhibit 1: Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief		17	3803-3849
85.	Case Appeal Statement	10/11/21	17	3850-3855
	Transcripts			
86.	Transcript of Proceedings – Status Hearing	08/17/15	18	3856-3873
87.	Transcript of Proceedings – Hearing on Motion for Partial Summary Judgment	01/10/17	18	3874-3942
88.	Transcript of Proceedings – Pre-Trial Conference	12/12/17	18	3943-3970
89.	Transcript of Proceedings – Oral Arguments – Plaintiffs' Rule 60(b) Motion	09/04/18	18	3971-3991
90.	Transcript of Proceedings – Status Conference	04/21/21	18	3992-4010

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Clerk of the Court
Transaction # 4554513 : mfernand

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.
Pro Hac Vice Application Pending
CALIFORNIA BAR NO. 247583
3506 La Castellet Court
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

v.

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

Defendants.

Case No. _____

Dept. _____

VERIFIED COMPLAINT

(EXEMPT FROM ARBITRATION—AMOUNT IN EXCESS OF $40,000.00)

Plaintiffs LARRY J. WILLARD ("Willard"), individually and as trustee of the Larry James Willard Trust Fund ("the Willard Trust"), OVERLAND DEVELOPMENT CORPORATION ("Overland"), EDWARD C. WOOLEY and JUDITH A. WOOLEY ("the Wooleys"), individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000 ("the Wooley Trust"), by and through undersigned attorneys, hereby allege, aver, and complain of Defendants BERRY-HINCKLEY INDUSTRIES ("BHI"), JERRY HERBST ("Herbst"), and JH, INC. ("JH") (collectively, "Defendants") as follows:

JURISDICTION

1. This Court has jurisdiction over Defendants because Defendants are either citizens or residents of the State of Nevada or do business in the State of Nevada, County of Washoe.

2. Venue is proper in this Court because the properties at issue are located in this judicial district and because the leases at issue expressly provide for venue in this Court.

PARTIES

3. Plaintiff Larry J. Willard ("Willard") is, and at all times relevant herein was, a citizen of the United States and a resident of the State of California. At all times relevant herein Willard was trustee of the Larry James Willard Trust Fund ("the Willard Trust").

4. Plaintiff Overland Development Corporation ("Overland") is, and at all times relevant herein was, a corporation organized and existing under the laws of the State of California. Willard is the President of Overland. Willard, the Willard Trust, and Overland are referred to hereinafter as "the Willard Plaintiffs."

5. Plaintiffs Edward C. Wooley and Judith A Wooley (collectively, "the Wooleys") are, and at all times relevant herein were, citizens of the United States of America and are trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000 ("the Wooley Trust") (collectively, "the Wooley Plaintiffs").

6. Defendant Berry-Hinckley Industries ("BHI") is, and at all times relevant herein

was, a corporation organized and existing under the laws of the State of Nevada.

7. Defendant Jerry Herbst ("Herbst") is, and at all times relevant herein was, a citizen of the State of Nevada.

8. Defendant JH, Inc. ("JH") is, and at all times relevant herein was, a corporation organized and existing under the laws of the State of Nevada. JH is the parent company of BHI.

9. Plaintiffs are informed and believe and on that basis allege that Defendant JH is the alter ego of Defendant BHI, given the commingling and diversion of the funds and assets of each, the failure to segregate said funds, the unity of interest and ownership between JH, BHI, and Herbst such that their individuality or separation has ceased, the disregard for corporate formalities, the undercapitalization of BHI to the extent that it cannot satisfy its legal obligations, and the commonality of officers, directors, and corporate office, resulting in BHI serving as a mere shell for the affairs of JH and Herbst and being used solely for the purpose of escaping personal liability. The interests of justice in avoiding inequitable results warrants the disregarding of BHI's corporate form and the holding of BHI's parent company, JH, as well as its sole shareholder, Herbst, liable for BHI's legal obligations.

FIRST CAUSE OF ACTION

(Breach of Lease Agreement)

By the Willard Plaintiffs Against JH, Inc. and Berry-Hinckley Industries

10. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set forth at this point.

11. On November 18, 2005, BHI entered into a lease agreement (the "Willard Lease") on the property owned by the Willard Plaintiffs located at 7695-7699 S. Virginia Street, Reno, Nevada (the "Willard Property"). Under the Willard Lease, BHI agreed to lease the Virginia Street Property from January 2006 through January 2026 at a monthly rental rate of $122,031.25, said rental rate increasing by 2% per month through the lease term. A true and correct copy of the Willard Lease is attached hereto as Exhibit 1.

12. On February 17, 2007, BHI sent the Willard Plaintiffs a letter indicating Herbst's intent to acquire BHI's convenience store assets. Attached to that letter was a letter from Herbst requesting that the Willard Plaintiffs agree to a modifications of the Willard Lease in return for

Herbst personally guaranteeing lease payments by BHI through the duration of the revised lease term. Also attached was a letter from Johnson Jacobson Wilcox dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of $200 million. A true and correct copy of the February 17, 2007 letter and accompanying attachments is attached hereto as Exhibit 2.

13. On March 9, 2007, the Willard Plaintiffs agreed to amend the Willard Lease, thereby forgoing $5,250,045.20 in rent through the shortening of the lease term by 30 months, in return for Herbst's personally guaranteeing that BHI would make all lease payments through the term of the lease (the "Herbst-Willard Guaranty Agreement"). A true and correct copy of the Herbst-Willard Guaranty Agreement is attached hereto as Exhibit 3. A true and correct copy of the amendment to the Willard Lease is attached hereto as Exhibit 4.

14. In March 2013, BHI defaulted on the Willard Lease. BHI and Herbst negotiated an agreement (the " Operating Agreement") with the Willard Plaintiffs under which BHI would pay the Willard Plaintiffs 50% of net revenues minus $10,000.00 from continuing to operate at the Willard Property. A true and correct copy of the Interim Operating Agreement is attached hereto as Exhibit 5.

15. BHI failed to tender any payments to the Willard Plaintiffs as required under the Interim Operating Agreement, instead occupying the Willard Property through May 2013 without paying any rent. At the end of May 2013, BHI abandoned the Willard Property leaving it in such a state of disbevelment and disrepair that Willard was fined and continues to be fined by the City of Reno, said fines currently totaling $3,265.00.

16. As a direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs were deprived of rental income in the amount of $19,443,836.94 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in the Willard Lease was $15,741.360.75 as of March 1, 2013.

17. As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs were forced to sell the Willard Property in March 2014 in a short sale, thereby losing $4,437,500.00 of earnest money invested in the Willard Property and incurring at least $3,000,000.00 in tax consequences and $549,852.00 in closing costs.

18. As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs were forced to purchase insurance on the Willard Property at a cost of $4,554.53, were forced to pay for installation of a security fence for the Willard Property at a cost of $2,668.62, and were charged $10,393.35 by Nevada Energy for utility fees rightly owed by BHI.

19. As a further direct and proximate result of BHI breaching the Willard Lease, Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and $15,000.00 in accounting fees in the process. Six months later, upon the advice of counsel, Willard withdrew his bankruptcy petition but has been rendered insolvent by virtue of the breaches by BHI and Herbst.

20. As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in Santa Clara County, California, thereby incurring $35,000.00 in attorney's fees.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)
By the Willard Plaintiffs Against Jerry Herbst

21. Paragraphs 1 through 20 above are hereby incorporated by reference as if fully set forth at this point.

22. Upon receiving notice from the Willard Plaintiffs that BHI was in default of the Willard Lease, Herbst breached his duties under the Herbst-Willard Guaranty in failing to tender payment of rent due by BHI to the Willard Plaintiffs.

23. Under the terms of the Herbst-Willard Guaranty, Herbst guaranteed "unconditionally, absolutely and irrevocably" the timely payment and performance of each of BHI's obligations arising out of and under the Willard Lease. This guaranty was "a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectability or enforceability of such obligations." Herbst agreed to be "directly responsible for the full extent of any unsatisfied Guarantee Obligations." Herbst further agreed that his guaranty "is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of [Herbst] hereunder shall

not be impaired, affected or released hy, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; (viii) any allegation or contest of the validity of the Lease or this Agreement."

24. In the Herbst-Willard Guaranty, Herbst expressly waived "any defense to its obligations . . . that might arise as a result of any of the" contingencies articulated in Paragraph 20, and furtber waived "tbe effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or would constitute or give rise to a defense to, the obligation of a surety or guarantor."

25. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, the Willard Plaintiffs were forced to sell the Willard Property in March 2014 in a short sale, thereby losing $4,437,500.00 of earnest money invested in the Willard Property and incurring at least $3,000,000.00 in tax consequences and $549,852.00 in closing costs.

26. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, the Willard Plaintiffs were forced to purchase insurance on the Willard Property at a cost of $4,554.53, were forced to pay for installation of a security fence for the Willard Property at a cost of $2,668.62, and were charged $10,393.35 by Nevada Energy for utility fees rightly owed by BHI.

27. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and

$15,000.00 in accounting fees in the process. Six months later, upon the advice of counsel, Willard withdrew his bankruptcy petition but has been rendered insolvent by virtue of the breaches by BHI and Herbst.

28. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, the Willard Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in Santa Clara County, California, thereby incurring $35,000.00 in attorney's fees.

THIRD CAUSE OF ACTION

(Breach of Lease Agreement)

By the Wooley Plaintiffs Against JH, Inc. and Berry-Hinckley Industries

29. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set forth at this point.

30. On December 2, 2005, BHI entered into a lease agreement ("Wooley Lease #1") on the property owned by the Wooley Plaintiffs located at 1820 Highway 50 East, Carson City, Nevada (the "Highway 50 Property"). Under Wooley Lease #1, BHI agreed to lease the Highway 50 Property from December 1, 2005 through November 30, 2025 at a monthly rental rate of $22,666.67, said rental rate increasing by 2% per month through the lease term. A true and correct copy of Wooley Lease #1 is attached hereto as Exhibit 6.

31. On June 6, 2006, BHI entered into a lease agreement ("Wooley Lease #2") on the property owned by the Wooley Plaintiffs located at 1365 Baring Boulevard, Sparks, Nevada (the "Sparks Property"). Under Wooley Lease #2, BHI agreed to lease the Sparks Property from June 6, 2006 through September 30, 2025 at a monthly rental rate of $19,856.25, said rental rate increasing by 2% per month through the lease term. A true and correct copy of Wooley Lease #2 is attached hereto as Exhibit 7.

32. On February 17, 2007, BHI sent the Wooley Plaintiffs a letter indicating Herbst's intent to acquire BHI's convenience store assets. Attached to that letter was a letter from Herbst requesting that the Wooley Plaintiffs agree to a modifications of Wooley Lease #1 and Wooley Lease #2 in return for Herbst personally guaranteeing lease payments by BHI through the duration of the revised lease terms. Also attached was a letter from Johnson Jacobson Wilcox dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of $200

million. A true and correct copy of the February 17, 2007 letter and accompanying attachments is attached hereto as Exhibit 2.

33. On March 12, 2007, the Wooley Plaintiffs agreed to amend Wooley Lease #1 and Wooley Lease #2, thereby forgoing $1,834,663.77 in rent through the shortening of the lease terms hy 30 months, in return for Herbst's personally guaranteeing that BHI would make all lease payments through the term of the lease (the "Herbst-Wooley Guaranty Agreement"). A true and correct copy of the Herbst-Wooley Guaranty Agreement regarding the Highway 50 Property is attached hereto as Exhibit 8. A true and correct copy of the Herbst-Wooley Guarantee is attached hereto as Exhibit 9. A true and correct copy of the amendment to Wooley Lease #1 is attached hereto as Exhibit 10. A true and correct copy of the amendment to Wooley Lease #2 is attached hereto as Exhibit 11.

34. In March 2013, BHI defaulted on Wooley Lease #1 and Wooley Lease #2.

35. As a direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs were deprived of rental income in the amount of $4,420,244.00 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in Wooley Lease #1 was $3,323,543.49 as of March 1, 2013.

36. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Highway 50 Property suffered a diminution in value in an amount to be proven at trial but which is at least $2,000,000.00.

37. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs incurred property taxes in the amount of $1,500.00.

38. As a further direct and proximate result of BHI hreaching Wooley Lease #1, the Wooley Plaintiffs were forced to purchase insurance on the Highway 50 Property at a cost of $3,840.00.

39. As a further direct and proximate result of BHI hreaching Wooley Lease #1, the Wooley Plaintiffs incurred maintenance costs on the Highway 50 Property of $4,000.00.

40. As a further direct and proximatc result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs incurred management fce costs on the Highway 50 Property of $2,500.00.

41. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs were deprived of the security deposit from the subtenant at the Highway 50 Property in the amount of $2,485.00.

42. As a direct and proximate result of BHI breaching Wooley Lease #2, the Wooley Plaintiffs were deprived of rental income in the amount of $3,712,389.67 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in Wooley Lease #2 was $3,046,715.50 as of March 1, 2013.

43. As a further direct and proximate result of BHI breaching Wooley Lease #2, the Wooley Plaintiffs were forced to sell the Sparks Property at a loss of $147,847.30.

44. As a further direct and proximate result of BHI breaching Wooley Lease #2, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but which is at least $600,000.00.

45. As a further direct and proximate result of BHI breaching Wooley Lease #1 and Wooley Lease #2, the Wooley Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in Santa Clara County, California, thereby incurring $45,088.00 in attorney's fees.

FOURTH CAUSE OF ACTION

(Breach of Personal Guaranty)

By the Wooley Plaintiffs Against Jerry Herbst

46. Paragraphs 29 through 45 above are hereby incorporated by reference as if fully set forth at this point.

47. Upon receiving notice from the Wooley Plaintiffs that BHI was in default of the Wooley Leases, Herbst breached his duties under the Herbst-Wooley Guaranty in failing to tender payment of rent due by BHI to the Wooley Plaintiffs.

48. Under the terms of the Herbst-Wooley Guaranty, Herbst guaranteed "unconditionally, absolutely and irrevocably" the timely payment and performance of each of BHI's obligations arising out of and under the Wooley Leases. This guaranty was "a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectability or enforceability of such obligations." Herbst agreed to be "directly responsible for the full extent of any unsatisfied Guarantee Obligations." Herbst further agreed that his guaranty "is an

unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of [Herbst] hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; (viii) any allegation or contest of the validity of the Lease or this Agreement."

49. In the Herbst-Wooley Guaranty, Herbst expressly waived "any defense to its obligations . . . that might arise as a result of any of the" contingencies articulated in Paragraph 44, and further waived "the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or would constitute or give rise to a defense to, the obligation of a surety or guarantor."

50. As a direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were deprived of rental income in the amount of $8,145,301.73 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in the Wooley Leases was $6,370,258.99 as of March 1, 2013.

51. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Highway 50 Property suffered a diminution in value in an amount to be proven at trial but which is at least $2,000,000.00.

52. As a further direct and proximate result of Herbst breaching the Herbst-Wooley

A.App.10

Guaranty, the Wooley Plaintiffs incurred property taxes in the amount of $1,500.00.

53. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were forced to purchase insurance on the Highway 50 Property at a cost of $3,840.00.

54. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred maintenance costs on the Highway 50 Property of $4,000.00.

55. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred management fee costs on the Highway 50 Property of $2,500.00.

56. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were deprived of the security deposit from the subtenant at the Highway 50 Property in the amount of $2,485.00.

57. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were forced to sell the Sparks Property at a loss of $147,847.30.

58. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but which is at least $600,000.00.

59. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs hired an attorney to file suit against JH, BHI, and Herbst in Santa Clara County, California, thereby incurring $45,088.00 in attorney's fees.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
By the Willard Plaintiffs Against Jerry Herbst

60. Paragraphs 1 through 28 above are hereby incorporated by reference as if fully set forth at this point.

61. By virtue of the Herbst-Willard Guaranty entered into by and between the Willard Plaintiffs and Herbst on March 9, 2007, Herbst owed and continues to owe the Willard Plaintiffs a fiduciary duty.

A.App.11

62. Herbst breached that duty.

63. As a direct and proximate result of Herbst's breach of his fiduciary duty, the Willard Plaintiffs suffered damages in the amount of $23,873,479.21.

SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
By the Wooley Plaintiffs Against Jerry Herbst

64. Paragraphs 46 through 59 above are hereby incorporated by reference as if fully set forth at this point.

65. By virtue of the Herbst-Wooley Guaranty entered into by and between the Wooley Plaintiffs and Herbst on March 12, 2007, Herbst owed and continues to owe the Wooley Plaintiffs a fiduciary duty.

66. Herbst breached that duty.

67. As a direct and proximate result of Herbst's breach of his fiduciary duty, the Wooley Plaintiffs suffered damages in an amount to be proven at trial but which is at least $9,179,859.29.

SEVENTH CAUSE OF ACTION
(Attachment)
By All Plaintiffs Against All Defendants

68. Paragraphs 1 through 67 above are hereby incorporated by reference as if fully set forth at this point.

69. Plaintiffs are informed and believe and on that basis allege that as a result of this action, Defendants will attempt to transfer or otherwise conceal assets in an effort to make it impossible for Plaintiffs to reach the property by execution after judgment is entered.

70. Plaintiffs are informed and believe and on that basis allege that Defendants will move, transfer or otherwise conceal these assets in order to defeat or otherwise hinder Plaintiff's ability to collect after judgment is entered.

71. These allegations are based in part on the fact that on March 18, 2013, Defendants attorney, Gerald M. Gordon of Gordon Silver, sent a letter to Plaintiffs' attorney in which Defendants threatened to declare bankruptcy rather than honor their obligations arising under the leases. A true and correct copy of this letter is attached hereto as Exhibit 12.

72. These allegations are further based on the fact that on March 28, 2013, Defendants attorney, Gerald M. Gordon of Gordon Silver, sent a letter to Plaintiffs' attorney reiterating Defendants' threat of seeking bankruptcy protection and offering to pay a small fraction of the amount due under the leases and Herbst's personal guaranty, an offer which Plaintiffs rejected.

73. These allegations are further based on the fact that on July 1, 2013, while Plaintiffs had the instant claim pending against Defendants in Santa Clara County, California, Herbst and his wife transferred 100% of their interest in the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134 to their sons, Timothy Paul Herbst and Troy Dederick Herbst, as trustees of the Jerry E. Herbst Residence Trust and the Maryanna Herbst Residence Trust. Plaintiffs are informed and believe and on that basis allege that such transfer was for the purpose of attempting to shelter the estate, which is estimated to be worth at least $18 million, from being attached by Plaintiffs.

74. In this action, Plaintiffs seek an attachment pursuant to NRS 31.013 because extraordinary circumstances exist which will make it improbable for Plaintiffs to reach the property of Defendants by execution after judgment has been entered. Specifically, Plaintiffs seek an attachment of the following property:

- the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134, Parcel No. 138-20-416-003;
- the property located at 1001 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-031;
- the property located at 1005 South California Avenue, Parker, Arizona 85344, Parcel No. 311-23-030;
- the property located at 1009 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-028A;
- the property located at 515 Saddle View Way 23, Park City, Utah 84060, Parcel No. 01-923-06; and
- such other and further assets and properties owned by Defendants sufficient to

secure payment of Plaintiffs' claims against Defendants.

75. Pursuant to NRS Chapter 31, Plaintiffs seek issuance of a prejudgment writ of attachment upon the assets of Defendant JH, Inc., Defendant Berry-Hinckley Industries, and Defendant Jerry Herbst, to secure payment of Plaintiffs' claims against Defendants.

EIGHTH CAUSE OF ACTION

(Temporary Restraining Order)

By All Plaintiffs Against All Defendants

76. Paragraphs 1 through 75 above are hereby incorporated by reference as if fully set forth at this point.

77. If Defendants are permitted the ability to transfer, sell, or otherwise conceal assets during the pendency of this action, Plaintiffs will suffer irreparable harm.

78. If Defendants are permitted to have the ability to transfer, sell, or otherwise conceal assets before this Court can issue a writ of attachment on the assets of Defendants, and each of them, Plaintiffs will be denied the extraordinary relief provided in NRS Chapter 31 to protect their rights.

79. An interlocutory injunction preventing Defendants or any person with actual knowledge of the injunction is necessary to maintain the status quo until this Court can determine whether a writ of attachment should issue and/or until the conclusion of this action after trial.

80. Plaintiffs are entitled to a temporary restraining order and preliminary injunction enjoining Defendants, and each of them, and any other person with notice of the injunction from transferring, selling, or otherwise encumbering any assets or property of Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

ON THE FIRST CAUSE OF ACTION:

1. For direct damages in the discounted amount of $15,766,991.73;

2. For consequential damages in the amount of $8,080,856.50;

3. For late payment penalties of $25,630.98 for the period of March 2013 through May 2013;

4. For interest at a rate of 18% per annum as provided for under the Willard Lease from March 1, 2013 through entry of judgment; and

5. For reasonable attorney's fees as provided for under the Willard Lease.

ON THE SECOND CAUSE OF ACTION:

1. For direct damages in the discounted amount of $15,766,991.73;

2. For consequential damages in the amount of $8,080,856.50;

3. For late payment penalties of $25,630.98 for the period of March 2013 through May 2013;

4. For interest at a rate of 18% per annum as provided for under the Willard Lease from March 1, 2013 through entry of judgment; and

5. For reasonable attorney's fees as provided for under the Willard Lease.

ON THE THIRD CAUSE OF ACTION:

1. For direct damages in the discounted amount of $6,370,258.99;

2. For consequential damages in an amount to be proven at trial but which is at least $2,809,600.30;

3. For interest at a rate of 18% per annum as provided for under the Wooley Leases from March 1, 2013 through entry of judgment; and

4. For reasonable attorney's fees as provided for under the Wooley Leases.

ON THE FOURTH CAUSE OF ACTION:

1. For direct damages in the discounted amount of $6,370,258.99;

2. For consequential damages in an amount to be proven at trial but which is at least $2,809,600.30;

3. For interest at a rate of 18% per annum as provided for under the Wooley Leases from March 1, 2013 through entry of judgment; and

4. For reasonable attorney's fees as provided for under the Wooley Leases.

ON THE FIFTH CAUSE OF ACTION:

1. For damages in the amount of $23,773,479.21;

2. For interest at a rate of 18% per annum as provided for under tbe Willard Lease

from March 1, 2013 through entry of judgment; and

3. For reasonable attorney's fees as provided for under the Willard Lease.

ON THE SIXTH CAUSE OF ACTION:

1. For damages in an amount to be proven at trial but which is at least $9,179,859.29;

2. For interest at a rate of 18% per annum as provided for under the Wooley Leases from March 1, 2013 through entry of judgment; and

3. For reasonable attorney's fees as provided for under the Wooley Leases.

ON THE SEVENTH CAUSE OF ACTION:

1. For issuance of a writ of attachment to impress a lien upon the assets of Defendants, and each of them, in order to secure judgment in favor of Plaintiffs, which including interest accrued to date will exceed $41,526,899.64. Such assets include the following:

- the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134, Parcel No. 138-20-416-003;
- the property located at 1001 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-031;
- the property located at 1005 South California Avenue, Parker, Arizona 85344, Parcel No. 311-23-030;
- the property located at 1009 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-028A;
- the property located at 515 Saddle View Way 23, Park City, Utah 84060, Parcel No. 01-923-06; and
- such other and further assets and properties owned by Defendants sufficient to secure payment of Plaintiffs' claims against Defendants.

ON THE EIGHTH CAUSE OF ACTION:

1. For a temporary restraining order and preliminary injunction preventing Defendants, and each of them, and any person with knowledge of the injunction from transferring, selling, or otherwise encumbering the assets of Defendants.

ON ALL CAUSES OF ACTION:

1. For pre-judgment interest upon such damages through entry of judgment at the rate of 18 percent per annum as provided for under the Lease Agreements;

2. For costs of suit;

3. For such other orders and further relief as the Court deems just and proper.

Respectfully submitted,

THE O'MARA LAW FIRM, P.C.

DATED: August 8, 2014

By: _____

DAVID C. O'MARA
Nevada Bar No. 8599
311 East Liberty Street
Reno, Nevada 89501
(775) 323-1321
(775) 323-4082 (facsimile)

LAW OFFICES OF BRIAN P. MOQUIN

DATED: August 7, 2014

By: _____

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

Attorneys for Plaintiffs

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the attorney for Larry J. Willard, Overland Development Corporation, Edward C. Wooley, and Judith A. Wooley, Plaintiffs in the foregoing Complaint and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true.

Pursuant to NRS 15.010, the undersigned attorney verifies this Complaint for Plaintiffs Larry J. Willard, Overland Development Corporation, Edward C. Wooley, and Judith A. Wooley because Plaintiffs reside outside this County.

DATED: August 8, 2014

DAVID C. O'MARA, ESQ.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-entitled matter

__X__ Document does not contain the social security number of any person

-OR-

_____ Document contains the social security number of a person as required by:

____ A specific state or federal law, to wit: _____

-or-

____ For the administration of a public program

-or-

____ For an application for a federal or state grant

-or-

____ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: August 8, 2014.

THE O'MARA LAW FIRM, PC

BY: /s David C. O'Mara
DAVID C. O'MARA, ESQ.

EXHIBIT INDEX

EXHIBIT NO:	DESCRIPTION	PAGES
1.	Lease Agreement (November 18, 2005)	36
2.	Herbst Offer Letter	16
3	Herbst Guaranty	5
4.	Lease Agreement (Dec. 2005)	6
5.	Interim Operating Agreement (March 2007)	5
6.	Lease Agreement (Dec. 2, 2005)	29
7.	Lease Agreement (June 6, 2006)	36
8.	Herbst Guaranty (March 2007) Hwy 50	5
9.	Herbst Guaranty (March 12, 2007)	5
10.	First Amendment to Lease Agreement (Mar. 12, 2007) (HWY 50)	8
11.	First Amendment to Lease Agreement (Mar 12, 2007) (Baring)	8
12.	Gordon Silver Letter dated March 18, 2013	3
13.	Gordon Silver Letter dated March 28, 2013	3

F I L E D
Electronically
2014-08-08 04:07:29 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 1

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of November 18, 2005 by and between **OVERLAND DEVEOPMENT CORPORATION INC. dba LJW ENTERPIRSES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030, and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, NV 89511

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

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

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

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

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 untenantability 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 exclnde 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'a 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 bave the option to restore the Property if Lessor elects to terminate this Lease in accordance with the terms bereof;

(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 Projection, 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 it 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 withhold 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:	Overland Development Corporation Inc. Attn: Larry Willard 133 Glenridge Avenue Los Gatos, CA 95030
With a copy to	Sam Chuck, Esq. Rossi, Hamerslough, Reischl & Chuck 1960 The Alameda, Suite 200 San Jose, CA 95126 Telephone: (408) 261-4252 Facsimile: (408) 261-4292

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

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

26. **Intentionally Omitted.**

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

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 eotitled 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]

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

LESSOR:

LARRY WILLARD

Tax Identification No. [redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

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

Tina T. Seda
Notary Public

My Commission Expires: 10-15-07

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

STATE OF CALIFORNIA) S.S.
COUNTY OF Santa Clara

On December 2, 2005 before me,

Tina T. Seda

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

Larry J. Willard

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Tina T. Seda

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

(This area for official notarial seal)

notyack rev. (010698)

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____
Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

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

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

ANNA-LISA LOHER
Commission # 1400595
Notary Public - California
Orange County
My Comm. Expires Feb 14, 2007

EXHIBIT A

DEFINED TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

"*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

(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.

"*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*" bas 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: 7695 - 7699 S. Virginia Street, Reno, Nevada (APN 043-011-48)

PROPERTY LEGAL DESCRIPTION:

Parcel I

The land referred to herein is situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South Half (S 1/2) of the Northwest Quarter (NW 1/4) of Section 6, Township 19 North, Range 20 East, M.D.M., and being more particularly described as follows:

Commencing at the Southwest corner as Parcel "C", a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, on file in the County Recorders Office, Washoe County, Nevada; thence North 00°16'56" East, a distance of 579.25 feet to the Northerly side of Longley Lane, Thence along said Northerly side South 69°21'09" West, a distance of 21.41 feet to the true point of beginning.

Thence along the said Northerly line of Longley Lane South 69°21'09" West, a distance of 301.22 feet to the Easterly line of U.S. 395; thence along said Easterly line North 21°04'38" West, a distance of 653.04 feet; thence leaving said Easterly line North 14°55'49" East, a distance of 126.66 feet, thence North 89°52'07" East, a distance of 458.81 feet; thence North 19°19'30" West, a distance of 0.78 feet; thence North 84°51'10" East, a distance of 213.17 feet to the Westerly line of South Virginia Street; thence along said Westerly line South 20°39'19" East, a distance of 257.92 feet; thence leaving said westerly line of South Virginia North 89°40'18" West, a distance of 275.76 feet; thence South 00°16'56" West, a distance of 406.67 feet to the true point of beginning.

Parcel II

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

Note: The above metes and bounds legal description appeared previously in that certain document recorded August 27, 1996, in Book 4656, Page 716, as Instrument No. 2024695.

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Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 2

BERRY-HINCKLEY INDUSTRIES

Memorandum

To	Berry-Hinckley Industries - convenience store landlords
Re	Jerry Herbs acquisition of Winners Corner & Chevron convenience stores
Date	Saturday, February 17^{h}, 2007

Over the past several weeks, Jerry Herbst of Terrible Herbst, Inc., in Las Vegas, Nevada, has been in discussions with us to acquire the convenience store assets of Berry-Hinckley Industries.

The Herbst's business is the second largest petroleum provider in Nevada after Berry-Hinckley, they have a 50% retail marketshare in Clark County (Las Vegas), and through a separate company controlled by the Herbst's three sons, operate in excess of 7,000 slot machines on a route and four casinos in Southern Nevada.

As a landlord of one of our properties, Mr. Herbst has requested that you consider certain changes to the leases that you have with Berry-Hinckley as a condition of assignment. We have attached an Estoppel, as well as a Lease modification document. Mr. Herbst has also attached a letter, in which he offers to personally guaranty your lease, as well as a brief summary on his net worth and company description. With this transaction, Mr. Herbst is also acquiring Berry-Hinckley's option to own Winners Gaming, Inc. which operates the slot machines in all of our convenience stores.

Our goal is to have all Estoppels and other documents agreed to and executed by February 23, 2006, and they will then be held by Chicago Title Insurance Company in escrow until closing.

Please address any concerns to Philip Tripoli, Berry-Hinckley's Vice President of Development at (775) 223-3590 or by e-mail at Philip.tripoli@berry-hinckley.com. If you refer this on to your attorney to review, please have them communicate directly with Berry-Hinckley's counsel:

Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203
Telephone (716) 848-1657; fax 849-0349
syalaman@hodgsonruss.com

We are looking forward to working with Jerry Herbst and you, reaching a successful conclusion for all parties.

Thank you for your trust and confidence in Berry-Hinckley Industries.

Sujata Yalamanchili
Direct Dial: 716.848.1657
syalaman@hodgsonruss.com

Hodgson Russ LLP
ATTORNEYS

February 17, 2007

Larry Willard
133 Glenridge Avenue
Los Gatos, CA 95030

Dear Mr. Willard:

Re: Jerry Herbst - Acquisition of Winners Corner & Chevron Convenience Stores
#1 Highway 95A - #195

Enclosed please find the following documents:

1. Gary M. Johnson's Letter dated January 31, 2007;
2. Letter from Jerry Herbst regarding the acquisition of C-Stores dated December 14, 2006;
3. Memo dated December 18, 2006;
4. The Landlord's Estoppel Certificate; and
5. First Amendment to Lease Agreement.

Please feel free to contact me with any questions you may have.

Sincerely yours,

Sujata Yalamanchili

SY/tmr
Enclosures

JOHNSON JACOBSON WILCOX

January 31, 2007

To Whom It May Concern

RE: Jerry Herbst

Our firm has compiled, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, the personal financial statement of Jerry and Maryanna Herbst as of December 31 each year from the 1980's through 2005. A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We did not audit or review the personal financial statements of Mr. and Mrs. Herbst and, accordingly, did not express an opinion or any other form of assurance on them.

The net worth of Mr. and Mrs. Herbst, as reported on the statement compiled by us as of December 31, 2005, was in excess of $200 million.

Sincerely,

JOHNSON JACOBSON WILCOX

Gary M. Johnson

GMJ:jkj

Certified Public Accountants and Consultants

7440 W. SAHARA AVE., LAS VEGAS, NV 89117-3737 – TEL 702 304-0400 – FAX 702 304-0410



"the best bad guy in the west"

December 14, 2006

Dear Sir,

It is with pleasure that I am writing to you to inform you of our proposed transaction with PAMCo, Inc. to acquire the C-Store assets of Berry Hinckley Industries ("BHI"). The BHI C-Stores are strategically important to my family of companies as we are in the process of entering the Northern Nevada market. These assets will create a significant platform for us to grow our business.

In our review of the existing leases we identified a few minor provisions which we feel need modification. We are forwarding to you a contract amendment and consent form that we are asking you to execute and return to us. In exchange for this amendment and consent I will be willing to personally guarantee the lease obligation.

I look forward to establishing a good tenant/landlord relationship with you and am very excited about closing the proposed transaction.

Regards,

Jerry Herbst
Chairman of the Board
Terrible Herbst, Inc.

045651/00080 GBDOCS 606959v2
3195 Las Vegas Boulevard South, Las Vegas, Nevada 89119 • (702) 798-6400 • Fax (702) 736-0819

A.App.61

TERRIBLE HERBST, INC.

BUSINESS OVERVIEW

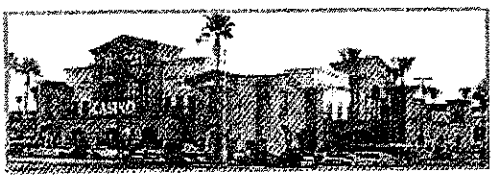


Terrible Herbst, Inc. ("Terrible Herbst" or the "Company") is one of the most recognized brands in the Las Vegas metropolitan area. The Terrible Herbst legacy dates back to 1937 when Ed Herbst (Jerry Herbst father) opened his first service station. The Terrible Herbst brand and familiar "Bad Guy" cowboy logo, has been an icon in Nevada since 1959 and is currently used at five casinos, over 100 gasoline stations and convenience stores as well as over 850 slot route locations throughout the state of Nevada.



Terrible Herbst, Inc. is owned by Jerry and Maryanna Herbst who have a combined net worth in excess of approximately $240 million. Terrible Herbst, Inc. operates over 100 gas station and convenience stores, many of which include lube facilities and car washes, throughout Southern Nevada. Terrible Herbst has a leading position in the Southern Nevada and maintains a market share of approximately 50% of total fuel sales, which is equivalent to a statewide market share of approximately 30%.

The Herbst family uses cross-marketing efforts to capitalize on the strong recognition and high level of quality and value associated with the Terrible Herbst trade name and cowboy logo. The company has established strategic and/or marketing alliances with Chevron, ARCO, Pizza Hutt, Burger King, Port of Subs, Coke and McDonalds.



The Terrible Herbst name and logo are also used by Herbst Gaming, which is owned and operated by Ed, Tim and Troy Herbst. Herbst Gaming began operations in 1897 and is now one of the largest slot route operators in Nevada with an excess of 7,200 slot machines. Additionally, Herbst Gaming currently operates eight Terrible's casinos in locations spread throughout Nevada, Iowa and Missouri.

In recent transactions, Herbst Gaming has entered into a contract with MGM Mirage to purchase Buffalo Bill's, Primm Valley and Whiskey Pete's Hotel-Casino in Primm, Nevada. In addition, the Company recently entered the Reno market with is acquisition of the Sands Regent in Reno, Nevada.

LANDLORD'S ESTOPPEL CERTIFICATE

Landlord hereby certifies as follows:

1. A true, accurate, and complete copy of the Lease is attached hereto as **Exhibit A**. The Lease is in full force and effect and, has not been amended or modified, except as set forth above.

2. That Landlord is the fee owner of the Premises and has not assigned its interest in the Lease. There is no mortgage financing on the Premises, except for _____. The loan documents related to such deed of trust provide that the lender under such deed of trust will not disturb the Lease so long as the Tenant attorns to the Landlord's successor.

3. The original term of the Lease commenced on _____ ___, ____ and has been renewed _____ such that the current term of the Lease expires on _____ ___, _____. The Tenant has ____ additional renewal periods, such that the Lease might expire as late as _____ ___, _____.

4. That the Monthly Rent due under the Lease has been paid through _____ and all Additional Rent due under the Lease has been paid through _____. That there exist at this time no charges, liens, claims, or offsets against the rents or other charges due or to become due under the Lease. That there is no defense, offset, claim or counterclaim by or in favor of Landlord against Tenant under the Lease or against the obligations of Landlord under the Lease.

5. Landlord has no knowledge of any outstanding notice of default given by Tenant. To the best of Landlord's knowledge, Landlord and Tenant are not in default of any of the agreements, terms, amendments, covenants, or conditions of the Lease on the part of Landlord or the Tenant to be performed or complied with, and no condition or set of facts exist which, with the passage of time and/or the giving of notice would constitute a default by either party in the performance of any of the agreements, terms, amendments, covenants, or conditions of the Lease.

6. That the above certifications are made by Landlord knowing that they will be relied upon by _____.

In addition, Landlord hereby consents to the encumbrance of the Tenant's interest in the Lease with a leasehold deed of trust and collateral assignment of the Tenant's interest in favor of First National Bank of Nevada or another lender of the Tenant. Landlord hereby agrees to give such lender notice of any default under the Lease and that such lender has the right (but no obligation) to cure such default within the time period set forth in the Lease with respect to monetary defaults and with respect to non-monetary defaults so long as such lender promptly commences to cure such default and diligently pursues such cure.

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of December __, 2006 by and between **OVERLAND DEVELOPMENT CORPORATION INC. dba LJW ENTERPRISES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030 and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of March 1, 2006 (the "Lease") with respect to real property and improvements as described in the Lease;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **WGI Agreements**. The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

2. **Winner's Corner**. Section 12.H is deleted in its entirety.

3. **Default, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.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:"

and replaced with the following:

"*Remedies.* Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, 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:"

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests

herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law**. Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification**. Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness**. This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

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

By: _____

Printed Name: _____

Title: _____

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

(SEAL)

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

(SEAL)

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of December, 2006 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Overland Development Corporation Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (collectively, the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for #1 Highway 95-A & Goldfield, Yerington, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 6 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or nonexercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) the date on which Guarantor no longer owns any interest, directly or indirectly, in BHI. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signatures on following page]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

_____
JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

OVERLAND DEVELOPMENT CORPORATION INC.

By: _____
Name:
Title:

LARRY JAMES WILLARD TRUST

By: _____
Name: Larry J. Willard
Title: Trustee

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 3

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 9th day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Overland Development Corporation Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (collectively, the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 7695 South Virginia, Reno, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the preinises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership,

insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

OVERLAND DEVELOPMENT CORPORATION INC.

By: _____
Name:
Title:

LARRY JAMES WILLARD TRUST

By: _____
Name: Larry J. Willard
Title: Trustee

Herbst Lease Guaranty - 7695 South Virginia.DOC

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Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 4

7695 S. Virginia

Amendment to Lease Agreement

THIS AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into effective as of ~~December __, 2005~~ March 9, 2007 by and between **OVERLAND DEVELOPMENT CORP. dba LJW ENTERPRISES INC. and LARRY WILLARD, TRUSTEE OF THE LARRY JAMES WILLIARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030 and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into a Lease Agreement dated as of November 18, 2005 (the "Lease") with respect to real property and improvements as described in the Lease. 7695 S. Virginia, Reno

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, Capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided that, within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., or E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

2. **Winner's Corner.** Section 12.H is deleted in its entirety.

3. **Default, Conditional Limitation, Remedies and Measure of Damages.** The following language is deleted in its entirety from the first paragraph of Section 20.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:"

and replaced with the following:

"*Remedies.* Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice

of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, 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:"

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment.** Section 23 is amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such

lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

OVERLAND DEVELOPMENT CORP. INC.
dba LJW ENTERPRISES

By: _____

Printed Name: LARRY J. WILLARD

Title: President

LARRY WILLARD, TRUSTEE OF THE
LARRY JAMES WILLARD TRUST

By: _____

Printed Name: LARRY J. WILLARD

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: Trevor Lloyd

Title: Corporate Secretary

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 9, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Larry J. Willard, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

STATE OF Nevada)
) SS:
COUNTY OF Washoe)

On June 19 2007, before me, Marguerite Benson-Braun, a Notary Public in and for said State, personally appeared Trevor Lloyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Marguerite Benson-Braun

(SEAL)

MARGUERITE BENSON-BRAUN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 96-5572-2 - Expires August 28, 2007

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 5

3. **RELATIONSHIP OF PARTIES.**

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

4. **COMPENSATION TO OPERATOR.**

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

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

10. **CONFLICTING PROVISIONS.**

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

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

"OPERATOR"

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____

Name: Chris Kemper

Title: V.P. of Admin.

"OWNER"

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

By: _____

Name: LARRY WILLARD

Title: PRESIDENT

_____

Trustee, THE WILLARD FAMILY TRUST DATED NOVEMBER 14, 1987

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 6

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of December ___, 2005 by and between [**EDWARD C. WOOLEY** and **JUDITH A. WOOLEY**], a _____ _____ ("Lessor"), whose address is _____, 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 untenantability 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 Projection, 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 it 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 WGL, 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 withhold 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]

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

LESSOR:

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Tax Identification No. [redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

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

Notary Public

My Commission Expires: Apr 1, 2009

CHRIS GONZALES
Commission # 1566164
Notary Public - California
Santa Clara County
My Comm. Expires Apr 1, 2009

A.App.115

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____
Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

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

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

F I L E D
Electronically
2014-08-08 04:07:29 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 7

05-4646

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of _____, 2006 by and between **EDWARD WOOLEY AND JUDITH WOOLEY**, individuals (collectively "Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 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) and commonly known as 1365 Baring Boulevard, Sparks, Nevada, 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 for the operation of a Permitted Facility, and lawful or related purposes such as ingress, egress and parking.

3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May __, 2006 ("Effective Date") and shall expire at midnight on October 31, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this 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 (2) percent 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 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 untenantability 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 Winner's Gaming Inc. ("WGI") or its successor in making application to the Nevada Gaming Control Board if such application or approval is 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.

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

(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 due to any act or omission of Lessee.

(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 Projection, 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.

(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.

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, correctioos, 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 alterstions 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 alteratioos 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,

(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.

B. *Remedies.* Upon the occurrence of an Event of Default, Lessor shall provide notice thereof to WGI and shall provide WGI with a thirty day period in which to elect, by notice to Lessor, to cure such Event of Default, in which case, Lessor will provide WGI reasonable access to the Premises to cure such Event of Default, and will accept such cure as if performed by Lessee. WGI may also elect within such thirty day period, to take an assignment of tenant's interests under this Lease, in which case, WGI will have a period of one hundred twenty (120) days following such assignment in which to further assign such tenant's rights, or to sublet the Premises, to a entity or person which will operate the Premises as a Permitted Facility, without the need for Lessor's consent or approval.

If WGI does not elect either such option then, 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 it 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.** Except as provided in Section 20, above, 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 withhold 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 Sublesses, 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 pursoant 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

And with a copy to: Winners Gaming Inc.
Attn: Paul A. Morabito
425 Maestro Drive
Reno, NV 89511
Telephone: (775) 689-1222
Facsimile: (775) 689-1232

If to Lessor:

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]

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

LESSOR:

Ed C Wooley, Trustee
EDWARD WOOLEY

Judith Wooley Trustee
JUDITH WOOLEY

Tax Identification or Social Security No.
[redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

The foregoing instrument was acknowledged before me on June 6, 2006 by Edward Wooley and, an individual with an address of Judith Wooley - 41 Peralta Ave Los Gatos, CA. 95030.

Tina T. Seda
Notary Public

My Commission Expires: 10-15-07

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

Wooley ~~Sisto~~/BHI
_____, Carson City
5/31/2006
000160/09959 GBDOCS 576954v1

STATE OF CALIFORNIA } S.S
COUNTY OF Santa Clara

On June 6, 2006 before me,

Tina T. Seda
a Notary Public, personally appeared

Edward Wooley
Judith Wooley
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

Signature Tina T. Seda

TINA T. SEDA
Commission # 1441979
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

(This area for official notorial seal)

notryack rev. (12/18/05)

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____

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

The foregoing instrument was acknowledged before me on July 14, 2006 by Paul Morabito as Chairman of **BERRY- HINCKLEY INDUSTRIES**, a Nevada corporation.

_____
Notary Public

My Commission Expires: Sept 20, 2009

JEANETTE TEGER
Commission # 1608087
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2009

Wooley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160/09959 GBDOCS 576954v2

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 the first anniversary of the Effective Date, 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 $238,275.

"*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.

"*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 (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.

"*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:

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2014-08-08 04:07:29 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 8

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for property located on U.S. Highway 50 in Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets, or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the

provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Herbst Lease Guaranty - US Hwy 50 (Wooley).DOC

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 9

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 12 day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 1365 Baring Boulevard, Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the

provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Herbst Lease Guaranty - 1365 Baring.DOC

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 10

US Hwy 50

First Amendment to Lease Agreement

March 12, 2007

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of ~~December __, 2006~~ by and between **EDWARD C. WOOLEY AND JUDITH A. WOOLEY**, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of November 10, 2005 (the "Lease") with respect to real property and improvements located at 1820 U.S. Highway 50, Carson City, Nevada and as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **Lessor's Change of Name.** The name of the Lessor is hereby changed, effective as of the date of the Lease listed above, to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

3. **Default, Conditional Limitations, Remedies and Measure of Damages.**

(a) The first paragraph of Section 20.B is hereby deleted in its entirety and replaced as follows:

"*Remedies*. Upon occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect

to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion."

(b) The following language is deleted in its entirety from the second paragraph:

"If WGI does not elect either such option, then, 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 entitle 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:"

and replaced with the following:

"If lender does not elect such option to cure, then, 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:"

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or

its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

Judith A. Wooley
Judith A. Wooley
Trustee

LESSOR:

EDWARD C. WOOLEY AND JUDITH A. WOOLEY

By: Edward C. Wooley

Printed Name: Edward C. Wooley

Title: Trustee

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar a Notary Public in and for said State, personally appeared Edward C. Wooley, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Wooley, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

Judith A. Wooley
Judith A. Wooley
Trustee

LESSOR:

EDWARD C. WOOLEY AND JUDITH A. WOOLEY

By: _____

Printed Name: Edward C. Wooley

Title: Trustee

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: Trevor Lloyd

Title: Corporate Secretary

A.App.171

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

On June 19, 2007, before me Marguerite Benson-Braun, a Notary Public in an for said State, personally appeared Linda Lloyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Marguerite Benson-Braun

(SEAL)

MARGUERITE BENSON-BRAUN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-55720-2 - Expires August 26, 2007

F I L E D
Electronically
2014-08-08 04:07:29 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 11

1365 Baring Blvd

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of March 12, 2007 by and between Edward C. Wooley and Judith A. Wooley, as trusteas of the Edward C. Wooley and Iudith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of May __ 2006, (the "Lease") with respect to real property and improvements as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **Lessor's Change of Name.** The name of the Lessor is hereby changed to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreemeuts.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agrcement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (soch approval not to be unreasonably withheld, conditioned or delayed)."

3. **Winner's Corner.** Section 12.H is deleted in its entirety.

4. **Defanlt, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.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 he 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 mora of the following:"

and replaced with the following:

"*Remedies*. Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default withiu the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to uon-monetary defaults, such time reasonably necessary to cure such Event of Dafault, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect snch option to cure, then, 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:"

5. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted iu its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor aa lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default under this Lease, this Leasc 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

6. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

7. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

8. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

9. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

Judith A. Wooley
Judith A. Wooley
Trustee

LESSOR:

EDWARD WOOLEY AND JUDITH WOOLEY

By: _____

Printed Name: EDWARD C. WOOLEY

Title: TRUSTEE

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

AGREED AND ACKNOWLEDGED:

WINNER'S GAMING, INC.

By: _____

Printed Name: Robert C. Kump

Title: Pres

SHERILL GRAYSON
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 03-84260-2
My Appt. Expires July 10, 2007

Sherill Grayson

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Edward C. Wooley, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Wooley, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(s) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD WOOLEY AND JUDITH WOOLEY

By: _____

Printed Name: _____

Title: _____

Judith A. Wooley
Judith A. Wooley
Trustee

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: Trevor Lloyd

Title: Secretary

AGREED AND ACKNOWLEDGED:

WINNER'S GAMING, INC.

By: _____

Printed Name: Robert G. King

Title: Pres

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

On June 28, 2007, before me, Sandra Shinault, a Notary Public in an for said State, personally appeared Trevor Lloyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sandra Shinault

(SEAL)

OFFICIAL SEAL
SANDRA SHINAULT
NOTARY PUBLIC - STATE OF NEVADA
Date Appointment Exp: 2-5-2009
Certificate No: 97-0031-2

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Electronically
2014-08-08 04:07:29 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 12

GORDON SILVER

March 18, 2013

VIA EMAIL & CERTIFIED MAIL:

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

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

Dear Mr. Goldblatt:

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

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

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

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

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

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

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

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

Very truly yours,

GORDON SILVER

For GERALD M. GORDON, ESQ.

MMW/

10500-001/1842200_2

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4554518 : mfernand

EXHIBIT 13

GORDON SILVER

March 28, 2013

VIA EMAIL & REGULAR MAIL:
Email: l.steven.goldblatt@gmail.com

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

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

Dear Mr. Goldblatt:

As indicated in our March 18, 2013 letter, BHI is prepared to assist in a coordinated turnover of the Leased Premises, which affords your clients the opportunity to maintain operations and preserve value. Mr. Herbst will agree to amend his guaranty to provide for a total payment over sixty (60) months equal to the allowed claim that your clients would have under Section 502(b)(6) of the Bankruptcy Code for future amounts due under the lease in the event Mr. Herbst is required to file a petition under Chapter 11, together with interest at 3% per annum.

The amount allowed pursuant to Section 502(b)(6) with regard to the Leased Premises is $2,921,180 from March 1, 2013, to August 23, 2023. Subject to the conditions set forth in the March 18, 2013 letter, Mr. Herbst is prepared to pay your clients $3,149,387 over 60 months, which amount includes the $2,921,180 amount under Section 502(b)(6), together with interest at 3% per annum. The proposed monthly settlement payment is $52,490.

These calculations of allowed amounts include all scheduled rent increases pursuant to the lease and, as noted, are calculated from March 1, 2013, to expiration of the lease.

I look forward to hearing from you in regard to this proposal.

Very truly yours,

GORDON SILVER

GERALD M. GORDON, ESQ.

3960 Howard Hughes Parkway, Ninth Floor | Las Vegas, Nevada 89169
T: 702.796.5555 | F: 702.369.2666
gordonsilver.com

10500-001/1870022.doc

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

FILED
Electronically
2014-09-05 04:41:49 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4594499 : adegayne

CODE NO.
THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, State Bar No. 00837
DAVID C. O'MARA, State Bar No. 8599
311 E. Liberty Street
Reno, NV 89501
Telephone (775) 323-1321
Facsimile: (775) 323-4082

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Pro Hac Vice Application Pending
California Bar No. 247583
3506 La Castellet Court
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

Attorneys for Plaintiffs

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,

vs.

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

Defendants.

Case No. CV14-01712

Dept. No. 6

ACCEPTANCE OF SERVICE OF SUMMONS AND COMPLAINT ON BEHALF OF DEFENDANTS, BERRY-HINCKLEY INDUSTRIES, JERRY HERBST, and JH, INC.

A.App.188

I, John Desmond, of Gordon Silver, do hereby accept service of the Summons and Complaint in the above-entitled case on behalf of the Defendants, Berry-Hinckley Industries, Jerry Herbst, and JH, Inc., this 5th day of September, 2014.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does bereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person

Dated: September 5, 2014

GORDON SILVER

for JOHN DESMOND, ESQ.
100 W. Liberty St., Ste. 940
Reno, NV 89501
Telephone: 775.343.7500
Fax: 775.786.0131

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Cathy Hill
Acting Clerk of the Court
Transaction # 4638541 : yviloria

1130
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.com
Email: birvine@gordonsilver.com
Email: 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,

vs.

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

Defendants.

CASE NO.: CV14-01712

DEPT. NO.: 6

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

DEFENDANTS BERRY HINCKLEY INDUSTRIES and JERRY HERBST (collectively, "Defendants"), by and through their attorneys of record, GORDON SILVER, answer Plaintiffs' Complaint as follows:

JURISDICTION

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Defendants admit the remaining allegations contained in Paragraph 2 of Plaintiffs' Complaint.

PARTIES

3. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 3 of Plaintiffs' Complaint, and thus deny the same.

4. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and thus deny the same.

5. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and thus deny the same.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

///

FIRST CAUSE OF ACTION
(Breach of Lease Agreement)

10. Paragraphs 1 through 9 above are hereby incorporated by reference as if fully set forth at this point.

11. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint, and thus deny the same.

12. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 12 of the Complaint.

13. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and thus deny the same.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 15 of Plaintiffs' Complaint, and thus deny the same.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)

21. Paragraphs 1 through 20 above are hereby incorporated by reference as if fully set forth at this point.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 23 of the Complaint.

24. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

THIRD CAUSE OF ACTION
(Breach of Lease Agreement)

29. Paragraphs 1 through 28 above are hereby incorporated by reference as if fully set forth at this point.

30. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and thus deny the same.

31. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint, and thus deny the same.

32. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 32 of Plaintiffs' Complaint, and thus deny the same.

33. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 33 of Plaintiffs' Complaint, and thus deny the same.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

FOURTH CAUSE OF ACTION
(Breach of Personal Guaranty)

46. Paragraphs 1 through 45 above are hereby incorporated by reference as if fully set forth at this point.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 48 of the Complaint.

49. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

60. Paragraphs 1 through 59 above are hereby incorporated by reference as if fully set forth at this point.

61. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action, and therefore, no response to the allegations contained in paragraph 61 is required. To the extent a response is required, Defendant Jerry Herbst denies the allegations in paragraph 61.

62. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action, and therefore, no response to the allegations contained in paragraph 62 is required. To the extent a response is required, Defendant Jerry Herbst denies the allegations in paragraph 62.

63. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action, and therefore, no response to the allegations contained in paragraph 63 is required. To the extent a response is required, Defendant Jerry Herbst denies the allegations in paragraph 63.

SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

64. Paragraphs 1 through 63 above are hereby incorporated by reference as if fully set forth at this point.

65. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action, and therefore, no response to the allegations contained in paragraph 65 is required. To the extent a response is required, Defendant Jerry Herbst denies the allegations in paragraph 65.

66. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action, and therefore, no response to the allegations contained in paragraph 66 is required. To the extent a response is required, Defendant Jerry Herbst denies the allegations in paragraph 66.

67. Defendant Jerry Herbst has filed a motion to dismiss the Fifth Cause of Action, and therefore, no response to the allegations contained in paragraph 67 is required. To the extent a response is required, Defendant Jerry Herbst denies the allegations in paragraph 67.

SEVENTH CAUSE OF ACTION
(Attachment)

68. Paragraphs 1 through 67 above are hereby incorporated by reference as if fully set forth at this point.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint.

71. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 71 of Plaintiffs' Complaint, and thus deny the same.

72. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

EIGHTH CAUSE OF ACTION
(Temporary Restraining Order)

76. Paragraphs 1 through 75 above are hereby incorporated by reference as if fully set forth at this point.

77. Defendants deny the allegations contained in Paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

AFFIRMATIVE DEFENSES

In accordance with Nevada Rule of Civil Procedure 11, all possible affirmative defenses may or may not have been asserted herein insofar as sufficient facts were not available to Defendants after reasonable inquiry upon the filing of this pleading and therefore Defendants assert the following defenses based in fact or upon reasonable belief and hereby reserve the right to amend this Answer to allege appropriate or additional defenses, if subsequent investigation or discovery so warrants:

FIRST AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

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THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendants did not owe any legal duty to Plaintiffs or, if Defendants owed any such legal duty, Defendants did not breach that duty.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are contrary to the terms of the agreement(s) between the parties.

FIFTH AFFIRMATIVE DEFENSE

Defendants are excused from performance.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches, waiver, equitable estoppel, and ratification.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiff failed to adequately mitigate any injuries and damages that it allegedly suffered.

EIGHTH AFFIRMATIVE DEFENSE

Defendants are entitled to set-off, should any damages be awarded against them.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on the claims pled in the Complaint because the damages sought are too speculative and remote.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has contractually waived the right to seek consequential, special, and indirect damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to provide reasonable and adequate notice of any claimed breach.

///

THIRTEENTH AFFIRMATIVE DEFENSE

It has been necessary for Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together with their costs expended in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state sufficient facts or claims to support punitive damages against Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not contractually entitled to accelerated rent.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorney's fees, costs, or interest.

PRAYER FOR RELIEF

WHEREFORE, Defendants BERRY HINCKLEY INDUSTRIES and JERRY HERBST hereby pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of their Complaint and that the same be dismissed with prejudice.

2. For costs of suit and reasonable attorneys' fees; and

3. For such other and further relief as the Court deems just and proper in the circumstances.

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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 6th day of October, 2014.

GORDON SILVER

By: /s/ Kathleen M. Brady

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' ANSWER TO PLAINTIFFS' COMPLAINT** 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 6th day of October, 2014.

/s/ Cindy S. Grinstead
An Employee of GORDON SILVER

FILED
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Cathy Hill
Acting Clerk of the Court
Transaction # 4672894 : yloyd

CODE NO.
THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, State Bar No. 00837
DAVID C. O'MARA, State Bar No. 8599
311 E. Liberty Street
Reno, NV 89501
Telephone (775) 323-1321
Facsimile: (775) 323-4082

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Pro Hac Vice Application Pending
California Bar No. 247583
3506 La Castellet Court
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

Attorneys for Plaintiffs

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, vs. BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and JH, INC., a Nevada corporation, Defendants.	Case No. CV14-01712 Dept. No. 6

MOTION TO ASSOCIATE COUNSEL

Plaintiffs, 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, by and through their counsel David C. O'Mara, Esq., of The O'Mara Law Firm, P.C., hereby moves this Court for an order permitting Brian P. Moquin, Esq. to practice in Nevada pursuant to Nevada Supreme Court Rule 42 (SCR 42). This Motion is supported by the attached "Verified Application for Association of Counsel" (Exhibit "1"), "Certificate of Good Standing" from California (Exhibit "2"), and the State Bar of Nevada Statement (Exhibit "3").

DATED: October 28, 2014

THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, ESQ.
DAVID C. O'MARA, ESQ.

DAVID C. O'MARA, ESQ.

NOTICE OF MOTION

TO: All Interested Parties; and

TO: All Counsel of Record

PLEASE TAKE NOTICE that Plaintiffs, 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, by and through their counsel David C. O'Mara, Esq., of The O'Mara Law Firm, P.C. will bring the foregoing Motion to Associate Counsel on for decision on the _____ day of _____, 2014, in Department 6 of the above-entitled Court.

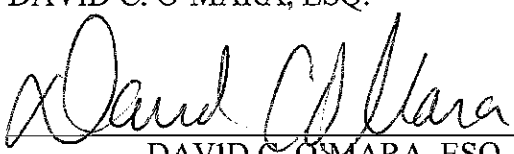
AFFIRMATION

(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: October 28, 2014

THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, ESQ.
DAVID C. O'MARA, ESQ.



DAVID C. O'MARA, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

X Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

_____ Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

_____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

John Desmond, Esq.
100 W. Liberty St., Ste. 940
Reno, NV 89501
Telephone: 775.343.7500
Fax: 775.786.0131

DATED: October 28, 2014.



INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1.	Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42	6
2.	The State Bar of California's Certificate of Standing	1
3.	State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)	2

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Transaction # 4672894 : ylloyd

EXHIBIT 1

EXHIBIT 1

VAPP

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Larry J. Willard, et al.

Plaintiff,

vs.

Berry-Hinckley Industries, Inc., et al.

Defendant.

Case No. CV14-01712
Dept. No. 6

VERIFIED APPLICATION FOR ASSOCIATION OF COUNSEL UNDER NEVADA SUPREME COURT RULE 42

Brian (First) P. (Middle Name) Moquin (Last), Petitioner, respectfully represents:

1. Petitioner resides at 3506 La Castellet Court (Street Address)

San Jose (City), Santa Clara (County), CA (State), 95148 (Zip Code)

(408) 300-0022 (Telephone).

2. Petitioner is an attorney at law and a member of the law firm of: Law Offices of Brian P. Moquin

with offices at 3506 La Castellet Court (Street Address)

San Jose (City), Santa Clara (County), CA (State), 95148 (Zip Code)

(408) 300-0022 (Telephone), bmoquin@lawprism.com (Email).

3. Petitioner has been retained personally or as a member of the above named law firm by _____ *(See Exhibit 1(A))* to provide legal representation in connection with the above-entitled matter now pending before the above referenced court.

4. Since November of 2008, petitioner has been, and presently is, a member of good standing of the bar of the highest court of the State of California where petitioner regularly practices law.

5. Petitioner was admitted to practice before the following United States District Courts, United States Circuit Courts of Appeal, the Supreme Court of the United States, and/or courts of other states on the dates indicated for eacb, and is presently a member in good standing of the bars of said Courts:

	DATE ADMITTED
Supreme Court of California	11/3/2008
U.S. District Court for the Eastern District of California	7/08/2011
U.S. Bankruptcy Court for the Eastern District of California	7/08/2011
U.S. District Court for the Central District of California	2/09/2011
U.S. District Court for the Northern District of California	2/22/2013

6. 1s Petitioner currently suspended or disbarred in any court? You must answer yes or no. 1f yes, give particulars; e.g., court, jurisdiction, date: No.

7. Is Petitioner currently subject to any disciplinary proceedings by any organization with authority at law? You must answer yes or no. 1f yes, give particulars, e.g. court, discipline authority, date, status: No.

8. Has Petitioner ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No.

9. Has Petitioner ever had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked? You must answer yes or no. If yes, give particulars, e.g. date, administrative body, date of suspension or reinstatement: No.

10. Has Petitioner, either by resignation, withdrawal, or otherwise, ever terminated or attempted to terminate Petitioner's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings? You must answer yes or no. If yes, give particulars: No.

11. Petitioner has filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matters, if none, indicate so: *(do not include Federal Pro Hacs)*

Date of Application	Cause	Title of Court Administrative Body or Arbitrator	Was Application Granted or Denied?
None.			

(If necessary, please attach a statement of additional applications)

12. Nevada Counsel of Record for Petition in this matter is:
(must be the same as the signature on the Nevada Counsel consent page)

David	C.	O'Mara	8599
First Name	Middle Name	Last Name	NV Bar #

who has offices at The O'Mara Law Firm, P.C.
Firm Name/Company

311 E. Liberty Street, Reno, Washoe,
Street Address, City, County

89501, (775) 323-1321.
Zip Code, Phone Number

13. The following accurately represents the names and addresses of each party in this matter, WHETHER OR NOT REPRESENTED BY COUNSEL, and the names and addresses of each counsel of record who appeared for said parties: (You may attach as an Exhibit if necessary.)

NAME MAILING ADDRESSS

See Exhibit 1(B).

14. Petitioner agrees to comply with the provisions of Nevada Supreme Court Rule 42(3) and (13) and Petitioner consents to the jurisdiction of the courts and disciplinary boards of the State of Nevada in accordance with provisions as set forth in SCR 42(3) and (13). Petitioner respectfully requests that Petitioner be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

15. Petitioner has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation.

I, Brian P. Moquin, do hereby swear/affirm under penalty of perjury that the assertions of this application are true:

That I am the Petitioner in the above entitled matter; that I have read the foregoing and know the contents thereof; that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to the matter I believe them to be true.

That I further certify that I am subject to the jurisdiction of the Courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada; that I understand and shall comply with the standards of professional conduct required by members of the State Bar of Nevada; and that I am subject to the disciplinary jurisdiction to the State Bar of Nevada with respect to any of my actions occurring in the course of such appearance.

DATED this 6th day of October, 2014

Petitioner/Affiant
If this signature is not in blue ink, you have a copy.

STATE OF California)
) ss
COUNTY OF Santa Clara)

Subscribed and sworn to before me

this 06 day of Oct., 2014

Notary Public

KIM-TRINH MAI
COMM. # 2073674
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. AUG. 1, 2018

I David C. O'Mara hereby consent as Nevada Counsel of Record to the
Print NV Counsel name

designation of Petitioner to associate in this cause pursuant to SCR 42.

DATED this 8th day of October, 2014

David C. O'Mara
Counsel of Record

If this signature is not in blue ink, you have a copy.

STATE OF Nevada)
) ss
COUNTY OF Washoe)

Subscribed and sworn to before me

this 8 day of October, 2014

Valerie Weis
Notary Public

VALERIE WEIS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 94-0636-2 - Expires March 14, 2018

VERIFIED APPLICATION FOR ASSOCIATION
OF COUNSEL UNDER NEVADA SUPREME COURT RULE 42

Exhibit 1

A. List of Clients

1. Larry J. Willard
2. The Larry James Willard Family Trust
3. Overland Development Corp.
4. Edward C. Wooley
5. Judith A. Wooley
6. The Edward C. and Judith A. Wooley Intervivos Revocable Trust

B. Names and Addresses of Parties and Counsel of Record

NAME	MAILING ADDRESS
Larry J. Willard	826 Vanderbilt Place, San Diego, CA 92103
The Larry James Willard Family Trust	826 Vanderbilt Place San Diego, CA 92103
Overland Development Corp.	826 Vanderbilt Place San Diego, CA 92103
Edward C. Wooley	68-1025 N. Kaniku Dr. # 516 Kamueca, HI 96743
Judith A. Wooley	68-1025 N. Kaniku Dr. # 516 Kamueca, HI 96743
The Edward C. and Judith A. Wooley Intervivos Revocable Trust	68-1025 N. Kaniku Dr. # 516 Kamueca, HI 96743
David C. O'Mara, Esq.	The O'Mara Law Firm, P.C. 311 East Liberty Street Reno, NV 89501

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EXHIBIT 2

EXHIBIT 2

THE STATE BAR
OF CALIFORNIA

MEMBER RECORDS & COMPLIANCE

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: 888-800-3400

CERTIFICATE OF STANDING

September 15, 2014

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, BRIAN P. MOQUIN, #257583 was admitted to the practice of law in this state by the Supreme Court of California on November 3, 2008; and has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

Louise Turner
Custodian of Membership Records

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Cathy Hill
Acting Clerk of the Court
Transaction # 4672894 : ylloyd

EXHIBIT 3

EXHIBIT 3

STAT

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

Case No. CV14-01712
Dept. No. 6

Larry J. Willard

vs.

Berry-Hinckley Industries, Inc.

_____/

STATE BAR OF NEVADA STATEMENT PURSUANT TO SUPREME COURT RULE 42(3)(b)

THE STATE BAR OF NEVADA, in response to the application of Petitioner, submits the following statement pursuant to SCR42(3):

SCR42(6)**Discretion.** The granting or denial of a motion to associate counsel pursuant to this rule by the court is discretionary. The court, arbitrator, mediator, or administrative or governmental hearing officer may revoke the authority of the person permitted to appear under this rule. Absent special circumstances, repeated appearances by any person or firm of attorneys pursuant to this rule shall be cause for denial of the motion to associate such person.

(a) **Limitation.** It shall be presumed, absent special circumstances, and only upon showing of good cause, that more than 5 appearances by any attorney granted under this rule in a 3-year period is excessive use of this rule.

(b) **Burden on applicant.** The applicant shall have the burden to establish special circumstances and good cause for an appearance in excess of the limitation set forth in subsection 6(a) of this rule. The applicant shall set forth the special circumstances and good cause in an affidavit attached to the original verified application.

1. DATE OF APPLICATION: October 10, 2014

2. APPLYING ATTORNEY: Brian P. Moquin, Esq.

3. FIRM NAME AND ADDRESS: Law Offices of Brian P. Moquin, 3506 La Castellet Court, San Jose, CA 95148

4. NEVADA COUNSEL OF RECORD: David C. O'Mara, Esq., The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, NV 89501

5. There is no record of previous applications for appearance by petitioner within the past three (3) years.

DATED this October 22, 2014

Mary Jorgensen
Member Services Manager
Pro Hac Vice Processor
STATE BAR OF NEVADA

FILED
Electronically
2014-11-10 03:32:31 PM
Cathy Hill
Acting Clerk of the Court
Transaction # 4689820

CODE NO. 3696

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; et al.,

Plaintiffs,

vs.

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

Defendants.
_____/

Case No. CV14-01712

Dept. No. 6

PRETRIAL ORDER

The procedures described in this pretrial order are designed to secure a just, speedy, and inexpensive determination of the issues. If any party believes that a procedure described below will not achieve these ends in this case, that party should seek an immediate conference among all parties and the Court so that alternative possibilities may be discussed. Otherwise, failure of either party to comply with the provisions in this order may result in the imposition of sanctions, including dismissal of the action or entry of a default. All references to "counsel" include self-represented litigants.

I. TRIAL SETTING AND PRETRIAL CONFERENCES

A. **Trial Setting**. Within 30 days of the date of this Order, Counsel for Plaintiff(s) must notice counsel for Defendant(s) and set this matter for trial. Said trial setting may be via telephone conference with all parties conferenced first before calling the Court.

B. **Interim Pretrial Conferences.** The Court is available to meet with the parties whenever the parties agree that a meeting would be beneficial in facilitating this litigation. The Court also may order one or more pretrial conferences sua sponte or upon motion by any party.

C. **Final Pretrial Conference.** When this case is initially scheduled for trial, the parties shall also arrange for a final pretrial conference, to be held no later than 60 calendar days prior to trial.

1. Purpose—The conference is intended to develop a plan for trial, including a protocol for facilitating the admission of evidence, and to address any trial-related disputes, needs, or requests.

2. Required Attendance—This conference must be attended by (a) the attorneys who will try the case; (b) the parties, which includes an authorized representative of any party that is an entity; and (c) any unrepresented parties.

3. Use of Equipment at Trial—At this conference, counsel must advise the Court fully with respect to the following matters:

(a) the equipment to be used during trial;

(b) the presentation software to be used during trial, and whether each party is able to receive and use digital files of presentation materials prepared by another;

(c) any expected use of videoconferencing; and

(d) the testing, inspection, compatibility, reliability, positioning, and backup for any equipment to be brought to the courtroom.

D. **Personal Appearance Required.** Except upon prior approval otherwise, counsel must appear at all conferences in person.

II. DISCOVERY

A. **Explanation and Support for Objections.** A party objecting to a discovery request must, in the original response, specifically state the grounds for any objection asserted, including (a) an explanation supporting the stated objection, and (b) affidavits, declarations, or other evidence to support any factual assertions upon which the objection is based. The Court will disregard general objections used to assert objections that might exist to unspecified portions of a discovery request.

B. **Consultation Before Motion Practice.** Prior to filing any discovery motion, the attorney for the moving party must consult with opposing counsel about the disputed issues. Counsel for each side must present to each other the merits of their respective positions with the same candor, specificity, and supporting material as would be used in connection with a discovery motion.

C. **Dilatory Motions.** Notwithstanding the deadline for submitting pretrial motions, all discovery motions must be filed and submitted in a reasonably prompt manner with respect to the request or response giving rise to the motion.

D. **Discovery Hearings.** Discovery motions typically are resolved without the need for oral argument. However, if both sides desire a dispute resolution conference pursuant to NRCP 16.1(d), counsel must contact the Discovery Commissioner's office, at (775) 328-3293, to obtain a date and time for the conference that is convenient to all parties and the Discovery Commissioner. If the parties cannot agree upon the need for a conference, the party seeking the conference must file and submit a motion in that regard.

E. **Effect of Trial Continuance.** A continuance of trial does not extend the deadline for completing discovery. A request for an extension of the discovery deadline, if needed, must be made separately or included as part of any motion for continuance of trial.

F. **Electronically Stored Information.** Electronically stored information ("ESI") is any information created, stored, or best utilized with computer technology of any type. ESI generally is discoverable to the same extent as other information.

1. Notice of ESI Discovery—If any party intends to seek the production of ESI in this case, that fact should be communicated as soon as possible to counsel for the party in possession, custody, or control of that ESI, and the categories or types of information to be sought should be clearly identified.

2. Consultation About ESI—If discovery of ESI will be sought or is likely to be sought, the parties must meet and confer about the issues, problems, and disputes that might reasonably arise from such a request.

3. Knowledge of Systems—To the extent that discovery of a party's ESI is or reasonably may be an issue in the case, counsel for that party (either personally or through a representative) must become appropriately familiar with the operation of the client's relevant information management systems, including the manner in which information is stored and retrieved. The degree of familiarity necessary will depend upon the nature of the case, the information systems, the discovery requests, and other relevant factors.

G. **Computer Animations.** If any party intends to offer a computer-generated animation either as an evidentiary exhibit or an illustrative aid, that party must disclose that intention when expert disclosures are made pursuant to NRCP 16.1(a)(2). A copy of the animation must be furnished to all other parties no later than 30 calendar days prior to trial. Disclosure of the animation

includes copies of the underlying digital files as well as the completed animation.

III. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

A. **Notice of Settlement.** In the event that this case is settled prior to trial, the parties must promptly notify the presiding judge's judicial assistant.

B. **Settlement Conference or Alternative Dispute Resolution.** The court may order, upon a party's request or sua sponte, that the parties and their attorneys (a) meet in person with a judge other than the presiding judge in this case and attempt to settle the case, or (b) participate in mediation or some other appropriate form of alternative dispute resolution in an effort to resolve this case prior to trial.

IV. TRIAL-RELATED PROCEDURES

A. **All Motions and Motions in Limine.** All motions, except for motions in limine, must be fully briefed and submitted for decision no later than 30 calendar days before trial. Motions in limine must be fully briefed and submitted for decision no later than 15 calendar days before trial. Any party filing a motion in limine, or any other paper stating a party's position in connection with a motion in limine, must deliver to chambers a copy of that party's filing. The parties are relieved of the requirement that motions in limine be attached to a party's trial statement.

B. **Page Limits.** Legal memoranda submitted in support of any motion may not exceed fifteen pages in length; opposition memoranda may not exceed fifteen pages in length; and reply memoranda may not exceed five pages in length. These limitations are exclusive of exhibits. A party may file memoranda that exceed these limits only with prior approval of the Court, upon a showing of extraordinary circumstances. Said approval will only be considered upon the party filing a Motion to Exceed Page Limits. Absent a Motion to Exceed Page Limits and the Court's approval of said motion, any motion, opposition or reply submitted to Department Six that exceeds the page limits

listed above, will be rejected.

C. **Exhibits.** The Court Clerk(s) for Department 6, will contact trial counsel, no later than seven calendar days prior to trial, to arrange a date and time to mark trial exhibits.

1. Marking and Objections—All exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.) and placed in one or more binders provided by counsel, unless the Court permits a different procedure. When marking the exhibits with the clerk, counsel shall advise the clerk of all exhibits which may be admitted without objection, and those that may be admissible subject to objections.

2. Copies—Counsel must cooperate to insure that three identical sets of exhibits—one for the Court, one for the clerk to be used for trial, and one for the testifying witnesses—are provided to the Court.

3. Custody of Exhibits—After trial exhibits are marked by the clerk, they will remain in the custody of the clerk.

4. Unmarked Exhibits—Any exhibits not timely submitted to opposing counsel and the clerk in full compliance with these procedures will not be marked by the clerk, and may not be offered or referenced during the trial.

5. Illustrative Aids—No later than seven judicial days before trial, the parties must exchange any illustrative aids that they may use at trial. These exhibits must be exchanged in the form and format in which they may be used at trial.

D. **Trial Statements.** The trial statement required by WDCR 5 must be filed and served no later than 5:00 p.m. five judicial days before trial. It must be served upon other parties by personal delivery, fax, or email, and a copy must be delivered to the chambers of the presiding judge.

E. **Jury Instructions and Verdict Forms.** All proposed jury instructions and verdict forms

must be submitted to the Court no later than five judicial days prior to trial.

1. Format—All original jury instructions must be accompanied by a separate copy of each instruction containing a citation to the form instruction or to the authority supporting that instruction. All modifications made to instructions taken from statutory authority, Nevada Pattern Jury Instructions, Devitt and Blackmar, CACI, BAJI, or other form instructions must be separately underscored on the citation page.

2. Exchange—The parties must exchange all proposed jury instructions and verdict forms no later than seven judicial days before trial.

3. Agreement and Submission—The parties must confer regarding the proposed jury instructions and verdict forms before they are submitted to the Court. All undisputed instructions and verdict forms must be submitted jointly to the Court; the parties must separately submit any disputed instructions and verdict forms.

4. Disputes and Additional Instructions—After commencement of the trial, the Court will meet with counsel to determine the jury instructions and verdict forms that will actually be used. At that time, the Court will resolve all disputes over instructions and verdict forms, and consider the need for any additional instructions which could not reasonably have been foreseen prior to trial.

F. **Juror Notes and Questions.** Jurors will be permitted to take notes during trial. Jurors will be permitted to submit questions in writing during trial; however, juror questions will be asked only after the questions are reviewed by counsel and approved by the Court. Any objection to this procedure must be set forth in the trial statement.

G. **Use of Electronically Recorded Depositions.** No depositions that were recorded by other than stenographic means may be edited until the Court rules on objections. If such a recording is to be used at trial, it must be edited to eliminate cumulative testimony and to present only those

matters that are relevant and material. All extended silent passages and objections/exchanges between counsel must be omitted.

H. **Evidentiary Rulings.** Every witness that counsel intends to call at trial must be informed about any rulings that restrict or limit testimony or evidence (e.g., rulings on motions in limine), and to further inform them that they may not offer or mention any evidence that is subject to that ruling.

I. **Examination Limits.** Absent extraordinary circumstances, counsel will be given the opportunity for one re-direct and one re-cross examination.

V. MISCELLANEOUS

A. **Communication with Department.** In addition to communication by telephone, letter, or facsimile, counsel may communicate with Department 6 via electronic mail to the Judicial Assistant at: heidi.boe@washoecourts.us. All written communications must be copied to all opposing counsel and unrepresented litigants.

B. **Request for Accommodation or Interpreter.** Counsel must notify the Court as early as possible of any reasonable accommodation needed because of a disability or the need for an interpreter.

C. **Audio Visual Equipment.** Attorneys requesting the use of audio visual equipment in the courtroom must complete the "audio visual equipment request form" and fax the completed form to Court Administration at the number provided thereon. Please note that significant lead time is needed for the request as Court equipment is limited. The form is available on the Second Judicial District Court's web site at:

http://washoecourts.com/filing_office/PDF/Audio%20Visual%20Equipment%20Request%20Form.pdf

D. **Etiquette and Decorum.** Counsel must adhere to professional standards of courtroom

etiquette and decorum. In addition, direct attacks on the character or ethics of other counsel which the Court deems unwarranted—whether occurring in a writing submitted to the Court, at a deposition, or in connection with a trial, hearing, or meeting with the Court—may result in the imposition of sanctions.

IT IS SO ORDERED.

DATED this 10 day of November, 2014.

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 10th day of November, 2014, I electronically filed the foregoing with the clerk of the Court:

JOHN DESMOND, ESQ.

DAVID O'MARA, ESQ.

KATHLEEN BRADY, ESQ.

BRIAN IRVINE, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Judicial Assistant

FILED
Electronically
2014-11-13 09:49:24 AM
Cathy Hill
Acting Clerk of the Court
Transaction # 4693280

CODE NO.
THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, State Bar No. 00837
DAVID C. O'MARA, State Bar No. 8599
311 E. Liberty Street
Reno, NV 89501
Telephone (775) 323-1321
Facsimile: (775) 323-4082

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Pro Hac Vice Application Pending
California Bar No. 247583
3506 La Castellet Court
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

Attorneys for Plaintiffs

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,

vs.

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

Defendants.

Case No. CV14-01712

Dept. No. 6

ORDER ADMITTING BRIAN P. MOQUIN, ESQ. TO PRACTICE

Brian P. Moquin, Esq. having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the State of California, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and Brian P. Moquin, Esq. is hereby admitted to practice in the above-entitled Court for the purposes of the above-entitled matter only.

DATED: 11/12, 2014.

DISTRICT COURT JUDGE

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, Appellants, vs. BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and TIMOTHY P. HERBST, as Special Administrator of the ESTATE OF JERRY HERBST, deceased, Respondents.	**No. 83640** District Court Case No. CV14-01712

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 2 OF 18

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 0950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
RICHARD D. WILLIAMSON (SBN 9932)
JONATHAN JOEL TEW (SBN 11874)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS LARRY J. WILLARD, et al.

Docket 83640 Document 2022-06442

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 1)	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel – Brian P. Moquin, Esq.	10/28/14	1	202-206
	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brian P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340
	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547
	Exhibit 9: Seller's Final Closing Statement		3	548-549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 15)	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		4	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Larry J. Willard	08/30/16	4	798-806
18.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	807-837
	Exhibit 1: *Purchase and Sale Agreement* dated July 1, 2005 for Purchase of the Highway 50 Property		4	838-851

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 2: *Lease Agreement* dated December 2, 2005 for the Highway 50 Property		4	852-895
	Exhibit 3: *Three Year Adjustment Term Note* dated January 19, 2007 in the amount of $2,200,00.00 for the Highway 50 Property		4	896-900
	Exhibit 4: *Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	901-918
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		5	919-934
	Exhibit 6: *First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property		5	935-942
	Exhibit 7: *Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property		5	943-947
	Exhibit 8: *Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property		5	948-950
	Exhibit 9: *Purchase and Sale Agreement* Dated July 14, 2006 for the Baring Property		5	951-973
	Exhibit 10: *Lease Agreement* dated June 6, 2006 for the Baring Property		5	974-1009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 11: *Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,00.00 for the Baring Property		5	1010-1028
	Exhibit 12*: Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1029-1046
	Exhibit 13: *First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property		5	1047-1054
	Exhibit 14: *Guaranty Agreement* dated March 12, 2007 for the Baring Property		5	1055-1059
	Exhibit 15: *Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1060-1071
	Exhibit 16: *Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1072-1079
	Exhibit 17: *Substitution of Attorney* forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1080-1084
	Exhibit 18: *Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California Case		5	1085-1088
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and		5	1089-1093

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Brian Moquin re Joint Stipulation in California Case			
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court Property		5	1094-1100
	Exhibit 21: *Request for Dismissal* without prejudice filed May 19, 2014 in the California case		5	1101-1102
	Exhibit 22: *Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1103-1111
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1112-1113
	Exhibit 24: *Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property		5	1114-1116
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1117-1152
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1153-1155
	Exhibit 27: *Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property		6	1156-1168

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 28: *Lease Agreement* dated November 18, 2005 for the Virginia Property		6	1169-1204
	Exhibit 29: *Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property		6	1205-1207
	Exhibit 30: *Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1208-1225
	Exhibit 31: *Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1226-1230
	Exhibit 32: *Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1231-1245
	Exhibit 33: *Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1246-1271
	Exhibit 34: *Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1272-1273
	Exhibit 35: *Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1274-1275

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 36: *Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property		6	1276-1281
	Exhibit 37: *Guaranty Agreement* dated March 9, 2007 for the Virginia Property		6	1282-1286
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1287-1291
	Exhibit 39: Letter dated March 18,2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1292-1294
	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1295-1297
	Exhibit 41: *Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1298-1302
	Exhibit 42: *Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1303-1305
	Exhibit 43: *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 2013		6	1306-1309
	Exhibit 44: *Declaration in Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013,		6	1310-1314

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Northern District of California Bankruptcy Court Case No. 13-53293 CN			
	Exhibit 45: *Substitution of Attorney* forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1315-1319
	Exhibit 46: *Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1320-1327
	Exhibit 47: *Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00		6	1328-1334
	Exhibit 48: *Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1335-1354
	Exhibit 49: *Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1355-1356
	Exhibit 50: *Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property		6	1357-1358
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland		6	1359-1360

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000,000.00			
19.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1361-1380
	Exhibit 1: Declaration of John P. Desmond		6	1381-1384
20.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgement	12/20/16	7	1385-1390
	Exhibit 1: Expert Report of Michelle Salazar		7	1391-1424
21.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1425-1443
22.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgement in Favor of Defendants	02/02/17	7	1444-1451
	Exhibit 1: January 19-25, 2017, Email Exchange		7	1452-1454
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1455-1479
23.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1480-1488
24.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1489-1512

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
25.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1513-1516
	Exhibit 1: May 30, 2017 Order		7	1517-1541
26.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1542-1549
27.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1550-1557
28.	Affidavit of Larry Willard	10/18/17	7	1558-1574
29.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1575-1602
	Contents of DVD of Exhibits (filed manually)		7	1603-1615
30.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	8	1616-1659
	Exhibit 1: Declaration of Brian R. Irvine		8	1660-1666
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		8	1667-1674
	Exhibit 3: February 12, 2015 Letter		8	1675-1677
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		8	1678-1689
	Exhibit 5: August 28, 2015, Letter		8	1690-1701
	Exhibit 6: March 3, 2016, Letter		8	1702-1790
	Exhibit 7: March 15, 2016 Letter		9	1791-1882
	Exhibit 8: April 20, 2016, Letter		9	1883-1909

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		9	1910-1918
	Exhibit 10: December 5, 2016 Email		9	1919-1925
	Exhibit 11: December 9, 2016 Email		9	1926-1927
	Exhibit 12: December 23, 2016 Email		9	1928-1931
	Exhibit 13: December 27, 2016 Email		9	1932-1935
	Exhibit 14: February 3, 2017, Letter		9	1936-1963
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		9	1964-1973
	Exhibit 16: April 1, 2016 Email		9	1974-1976
	Exhibit 17: May 3, 2016 Email		9	1977-1978
	Exhibit 18: June 21, 2016 Email Exchange		9	1979-1985
	Exhibit 19: July 21, 2016 Email		9	1986-2002
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		9	2003-2012
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		9	2013-2023
	Exhibit 22: Defendants' First Requests for Production on Willard		9	2024-2031
	Exhibit 23: Defendants' Second Request for Production on Willard		9	2032-2039

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 24: Defendants' Third Request for Production on Willard		10	2040-2045
	Exhibit 25: Defendants Requests for Admission to Willard		10	2046-2051
	Exhibit 26: Willard Lease		10	2052-2087
	Exhibit 27: Willard Response to Second Set of Interrogatories		10	2088-2096
	Exhibit 28: Deposition of L. Willard Excerpt		10	2097-2102
	Exhibit 29: April 12, 2013 Letter		10	2103-2105
	Exhibit 30: Declaration of G. Gordon		10	2106-2108
	Exhibit 31: Declaration of C. Kemper		10	2109-2112
31.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	10	2113-2135
	Exhibit 1: Plaintiffs' Initial Disclosures		10	2136-2143
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		10	2144-2152
	Exhibit 3: December 5, 2016 Email		10	2153-2159
	Exhibit 4: December 9, 2016 Email		10	2160-2161
	Exhibit 5: December 23, 2016 Email		10	2162-2165
	Exhibit 6: December 27, 2016 Email		10	2166-2169
	Exhibit 7: February 3, 2017 Letter		10	2170-2197

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 31)	Exhibit 8: Deposition Excerpts of D. Gluhaich		10	2198-2207
	Exhibit 9: Declaration of Brian Irvine		10	2208-2211
32.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	10	2212-2228
	Exhibit 1: Highway 50 Lease		10	2229-2272
	Exhibit 2: Declaration of Chris Kemper		10	2273-2275
	Exhibit 3: Wooley Deposition at 41		10	2276-2281
	Exhibit 4: Virginia Lease		11	2282-2317
	Exhibit 5: Little Caesar's Sublease		11	2318-2337
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		11	2338-2346
	Exhibit 7: Willard Deposition at 89		11	2347-2352
33.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	11	2353-2390
	Exhibit 1: Plaintiffs' Initial Disclosures		11	2391-2398
	Exhibit 2: November 2014 Email Exchange		11	2399-2408
	Exhibit 3: January 2015 Email Exchange		11	2409-2414
	Exhibit 4: February 12, 2015 Letter		11	2415-2417
	Exhibit 5: Willard July 2015 Interrogatory Reponses		11	2418-2429

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 6: Wooley July 2015 Interrogatory Responses		11	2430-2439
	Exhibit 7: August 28, 2015 Letter		11	2440-2451
	Exhibit 8: March 3, 2016 Letter		12	2452-2540
	Exhibit 9: March 15, 2016 Letter		12	2541-2632
	Exhibit 10: April 20, 2016 Letter		12	2633-2659
	Exhibit 11: December 2, 2016 Expert Disclosure		12	2660-2668
	Exhibit 12: December 5, 2016 Email		12	2669-2675
	Exhibit 13: December 9, 2016 Email		12	2676-2677
	Exhibit 14: December 23, 2016 Email		12	2678-2681
	Exhibit 15: December 27, 2016 Email		12	2682-2685
	Exhibit 16: February 3, 2017 Letter		13	2686-2713
	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		13	2714-2723
	Exhibit 18: Wooley Deposition Excerpts		13	2724-2729
	Exhibit 19: Highway 50 Lease		13	2730-2773
	Exhibit 20: April 1, 2016 Email		13	2774-2776
	Exhibit 21: May 3, 2016 Email Exchange		13	2777-2778
	Exhibit 22: June 21, 2016 Email Exchange		13	2779-2785

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 23: July 21, 2016 Letter		13	2786-2802
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		13	2803-2812
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		13	2813-2822
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		13	2823-2830
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		13	2831-2838
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		13	2839-2844
	Exhibit 29: Defendants' Requests for Admission on Wooley		13	2845-2850
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		13	2851-2860
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		13	2861-2871
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		13	2872-2879
	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		13	2880-2887
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		13	2888-2893
	Exhibit 35: Defendants' Requests for Admission on Willard		13	2894-2899

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
34.	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	13	2900-2904
35.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	13	2905-2908
36.	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	13	2909-2912
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	13	2913-2916
38.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	13	2917-2921
39.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	13	2922-2926
40.	Order Granting Defendants' Motion for Partial Summary Judgment	01/04/18	14	2927-2931
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	14	2932-2935
42.	Notice of Entry of Order re Defendants' Motion to Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	14	2936-2939

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	14	2940-2943
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	14	2944-2977
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	14	2978-2981
46.	Order Denying Plaintiffs' Motion to Partially Dismiss Plaintiffs' Complaint as Moot	03/06/18	14	2982-2985
47.	Notice of Entry of Order re Order Denying Motion to Partially Dismiss Complaint	03/06/18	14	2986-2989
48.	Request for Entry of Judgment	03/09/18	14	2990-2998
49.	Notice of Withdrawal of Local Counsel	03/15/18	14	2999-3001
50.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	14	3002-3004
51.	Opposition to Request for Entry of Judgment	03/26/18	14	3005-3010
52.	Reply in Support of Request for Entry of Judgment	03/27/18	14	3011-3016
53.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	14	3017-3019
54.	Notice of Entry of Order re Order Granting Defendants' Motion to Dismiss Counterclaims	04/16/18	14	3020-3023
55.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	14	3024-3041

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 55)	Exhibit 1: Declaration of Larry J. Willard		14	3042-3051
	Exhibit 2: Lease Agreement dated 11/18/05		14	3052-3087
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		14	3088-3090
	Exhibit 4: Operation and Management Agreement dated 5/1/13		14	3091-3095
	Exhibit 5: 13 Symptoms of Bipolar Disorder		14	3096-3098
	Exhibit 6: Emergency Protective Order dated 1/23/18		14	3099-3101
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		14	3102-3104
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		14	3105-3118
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		14	3119-3147
56.	Opposition to Rule 60(b) Motion for Relief	05/18/18	15	3148-3168
	Exhibit 1: Declaration of Brian R. Irvine		15	3169-3172
	Exhibit 2: Transcript of Hearing, January 10, 2017		15	3173-3242

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 56)	Exhibit 3: Transcript of Hearing, December 12, 2017		15	3243-3271
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		15	3272-3280
	Exhibit 5: Attorney status according to the California Bar		15	3281-3282
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		15	3283-3290
57.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	15	3291-3299
	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		15	3300-3307
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		15	3308-3311
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		15	3312-3314
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		15	3315-3324
	Exhibit 5: Receipt		15	3325-3326
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018		15	3327-3331

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 57)	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		15	3332-3338
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		15	3339-3343
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		15	3344-3346
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		15	3347-3349
	Exhibit 11: Notice of Withdrawal of Local Counsel		15	3350-3353
58.	Order re Request for Entry of Judgment	06/04/18	15	3354-3358
59.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	15	3359-3367
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		15	3368-3385
60.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	16	3386-3402
61.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	16	3403-3409
62.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	16	3410-3441

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
63.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	16	3442-3478
64.	Judgment	12/11/18	16	3479-3481
65.	Notice of Entry of Order re Judgment	12/11/18	16	3482-3485
66.	Notice of Appeal	12/28/18	16	3486-3489
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		16	3490-3524
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		16	3525-3557
	Exhibit 3: Judgment, entered December 11, 2018		16	3558-3561
67.	Motion to Substitute Proper Party	02/22/19	16	3562-3576
68.	Addendum to Motion to Substitute Proper Party	02/26/19	16	3577-3588
69.	Opinion	08/06/20	16	3589-3597
70.	Notice of Related Action	08/19/20	16	3598-3601
	Exhibit 1: Conditional Guilty Plea in Exchange for a Stated Form of Discipline		16	3602-3612
	Exhibit 2: Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing		16	3613-3623

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 70)	Exhibit 3: Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney from Practicing Law in Nevada		17	3624-3632
71.	Order to Set Status Conference	09/18/20	17	3633-3634
72.	Order Denying Rehearing	11/03/20	17	3635
73.	Order Denying En Banc Reconsideration	02/23/21	17	3636-3637
74.	Notice of Association of Counsel	03/29/21	17	3638-3640
75.	Request for Status Conference	03/30/21	17	3641-3645
76.	Notice of Submission of Proposed Order	05/21/21	17	3646-3649
	Exhibit 1: [Plaintiffs' proposed] Order Granting in Part and Denying in Part the Willard Plaintiffs' Rule 60(b)(1) Motion for Relief		17	3650-3664
77.	Notice of Submission of Proposed Order	05/21/21	17	3665-3668
	Exhibit 1: [Defendants' proposed] Order Denying Plaintiffs' Rule 60(b) Motion for Relief on Remand		17	3669-3714
78.	Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/09/21	17	3715-3722
79.	Defendants' Opposition to Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/23/21	17	3723-3735
80.	Reply in Support of Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/29/21	17	3736-3742
81.	Order Denying Motion to Strike	09/10/21	17	3743-3749

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
82.	Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief	09/13/21	17	3750-3795
83.	Notice of Filing Cost Bond	10/11/21	17	3796-3798
84.	Notice of Appeal	10/11/21	17	3799-3802
	Exhibit 1: Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief		17	3803-3849
85.	Case Appeal Statement	10/11/21	17	3850-3855
	Transcripts			
86.	Transcript of Proceedings – Status Hearing	08/17/15	18	3856-3873
87.	Transcript of Proceedings – Hearing on Motion for Partial Summary Judgment	01/10/17	18	3874-3942
88.	Transcript of Proceedings – Pre-Trial Conference	12/12/17	18	3943-3970
89.	Transcript of Proceedings – Oral Arguments – Plaintiffs' Rule 60(b) Motion	09/04/18	18	3971-3991
90.	Transcript of Proceedings – Status Conference	04/21/21	18	3992-4010

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Transaction # 4782758 : ylloyd

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

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

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

v.

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

Defendants.

Case No. CV14-01712

Dept. No. 6

VERIFIED FIRST AMENDED COMPLAINT

(EXEMPT FROM ARBITRATION—AMOUNT IN EXCESS OF $40,000.00)

Plaintiffs LARRY J. WILLARD ("Willard"), individually and as trustee of the Larry James Willard Trust Fund ("the Willard Trust"), OVERLAND DEVELOPMENT CORPORATION ("Overland"), EDWARD C. WOOLEY and JUDITH A. WOOLEY ("the Wooleys"), individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000 ("the Wooley Trust"), by and through undersigned attorneys, hereby allege, aver, and complain of Defendants BERRY-HINCKLEY INDUSTRIES ("BHI") and JERRY HERBST ("Herbst") (collectively, "Defendants") as follows:

JURISDICTION

1. This Court has jurisdiction over Defendants because Defendants are either citizens or residents of the State of Nevada or do business in the State of Nevada, County of Washoe.

2. Venue is proper in this Court because the properties at issue are located in this judicial district and because the leases at issue expressly provide for venue in this Court.

PARTIES

3. Plaintiff Larry J. Willard ("Willard") is, and at all times relevant herein was, a citizen of the United States and a resident of the State of California. At all times relevant herein Willard was trustee of the Larry James Willard Trust Fund ("the Willard Trust").

4. Plaintiff Overland Development Corporation ("Overland") is, and at all times relevant herein was, a corporation organized and existing under the laws of the State of California. Willard is the President of Overland. Willard, the Willard Trust, and Overland are referred to hereinafter as "the Willard Plaintiffs."

5. Plaintiffs Edward C. Wooley and Judith A Wooley (collectively, "the Wooleys") are, and at all times relevant herein were, citizens of the United States of America and are trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000 ("the Wooley Trust") (collectively, "the Wooley Plaintiffs").

6. Defendant Berry-Hinckley Industries ("BHI") is, and at all times relevant herein

was, a corporation organized and existing under the laws of the State of Nevada.

7. Defendant Jerry Herbst ("Herbst") is, and at all times relevant herein was, a citizen of the State of Nevada.

FIRST CAUSE OF ACTION
(Breach of Lease Agreement)
By the Willard Plaintiffs Against Berry-Hinckley Industries

8. Paragraphs 1 through 7 above are hereby incorporated by reference as if fully set forth at this point.

9. On November 18, 2005, BHI entered into a lease agreement (the "Willard Lease") on the property owned by the Willard Plaintiffs located at 7695-7699 S. Virginia Street, Reno, Nevada (the "Willard Property"). Under the Willard Lease, BHI agreed to lease the Virginia Street Property from January 2006 through January 2026 at a monthly rental rate of $122,031.25, said rental rate increasing by 2% per month through the lease term. A true and correct copy of the Willard Lease is attached hereto as Exhibit 1.

10. On February 17, 2007, BHI sent the Willard Plaintiffs a letter indicating Herbst's intent to acquire BHI's convenience store assets. Attached to that letter was a letter from Herbst requesting that the Willard Plaintiffs agree to a modifications of the Willard Lease in return for Herbst personally guaranteeing lease payments by BHI through the duration of the revised lease term. Also attached was a letter from Johnson Jacobson Wilcox dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of $200 million. A true and correct copy of the February 17, 2007 letter and accompanying attachments is attached hereto as Exhibit 2.

11. On March 9, 2007, the Willard Plaintiffs agreed to amend the Willard Lease, thereby forgoing $5,250,045.20 in rent through the shortening of the lease term by 30 months, in return for Herbst's personally guaranteeing that BHI would make all lease payments through the term of the lease (the "Herbst-Willard Guaranty Agreement"). A true and correct copy of the Herbst-Willard Guaranty Agreement is attached hereto as Exhibit 3. A true and correct copy of the amendment to the Willard Lease is attached hereto as Exhibit 4.

12. In March 2013, BHI defaulted on the Willard Lease. BHI and Herbst negotiated an agreement (the " Operating Agreement") with the Willard Plaintiffs under which BHI would

pay the Willard Plaintiffs 50% of net revenues minus $10,000.00 from continuing to operate at the Willard Property. A true and correct copy of the Interim Operating Agreement is attached hereto as Exhibit 5.

13. BHI failed to tender any payments to the Willard Plaintiffs as required under the Interim Operating Agreement, instead occupying the Willard Property through May 2013 without paying any rent. At the end of May 2013, BHI abandoned the Willard Property leaving it in such a state of dishevelment and disrepair that Willard was fined and continues to be fined by the City of Reno, said fines currently totaling $3,265.00.

14. As a direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs were deprived of rental income in the amount of $19,443,836.94 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in the Willard Lease was $15,741.360.75 as of March 1, 2013.

15. As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs were forced to sell the Willard Property in March 2014 in a short sale, thereby losing $4,437,500.00 of earnest money invested in the Willard Property and incurring at least $3,000,000.00 in tax consequences and $549,852.00 in closing costs.

16. As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs were forced to purchase insurance on the Willard Property at a cost of $4,554.53, were forced to pay for installation of a security fence for the Willard Property at a cost of $2,668.62, and were charged $10,393.35 by Nevada Energy for utility fees rightly owed by BHI.

17. As a further direct and proximate result of BHI breaching the Willard Lease, Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and $15,000.00 in accounting fees in the process. Six months later, upon the advice of counsel, Willard withdrew his bankruptcy petition but has been rendered insolvent by virtue of the breaches by BHI and Herbst.

18. As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs hired an attorney to file suit against BHI and Herbst in Santa Clara County,

California, thereby incurring $35,000.00 in attorney's fees.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)
By the Willard Plaintiffs Against Jerry Herbst

19. Paragraphs 1 through 18 above are hereby incorporated by reference as if fully set forth at this point.

20. Upon receiving notice from the Willard Plaintiffs that BHI was in default of the Willard Lease, Herbst breached his duties under the Herbst-Willard Guaranty in failing to tender payment of rent due by BHI to the Willard Plaintiffs.

21. Under the terms of the Herbst-Willard Guaranty, Herbst guaranteed "unconditionally, absolutely and irrevocably" the timely payment and performance of each of BHI's obligations arising out of and under the Willard Lease. This guaranty was "a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectability or enforceability of such obligations." Herbst agreed to be "directly responsible for the full extent of any unsatisfied Guarantee Obligations." Herbst further agreed that his guaranty "is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of [Herbst] hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; (viii) any allegation or contest of the validity of the Lease or this Agreement."

22. In the Herbst-Willard Guaranty, Herbst expressly waived "any defense to its obligations . . . that might arise as a result of any of the" contingencies articulated in Paragraph 20, and further waived "the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or would constitute or give rise to a defense to, the obligation of a surety or guarantor."

23. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, the Willard Plaintiffs were forced to sell the Willard Property in March 2014 in a short sale, thereby losing $4,437,500.00 of earnest money invested in the Willard Property and incurring at least $3,000,000.00 in tax consequences and $549,852.00 in closing costs.

24. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, the Willard Plaintiffs were forced to purchase insurance on the Willard Property at a cost of $4,554.53, were forced to pay for installation of a security fence for the Willard Property at a cost of $2,668.62, and were charged $10,393.35 by Nevada Energy for utility fees rightly owed by BHI.

25. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and $15,000.00 in accounting fees in the process. Six months later, upon the advice of counsel, Willard withdrew his bankruptcy petition but has been rendered insolvent by virtue of the breaches by BHI and Herbst.

26. As a direct and proximate result of Herbst breaching the Herbst-Willard Guaranty Agreement, the Willard Plaintiffs hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $35,000.00 in attorney's fees.

THIRD CAUSE OF ACTION

(Breach of Lease Agreement)

By the Wooley Plaintiffs Against Berry-Hinckley Industries

27. Paragraphs 1 through 7 above are hereby incorporated by reference as if fully set forth at this point.

28. On December 2, 2005, BHI entered into a lease agreement ("Wooley Lease #1") on the property owned by the Wooley Plaintiffs located at 1820 Highway 50 East, Carson City,

Nevada (the "Highway 50 Property"). Under Wooley Lease #1, BHI agreed to lease the Highway 50 Property from December 1, 2005 through November 30, 2025 at a monthly rental rate of $22,666.67, said rental rate increasing by 2% per month through the lease term. A true and correct copy of Wooley Lease #1 is attached hereto as Exhibit 6.

29. On June 6, 2006, BHI entered into a lease agreement ("Wooley Lease #2") on the property owned by the Wooley Plaintiffs located at 1365 Baring Boulevard, Sparks, Nevada (the "Sparks Property"). Under Wooley Lease #2, BHI agreed to lease the Sparks Property from June 6, 2006 through September 30, 2025 at a monthly rental rate of $19,856.25, said rental rate increasing by 2% per month through the lease term. A true and correct copy of Wooley Lease #2 is attached hereto as Exhibit 7.

30. On February 17, 2007, BHI sent the Wooley Plaintiffs a letter indicating Herbst's intent to acquire BHI's convenience store assets. Attached to that letter was a letter from Herbst requesting that the Wooley Plaintiffs agree to a modifications of Wooley Lease #1 and Wooley Lease #2 in return for Herbst personally guaranteeing lease payments by BHI through the duration of the revised lease terms. Also attached was a letter from Johnson Jacobson Wilcox dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of $200 million. A true and correct copy of the February 17, 2007 letter and accompanying attachments is attached hereto as Exhibit 2.

31. On March 12, 2007, the Wooley Plaintiffs agreed to amend Wooley Lease #1 and Wooley Lease #2, thereby forgoing $1,834,663.77 in rent through the shortening of the lease terms by 30 months, in return for Herbst's personally guaranteeing that BHI would make all lease payments through the term of the lease (the "Herbst-Wooley Guaranty Agreement"). A true and correct copy of the Herbst-Wooley Guaranty Agreement regarding the Highway 50 Property is attached hereto as Exhibit 8. A true and correct copy of the Herbst-Wooley Guarantee is attached hereto as Exhibit 9. A true and correct copy of the amendment to Wooley Lease #1 is attached hereto as Exhibit 10. A true and correct copy of the amendment to Wooley Lease #2 is attached hereto as Exhibit 11.

32. In March 2013, BHI defaulted on Wooley Lease #1.

33. As a direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs were deprived of rental income in the amount of $4,420,244.00 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in Wooley Lease #1 was $3,323,543.49 as of March 1, 2013.

34. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Highway 50 Property suffered a diminution in value in an amount to be proven at trial but which is at least $2,000,000.00.

35. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs incurred property taxes in the amount of $1,500.00.

36. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs were forced to purchase insurance on the Highway 50 Property at a cost of $3,840.00.

37. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs incurred maintenance costs on the Highway 50 Property of $4,000.00.

38. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs incurred management fee costs on the Highway 50 Property of $2,500.00.

39. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs were deprived of the security deposit from the subtenant at the Highway 50 Property in the amount of $2,485.00.

40. As 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.

41. As 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.

42. As a further direct and proximate result of BHI breaching Wooley Lease #1, the Wooley Plaintiffs hired an attorney to file suit against BHI and Herbst in Santa Clara County,

California, thereby incurring $45,088.00 in attorney's fees.

FOURTH CAUSE OF ACTION

(Breach of Personal Guaranty)

By the Wooley Plaintiffs Against Jerry Herbst

43. Paragraphs 27 through 42 above are hereby incorporated by reference as if fully set forth at this point.

44. Upon receiving notice from the Wooley Plaintiffs that BHI was in default of the Wooley Leases, Herbst breached his duties under the Herbst-Wooley Guaranty in failing to tender payment of rent due by BHI to tbe Wooley Plaintiffs.

45. Under the terms of the Herbst-Wooley Guaranty, Herbst guaranteed "unconditionally, absolutely and irrevocably" the timely payment and performance of each of BHI's obligations arising out of and under tbe Wooley Leases. This guaranty was "a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectability or enforceability of such obligations." Herbst agreed to be "directly responsible for the full extent of any unsatisfied Guarantee Obligations." Herbst further agreed that his guaranty "is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of [Herbst] hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; (viii) any allegation or contest of the validity of the Lease or this Agreement."

46. In the Herbst-Wooley Guaranty, Herbst expressly waived "any defense to its obligations . . . that might arise as a result of any of the" contingencies articulated in Paragraph 44, and further waived "the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or would constitute or give rise to a defense to, the obligation of a surety or guarantor."

47. As a direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were deprived of rental income in the amount of $4,420,244.00 that they otherwise would have received. The net present value of the remaining lease payments using a discount rate of 4% as specified in the Wooley Leases was $3,323,543.49 as of March 1, 2013.

48. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Highway 50 Property suffered a diminution in value in an amount to be proven at trial but which is at least $2,000,000.00.

49. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred property taxes in the amount of $1,500.00.

50. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were forced to purchase insurance on the Highway 50 Property at a cost of $3,840.00.

51. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred maintenance costs on the Highway 50 Property of $4,000.00.

52. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred management fee costs on the Highway 50 Property of $2,500.00.

53. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs were deprived of the security deposit from the subtenant at the Highway 50 Property in the amount of $2,485.00.

54. As a further direct and proximate result of Herbst breaching the Herbst-Wooley

Guaranty, 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.

55. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, because the Sparks Property was cross-collateralized with the Highway 50 Property and the Wooley Plaintiffs were forced to sell the Sparks Property due to the breach of the Herbst-Wooley Guaranty, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but which is at least $600,000.00.

56. As a further direct and proximate result of Herbst breaching the Herbst-Wooley Guaranty, the Wooley Plaintiffs hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $45,088.00 in attorney's fees.

FIFTH CAUSE OF ACTION

(Attachment)

By All Plaintiffs Against All Defendants

57. Paragraphs 1 through 56 above are hereby incorporated by reference as if fully set forth at this point.

58. Plaintiffs are informed and believe and on that basis allege that as a result of this action, Defendants will attempt to transfer or otherwise conceal assets in an effort to make it impossible for Plaintiffs to reach the property by execution after judgment is entered.

59. Plaintiffs are informed and believe and on that basis allege that Defendants will move, transfer or otherwise conceal these assets in order to defeat or otherwise hinder Plaintiff's ability to collect after judgment is entered.

60. These allegations are based in part on the fact that on March 18, 2013, Defendants attorney, Gerald M. Gordon of Gordon Silver, sent a letter to Plaintiffs' attorney in which Defendants threatened to declare bankruptcy rather than honor their obligations arising under the leases. A true and correct copy of this letter is attached hereto as Exhibit 12.

61. These allegations are further based on the fact that on March 28, 2013, Defendants attorney, Gerald M. Gordon of Gordon Silver, sent a letter to Plaintiffs' attorney reiterating Defendants' threat of seeking bankruptcy protection and offering to pay a small fraction of the amount due under the leases and Herbst's personal guaranty, an offer which

Plaintiffs rejected.

62. These allegations are further based on the fact that on July 1, 2013, while Plaintiffs had the instant claim pending against Defendants in Santa Clara County, California, Herbst and his wife transferred 100% of their interest in the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134 to their sons, Timothy Paul Herbst and Troy Dederick Herbst, as trustees of the Jerry E. Herbst Residence Trust and the Maryanna Herbst Residence Trust. Plaintiffs are informed and believe and on that basis allege that such transfer was for the purpose of attempting to shelter the estate, which is estimated to be worth at least $18 million, from being attached by Plaintiffs.

63. In this action, Plaintiffs seek an attachment pursuant to NRS 31.013 because extraordinary circumstances exist which will make it improbable for Plaintiffs to reach the property of Defendants by execution after judgment has been entered. Specifically, Plaintiffs seek an attachment of the following property:

- the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134, Parcel No. 138-20-416-003;
- the property located at 1001 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-031;
- the property located at 1005 South California Avenue, Parker, Arizona 85344, Parcel No. 311-23-030;
- the property located at 1009 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-028A;
- the property located at 515 Saddle View Way 23, Park City, Utah 84060, Parcel No. 01-923-06; and
- such other and further assets and properties owned by Defendants sufficient to secure payment of Plaintiffs' claims against Defendants.

64. Pursuant to NRS Chapter 31, Plaintiffs seek issuance of a prejudgment writ of attachment upon the assets of Defendant Berry-Hinckley Industries and Defendant Jerry Herbst, to secure payment of Plaintiffs' claims against Defendants.

SIXTH CAUSE OF ACTION
(Temporary Restraining Order)
By All Plaintiffs Against All Defendants

65. Paragraphs 1 through 65 above are hereby incorporated by reference as if fully set forth at this point.

66. If Defendants are permitted the ability to transfer, sell, or otherwise conceal assets during the pendency of this action, Plaintiffs will suffer irreparable harm.

67. If Defendants are permitted to have the ability to transfer, sell, or otherwise conceal assets before this Court can issue a writ of attachment on the assets of Defendants, and each of them, Plaintiffs will be denied the extraordinary relief provided in NRS Chapter 31 to protect their rights.

68. An interlocutory injunction preventing Defendants or any person with actual knowledge of the injunction is necessary to maintain the status quo until this Court can determine whether a writ of attachment should issue and/or until the conclusion of this action after trial.

69. Plaintiffs are entitled to a temporary restraining order and preliminary injunction enjoining Defendants, and each of them, and any other person with notice of the injunction from transferring, selling, or otherwise encumbering any assets or property of Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

ON THE FIRST CAUSE OF ACTION:

1. For direct damages in the discounted amount of $15,766,991.73;

2. For consequential damages in the amount of $8,080,856.50;

3. For late payment penalties of $25,630.98 for the period of March 2013 through May 2013;

4. For interest at a rate of 18% per annum as provided for under the Willard Lease from March 1, 2013 through entry of judgment; and

5. For reasonable attorney's fees as provided for under the Willard Lease.

///

ON THE SECOND CAUSE OF ACTION:

1. For direct damages in the discounted amount of $15,766,991.73;

2. For consequential damages in the amount of $8,080,856.50;

3. For late payment penalties of $25,630.98 for the period of March 2013 through May 2013;

4. For interest at a rate of 18% per annum as provided for under the Willard Lease from March 1, 2013 through entry of judgment; and

5. For reasonable attorney's fees as provided for under the Willard Lease.

ON THE THIRD CAUSE OF ACTION:

1. For direct damages in the discounted amount of $3,323,543.49;

2. For consequential damages in an amount to be proven at trial but which is at least $2,809,600.30;

3. For interest at a rate of 18% per annum as provided for under the Wooley Leases from March 1, 2013 through entry of judgment; and

4. For reasonable attorney's fees as provided for under the Wooley Leases.

ON THE FOURTH CAUSE OF ACTION:

1. For direct damages in the discounted amount of $3,323,543.49;

2. For consequential damages in an amount to be proven at trial but which is at least $2,809,600.30;

3. For interest at a rate of 18% per annum as provided for under the Wooley Leases from March 1, 2013 through entry of judgment; and

4. For reasonable attorney's fees as provided for under the Wooley Leases.

ON THE FIFTH CAUSE OF ACTION:

1. For issuance of a writ of attachment to impress a lien upon the assets of Defendants, and each of them, in order to secure judgment in favor of Plaintiffs, which, including interest accrued through October 2014, will exceed $ 38,480,184.14. Such assets include the following:

- the estate located at 1701 Enclave Court, Las Vegas, Nevada 89134, Parcel No.

138-20-416-003;

- the property located at 1001 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-031;
- the property located at 1005 South California Avenue, Parker, Arizona 85344, Parcel No. 311-23-030;
- the property located at 1009 South California Avenue, Parker, Arizona 85334, Parcel No. 311-23-028A;
- the property located at 515 Saddle View Way 23, Park City, Utah 84060, Parcel No. 01-923-06; and
- such other and further assets and properties owned by Defendants sufficient to secure payment of Plaintiffs' claims against Defendants.

ON THE SIXTH CAUSE OF ACTION:

1. For a temporary restraining order and preliminary injunction preventing Defendants, and each of them, and any person with knowledge of the injunction from transferring, selling, or otherwise encumbering the assets of Defendants.

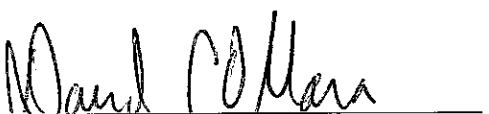
ON ALL CAUSES OF ACTION:

1. For pre-judgment interest upon such damages through entry of judgment at the rate of 18 percent per annum as provided for under the Lease Agreements;
2. For costs of suit;
3. For such other orders and further relief as the Court deems just and proper.

Respectfully submitted,

THE O'MARA LAW FIRM, P.C.

DATED: January 20, 2015

By: 

DAVID C. O'MARA
Nevada Bar No. 8599
311 East Liberty Street
Reno, Nevada 89501
(775) 323-1321
(775) 323-4082 (facsimile)

LAW OFFICES OF BRIAN P. MOQUIN

DATED: January 20, 2015

By: _____

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

Attorneys for Plaintiffs

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the attorney for Larry J. Willard, Overland Development Corporation, Edward C. Wooley, and Judith A. Wooley, Plaintiffs in the foregoing First Amended Complaint and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true.

Pursuant to NRS 15.010, the undersigned attorney verifies this First Amended Complaint for Plaintiffs Larry J. Willard, Overland Development Corporation, Edward C. Wooley, and Judith A. Wooley because Plaintiffs reside outside this County.

DATED: January 20, 2015

BRIAN P. MOQUIN, ESQ.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-entitled matter

X Document does not contain the social security number of any person

-OR-

___ Document contains the social security number of a person as required by:

____ A specific state or federal law, to wit:

_____

-or-

____ For the administration of a public program

-or-

____ For an application for a federal or state grant

-or-

____ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: January 21, 2015.

THE O'MARA LAW FIRM, PC

BY: _____
DAVID C. O'MARA, ESQ.

FILED
Electronically
2015-02-02 04:16:17 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4799508 : mcholico

1140
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.com
Email: birvine@gordonsilver.com
Email: 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,

vs.

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

Defendants.

CASE NO.: CV14-01712

DEPT. NO.: 6

DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

DEFENDANTS BERRY HINCKLEY INDUSTRIES and JERRY HERBST (collectively, "Defendants"), by and through their attorneys of record, GORDON SILVER, answer Plaintiffs' Amended Complaint as follows:

JURISDICTION

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Defendants admit the remaining allegations contained in Paragraph 2 of Plaintiffs' Complaint.

PARTIES

3. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 3 of Plaintiffs' Complaint, and thus deny the same.

4. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and thus deny the same.

5. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and thus deny the same.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

FIRST CAUSE OF ACTION
(Breach of Lease Agreement)

8. Paragraphs 1 through 7 above are hereby incorporated by reference as if fully set forth at this point.

9. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 9 of Plaintiffs' Complaint, and thus deny the same.

10. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 10 of the Complaint.

11. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint, and thus deny the same.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and thus deny the same.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)

19. Paragraphs 1 through 18 above are hereby incorporated by reference as if fully set forth at this point.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 21 of the Complaint.

22. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

THIRD CAUSE OF ACTION
(Breach of Lease Agreement)

27. Paragraphs 1 through 26 above are hereby incorporated by reference as if fully set forth at this point.

28. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint, and thus deny the same.

29. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 29 of Plaintiffs' Complaint, and thus deny the same.

30. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to

the truthfulness of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and thus deny the same.

31. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint, and thus deny the same.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

FOURTH CAUSE OF ACTION
(Breach of Personal Guaranty)

43. Paragraphs 1 through 42 above are hereby incorporated by reference as if fully set forth at this point.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 45 of the Complaint.

46. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

FIFTH CAUSE OF ACTION
(Attachment)

57. Paragraphs 1 through 56 above are hereby incorporated by reference as if fully set forth at this point.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 60 of Plaintiffs' Complaint, and thus deny the same.

61. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

EIGHTH CAUSE OF ACTION
(Temporary Restraining Order)

65. Paragraphs 1 through 64 above are hereby incorporated by reference as if fully set forth at this point.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

AFFIRMATIVE DEFENSES

In accordance with Nevada Rule of Civil Procedure 11, all possible affirmative defenses may or may not have been asserted herein insofar as sufficient facts were not available to Defendants after reasonable inquiry upon the filing of this pleading and therefore Defendants assert the following defenses based in fact or upon reasonable belief and hereby reserve the right to amend this Answer to allege appropriate or additional defenses, if subsequent investigation or discovery so warrants:

FIRST AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are contrary to the terms of the agreement(s) between the parties.

FOURTH AFFIRMATIVE DEFENSE

Defendants are excused from performance.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches, waiver, equitable estoppel, and ratification.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiff failed to adequately mitigate any injuries and damages that it allegedly suffered.

SEVENTH AFFIRMATIVE DEFENSE

Defendants are entitled to set-off, should any damages be awarded against them.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on the claims pled in the Complaint because the damages sought are too speculative and remote.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has contractually waived the right to seek consequential, special, and indirect damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are not contractually entitled to accelerated rent.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to provide reasonable and adequate notice of any claimed breach.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state sufficient facts or claims to support punitive damages against Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

It has been necessary for Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together

with their costs expended in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorney's fees, costs, or interest.

PRAYER FOR RELIEF

WHEREFORE, Defendants BERRY HINCKLEY INDUSTRIES and JERRY HERBST hereby pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of their Complaint and that the same be dismissed with prejudice.

2. For costs of suit and reasonable attorneys' fees; and

3. For such other and further relief as the Court deems just and proper in the circumstances.

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 February, 2015.

GORDON SILVER

By: /s/ Brian R. Irvine

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' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT** 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 2nd day of February, 2015.

/s/ Stephanie J. Glantz
An Employee of GORDON SILVER

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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.com
Email: birvine@gordonsilver.com
Email: 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,

vs.

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

Defendants.
_____/

CASE NO.: CV14-01712

DEPT. NO.: 6

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; and OVERLAND DEVELOPMENT CORPORATION, a California corporation;

Counter-defendants

DEFENDANTS' AMENDED ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND COUNTERCLAIM

DEFENDANTS BERRY HINCKLEY INDUSTRIES and JERRY HERBST (collectively, "Defendants"), by and through their attorneys of record, GORDON SILVER, answer Plaintiffs' Amended Complaint as follows:

JURISDICTION

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Defendants admit the remaining allegations contained in Paragraph 2 of Plaintiffs' Complaint.

PARTIES

3. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 3 of Plaintiffs' Complaint, and thus deny the same.

4. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and thus deny the same.

5. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and thus deny the same.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

FIRST CAUSE OF ACTION
(Breach of Lease Agreement)

8. Paragraphs 1 through 7 above are hereby incorporated by reference as if fully set forth at this point.

9. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 9 of Plaintiffs' Complaint, and thus deny the same.

10. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 10 of the Complaint.

11. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint, and thus deny the same.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and thus deny the same.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)

19. Paragraphs 1 through 18 above are hereby incorporated by reference as if fully set forth at this point.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 21 of the Complaint.

22. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

THIRD CAUSE OF ACTION
(Breach of Lease Agreement)

27. Paragraphs 1 through 26 above are hereby incorporated by reference as if fully set forth at this point.

28. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint, and thus deny the same.

29. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to

the truthfulness of the remaining allegations contained in Paragraph 29 of Plaintiffs' Complaint, and thus deny the same.

30. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and thus deny the same.

31. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint, and thus deny the same.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

FOURTH CAUSE OF ACTION
(Breach of Personal Guaranty)

43. Paragraphs 1 through 42 above are hereby incorporated by reference as if fully set forth at this point.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 45 of the Complaint.

46. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

FIFTH CAUSE OF ACTION
(Attachment)

57. Paragraphs 1 through 56 above are hereby incorporated by reference as if fully set forth at this point.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 60 of Plaintiffs' Complaint, and thus deny the same.

61. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

EIGHTH CAUSE OF ACTION
(Temporary Restraining Order)

65. Paragraphs 1 through 64 above are hereby incorporated by reference as if fully set forth at this point.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

AFFIRMATIVE DEFENSES

In accordance with Nevada Rule of Civil Procedure 11, all possible affirmative defenses may or may not have been asserted herein insofar as sufficient facts were not available to Defendants after reasonable inquiry upon the filing of this pleading and therefore Defendants assert the following defenses based in fact or upon reasonable belief and hereby reserve the right to amend this Answer to allege appropriate or additional defenses, if subsequent investigation or discovery so warrants:

FIRST AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are contrary to the terms of the agreement(s) between the parties.

FOURTH AFFIRMATIVE DEFENSE

Defendants are excused from performance.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches, waiver, equitable estoppel, and ratification.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiff failed to adequately mitigate any injuries and damages that it allegedly suffered.

SEVENTH AFFIRMATIVE DEFENSE

Defendants are entitled to set-off, should any damages be awarded against them.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on the claims pled in the Complaint because the damages sought are too speculative and remote.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has contractually waived the right to seek consequential, special, and indirect damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are not contractually entitled to accelerated rent.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to provide reasonable and adequate notice of any claimed breach.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state sufficient facts or claims to support punitive damages

against Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

It has been necessary for Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together with their costs expended in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorney's fees, costs, or interest.

PRAYER FOR RELIEF

WHEREFORE, Defendants BERRY HINCKLEY INDUSTRIES and JERRY HERBST hereby pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of their Complaint and that the same be dismissed with prejudice.

2. For costs of suit and reasonable attorneys' fees; and

3. For such other and further relief as the Court deems just and proper in the circumstances.

COUNTERCLAIM

Counterclaimants Berry-Hinckley Industries and Jerry Herbst, by and through their counsel of record, Gordon Silver, allege as follows:

PARTIES

1. Berry-Hinckley Industries ("BHI") is a Nevada corporation.

2. Jerry Herbst ("Herbst," and collectively with BHI, "Counterclaimants") is an individual and a resident of the State of Nevada.

3. Counter-defendant Larry J. Willard ("Willard") is, on information and belief, a resident of California, and at all relevant times herein was trustee of the Larry James Willard Trust Fund (the "Willard Trust").

4. Counter-defendant Overland Development Corporation, Inc., dba LJW Enterprises, Inc. ("Overland"), is, on information and belief, a California corporation.

5. On information and belief, Willard is the president of Overland. Willard, the Willard Trust, and Overland are collectively referred to hereinafter as "Counter-defendants."

GENERAL ALLEGATIONS

6. On May 1, 2013, BHI entered into an Operation and Management Agreement (the "Operation Agreement") with Counter-defendants related to the real property located at 7695 S. Virginia Street in Reno, Nevada, which BHI had occupied pursuant to a Lease Agreement by and between BHI and Counter-defendants (the "Willard Lease"). A true and correct copy of the Operation Agreement is attached hereto as **Exhibit 1**.

7. Pertinent to this Counterclaim, Section 4 of the Operation Agreement provided the following with respect to compensation to BHI, who is defined in the Operation Agreement as the "Operator":

> In consideration of Operator performing the Services and other mutual covenants set forth herein, Owner shall pay to Operator the sum of Ten Thousand and No/100ths Dollars ($10,000.00) per month (the "Fee"), and Owner then shall be entitled to all Net Profits (below defined) generated at the Location during each month of the term of this Agreement. The Fee and Net Profits payment shall be payable as set forth below.
>
> Operator shall have fifty (50) days from the end of each month to tender the Net Profits to Owner and provide Owner with an accounting of the subject month's Net Profits. Based thereon, commencing on July 20, 2013, and continuing no later than the twentieth (20th) day of each month thereafter as necessary depending on the length of the term of this Agreement, Operator shall tender to Owner the subject month's Net Profits attributable to the Location, minus the Fee, which such Fee shall be retained by Operator. In the event that the Net Profits for any given month are negative or otherwise not sufficient to pay the Fee, Owner shall not be entitled to any payment and shall instead pay to Operator the amount of the negative Net Profits (if applicable) plus the balance of the Fee within three (3) days of receipt of written demand therefore. As used herein, the term Net Profits shall mean the gross receipts collected by Operator in operating the Location in any given month, minus any and all expenses incurred by Operator in operating the Location during such month including, but not limited to, the cost of all insurance required to be carried by Operator as well as the actual cost to Operator of all inventory sold during such month (regardless of whether Operator purchased such inventory during the subject month, or any previous month). Each payment of Net Profits to Owner hereunder (or alternatively, demand by Operator for payment of the Fee and/or negative Net Profits) shall be accompanied by documentation, certified by an officer of Operator to be accurate, supporting Operator's calculation of Net Profits for the subject month.

8. Section 5 of the Operation Agreement also provided that BHI had no obligation to make the rent payments set forth in the Willard Lease. Specifically:

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

9. Further, Section 9 of the Operation Agreement provides that Counter-defendants must indemnify BHI as follows:

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

10. BHI incurred a negative Net Profit during the term of the Operation Agreement, which was also insufficient to pay the Fee contemplated in Section 4 of the Operation Agreement.

11. However, Counter-defendants have failed to pay to BHI the amount of negative Net Profits plus the balance of the Fee as was required by Section 4 of the Operation Agreement.

12. Further, Counter-defendants have brought suit against BHI, seeking, *inter alia*, rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement.

13. Counter-defendants have also brought suit against Herbst, claiming, *inter alia*, that Herbst is liable for rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement by virtue of a guaranty between Herbst and Counter-defendants (the "Willard Guaranty").

FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT)

14. Counterclaimants incorporate by reference all allegations previously stated in this

Counterclaim as though set forth fully herein.

15. The Operation Agreement constitutes a binding legal contract.

16. BHI performed under the terms of the Operation Agreement.

17. Counter-defendants' failure to pay to BHI the amount of negative Net Profits plus the balance of the Fee as was required by Section 4 of the Operation Agreement constitutes a breach of the Operation Agreement.

18. As a result of Counter-defendants' breach of the Operation Agreement, BHI has suffered damages in excess of $10,000, plus interest, attorneys' fees, and costs.

SECOND CLAIM FOR RELIEF
(DECLARATORY RELIEF)

19. Counterclaimants incorporate by reference all allegations previously stated in this Counterclaim as though set forth fully herein.

20. Pursuant to NRS 30.040(1) and NRS 30.050, any person interested under a written contract, or whose rights, status, or other legal relations are affected by a contract, may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder, regardless of whether or not a breach has occurred.

21. Here, a controversy exists because Counter-defendants have brought suit against BHI seeking, *inter alia*, rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement.

22. Similarly, Counter-defendants have brought suit against Herbst, claiming, *inter alia*, that Herbst is liable for rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement by virtue of the Willard Guaranty.

23. While BHI and Herbst deny any liability under the Willard Lease and Willard Guaranty, BHI and Herbst request a declaration that BHI and Herbst are not responsible for any of the rental payments that Counter-defendants claim were incurred during the term of the Operation Agreement, as Section 5 of the Operation Agreement expressly provides that "[d]uring

the term of this Agreement, Operator shall have no obligation to make the rent payments set forth in the Lease."

PRAYER FOR RELIEF

WHEREFORE, Counterclaimants pray for relief as follows against Counter-defendants:

1. Judgment for damages in excess of $10,000 in favor of BHI and against Counter-defendants.

2. A judicial declaration that BHI and Herbst are not responsible for any of the rental payments that Counter-defendants claim were incurred during the term of the Operation Agreement.

3. For all attorneys' fees, costs, and interest according to law; and

4. For such other and further relief as this Court deems just and proper.

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 21st day of April, 2015.

GORDON SILVER

By: /s/ Brian R. Irvine
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' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND COUNTERCLAIM** 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 21st day of April, 2015.

/s/ Stephanie J. Glantz
An Employee of GORDON SILVER

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Clerk of the Court
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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.com
Email: birvine@gordonsilver.com
Email: 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,

vs.

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,

CASE NO.: CV14-01712

DEPT. NO.: 6

ERRATA

vs.

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

Counter-defendants.

On the 21st day of April, 2015, Defendants/ Counterclaimants Berry-Hinckley Industries and Jerry Herbst filed their Amended Answer to Plaintiffs' Amended Complaint and Counterclaim ("Amended Answer"). The exhibit to the Amended Answer was inadvertently omitted. Defendants' Amended Answer is attached in its entirety, including the exhibit, hereto as **Exhibit 1**.

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 23rd day of April, 2015.

GORDON SILVER

By: /s/ Brian R. Irvine
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

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

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 **ERRATA** 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 23rd day of April, 2015.

/s/ Stephanie J. Glantz
An Employee of GORDON SILVER

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

EXHIBIT TABLE

Exhibit	Description	Pages[1]
1	Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim	20

[1] Exhibit page counts are exclusive of exhibit slip sheets.

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

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Jacqueline Bryant
Clerk of the Court
Transaction # 4920285 : ylloyd

EXHIBIT 1

EXHIBIT 1

1085
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.com
Email: birvine@gordonsilver.com
Email: 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,

vs.

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

Defendants.
_____/

CASE NO.: CV14-01712

DEPT. NO.: 6

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

Counterclaimants

A.App.279

vs.

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

Counter-defendants

DEFENDANTS' AMENDED ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND COUNTERCLAIM

DEFENDANTS BERRY HINCKLEY INDUSTRIES and JERRY HERBST (collectively, "Defendants"), by and through their attorneys of record, GORDON SILVER, answer Plaintiffs' Amended Complaint as follows:

JURISDICTION

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Defendants admit the remaining allegations contained in Paragraph 2 of Plaintiffs' Complaint.

PARTIES

3. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 3 of Plaintiffs' Complaint, and thus deny the same.

4. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and thus deny the same.

5. Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 5 of Plaintiffs' Complaint, and thus deny the same.

6. Defendants admit the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

FIRST CAUSE OF ACTION
(Breach of Lease Agreement)

8. Paragraphs 1 through 7 above are hereby incorporated by reference as if fully set forth at this point.

9. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 9 of Plaintiffs' Complaint, and thus deny the same.

10. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 10 of the Complaint.

11. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint, and thus deny the same.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and thus deny the same.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

SECOND CAUSE OF ACTION
(Breach of Personal Guaranty)

19. Paragraphs 1 through 18 above are hereby incorporated by reference as if fully set forth at this point.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 21 of the Complaint.

22. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

THIRD CAUSE OF ACTION
(Breach of Lease Agreement)

27. Paragraphs 1 through 26 above are hereby incorporated by reference as if fully set forth at this point.

28. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint, and thus deny the same.

29. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to

the truthfulness of the remaining allegations contained in Paragraph 29 of Plaintiffs' Complaint, and thus deny the same.

30. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and thus deny the same.

31. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint, and thus deny the same.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

FOURTH CAUSE OF ACTION
(Breach of Personal Guaranty)

43. Paragraphs 1 through 42 above are hereby incorporated by reference as if fully set forth at this point.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 45 of the Complaint.

46. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document and deny any remaining allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

FIFTH CAUSE OF ACTION
(Attachment)

57. Paragraphs 1 through 56 above are hereby incorporated by reference as if fully set forth at this point.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document. Additionally, Defendants are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 60 of Plaintiffs' Complaint, and thus deny the same.

61. To the extent Plaintiffs purport to quote or paraphrase from a document, the document speaks for itself. Defendants deny any statements inconsistent with the document.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

EIGHTH CAUSE OF ACTION
(Temporary Restraining Order)

65. Paragraphs 1 through 64 above are hereby incorporated by reference as if fully set forth at this point.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

AFFIRMATIVE DEFENSES

In accordance with Nevada Rule of Civil Procedure 11, all possible affirmative defenses may or may not have been asserted herein insofar as sufficient facts were not available to Defendants after reasonable inquiry upon the filing of this pleading and therefore Defendants assert the following defenses based in fact or upon reasonable belief and hereby reserve the right to amend this Answer to allege appropriate or additional defenses, if subsequent investigation or discovery so warrants:

FIRST AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are contrary to the terms of the agreement(s) between the parties.

FOURTH AFFIRMATIVE DEFENSE

Defendants are excused from performance.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches, waiver, equitable estoppel, and ratification.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiff failed to adequately mitigate any injuries and damages that it allegedly suffered.

SEVENTH AFFIRMATIVE DEFENSE

Defendants are entitled to set-off, should any damages be awarded against them.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on the claims pled in the Complaint because the damages sought are too speculative and remote.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has contractually waived the right to seek consequential, special, and indirect damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are not contractually entitled to accelerated rent.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to provide reasonable and adequate notice of any claimed breach.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state sufficient facts or claims to support punitive damages

against Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

It has been necessary for Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together with their costs expended in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to allege facts, or a cause of action, sufficient to support a claim for attorney's fees, costs, or interest.

PRAYER FOR RELIEF

WHEREFORE, Defendants BERRY HINCKLEY INDUSTRIES and JERRY HERBST hereby pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by way of their Complaint and that the same be dismissed with prejudice.

2. For costs of suit and reasonable attorneys' fees; and

3. For such other and further relief as the Court deems just and proper in the circumstances.

COUNTERCLAIM

Counterclaimants Berry-Hinckley Industries and Jerry Herbst, by and through their counsel of record, Gordon Silver, allege as follows:

PARTIES

1. Berry-Hinckley Industries ("BHI") is a Nevada corporation.

2. Jerry Herbst ("Herbst," and collectively with BHI, "Counterclaimants") is an individual and a resident of the State of Nevada.

3. Counter-defendant Larry J. Willard ("Willard") is, on information and belief, a resident of California, and at all relevant times herein was trustee of the Larry James Willard Trust Fund (the "Willard Trust").

4. Counter-defendant Overland Development Corporation, Inc., dba LJW Enterprises, Inc. ("Overland"), is, on information and belief, a California corporation.

5. On information and belief, Willard is the president of Overland. Willard, the Willard Trust, and Overland are collectively referred to hereinafter as "Counter-defendants."

GENERAL ALLEGATIONS

6. On May 1, 2013, BHI entered into an Operation and Management Agreement (the "Operation Agreement") with Counter-defendants related to the real property located at 7695 S. Virginia Street in Reno, Nevada, which BHI had occupied pursuant to a Lease Agreement by and between BHI and Counter-defendants (the "Willard Lease"). A true and correct copy of the Operation Agreement is attached hereto as **Exhibit 1**.

7. Pertinent to this Counterclaim, Section 4 of the Operation Agreement provided the following with respect to compensation to BHI, who is defined in the Operation Agreement as the "Operator":

> In consideration of Operator performing the Services and other mutual covenants set forth herein, Owner shall pay to Operator the sum of Ten Thousand and No/100ths Dollars ($10,000.00) per month (the "Fee"), and Owner then shall be entitled to all Net Profits (below defined) generated at the Location during each month of the term of this Agreement. The Fee and Net Profits payment shall be payable as set forth below.
>
> Operator shall have fifty (50) days from the end of each month to tender the Net Profits to Owner and provide Owner with an accounting of the subject month's Net Profits. Based thereon, commencing on July 20, 2013, and continuing no later than the twentieth (20th) day of each month thereafter as necessary depending on the length of the term of this Agreement, Operator shall tender to Owner the subject month's Net Profits attributable to the Location, minus the Fee, which such Fee shall be retained by Operator. In the event that the Net Profits for any given month are negative or otherwise not sufficient to pay the Fee, Owner shall not be entitled to any payment and shall instead pay to Operator the amount of the negative Net Profits (if applicable) plus the balance of the Fee within three (3) days of receipt of written demand therefore. As used herein, the term Net Profits shall mean the gross receipts collected by Operator in operating the Location in any given month, minus any and all expenses incurred by Operator in operating the Location during such month including, but not limited to, the cost of all insurance required to be carried by Operator as well as the actual cost to Operator of all inventory sold during such month (regardless of whether Operator purchased such inventory during the subject month, or any previous month). Each payment of Net Profits to Owner hereunder (or alternatively, demand by Operator for payment of the Fee and/or negative Net Profits) shall be accompanied by documentation, certified by an officer of Operator to be accurate, supporting Operator's calculation of Net Profits for the subject month.

8. Section 5 of the Operation Agreement also provided that BHI had no obligation to make the rent payments set forth in the Willard Lease. Specifically:

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

9. Further, Section 9 of the Operation Agreement provides that Counter-defendants must indemnify BHI as follows:

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

10. BHI incurred a negative Net Profit during the term of the Operation Agreement, which was also insufficient to pay the Fee contemplated in Section 4 of the Operation Agreement.

11. However, Counter-defendants have failed to pay to BHI the amount of negative Net Profits plus the balance of the Fee as was required by Section 4 of the Operation Agreement.

12. Further, Counter-defendants have brought suit against BHI, seeking, *inter alia*, rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement.

13. Counter-defendants have also brought suit against Herbst, claiming, *inter alia*, that Herbst is liable for rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement by virtue of a guaranty between Herbst and Counter-defendants (the "Willard Guaranty").

FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT)

14. Counterclaimants incorporate by reference all allegations previously stated in this

Counterclaim as though set forth fully herein.

15. The Operation Agreement constitutes a binding legal contract.

16. BHI performed under the terms of the Operation Agreement.

17. Counter-defendants' failure to pay to BHI the amount of negative Net Profits plus the balance of the Fee as was required by Section 4 of the Operation Agreement constitutes a breach of the Operation Agreement.

18. As a result of Counter-defendants' breach of the Operation Agreement, BHI has suffered damages in excess of $10,000, plus interest, attorneys' fees, and costs.

SECOND CLAIM FOR RELIEF
(DECLARATORY RELIEF)

19. Counterclaimants incorporate by reference all allegations previously stated in this Counterclaim as though set forth fully herein.

20. Pursuant to NRS 30.040(1) and NRS 30.050, any person interested under a written contract, or whose rights, status, or other legal relations are affected by a contract, may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder, regardless of whether or not a breach has occurred.

21. Here, a controversy exists because Counter-defendants have brought suit against BHI seeking, *inter alia*, rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement.

22. Similarly, Counter-defendants have brought suit against Herbst, claiming, *inter alia*, that Herbst is liable for rental payments under the Willard Lease that Counter-defendants claim were incurred during the term of the Operation Agreement by virtue of the Willard Guaranty.

23. While BHI and Herbst deny any liability under the Willard Lease and Willard Guaranty, BHI and Herbst request a declaration that BHI and Herbst are not responsible for any of the rental payments that Counter-defendants claim were incurred during the term of the Operation Agreement, as Section 5 of the Operation Agreement expressly provides that "[d]uring

the term of this Agreement, Operator shall have no obligation to make the rent payments set forth in the Lease."

PRAYER FOR RELIEF

WHEREFORE, Counterclaimants pray for relief as follows against Counter-defendants:

1. Judgment for damages in excess of $10,000 in favor of BHI and against Counter-defendants.

2. A judicial declaration that BHI and Herbst are not responsible for any of the rental payments that Counter-defendants claim were incurred during the term of the Operation Agreement.

3. For all attorneys' fees, costs, and interest according to law; and

4. For such other and further relief as this Court deems just and proper.

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 21st day of April, 2015.

GORDON SILVER

By: /s/ Brian R. Irvine

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' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND COUNTERCLAIM** 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 21st day of April, 2015.

/s/ Stephanie J. Glantz
An Employee of GORDON SILVER

EXHIBIT TABLE

Exhibit	Description	Pages[1]
1	Operation Agreement	4

[1] Exhibit page counts are exclusive of exhibit slip sheets.

EXHIBIT 1

EXHIBIT 1

OPERATION AND MANAGEMENT AGREEMENT

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

RECITALS

A. Owner is the owner of that certain gas station and convenience store located at 7695 S. Virginia Street, Reno, Nevada (the "**Location**").

B. Operator is the tenant, and Owner is the landlord, under that certain Lease Agreement dated November 18, 2005, which encumbers the Location (as amended, the "**Lease**").

C. Operator has informed Owner that Operator intends to vacate and cease operations at the Location no later than April 30, 2013. Owner has requested that Operator remain in possession and continue to operate the Location until such time as Owner is able to find a replacement tenant for the Location.

D. Operator has agreed to remain in possession and continue operating the Location upon the terms and conditions as set forth in this Agreement.

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

1. TERM/TERMINATION.

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

2. GENERAL SCOPE OF SERVICES.

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

3. **RELATIONSHIP OF PARTIES.**

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

4. **COMPENSATION TO OPERATOR.**

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

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

5. **RENT.**

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

6. **OPERATOR'S EMPLOYEES.**

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

7. **INSURANCE.**

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

8. **DEFAULT -- REMEDIES.**

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

9. **INDEMNIFICATION.**

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

10. **CONFLICTING PROVISIONS.**

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

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

"OPERATOR"

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: [signature]

Name: Chris Kemper

Title: V.P. of Admin.

"OWNER"

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

By: [signature]

Name: LARRY WILLARD

Title: President

[signature]

Trustee, THE WILLARD FAMILY TRUST DATED NOVEMBER 14, 1987

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Jacqueline Bryant
Clerk of the Court
Transaction # 4971207 : yviloria

CODE NO.
THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA, State Bar No. 00837
DAVID C. O'MARA, State Bar No. 8599
311 E. Liberty Street
Reno, NV 89501
Telephone (775) 323-1321
Facsimile: (775) 323-4082

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Pro Hac Vice Application Pending
California Bar No. 247583
3506 La Castellet Court
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

Attorneys for Plaintiffs

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,

vs.

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

Defendants.

Case No. CV14-01712

Dept. No. 6

PLAINTIFFS LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION'S ANSWER TO DEFENDANTS' COUNTERCLAIM

Plaintiffs and Counter-Defendants LARRY J. WILLARD ("Willard"), individually and as trustee of the Larry James Willard Trust Fund ("the Willard Trust"), and OVERLAND DEVELOPMENT CORPORATION ("Overland") (collectively, "Counter-Defendants"), by and through undersigned attorneys, hereby answer the allegations in the Counterclaim of Defendants BERRY-HINCKLEY INDUSTRIES ("BHI") and JERRY HERBST ("Herbst") (collectively, "Defendants") as follows:

1. The allegations contained in Paragraph 1 are ADMITTED.

2. The allegations contained in Paragraph 2 are ADMITTED.

3. The allegations contained in Paragraph 3 are ADMITTED.

4. The allegations contained in Paragraph 4 are ADMITTED.

5. The allegations contained in Paragraph 5 are ADMITTED.

6. The allegations contained in Paragraph 6 are ADMITTED.

7. The allegations contained in Paragraph 7 are ADMITTED.

8. The allegations contained in Paragraph 8 are ADMITTED.

9. The allegations contained in Paragraph 9 are ADMITTED.

10. Counter-Defendants do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraph 10, and therefore DENY each and every allegation contained therein.

11. The allegations contained in Paragraph 11 are DENIED.

12. The allegations contained in Paragraph 12 are ADMITTED.

13. The allegations contained in Paragraph 13 are ADMITTED.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

14. Paragraph 14 incorporates by reference prior paragraphs, and therefore requires no response. Counter-Defendants incorporate by reference the answers to Paragraphs 1 through 13 above as though set forth fully herein.

15. The allegations contained in Paragraph 15 are DENIED.

16. The allegations contained in Paragraph 16 are DENIED.

17. The allegations contained in Paragraph 17 are DENIED.

18. The allegations contained in Paragraph 18 are DENIED. By way of further answer, Counter-Defendants DENY that they breached the "Operation Agreement," DENY that BHI suffered damages in any amount, and DENY that Defendants would be entitled to attorneys' fees even if the allegations in the Counter-Claim were true, which they are not.

SECOND CLAIM FOR RELIEF
(Declaratory Relief)

19. Paragraph 19 incorporates by reference all allegations previously stated, and therefore requires no response. Counter-Defendants incorporate by reference the answers to Paragraphs 1 through 18 above as though set forth fully herein.

20. Paragraph 20 states conclusions of law to which no response is required. To the extent that a response is required, such allegations are DENIED.

21. Answering Paragraph 21, Counter-Defendants ADMIT that they brought suit against BHI seeking, *inter alia*, rental payments under the Willard Lease that they claim were incurred during the term of the Operation Agreement, but DENY that a controversy exists.

22. The allegations contained in Paragraph 22 are ADMITTED.

23. Paragraph 23 contains a request for declaratory relief, to which no response is required. To the extent that a response is required, such allegations are DENIED.

FIRST AFFIRMATIVE DEFENSE

Defendants' Counterclaim, and each and every allegation contained therein, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant Herbst is estopped from bringing the Counterclaim, and each and every allegation contained therein, and has waived any and all rights to pursue the claims alleged in the Counterclaim by virtue of Section 2 of the Guaranty executed by Defendant Herbst, which reads as follows:

> 2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after

receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. **This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor;** (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. **The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor.** Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement. The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

(Emphasis added.)

THIRD AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants obtained Counter-Defendants' consent to enter into the Operation Agreement through fraud, deceit, or misrepresentation and that as a result the Operation Agreement is invalid.

FOURTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants waived each purported cause of action in Defendants' Counterclaim.

FIFTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that their performance arising under the Operation Agreement was conditioned upon Defendants first performing, or another act or condition to occur, that such performance, act, or condition never took place, and that as a result Counter-Defendants were never obligated to perform. Specifically, Defendants failed to satisfy the conditions precedent to Counter-Defendants' performance in failing to provide Counter-Defendants with a certified accounting and supporting documents of Defendants' Net Profits on July 20, 2013 as required under Section 4 of the Operation Agreement, failing to provide Counter-Defendants with a certified accounting and supporting documents of the subject month's Net Profits within fifty (50) days from the end of the subject month as required under Section 4 of the Operation Agreement, and failing to make a demand to Counter-Defendants for the alleged negative Net Profits as required under Section 4 of the Operation Agreement.

SIXTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants failed to comply with the terms of the Operation Agreement by breaching the implied warranty of good faith and fair dealing by acting unreasonably, denying the benefits of the Operation Agreement to Counter-Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Counter-Defendants are informed and believe, and based upon such information and belief allege that Defendants are barred by the Equitable Doctrine of Unclean Hands from obtaining the relief requested in the Counterclaim.

EIGHTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants owe money to Counter-Defendants and that as a result if any amount is owed, which Counter-Defendants deny, Counter-Defendants owe less than the amount claimed by Defendants.

NINTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that even if Defendants' other allegations are true, Defendants did not suffer any damages.

TENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that they performed all duties owed under the Operation Agreement other than any duties that were prevented or excused, and therefore Counter-Defendants never breached the Operation Agreement.

ELEVENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants failed to take reasonable steps to reduce or minimize the damages alleged. Specifically, Defendants failed to exercise reasonable diligence in d the Location during the effective period of the Operation Agreement.

TWELFTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants acted in bad faith in failing to perform the duties required of them under the Operation Agreement and therefore Defendants should be barred from recovery in any amount.

THIRTEENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants are not entitled to an award of attorneys' fees under the Operation Agreement nor at law for Counter-Defendants' alleged breach.

FOURTEENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that the injuries, if any, suffered by Defendants as alleged in the Counterclaim were caused in whole or in part by the acts or omissions of Defendants, reducing the amount of recovery, if any, available to Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that the injuries, if any, suffered by Defendants as alleged in the Counterclaim were caused in whole or in part by the acts or omissions of a third party over which Counter-Defendants had no control.

SIXTEENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that the injuries, if any, suffered by Defendants as alleged in

the Counterclaim were caused in whole or in part by the acts or omissions of a third party over which Counter-Defendants had no control.

SEVENTEENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants brought this Counterclaim without reasonable cause and without a good faith belief that there was a justifiable controversy under the facts or the law which warranted the filing of the Counterclaim against Counter-Defendants. Defendants should therefore be responsible for and reimburse Counter-Defendants all of Counter-Defendants necessary and reasonable attorney's fees and defense costs.

EIGHTEENTH AFFIRMATIVE DEFENSE

Counter-Defendants allege that Defendants have suffered no damage and are not entitled to the relief sought, and that any claim for damages are speculative in nature.

NINETEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses and/or counterclaims may not have been fully alleged herein, in so far as sufficient facts were not available after reasonable inquiry upon the filing of this Answer and, therefore, Counter-Defendants reserve the right to amend this Answer to allege additional affirmative defenses and counterclaims if subsequent investigation warrants.

TWENTIETH AFFIRMATIVE DEFENSE

Counter-Defendants deny each and every allegation of the Counterclaim not specifically admitted or otherwise pled to herein.

WHEREFORE, Counter-Defendants pray for judgment on Defendants' Counterclaim as follows:

1. That Defendants take nothing by their Counterclaim and that the Counterclaim be dismissed with prejudice in its entirety;

2. For costs incurred in defense of Defendants' Counterclaim;

3. For reasonable attorney's fees incurred in defense of this action;

4. For such other relief as this Court may deem just and proper.

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.

Respectfully submitted,
THE O'MARA LAW FIRM, P.C.

DATED: May 27, 2015

By: _____
DAVID C. O'MARA
Nevada Bar No. 8599
311 East Liberty Street
Reno, Nevada 89501
(775) 323-1321
(775) 323-4082 (facsimile)

LAW OFFICES OF BRIAN P. MOQUIN

DATED: May 26, 2015

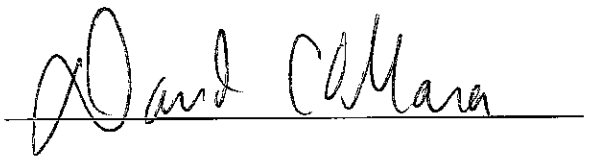
By: _____
BRIAN P. MOQUIN
Admitted *Pro Hac Vice*
California Bar No. 257583
3506 La Castellet Court
San Jose, CA 95148
(408) 300-0022
(408) 843-1678 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action electronically through the Court's ECF system to the following parties:

John Desmond, Esq.
100 W. Liberty St., Ste. 940
Reno, NV 89501
Telephone: 775.343.7500
Fax: 775.786.0131

DATED: May 27, 2015.



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Clerk of the Court
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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

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,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual; and JH, INC., a Nevada Corporation,

Defendants.
_____/

CASE NO. CV14-01712
DEPT. 6

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.

_____/

MOTION TO FOR CONTEMPT PURSUANT TO NRCP 45(e) AND MOTION FOR SANCTIONS AGAINST PLAINTIFFS' COUNSEL PURSUANT TO NRCP 37

Defendants Berry-Hinckley Industries and Jerry Herbst (collectively, "Defendants"), by and through their attorneys of record, Dickinson Wright PLLC, hereby respectfully submit this Motion for Contempt and/or Motion for Sanctions, seeking to compel third-party Daniel Gluhaich to comply with the Subpoena Duces Tecum with which he was served, and seeking sanctions against counsel for the Plaintiffs in this case, Brian P. Moquin. This Motion is based upon NRCP 37 and NRCP 45, the following memorandum of points and authorities and declaration of Brian R. Irvine, attached hereto as **Exhibit 1**, all pleadings and papers on file herein, and any other material that this Court may choose to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND PROCEDURAL HISTORY

While this Motion concerns the failure of third-party Daniel Gluhaich to respond to Defendants' Subpoena Duces Tecum with which he was served, Defendants respectfully submit that Mr. Gluhaich's failure to respond to the Duces Tecum appears largely to be a result of Mr. Moquin's dilatory conduct.

On June 11, 2015, counsel for Defendants wrote to counsel for Plaintiffs regarding a Subpoena Duces Tecum for Mr. Gluhaich (the "Subpoena," attached hereto as **Exhibit 2**), and inquired (1) whether Mr. Gluhaich or his company would be the more appropriate recipient of such a subpoena; and (2) whether Mr. Moquin would accept service of the Subpoena on behalf of Mr. Gluhaich. (June 11, 2015, email exchange, **Exhibit 3**.) Mr. Moquin responded that Mr.

Gluhaich was the proper recipient of the Subpoena and that Mr. Moquin had authority to accept service on Mr. Gluhaich's behalf. *Id.*

On June 29, 2015, counsel for Defendants sent to Mr. Gluhaich and Plaintiffs' counsel the following: (1) the Subpoena; (2) a form for acceptance of service; and (3) a cover letter listing the deadlines to respond. (June 29, 2015, email, **Exhibit 4.**) Specifically, the cover letter stated, in pertinent part, that Mr. Gluhaich was required to (1) produce true, legible, and durable copies of the documents identified in the Subpoena at the office of Talty Court Reporters, 2131 The Alameda, San Jose, CA 95126, on **July 20, 2015, at 9:00 a.m.**; or (2) in lieu of his personal appearance on that date, to deliver copies of the documents to the office of Defendants' counsel on or before **July 15, 2015, at 9:00 a.m.**, along with a Certificate of Authenticity.[1] (Cover Letter, **Exhibit 4.**) Mr. Moquin acknowledged receipt of the Subpoena and signed the acceptance of service. (June 29, 2015, email response, **Exhibit 5.**)

On July 17, 2015, Defendants' counsel informed Mr. Moquin that Defendants had not yet received any responses from Mr. Gluhaich. (July 17, 2015, email exchange, **Exhibit 6.**) Mr. Moquin responded that responses would be tendered at Talty Court Reporters on July 20, 2015. *Id.* Mr. Moquin subsequently represented that, in lieu of having Mr. Gluhaich appear at the San Jose court reporter's office, he would place the responsive documents, along with a Certification of Authenticity from Mr. Gluhaich, into an emailed Dropbox file on July 20, 2015, notwithstanding that the deadline for providing documents other than a personal appearance at Talty Court Reports was **July 15, 2015**. *Id.* Importantly, based on Mr. Moquin's representation that he would submit Mr. Gluhaich's response via Dropbox, Defendants' counsel took the records deposition off calendar and did not require Mr. Gluhaich's personal appearance at Talty Court Reporters on July 20, 2015. (Decl. of B. Irvine, **Exhibit 1.**)

On July 20, 2015, Mr. Moquin informed Defendants' counsel that he had "been working for 20 hours straight on the Gluhaich subpoena response," and "should have it to [Defendants'

---

[1]The responsive deadlines reflected in the cover letter are slightly later than those reflected in the Subpoena because Defendants extended the deadlines based on a slight delay in the issuance of the Subpoena.

counsel] sometime [that night]." (July 20, 2015, email, **Exhibit 7**.) Mr. Moquin also assured Defendants' counsel that he would provide documents to supplement Plaintiffs' wholly deficient discovery responses by July 21, 2015. *Id.*

Mr. Moquin did not provide any documents to Defendants' counsel by the dates specified in his email. (Decl. of B. Irvine, **Exhibit 1**.) On July 21, 2015, Defendants' counsel informed Mr. Moquin that they had still not received a response to the Subpoena. (July 21, 2015, email, **Exhibit 7**.) Defendants' counsel admonished Mr. Moquin that "[a]s of [July 22, 2015, the next day], that response will be one-week late and we will have no choice but to file another motion. Please advise as to the status of that response." *Id.*

On July 23, 2015, Defendants' counsel informed Mr. Moquin that Defendants still did not have responses from Mr. Gluhaich, stating as follows:

> [W]e still do not have a response to our subpoena to Mr. Gluhaich. The response is now eight days late, and you have fallen into a pattern of ignoring discovery deadlines. We intend to file a motion tomorrow and seek relief on shortened time unless I have a response by morning. I am truly not trying to be difficult, but these continued delays are not allowing us to conduct the discovery we need to prepare this case for our clients.

(July 23, 2015, email, **Exhibit 8**.) Mr. Moquin did not provide a substantive response indicating when documents responsive to the subpoena to Mr. Gluhaich would be produced. (Decl. of B. Irvine, **Exhibit 1**.) And, as of today's date, Defendants have not received any documents responsive to the Subpoena. *Id.*

DISCUSSION

Pursuant to NRCP 45(e), "[f]ailure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued." Here, Mr. Gluhaich has failed to timely respond to the Subpoena: his delivery of documents, along with a Certificate of Authenticity, is already nine days late. (Cover Letter, **Exhibit 4**.) Thus, Defendants respectfully request that this Court compel Mr. Gluhaich to produce all documents responsive to the Subpoena.

Additionally, as noted herein, Mr. Gluhaich's failure to timely comply with the subpoena appears to be attributable to Mr. Moquin.Mr. Moquin appears to have an established relationship with Mr. Gluhaich, and it is clear that Mr. Gluhaich has a long-standing relationship with each of the Plaintiffs as their real estate broker. Mr. Moquin certainly represented that he was authorized to accept service on Mr. Gluhaich's behalf and assured Defendants that he would timely provide the documents responsive to the subpoena directed at Mr. Gluhaich on behalf of Mr. Gluhaich. (July 17, 2015, email exchange, **Exhibit 6**.) Based on Mr. Moquin's representation that he would facilitate Mr. Gluhaich's response via Dropbox, Defendants' counsel did not require Mr. Gluhaich's personal appearance at Talty Court Reporters on July 20, 2015. (Decl. of B. Irvine, **Exhibit 1**.) In other words, but for Mr. Moquin's representations, Defendants would have taken steps to procure the responsive documents from Mr. Gluhaich on July 20, 2015, at Talty Court Reporters.

Indeed, according to Mr. Moquin, Mr. Gluhaich has already provided Mr. Moquin with responsive documents on or before July 20, 2015, as Mr. Moquin purportedly "work[ed] for 20 hours straight on the Gluhaich subpoena response" on July 20, 2015. (July 20, 2015, email, **Exhibit 7**.) In fact, Mr. Moquin represented in June that Mr. Gluhaich provided Mr. Moquin with "162,000 e-mail messages" in response to Defendants' discovery requests to Plaintiffs. (June 23, 2015, email, **Exhibit 9**.) If Mr. Moquin had responsive documents as of the Subpoena deadline, the delay in responding to the Subpoena is attributable to Mr. Moquin.

Defendants also note that Mr. Moquin's repeated—but empty—reassurances of forthcoming documents have become a pattern. As this Court is aware, Plaintiffs' first round of discovery responses in this matter were more than 20 days late (following several extensions), resulting in this Court compelling Plaintiffs to produce their responses and awarding Defendants their fees. (Order Granting Motion to Compel, on file herein.) Since that time, Mr. Moquin has not only delayed in providing responses to the Subpoena, he has also delayed in providing supplemental responses to Plaintiffs' deficient discovery responses. (*See, e.g.*, July 20, 2015, email, **Exhibit 7**.) Defendants have heard excuses ranging from business trips to India, to potential eviction, to last-minute hearings or trials, to ignorance of the fact that verification of

discovery responses must be notarized. Defendants are certainly sympathetic to any justified requests for extensions, but Mr. Moquin's repeated failure to provide Defendants with responsive documents is severely hampering Defendants' ability to conduct the discovery necessary to defend this case.

Plaintiffs' unjustifiable and continual failure to provide Defendants with responses to Defendants' discovery requests has left Defendants with no choice but to file the present Motion. Further, Defendants have made repeated efforts to obtain documents responsive to the subpoena from Mr. Moquin. (*See, e.g.*, July 17, 2015, email exchange, **Exhibit 6**; July 21, 2015, email, **Exhibit 7**; July 23, 2015, email, **Exhibit 9**.) Defendants have also notified Mr. Moquin on two occasions that absent a response to the Subpoena, Defendants would file a motion for relief. (*See, e.g.*, July 21, 2015, email, **Exhibit 7**; July 23, 2015, email, **Exhibit 9**.) Thus, Defendants respectfully request that this Court award Defendants the fees and costs associated with the filing of this Motion against Mr. Moquin. Pursuant to NRCP 37(a)(4)(A):

> If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Defendants also note that Defendants have propounded additional discovery requests to Plaintiffs, responses to which are due by August 6, 2015. (Decl. of B. Irvine, **Exhibit 1**.) Defendants have also scheduled three depositions, at least one of which Mr. Moquin has already attempted to reschedule. *Id.* Defendants fear that, absent affirmative relief against Mr. Moquin, a pattern of obstructive conduct will continue and Defendants will continue to be severely prejudiced in their attempt to defend this case.

CONCLUSION

Based on the foregoing, Defendants respectfully request that this Court compel responses to the Subpoena and award sanctions against Mr. Moquin in the form of Defendants' fees and costs associated with the filing of this Motion.

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 24th day of July, 2015.

DICKINSON WRIGHT PLLC

By: /s/ Brian Irvine

JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 11525
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

Attorneys 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 the attached **MOTION TO FOR CONTEMPT PURSUANT TO NRCP 45(e) AND MOTION FOR SANCTIONS AGAINST PLAINTIFFS' COUNSEL PURSUANT TO NRCP 37** on the party(s) set forth below by:

☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of DICKINSON WRIGHT PLLC, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.

☐ 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) at the addressees) 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

☐ Federal Express (or other overnight delivery)

Addressed as follows:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

David C. O'Mara
THE O'MARA LAW FIRM
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 24th day of July, 2015.

Mina Reel
An Employee of DICKINSON WRIGHT PLLC

EXHIBIT TABLE

Exhibit	Description	Pages[2]
1	Declaration of Brian R. Irvine	
2	Subpoena Duces Tecum to Dan Gluhaich	16
3	June 11, 2015, email exchange	2
4	June 29, 2015, email attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond	23
5	June 29, 2015, email response	5
6	July 17, 2015, email exchange	4
7	July 20 and July 21 2015, email	2
8	July 23, 2015 email	1
9	June 23, 2015 email	1

[2] Exhibit page counts are exclusive of exhibit slip sheets.

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EXHIBIT 1

EXHIBIT 1

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

Attorney for Defendants
Berry Hinckley Industries, and
Jerry Herbst

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual; and JH, INC., a Nevada Corporation,

Defendants.
_____/

CASE NO. CV14-01712

DEPT. 6

DECLARATION OF BRIAN R. IRVINE IN SUPPORT OF DEFENDANTS' MOTION FOR CONTEMPT PURSUANT TO NRCP 45(e) AND MOTION FOR SANCTIONS PURSUANT TO NRCP 37

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.

_____/

I, BRIAN R. IRVINE, do hereby declare as follows:

1. I am an attorney of record for Defendants Berry-Hinckley Industries ("BHI") and Jerry Herbst in the above-captioned matter. I am an attorney duly licensed to practice law in the State of Nevada and before this Court, and I have personal knowledge of and am competent to testify concerning the facts stated herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true.

2. Based on Brian Moquin's representation to me that he would submit Daniel Gluhaich's response via Dropbox, I took the records deposition off calendar and did not require Mr. Gluhaich's personal appearance at Talty Court Reporters on July 20, 2015.

3. Although Mr. Moquin represented to me that he would provide me with documents responsive to the subpoena duces tecum by July 20, 2015, I did not receive any such documents by that date.

4. In fact, as of today's date, I still have not received any documents responsive to the subpoena duces tecum to Daniel Gluhaich.

5. Defendants have propounded additional discovery requests to Plaintiffs. Responses are due by August 6, 2015.

6. Attached as **Exhibit 2** to the Motion is the Subpoena Duces Tecum to Daniel Gluhaich.

7. Attached as **Exhibit 3** to the Motion is an email exchange from June 11, 2015, between Plaintiffs' counsel and Defendants' counsel.

8. Attached as **Exhibit 4** to the Motion is an email dated June 29, 2015, from the office of Defendants' counsel, including a Cover Letter to Mr. Gluhaich, the Subpoena Duces Tecum, and a form for Acceptance of Service.

9. Attached as **Exhibit 5** to the Motion is a June 29, 2015, email from Mr. Moquin regarding acceptance of service.

10. Attached as **Exhibit 6** to the Motion is an email exchange from July 17, 2015, between Plaintiffs' counsel and Defendants' counsel.

11. Attached as **Exhibit 7** to the Motion is an email exchange between Defendants' counsel and Mr. Moquin dated July 20-21, 2015.

12. Attached as **Exhibit 8** to the Motion is an email from Defendants' counsel dated July 23, 2015.

13. Attached as **Exhibit 9** to the Motion is an email from Mr. Moquin dated June 23, 2015.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 24th day of July, 2015.

BRIAN R. IRVINE

F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 2

EXHIBIT 2

SUBP-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brian R. Irvine (NV 7758) John P. Desmond (NV 5618. CA 176430) Dickinson Wright PLLC 100 W. Liberty Street, Suite 940 Reno, NV 89501 TELEPHONE NO.: 775-343-7500 FAX NO. (Optional): 775-786-0131 E-MAIL ADDRESS (Optional): birvine@dickinsonwright.com ATTORNEY FOR (Name): Berry Hinckley Industries, Jerry Herbst, JH, Inc.	FOR COURT USE ONLY ENDORSED FILED 2015 JUN 23 P 2:2 Clerk of the Superior Court County of Santa Clara, California By _____ Deputy Clerk S. Smith
Court for county in which discovery is to be conducted: SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court	
Court in which action is pending: Second Judicial District Court Name of Court: Second Judicial District Court, County of Washoe STREET ADDRESS: 75 Court Street MAILING ADDRESS: 75 Court Street CITY, STATE, AND ZIP CODE: Reno, NV 89501 COUNTRY: USA	
PLAINTIFF/PETITIONER: Larry J. Willard, et al. DEFENDANT/RESPONDENT: Berry Hinckley Industries, et al.	CALIFORNIA CASE NUMBER (if any assigned by court) 15CV282238
APPLICATION FOR DISCOVERY SUBPOENA IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California): CV14-01712

1. Applicant (*name*): Berry Hinckley Industries; Jerry Herbst; JH, Inc. is (*check one*):
   ☐ Plaintiff ☐ Petitioner ☑ Defendant ☐ Respondent ☐ Other (*specify*):
   in the above action.
2. Applicant requests that this court issue a subpoena for discovery under Code of Civil Procedure sections 2029.100 – 2029.900 to (*name and address of deponent or person in control of property*):
   Daniel Gluhaich; 175 East Main Ave., Suite 130; Morgan Hill, CA 95037
3. Attached is (*check one*): ☐ the original ☑ a true and correct copy of the document from the court in which the action is pending that requires the person in 2 to (*check all that apply*):
   a. ☐ attend and give testimony at a deposition;
   b. ☑ produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent;
   c. ☐ permit the inspection of premises under the control of the deponent.
4. Applicant submits with this application a proposed subpoena that includes terms identical to those in the document from the out-of-state court. (Code of Civil Procedure section 2029.300(d).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6/17/2015

Brian R. Irvine
(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Note: This application must be accompanied by the fee specified in Government Code section 70626. A discovery subpoena must be personally served on the deponent in compliance with California law, including Code of Civil Procedure section 1985.

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-030 [New January 1, 2010]

APPLICATION FOR DISCOVERY SUBPOENA IN ACTION PENDING OUTSIDE CALIFORNIA

Code of Civil Procedure §§ 2029.100–900
www.courtinfo.ca.gov

ORIGINAL

4065
DICKINSON WRIGHT
JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
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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

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; and JH, INC., a Nevada Corporation,

Defendants.
_____/

CASE NO. CV14-01712

DEPT. 6

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.

SUBPOENA DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

You are required, pursuant to Nevada Rule of Civil Procedure 45, to produce true, legible, and durable copies of the documents identified in Exhibit A attached hereto at the office of **TALTY COURT REPORTERS, 2131 The Alameda, San Jose, CA 95126 on July 10, 2015 at 9:00 a.m.** If you fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear.

In lieu of your personal appearance on **July 10, 2015, at 9:00 a.m.**, you may deliver copies of the documents to be provided to **DICKINSON WRIGHT, 100 W. Liberty Street, Suite 940, Reno, NV 89501 on or before July 15, 2015, at 9:00 a.m.** If documents are produced in lieu of appearance, please execute the attached certification (Certificate of Authenticity) that the records produced are true, accurate and complete copies of all responsive records in your possession or under your control.

DATED this 17 day of June, 2015.

JACQUELINE BRYANT, CLERK OF THE COURT

By: _____
DEPUTY CLERK

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 17th day of June, 2015.

DICKINSON WRIGHT

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

Attorney for Defendants
Berry Hinckley Industries, and
Jerry Herbst

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA CLARA)

I hereby certify that I am over 18 years of age and not a party to nor interested in the proceeding in which this service is made. That I received this Subpoena on the _____day of _____ 2015, and personally served the same by delivering a copy to the witness at (state address)

_____

_____

on this _____day of _____2015.

Signature of person making service

_____

Print name here

EXHIBIT "A"

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. When used herein, the term "BHI" means Berry-Hinckley Industries, a Nevada corporation.

2. When used herein, the term "Defendants" means BHI and Jerry Herbst.

3. When used herein, the term "Willard" means Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund.

4. When used herein, the term "Overland" means Overland Development Corporation, a California corporation.

5. When used herein, the term "Willard Plaintiffs" means Willard and Overland.

6. When used herein, the term "Willard Property" means the real property located at 7695-77699 S. Virginia Street, Reno, Nevada (APN 043-011-48).

7. When used herein, the term "Wooley Plaintiffs" means Edward C. Wooley and Judith A. Wooley, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000.

8. When used herein, the term "Highway 50 Property" means the real property located at 1820 Highway 50 East, Carson City, Nevada (APN 002-368-27).

9. When used herein, the term "Baring Property" means the real property located at 1365 Baring Boulevard, Sparks, Nevada (APN 030-041-08).

10. When used herein, the terms "You" and "Your" and their plural, or any synonym thereof means Daniel Gluhaich, in an individual capacity and/or in his capacity as a realtor and/or broker and/or real estate agent, and/or any agent, employee, or representative of Daniel Gluhaich who is purporting to act on his behalf, or who are in possession of, or may have obtained information for or on behalf of Daniel Gluhaich.

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

12. When used herein, the terms "Communication" or "Communications" shall mean (a) any form of data transmission, including letters, faxes, emails, and 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.

13. When used herein, the term "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.

14. When used herein, the term "Person" shall mean natural persons, firms, proprietorships, associations, partnerships, corporations, governmental entities, and every other type of organization or entity.

15. When used herein, the terms "Relate to," "related to," or "relating to" shall mean constituting, pertaining to, referring to, alluding to, responding to, elaborating upon, concerning, memorializing, supporting, refuting, evidencing, connected with, commenting on, regarding,

discussing, showing, describing, reflecting, analyzing, recording, including, mentioning, in respect of, analyzing or bearing on any logical or factual connection with the matter discussed.

16. 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 document 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;

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

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

INSTRUCTIONS

1. You are requested to produce all Documents and tangible things in Your possession, custody or control, which have not been previously produced.

2. You are requested to produce Documents in the form in which they are kept in the usual course of Your business, or to organize and label them to correspond with the categories in this request.

3. If You claim that the attorney-client privilege, the attorney work-product rule, or any other privilege is applicable to any Document, production of which is sought by this request, the substance of that Document need not be disclosed in Your answers, but You shall, with respect to that Document:

   a. State the date of the Document;

   b. Identify each and every author of the Document;

   c. Identify each and every person who prepared or participated in the preparation of the Document;

   d. Identify each and every person who received the Document;

   e. Identify each and every person from whom the Document was received;

   f. State the present location of the Document and all copies thereof;

   g. Identify each and every person having custody or control of the Document and all copies thereof; and

   h. Provide sufficient further information concerning the Document and the circumstances thereof to explain the claim of privilege and to permit the adjudication of the propriety of that claim.

4. In the event You are able to produce only some of the Documents called for in a particular request, please produce all the Document You are able to and state the reasons for Your inability to produce the remainder.

5. If You object to a portion of a request, please produce all Documents called for by that portion of the request to which You do not object.

REQUESTS FOR PRODUCTIONS OF DOCUMENTS

REQUEST NO. 1: Please produce any and all Documents You sent to or received from the Willard Plaintiffs, Willard, and/or Overland, or any employees, representatives, or agents of the Willard Plaintiffs, Willard, and/or Overland relating to the Willard Property from January 2005 through present.

REQUEST NO. 2: Please produce any and all Documents You sent to or received from BHI or any employees, representatives, agents, or successors of BHI relating to the Willard Property from January 2005 to present.

REQUEST NO. 3: Please produce any and all Documents You sent to or received from Jerry Herbst or any employees, representatives, or agents of Jerry Herbst relating to the Willard Property from January 2005 to present.

REQUEST NO. 4: Please produce any and all Documents You sent to or received from any other person or entity relating to the Willard Property from January 2005 to present.

REQUEST NO. 5: Please produce any and all Documents You have prepared or authorized or directed preparation of relating to the Willard Property from January 2005 to present.

REQUEST NO. 6: Please produce each and every contract to which you are a party that is related to the Willard Property.

REQUEST NO. 7: Please produce any and all marketing or promotional materials in your possession, custody, or control for the lease or sale of the Willard Property.

REQUEST NO. 8: Please produce any and all Documents You sent to or received from the Wooley Plaintiffs or any employees, representatives, or agents of the Wooley Plaintiffs relating to the Highway 50 Property from January 2005 through present.

REQUEST NO. 9: Please produce any and all Documents You sent to or received from BHI or any employees, representatives, agents, or successors of BHI relating to the Highway 50 Property from January 2005 through present.

REQUEST NO. 10: Please produce any and all Documents You sent to or received from Jerry Herbst or any employees, representatives, or agents of Jerry Herbst relating to the Highway 50 Property from January 2005 to present.

REQUEST NO. 11: Please produce any and all Documents You sent to or received from any other person or entity relating to the Highway 50 Property from January 2005 to present.

REQUEST NO. 12: Please produce any and all Documents You have prepared or authorized or directed preparation of relating to the Highway 50 Property from January 2005 to present.

REQUEST NO. 13: Please produce each and every contract to which you are a party that is related to the Highway 50 Property.

REQUEST NO. 14: Please produce any and all marketing or promotional materials in your possession, custody, or control for the lease or sale of the Highway 50 Property.

REQUEST NO. 15: Please produce any and all Documents You sent to or received from the Wooley Plaintiffs or any employees, representatives, or agents of the Wooley Plaintiffs related to the Baring Property from January 2005 through present.

REQUEST NO. 16: Please produce any and all Documents You sent to or received from BHI or any employees, representatives, agents, or successors of BHI related to the Baring Property from January 2005 through present.

REQUEST NO. 17: Please produce any and all Documents You sent to or received from Jerry Herbst or any employees, representatives, or agents of Jerry Herbst related to the Baring Property from January 2005 to present.

REQUEST NO. 18: Please produce any and all Documents You sent to or received from any person or entity related to the Baring Property from January 2005 to present.

REQUEST NO. 19: Please produce any and all Documents You have prepared or authorized or directed preparation of relating to the Baring Property from January 2005 to present.

REQUEST NO. 20: Please produce each and every contract to which you are a party that is related to the Baring Property.

REQUEST NO. 21: Please produce any and all marketing or promotional materials in your possession, custody, or control for the lease or sale of the Baring Property.

REQUEST NO. 22: Please produce documents sufficient to identify any and all commissions or other compensation that you have earned performing work for the Willard Plaintiffs and/or the Wooley Plaintiffs from 2005 through present.

CERTIFICATE OF AUTHENTICITY

State of California)
) ss.
County of Santa Clara)

I, _____, do hereby declare as follows:

1. I am a duly authorized Custodian of Records for **Daniel Gluhaich,** and I have the authority to certify said records.

2. The attached records are true, accurate and complete copies of the original records responsive to the Subpoena Duces Tecum dated June ___, 2015, and are kept in the regular course and scope of my business.

3. The attached records constitute all records responsive to the Subpoena Duces Tecum dated June ____, 2015.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Executed this ____ day of June, 2015.

By:_____
Custodian of Records

SUBSCRIBED and SWORN to before me this
____ day of _____, 2015.

_____
NOTARY PUBLIC

EXHIBIT "B"
NEVADA RULES OF CIVIL PROCEDURE

RULE 45

(c) Protection of Persons Subject to Subpoena.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

2. (A) Person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

1. A person responding to a subpoena to produce documents shall produce them as they are keep in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claims.

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 **SUBPOENA DUCES TECUM** on the parties as set forth below:

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

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Via E-Mail

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

_____ Federal Express (or other overnight delivery)

_____ EM/ECF Electronic Notification

Addressed as follows:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

David C. O'Mara
THE O'MARA LAW FIRM
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 17th day of June, 2015

An employee of DICKINSON WRIGHT

F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 3

EXHIBIT 3

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Friday, June 12, 2015 10:05 AM
To: Anjali D. Webster
Cc: david@omaralaw.net; Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al., Case No. CV14-01712

I have confirmed that Dan Gluhaich is the proper target for a subpoena and I can accept service on his behalf.

Brian

Sent from my iPhone

On Jun 12, 2015, at 9:33 AM, Anjali D. Webster <AWebster@dickinson-wright.com> wrote:

> Great, thank you. I appreciate your input on to whom to address the subpoena and look forward to hearing from you regarding service.
>
> ---
>
> **From:** Brian Moquin [mailto:bmoquin@lawprism.com]
> **Sent:** Thursday, June 11, 2015 6:57 PM
> **To:** Anjali D. Webster; david@omaralaw.net
> **Cc:** Brian R. Irvine; Mina Reel
> **Subject:** Re: Willard et al. v. BHI et al., Case No. CV14-01712
>
> I represent Dan Gluhaich in another matter, will check with him to see whether he will authorize me to accept service of a subpoena issued in this case. He is the proper target for the subpoena, not Intero.
>
> I'll let you know by tomorrow.
>
> Best,
> Brian
>
> Brian P. Moquin, Esq.
> Law Offices of Brian P. Moquin
> 3506 La Castellet Court
> San Jose, CA 95148
>
> skype: brianmoquin
> 408.300.0022
> 408.460.7787 cell
> 408.843.1678 fax
>
> On 6/11/15 4:48 PM, Anjali D. Webster wrote:
>
> > Dear Messrs. Moquin and O'Mara:
> >
> > We plan to serve a document-only subpoena duces tecum for Mr. Daniel Gluhaich. We know that Mr. Gluhaich is employed at Intero Real Estate Services; do you know if we should issue the subpoena to Mr. Gluhaich, Intero, or to both? We want to ensure that the recipient of the subpoena has the appropriate authority to provide us with our requested documents, whether that be Mr. Gluhaich or Intero.

Additionally, are you authorized to accept service of the subpoena?

Thank you, and I look forward to hearing from you.

Anjali

Anjali D. Webster Associate Attorney

100 West Liberty Street
Suite 940
Reno NV 89501-1991

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

F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 4

EXHIBIT 4

Mina Reel

From:	Stephanie J. Glantz
Sent:	Monday, June 29, 2015 4:48 PM
To:	bmoquin@lawprism.com
Cc:	Brian R. Irvine; Anjali D. Webster
Subject:	Subpoena to Daniel Gluhaich - Willard, et al. v. BHI, et al.
Attachments:	Cover Letter to D. Gluhaich.pdf; [Filed] Gluhaich Subpoena.Santa Clara.pdf; RENO-#150-v2-Acceptance_of_Service_for_Daniel_Gluhaich.pdf

Mr. Moquin,

Attached, please find a Subpoena to Daniel Gluhaich, an accompanying cover letter, and an Acceptance of Service of Subpoena. If everything looks acceptable, please return a signed copy of the Acceptance of Service at your earliest convenience. Thank you in advance, and please do not hesitate to contact our office if you have any questions.

Kind regards,
Stephanie Glantz

Stephanie J. Glantz Legal Secretary
100 West Liberty Street
Suite 940
Reno NV 89501-1991
Phone 775-343-7513
Fax 775-786-0131
Email SGlantz@dickinsonwright.com

DICKINSON WRIGHT PLLC
MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

DICKINSON WRIGHT PLLC

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

June 29, 2015

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue, Suite 130
Morgan Hill, CA 95037

Dear Mr. Gluhaich:

Please find attached a Subpoena Duces Tecum requiring you to produce certain documents in the case of *Willard et al. v. Berry-Hinckley Industries, et al.*, Case No. CV 14-01712. Brian Moquin, who represents the plaintiffs in this case, has informed us that he is authorized to accept service on your behalf; thus, we have contemporaneously sent Mr. Moquin an acceptance of service and the attached Subpoena.

Please note that the attached subpoena requires you to personally appear on July 10, 2015, at 9:00 a.m. to produce the required documents, or, in lieu of your personal appearance, to deliver copies of the required documents by July 15, 2015. *See* Subpoena Duces Tecum, attached hereto, at pg. 2. Given a slight delay in issuance of the Subpoena, we will extend those deadlines as follows:

- You are required, pursuant to Nevada Rule of Civil Procedure 45, to produce true, legible, and durable copies of the documents identified in Exhibit A to the Subpoena Duces Tecum at the office of Talty Court Reporters, 2131 The Alameda, San Jose, CA 95126 on **July 20, 2015, at 9:00 a.m.** If you fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear.

- In lieu of your personal appearance on **July 20, 2015, at 9:00 a.m.**, you may deliver copies of the documents to be provided to Dickinson Wright, 100 W. Liberty Street, Suite 940, Reno, NV, 89501, on or before **July 15, 2015, at 9:00 a.m.** If the documents are produced in lieu of appearance, please execute the Certificate of Authenticity attached to the Subpoena Duces Tecum to certify that the records produced are true, accurate, and complete copies of all records in your possession and under your control.

Thank you for your cooperation and please do not hesitate to contact me if you have any questions.

Very truly yours,

Dickinson Wright PLLC

Brian R. Irvine
Attorney

BRI:sjg
Enclosures

CC: Brian P. Moquin

SUBP-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brian R. Irvine (NV 7758) John P. Desmond (NV 5618, CA 176430) Dickinson Wright PLLC 100 W. Liberty Street, Suite 940 Reno, NV 89501 TELEPHONE NO.: 775-343-7500 FAX NO. (Optional): 775-786-0131 E-MAIL ADDRESS (Optional): birvine@dickinsonwright.com ATTORNEY FOR (Name): Berry Hinckley Industries, Jerry Herbst, JH, Inc.	FOR COURT USE ONLY ENDORSED FILED 2015 JUN 23 P 2:2 Clerk of the Superior Court County of Santa Clara, California By _____ Deputy Clerk S. Smith
Court for county in which discovery is to be conducted: SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court	
Court in which action is pending: Second Judicial District Court Name of Court: Second Judicial District Court, County of Washoe STREET ADDRESS: 75 Court Street MAILING ADDRESS: 75 Court Street CITY, STATE, AND ZIP CODE: Reno, NV 89501 COUNTRY: USA	
PLAINTIFF/PETITIONER: Larry J. Willard, et al. DEFENDANT/RESPONDENT: Berry Hinckley Industries, et al.	CALIFORNIA CASE NUMBER (if any assigned by court) 15CV282238
APPLICATION FOR DISCOVERY SUBPOENA IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California): CV14-01712

1. Applicant (*name*): Berry Hinckley Industries; Jerry Herbst; JH, Inc. is (*check one*):
   ☐ Plaintiff ☐ Petitioner ☑ Defendant ☐ Respondent ☐ Other (*specify*):
   in the above action.
2. Applicant requests that this court issue a subpoena for discovery under Code of Civil Procedure sections 2029.100 – 2029.900 to (*name and address of deponent or person in control of property*):
   Daniel Gluhaich; 175 East Main Ave., Suite 130; Morgan Hill, CA 95037
3. Attached is (*check one*): ☐ the original ☑ a true and correct copy of the document from the court in which the action is pending that requires the person in 2 to (*check all that apply*):
   a. ☐ attend and give testimony at a deposition;
   b. ☑ produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent;
   c. ☐ permit the inspection of premises under the control of the deponent.
4. Applicant submits with this application a proposed subpoena that includes terms identical to those in the document from the out-of-state court. (Code of Civil Procedure section 2029.300(d).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6/17/2015

Brian R. Irvine
(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Note: This application must be accompanied by the fee specified in Government Code section 70626. A discovery subpoena must be personally served on the deponent in compliance with California law, including Code of Civil Procedure section 1985.

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-030 [New January 1, 2010]

APPLICATION FOR DISCOVERY SUBPOENA
IN ACTION PENDING OUTSIDE CALIFORNIA

Code of Civil Procedure §§ 2029.100–900
www.courtinfo.ca.gov

ORIGINAL

4065
DICKINSON WRIGHT
JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: Jdesmond@dickinsonwright.com
Email: Birvine@dickinsonwright.com
Email: Awebster@dickinsonwright.com

Attorney for Defendants
Berry Hinckley Industries, and
Jerry Herbst

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual; and JH, INC., a Nevada Corporation,

Defendants.

_____/

CASE NO. CV14-01712

DEPT. 6

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.

SUBPOENA DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

You are required, pursuant to Nevada Rule of Civil Procedure 45, to produce true, legible, and durable copies of the documents identified in Exhibit A attached hereto at the office of **TALTY COURT REPORTERS, 2131 The Alameda, San Jose, CA 95126 on July 10, 2015 at 9:00 a.m.** If you fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear.

In lieu of your personal appearance on **July 10, 2015, at 9:00 a.m.**, you may deliver copies of the documents to be provided to **DICKINSON WRIGHT, 100 W. Liberty Street, Suite 940, Reno, NV 89501 on or before July 15, 2015, at 9:00 a.m.** If documents are produced in lieu of appearance, please execute the attached certification (Certificate of Authenticity) that the records produced are true, accurate and complete copies of all responsive records in your possession or under your control.

DATED this 17 day of June, 2015.

JACQUELINE BRYANT, CLERK OF THE COURT

By: _____
DEPUTY CLERK

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 17th day of June, 2015.

DICKINSON WRIGHT

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

Attorney for Defendants
Berry Hinckley Industries, and
Jerry Herbst

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA CLARA)

I hereby certify that I am over 18 years of age and not a party to nor interested in the proceeding in which this service is made. That I received this Subpoena on the _____day of _____ 2015, and personally served the same by delivering a copy to the witness at (state address)

_____

_____

on this _____day of _____2015.

Signature of person making service

_____

Print name here

EXHIBIT "A"

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. When used herein, the term "BHI" means Berry-Hinckley Industries, a Nevada corporation.

2. When used herein, the term "Defendants" means BHI and Jerry Herbst.

3. When used herein, the term "Willard" means Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund.

4. When used herein, the term "Overland" means Overland Development Corporation, a California corporation.

5. When used herein, the term "Willard Plaintiffs" means Willard and Overland.

6. When used herein, the term "Willard Property" means the real property located at 7695-77699 S. Virginia Street, Reno, Nevada (APN 043-011-48).

7. When used herein, the term "Wooley Plaintiffs" means Edward C. Wooley and Judith A. Wooley, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000.

8. When used herein, the term "Highway 50 Property" means the real property located at 1820 Highway 50 East, Carson City, Nevada (APN 002-368-27).

9. When used herein, the term "Baring Property" means the real property located at 1365 Baring Boulevard, Sparks, Nevada (APN 030-041-08).

10. When used herein, the terms "You" and "Your" and their plural, or any synonym thereof means Daniel Gluhaich, in an individual capacity and/or in his capacity as a realtor and/or broker and/or real estate agent, and/or any agent, employee, or representative of Daniel Gluhaich who is purporting to act on his behalf, or who are in possession of, or may have obtained information for or on behalf of Daniel Gluhaich.

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

12. When used herein, the terms "Communication" or "Communications" shall mean (a) any form of data transmission, including letters, faxes, emails, and 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.

13. When used herein, the term "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.

14. When used herein, the term "Person" shall mean natural persons, firms, proprietorships, associations, partnerships, corporations, governmental entities, and every other type of organization or entity.

15. When used herein, the terms "Relate to," "related to," or "relating to" shall mean constituting, pertaining to, referring to, alluding to, responding to, elaborating upon, concerning, memorializing, supporting, refuting, evidencing, connected with, commenting on, regarding,

discussing, showing, describing, reflecting, analyzing, recording, including, mentioning, in respect of, analyzing or bearing on any logical or factual connection with the matter discussed.

16. 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 document 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;

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

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

INSTRUCTIONS

1. You are requested to produce all Documents and tangible things in Your possession, custody or control, which have not been previously produced.

2. You are requested to produce Documents in the form in which they are kept in the usual course of Your business, or to organize and label them to correspond with the categories in this request.

3. If You claim that the attorney-client privilege, the attorney work-product rule, or any other privilege is applicable to any Document, production of which is sought by this request, the substance of that Document need not be disclosed in Your answers, but You shall, with respect to that Document:

   a. State the date of the Document;

   b. Identify each and every author of the Document;

   c. Identify each and every person who prepared or participated in the preparation of the Document;

   d. Identify each and every person who received the Document;

   e. Identify each and every person from whom the Document was received;

   f. State the present location of the Document and all copies thereof;

   g. Identify each and every person having custody or control of the Document and all copies thereof; and

   h. Provide sufficient further information concerning the Document and the circumstances thereof to explain the claim of privilege and to permit the adjudication of the propriety of that claim.

4. In the event You are able to produce only some of the Documents called for in a particular request, please produce all the Document You are able to and state the reasons for Your inability to produce the remainder.

5. If You object to a portion of a request, please produce all Documents called for by that portion of the request to which You do not object.

REQUESTS FOR PRODUCTIONS OF DOCUMENTS

REQUEST NO. 1: Please produce any and all Documents You sent to or received from the Willard Plaintiffs, Willard, and/or Overland, or any employees, representatives, or agents of the Willard Plaintiffs, Willard, and/or Overland relating to the Willard Property from January 2005 through present.

REQUEST NO. 2: Please produce any and all Documents You sent to or received from BHI or any employees, representatives, agents, or successors of BHI relating to the Willard Property from January 2005 to present.

REQUEST NO. 3: Please produce any and all Documents You sent to or received from Jerry Herbst or any employees, representatives, or agents of Jerry Herbst relating to the Willard Property from January 2005 to present.

REQUEST NO. 4: Please produce any and all Documents You sent to or received from any other person or entity relating to the Willard Property from January 2005 to present.

REQUEST NO. 5: Please produce any and all Documents You have prepared or authorized or directed preparation of relating to the Willard Property from January 2005 to present.

REQUEST NO. 6: Please produce each and every contract to which you are a party that is related to the Willard Property.

REQUEST NO. 7: Please produce any and all marketing or promotional materials in your possession, custody, or control for the lease or sale of the Willard Property.

REQUEST NO. 8: Please produce any and all Documents You sent to or received from the Wooley Plaintiffs or any employees, representatives, or agents of the Wooley Plaintiffs relating to the Highway 50 Property from January 2005 through present.

REQUEST NO. 9: Please produce any and all Documents You sent to or received from BHI or any employees, representatives, agents, or successors of BHI relating to the Highway 50 Property from January 2005 through present.

REQUEST NO. 10: Please produce any and all Documents You sent to or received from Jerry Herbst or any employees, representatives, or agents of Jerry Herbst relating to the Highway 50 Property from January 2005 to present.

REQUEST NO. 11: Please produce any and all Documents You sent to or received from any other person or entity relating to the Highway 50 Property from January 2005 to present.

REQUEST NO. 12: Please produce any and all Documents You have prepared or authorized or directed preparation of relating to the Highway 50 Property from January 2005 to present.

REQUEST NO. 13: Please produce each and every contract to which you are a party that is related to the Highway 50 Property.

REQUEST NO. 14: Please produce any and all marketing or promotional materials in your possession, custody, or control for the lease or sale of the Highway 50 Property.

REQUEST NO. 15: Please produce any and all Documents You sent to or received from the Wooley Plaintiffs or any employees, representatives, or agents of the Wooley Plaintiffs related to the Baring Property from January 2005 through present.

REQUEST NO. 16: Please produce any and all Documents You sent to or received from BHI or any employees, representatives, agents, or successors of BHI related to the Baring Property from January 2005 through present.

REQUEST NO. 17: Please produce any and all Documents You sent to or received from Jerry Herbst or any employees, representatives, or agents of Jerry Herbst related to the Baring Property from January 2005 to present.

REQUEST NO. 18: Please produce any and all Documents You sent to or received from any person or entity related to the Baring Property from January 2005 to present.

REQUEST NO. 19: Please produce any and all Documents You have prepared or authorized or directed preparation of relating to the Baring Property from January 2005 to present.

REQUEST NO. 20: Please produce each and every contract to which you are a party that is related to the Baring Property.

REQUEST NO. 21: Please produce any and all marketing or promotional materials in your possession, custody, or control for the lease or sale of the Baring Property.

REQUEST NO. 22: Please produce documents sufficient to identify any and all commissions or other compensation that you have earned performing work for the Willard Plaintiffs and/or the Wooley Plaintiffs from 2005 through present.

CERTIFICATE OF AUTHENTICITY

State of California)
) ss.
County of Santa Clara)

I, _____, do hereby declare as follows:

1. I am a duly authorized Custodian of Records for **Daniel Gluhaich**, and I have the authority to certify said records.

2. The attached records are true, accurate and complete copies of the original records responsive to the Subpoena Duces Tecum dated June ___, 2015, and are kept in the regular course and scope of my business.

3. The attached records constitute all records responsive to the Subpoena Duces Tecum dated June ____, 2015.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Executed this ____ day of June, 2015.

By:_____
Custodian of Records

SUBSCRIBED and SWORN to before me this
____ day of _____, 2015.

_____
NOTARY PUBLIC

EXHIBIT "B"
NEVADA RULES OF CIVIL PROCEDURE

RULE 45

(c) Protection of Persons Subject to Subpoena.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

2. (A) Person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

1. A person responding to a subpoena to produce documents shall produce them as they are keep in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claims.

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 **SUBPOENA DUCES TECUM** on the parties as set forth below:

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

_____ Certified Mail, Return Receipt Requested

_____ Via Facsimile (Fax)

_____ Via E-Mail

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

_____ Federal Express (or other overnight delivery)

_____ EM/ECF Electronic Notification

Addressed as follows:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

David C. O'Mara
THE O'MARA LAW FIRM
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 17th day of June, 2015

An employee of DICKINSON WRIGHT

1005
DICKINSON WRIGHT
JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: Jdesmond@dickinsonwright.com
Email: Birvine@dickinsonwright.com
Email: Awebster@dickinsonwright.com

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,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual; and JH, INC., a Nevada Corporation,

Defendants.
_____/

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

Counterclaimants,

vs

CASE NO. CV14-01712

DEPT. 6

ACCEPTANCE OF SERVICE FOR DANIEL GLUHAICH

A.App.361

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

Counter-defendants.

_____/

BRIAN P. MOQUIN, attorney for LARRY J. WILLARD, individually and as trustee of the Larry James Willard Trust Fund; OVERLAND DEVELOPMENT CORPORATION,; EDWARD C. WOOLEY AND JUDITH A. WOOLEY, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2, hereby acknowledges receipt and accept service of process of the Subpoena in the above-referenced matter on behalf of the Daniel Gluhaich.

DATED this ___ day of _____, 2015.

_____

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN
California Bar No. 257583
Email: bmoquin@lawprism.com
3506 La Castellet Court
San Jose, California 95148

THE O'MARA LAW FIRM
DAVID C. O'MARA
Nevada Bar No. 8599
Email: david@omaralaw.net
311 E. Liberty Street
Reno, Nevada 89501

Attorneys for Plaintiffs

///

///

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 ___ day of _____, 2015.

DICKINSON WRIGHT PLLC

By: _____

JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 11525
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

Attorneys 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 the attached **NOTICE OF CHANGE OF LAW FIRM AFFILIATION** on the party(s) set forth below by:

☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of DICKINSON WRIGHT PLLC, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.

☐ 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) at the addressees) 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)

Addressed as follows:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

David C. O'Mara
THE O'MARA LAW FIRM
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 ___ day of _____, 2015.

_____
An Employee of DICKINSON WRIGHT PLLC

F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 5

EXHIBIT 5

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Monday, June 29, 2015 7:28 PM
To: Stephanie J. Glantz
Cc: Brian R. Irvine; Anjali D. Webster; David O'Mara, Esq.
Subject: Re: Subpoena to Daniel Gluhaich - Willard, et al. v. BHI, et al.
Attachments: 20150629 RENO-#150-v2-Acceptance_of_Service_for_Daniel_Gluhaich -sBPM.pdf

Receipt acknowledged and Acceptance of Service signed and attached.

Best,
Brian

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

skype: brianmoquin
408.300.0022
408.460.7787 cell
408.843.1678 fax

On 6/29/15 4:48 PM, Stephanie J. Glantz wrote:

> Mr. Moquin,
>
> Attached, please find a Subpoena to Daniel Gluhaich, an accompanying cover letter, and an Acceptance of Service of Subpoena. If everything looks acceptable, please return a signed copy of the Acceptance of Service at your earliest convenience. Thank you in advance, and please do not hesitate to contact our office if you have any questions.
>
> Kind regards,
> Stephanie Glantz
>
> **Stephanie J. Glantz** Legal Secretary
>
> 100 West Liberty Street
> Suite 940
> Reno NV 89501-1991
>
> Phone 775-343-7513
> Fax 775-786-0131
> Email SGlantz@dickinsonwright.com
>
> DICKINSON WRIGHT PLLC
> MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

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1005
DICKINSON WRIGHT
JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: Jdesmond@dickinsonwright.com
Email: Birvine@dickinsonwright.com
Email: Awebster@dickinsonwright.com

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,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual; and JH, INC., a Nevada Corporation,

Defendants.

_____/

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

Counterclaimants,

vs

CASE NO. CV14-01712

DEPT. 6

ACCEPTANCE OF SERVICE FOR DANIEL GLUHAICH

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

Counter-defendants.

_____/

BRIAN P. MOQUIN, attorney for LARRY J. WILLARD, individually and as trustee of the Larry James Willard Trust Fund; OVERLAND DEVELOPMENT CORPORATION,; EDWARD C. WOOLEY AND JUDITH A. WOOLEY, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2, hereby acknowledges receipt and accept service of process of the Subpoena in the above-referenced matter on behalf of the Daniel Gluhaich.

DATED this 29th day of June, 2015.

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN
California Bar No. 257583
Email: bmoquin@lawprism.com
3506 La Castellet Court
San Jose, California 95148

THE O'MARA LAW FIRM
DAVID C. O'MARA
Nevada Bar No. 8599
Email: david@omaralaw.net
311 E. Liberty Street
Reno, Nevada 89501

Attorneys for Plaintiffs

///

///

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 ___ day of _____, 2015.

DICKINSON WRIGHT PLLC

By: _____

JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 11525
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

Text
Text

Attorneys 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 the attached **NOTICE OF CHANGE OF LAW FIRM AFFILIATION** on the party(s) set forth below by:

☒ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of DICKINSON WRIGHT PLLC, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.

☐ 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) at the addressees) 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)

Addressed as follows:

Daniel Gluhaich
Intero Real Estate Services
175 East Main Avenue Suite 130
Morgan Hill, CA 95037

David C. O'Mara
THE O'MARA LAW FIRM
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 ___ day of _____, 2015.

_____
An Employee of DICKINSON WRIGHT PLLC

F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 6

EXHIBIT 6

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Sunday, July 19, 2015 1:49 AM
To: Brian R. Irvine; david@omaralaw.net
Cc: Anjali D. Webster; Mina Reel
Subject: Re: Willard Wooley v. BHI

Sorry, I must have missed the episode of Sesame Street where the definition of the term "deposition" was redefined.

I will place the responsive documents along with a certification from Mr. Gluhaich in the Dropbox share on Monday.

Brian

On 7/17/15 12:07 PM, Brian R. Irvine wrote:

> Brian-
>
> You misunderstand me, and how records depositions work. We either need Mr. Gluhaich to sign the custodian of records certificate provided as part of his subpoena packet (which we should have received on July 15, 2015 pursuant to the subpoena), or he needs to appear personally at the Court Reporter's office on Monday and confirm on the record that he is providing documents that are fully responsive to the subpoena.
>
> I don't want to come to San Jose on Monday, and I don't want to take Mr. Gluhaich's deposition on Monday. But, I do need him to certify that he is supplying documents that are fully-responsive to the subpoena. I would prefer to use Dropbox again as opposed to taking an unnecessary trip. Please confirm that is how you intend to proceed, and that Mr. Gluhaich will include the custodian of records certificate as part of his production.
>
> Thanks,
>
> Brian

Brian R. Irvine Member

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7507
Fax 775-786-0131
Email BIrvine@dickinsonwright.com

From: Brian Moquin [mailto:bmoquin@lawprism.com]
Sent: Friday, July 17, 2015 11:59 AM
To: Brian R. Irvine; david@omaralaw.net
Cc: Anjali D. Webster; Mina Reel
Subject: Re: Willard Wooley v. BHI

Rule 45(c)(2)(A) states: "A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial." The subpoena you served requests that Mr. Gluhaich "produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent," *not* that he "attend and give testimony at a deposition." Your letter stated, "You are required, pursuant to Nevada Rule of Civil Procedure 45, to produce true, legible, and durable copies of the documents identified in Exhibit A to the Subpoena Duces Tecum at the office of Talty Court Reporters, 2131 The Alameda, San Jose, CA 95126 on July 20, 2015, at 9:00 a.m. If you fail to attend, you may be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear." Nowhere does it state that Mr. Gluhaich needed to appear to be deposed.

If you prefer, I can deliver the documents on Monday via Dropbox. If not, even if Mr. Gluhaich accompanies me to Talty Court Reporters on Monday to deliver the records, he will not submit to a deposition at that time since he was nowise commanded to do so. You have already noticed Mr. Gluhaich for deposition in late August, and he plans to attend that deposition.

I'll be offline until I land in Hong Kong in about ten hours.

Brian

On 7/17/15 11:11 PM, Brian R. Irvine wrote:

> Brian-
>
> Thanks for your response. Does that mean that Mr. Gluhaich intends to appear personally for a duces tecum records deposition on July 20, 2015 at 9:00 a.m. in San Jose? The letter you referenced specified that Mr. Gluhaich could personally appear and produce records on July 20, 2015, or in the alternative, that he could deliver copies to my office in Reno on or before July 15, 2015.
>
> Please clarify, as I do not want to travel to San Jose on Monday for the deposition if the documents will be mailed or provided via Dropbox.
>
> Brian Irvine
>
> ---
>
> **From:** Brian Moquin [mailto:bmoquin@lawprism.com]
> **Sent:** Friday, July 17, 2015 9:47 AM
> **To:** Brian R. Irvine; david@omaralaw.net
> **Cc:** Anjali D. Webster; Mina Reel
> **Subject:** Re: Willard Wooley v. BHI
>
> Per your letter dated June 29, 2015 that accompanied the subpoena *duces tecum* to Mr. Gluhaich, you extended the deadlines to produce copies at Talty Court Reporters in San Jose, California until July 20, 2015. Responsive documents will be tendered as specified on July 20, 2015.
>
> Note that I will be traveling home and most likely unavailable until Saturday, July 18 after 11:30 P.M.

Brian

On 7/17/15 9:30 PM, Brian R. Irvine wrote:

> Brian-
>
> Thank you for the email. We will expect your response by Tuesday, July 21, 2015.
>
> Also, Dan Gluhaich's response to the subpoena duces tecum was due on Wednesday, July 15, 2015. We have not received any response or any documents. Can you tell me what the status is on those responses, or should I contact Mr. Gluhiach directly?
>
> Brian Irvine

Brian R. Irvine Member

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7507
Fax 775-786-0131
Email BIrvine@dickinsonwright.com

From: Brian Moquin [mailto:bmoquin@lawprism.com]
Sent: Thursday, July 16, 2015 10:03 PM
To: Mina Reel; david@omaralaw.net
Cc: Brian R. Irvine; Anjali D. Webster
Subject: Re: Willard Wooley v. BHI

As I mentioned last week, I am working in India this week, returning this Saturday. While I disagree with some of the alleged deficiencies, I will contact my clients when I return and should have supplemental responses to you by this coming Tuesday at the latest.

Brian

On 7/16/15 5:48 AM, Mina Reel wrote:

> Good Afternoon,
>
> Please see attached correspondence of today's date from Brian Irvine. If you cannot view the attachment, please let me know.
>
> Thank you.
> Mina Reel

Mina Reel Paralegal

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7509
Fax 775-786-0131
Email MReel@dickinsonwright.com

DICKINSON WRIGHT PLLC
MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

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F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 7

EXHIBIT 7

Mina Reel

From: Brian R. Irvine
Sent: Tuesday, July 21, 2015 4:28 PM
To: Brian Moquin; david@omaralaw.net
Cc: Anjali D. Webster; Mina Reel
Subject: RE: Acceptance of Service

Brian-

I still have not received the response to Mr. Gluhaich's document subpoena. As of tomorrow, that response will be one-week late and we will have no choice but to file another motion. Please advise as to the status of that response.

Thank you,

Brian Irvine

From: Brian Moquin [mailto:bmoquin@lawprism.com]
Sent: Monday, July 20, 2015 6:18 PM
To: Mina Reel; david@omaralaw.net
Cc: Brian R. Irvine; Anjali D. Webster
Subject: Re: Acceptance of Service

Attached, typos corrected.

I've been working for 20 hours straight on the Gluhaich subpoena response, should have it to you sometime tonight. I'm also in touch with Messers. Willard and Wooley and they are searching for additional documents to supplement their responses, which I'm still intending to provide to you sometime tomorrow.

Brian

408.300.0022
408.460.7787 cell

On 7/20/15 4:51 PM, Mina Reel wrote:

> Mr. Moquin,
>
> Attached please find the Acceptance of Service and File Stamped CA Deposition Subpoena for Mr. Daniel Gluhaich.
>
> Please be so kind to execute the Acceptance of Service and return to us as soon as possible.
>
> Thank you.

Mina Reel Paralegal

100 West Liberty Street
Suite 940
Reno NV 89501-1991

Phone 775-343-7509
Fax 775-786-0131
Email MReel@dickinsonwright.com

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2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 8

EXHIBIT 8

Mina Reel

From: Brian R. Irvine
Sent: Thursday, July 23, 2015 4:11 PM
To: Brian Moquin; david@omaralaw.net
Cc: Anjali D. Webster; Mina Reel
Subject: Willard / Wooley v. BHI, et al.

Dear Brian-

I just listened to your voice message regarding the cancellation of the deposition of Larry Willard set for August 19, 2015. As you know, we have been attempting to conduct written discovery and take several depositions in this matter, all of which needs to be completed well in advance of the September 11, 2015 deadline for the disclosure of initial expert witnesses. The August 19, 2015 date was agreed-upon, and is at the very end of what I consider to be reasonable to allow sufficient time for the preparation of deposition transcripts that could be reviewed and relied upon by potential experts. Is it possible for your co-counsel, Mr. O'Mara, to defend the deposition so we can keep the date? That would be my preference. If that is absolutely not possible, we need an alternative date immediately, and we still intend to take the deposition in Reno so my client does not incur additional expenses.

Also, we still do not have a response to our subpoena to Mr. Gluhaich. The response is now eight days late, and you have fallen into a pattern of ignoring discovery deadlines. We intend to file a motion tomorrow and seek relief on shortened time unless I have a response by morning. I am truly not trying to be difficult, but these continued delays are not allowing us to conduct the discovery we need to prepare this case for our clients.

Sincerely,

Brian Irvine

F I L E D
Electronically
2015-07-24 05:03:50 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5062411 : mcholico

EXHIBIT 9

EXHIBIT 9

Mina Reel

From: Brian Moquin <bmoquin@lawprism.com>
Sent: Tuesday, June 23, 2015 10:39 AM
To: Anjali D. Webster; david@omaralaw.net
Cc: Brian R. Irvine; Mina Reel
Subject: Re: Willard et al. v. BHI et al.

I called and spoke with Mr. Irvine when the question regarding issuing a subpoena to Mr. Gluhaich arose. I told him that I was going down to retrieve documents from Mr. Gluhaich, which I did. I have been working literally day and night ever since, culling through 162,000 e-mail messages that I received from him to extract messages related to the discovery responses. While it is certainly within your right to file a motion to compel, I will have the responses to you by the end of this week.

Brian

408.300.0022
408.460.7787 cell

On 6/23/15 10:19 AM, Anjali D. Webster wrote:

> Dear Messrs. Moquin and O'Mara:
>
> Plaintiffs' responses to Defendants' discovery requests served on April 22, 2015, in the above-referenced case are now **21 days past due**, even with the agreed-upon extension. Based upon Plaintiffs' failure to answer, we are filing a Motion to Compel Discovery Responses and an Ex Parte Motion for an Order Shortening Time on the briefing of the Motion to Compel in Second Judicial District Court today.
>
> 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

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4030
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

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,

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

CASE NO. CV14-01712

DEPT. 6

STIPULATION AND ORDER TO CONTINUE TRIAL

(FIRST REQUEST)

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

Counter-defendants.

_____/

STIPULATION AND ORDER TO CONTINUE TRIAL (FIRST REQUEST)

Plaintiffs 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/ Counter-defendants Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, and Overland Development Corporation (collectively, "Plaintiffs"); and Defendants/ Counterclaimants Berry-Hinckley Industries and Jerry Herbst (collectively, "Defendants," and together with Plaintiffs, "the Parties"), by and through their respective attorneys of record, hereby stipulate and agree that good cause exists for this Court to enter an order continuing the trial scheduled to begin on January 11, 2016 based on the following:

- The Parties need to conduct significant additional discovery, including discovery relating to expert disclosures.

The parties further stipulate and agree that should this Court enter an order continuing the trial, the following deadlines in the Joint Case Conference Report filed on February 4, 2015, shall be amended as follows:

- The discovery deadline shall be extended until sixty (60) days before the first day of the rescheduled trial; provided, however, that if the 60th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.
- The deadline to serve, file, and submit for decision any dispositive motions shall be extended until thirty (30) days before the first day of the rescheduled trial; provided, however, that if the 30th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.

- The deadline to serve expert disclosures shall be extended until ninety (90) days before the close of discovery; provided, however, that if the 90th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.
- The deadline to serve rebuttal expert disclosures shall be extended until thirty (30) days after the deadline to file initial expert disclosures; provided, however, that if the 30th day after initial expert disclosures falls on a weekend or holiday, the deadline shall be the following judicial day.

Undersigned counsel certifies that their respective clients have been advised that a stipulation for continuance is to be submitted on their behalf. The parties have no objection thereto.

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.

Attorneys for Plaintiffs

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

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

Attorneys for Defendants

DICKINSON WRIGHT, PLLC
JOHN P. DESMOND
BRIAN R. IRVINE
ANJALI D. WEBSTER
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
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 continue the trial in the above-referenced matter.

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

IT IS FURTHER ORDERED that the discovery deadline shall be extended until 60 days before the first day of the rescheduled trial; provided, however, that if the 60th 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 30 days before the first day of the rescheduled trial; provided, however, that if the 30th 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 expert disclosures shall be extended until ninety (90) days before the close of discovery; provided, however, that if the 90th 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 rebuttal expert disclosures shall be extended until 30 days after the deadline to file initial expert disclosures; provided, however, that if the 30th day after initial expert disclosures falls on a weekend or holiday, the deadline shall be the following judicial day.

IT IS SO ORDERED.

DATED this 30th day of Sept., 2015.

DISTRICT COURT JUDGE

Respectfully submitted by:

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

Attorneys for Defendants
Berry-Hinckley Industries and Jerry Herbst

RENO 65540-1 1624v1

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 ORDER TO CONTINUE TRIAL (FIRST 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
3506 La Castellet Court
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 3RD day of September, 2015.

Mina Reel

An Employee of DICKINSON WRIGHT, PLLC

FILED
Electronically
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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

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,

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

CASE NO. CV14-01712

DEPT. 6

STIPULATION AND [PROPOSED] ORDER TO CONTINUE TRIAL

(SECOND REQUEST)

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

Counter-defendants.

_____/

Plaintiffs 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/ Counter-defendants Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, and Overland Development Corporation (collectively, "Plaintiffs"); and Defendants/ Counterclaimants Berry-Hinckley Industries and Jerry Herbst (collectively, "Defendants," and together with Plaintiffs, "the Parties"), by and through their respective attorneys of record, hereby stipulate and agree that good cause exists for this Court to enter an order to vacate the trial date scheduled to begin on August 29, 2016 based on the following:

1. The Parties need to conduct significant additional discovery, including discovery relating to expert disclosures.

2. Specifically, Plaintiffs still need to provide Defendants with (1) Plaintiffs' tax returns that have not yet been provided; (2) any new information relating to the current re-let status of the property located in Carson City, Nevada, owned by the Wooley Plaintiffs; (3) new information relating to the Wooley Plaintiffs' efforts to refinance the Wooley Plaintiffs' loan on the property located in Carson City, Nevada; (4) information relating to Plaintiffs' tax calculations performed by Plaintiffs' accountants and referenced as part of Plaintiffs' responses to Defendants' interrogatories; (5) Plaintiffs' NRCP 16.1 damages calculations; and (6) any other supplemental information requested by Defendants.

3. Accordingly, the Parties stipulate to a short continuance of the trial date, up to and including 180 days beyond the presently scheduled date of August 29, 2016.

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

The parties further stipulate and agree that should this Court enter an order continuing the trial, the following deadlines in the March 14, 2016, Stipulation and Order on file herein shall be amended as follows:

1. The discovery deadline shall be extended until sixty (60) days before the first day of the rescheduled trial; provided, however, that if the 60th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.

2. The deadline to serve, file, and submit for decision any dispositive motions shall be extended until thirty (30) days before the first day of the rescheduled trial; provided, however, that if the 30th day before trial falls on a weekend or holiday, the deadline shall be the following judicial day.

3. The deadline to serve expert disclosures shall be extended until ninety (90) days before the close of discovery; provided, however, that if the 90th day before the close of discovery falls on a weekend or holiday, the deadline shall be the following judicial day.

4. The deadline to serve rebuttal expert disclosures shall be extended until thirty (30) days after the deadline to file initial expert disclosures; provided, however, that if the 30th day after initial expert disclosures falls on a weekend or holiday, the deadline shall be the following judicial day.

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Undersigned counsel certifies that their respective clients have been advised that a stipulation for continuance is to be submitted on their behalf. The parties have no objection thereto.

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 26th day of April, 2016.

Attorneys for Plaintiffs

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

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

Dated this 26th day of April, 2016.

Attorneys for Defendants

DICKINSON WRIGHT, PLLC
JOHN P. DESMOND
BRIAN R. IRVINE
ANJALI D. WEBSTER
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
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, unless this Court waives this requirement.

IT IS FURTHER ORDERED that the discovery deadline shall be extended until 60 days before the first day of the rescheduled trial; provided, however, that if the 60th 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 30 days before the first day of the rescheduled trial; provided, however, that if the 30th 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 expert disclosures shall be extended until ninety (90) days before the close of discovery; provided, however, that if the 90th day before the close of discovery falls on a weekend or holiday, the deadline shall be the following judicial day.

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IT IS FURTHER ORDERED that the deadline to serve rebuttal expert disclosures shall be extended until 30 days after the deadline to file initial expert disclosures; provided, however, that if the 30th day after initial expert disclosures falls on a weekend or holiday, the deadline shall be the following judicial day.

No further continuances will be granted. JPD

IT IS SO ORDERED.

DATED this 11th day of May, 2016.

DISTRICT COURT JUDGE

Respectfully submitted by:

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

Attorneys 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 the attached **STIPULATION AND ORDER TO CONTINUE TRIAL (SECOND 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 26th day of April, 2016.

Mina Reel
An Employee of DICKINSON WRIGHT, PLLC

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Clerk of the Court
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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

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 C. 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,

CASE NO. CV14-01712

DEPT. 6

DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

vs

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

Counter-defendants.

Defendants/Counterclaimants Berry-Hinckley Industries ("BHI") and Jerry Herbst (collectively, "Defendants") hereby bring this Motion for Partial Summary Judgment on certain claims for consequential damages asserted by Plaintiffs Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, and Overland Development Corporation (collectively, "Willard"), and Edward C. Wooley and Judith A. Wooley, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Trust 2000 (collectively, "Wooley"). This Motion is made pursuant to NRCP 56, the attached memorandum of points and authorities, the affidavit of Timothy Herbst (**Exhibit 1**), all pleadings and papers on file herein, and any other material that this Court may choose to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This is an action for breach of lease agreements that were entered into by Defendants and two separate groups of Plaintiffs: Willard and Wooley.[1] The lease agreements were for different parcels of property. This Motion addresses Plaintiffs' baseless claims for millions of dollars in purported consequential damages to which Plaintiffs are not entitled as a matter of law.

[1]While two motions could have been filed to address Willard's Wooley's claims separately, Defendants chose to file one motion because the legal issues regarding Willard and Wooley's claims addressed herein greatly overlap and it is therefore more efficient to address both Willard and Wooley's claims in the same motion. As filing one motion instead of two has caused Defendants to exceed the page limits set forth in this Court's Order, Defendants are contemporaneously filing a motion to exceed page limits.

Specifically, well beyond the more than $20 million cumulatively sought by Plaintiffs as rent-based damages,[2] Plaintiffs also seek millions of dollars in damages for purported losses that do not result directly from any purported breach and that Plaintiffs have **admitted** were not foreseeable at the time the leases were executed. Plaintiffs' overreaching attempt to hold Defendants liable for costs that Defendants could not foresee and did not agree to is prohibited by Nevada law. Even worse, Plaintiffs **never actually incurred** many of their damages sought. Nevada law does not permit parties to use lawsuits as a means to profit millions of dollars beyond their actual purported losses; thus, Plaintiffs are not entitled to these damages as a matter of law. Finally, even if Plaintiffs incurred some of the unforeseeable damages sought, a review of the purported "damages" demonstrates just how overreaching is Plaintiffs' request for consequential damages. For example, Plaintiffs request attorneys' fees that they incurred in a previous action which they instituted against Defendants in an improper forum and in which Defendants, not Plaintiffs, were the prevailing party, as Defendants successfully obtained dismissal of the entire case in California. Plaintiffs' request for those fees, which is untimely, made in the wrong court, and not recoverable pursuant to prevailing party principles, is an example of how Plaintiffs are using this lawsuit to seek damages well beyond those permitted by law. This conduct should not be permitted and this Court should grant the Motion in order to streamline issues for trial.

The undisputed facts demonstrate that Plaintiffs are not entitled to the damages addressed herein as a matter of law. Thus, to streamline this case and eliminate consideration at trial of overreaching and impermissible damages requests which can be resolved in advance, Defendants respectfully request that this Court grant summary judgment in Defendants' favor and preclude Plaintiffs from seeking such damages at trial.

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[2]Defendants have numerous defenses to these purported damages which will not be addressed in this Motion but at a later time.

FACTS AND PROCEDURAL BACKGROUND

1. The Willard Lease.

In 2005, Willard and BHI entered into a commercial lease (the "Willard Lease") for the lease of real property in Reno, Nevada (the "Willard Property"). (Willard Lease, **Exhibit 2**; First Amended Complaint ("FAC") ¶ 9, on file herein). In 2007, Mr. Herbst entered into a guaranty agreement for the Willard Lease. (Willard Guaranty, **Exhibit 3**; FAC ¶ 11, on file herein).

Willard claims that BHI breached the Willard Lease in 2013. (FAC ¶ 12, on file herein). As a result of this purported breach, Willard seeks approximately $15 million in purported future rent. *Id.* ¶ 14. Willard also seeks more than $10 million in purported consequential damages which will be addressed in this Motion: (1) attorneys' fees allegedly incurred by Willard in an action Plaintiffs brought against Defendants in California; (2) fees Willard allegedly incurred in his voluntary bankruptcy; and (3) damages related to the short sale of the Willard Property. However, it is undisputed that these damages were not foreseeable and that many of these purported damages were not even actually incurred by Willard or are otherwise not recoverable.

Specifically, with respect to the "attorneys' fees" damages, upon BHI's purported breach, Willard (and Wooley) filed a lawsuit in California against Defendants and numerous other individuals and entities who had no relationship to Willard and Wooley, including Maryanne Herbst, JH Inc., Terrible Herbst, and Marc Berger. (Docket Sheet, **Exhibit 4**). Defendants moved to dismiss the California action for lack of personal jurisdiction because, amongst other things, all Defendants reside in Nevada, the leased property is located in Nevada, and the leases contained a forum selection clause that required any action to be filed in Nevada. (Second Amended Motion to Dismiss, **Exhibit 5**). The California court granted Defendants' motion and dismissed the case. (Docket Sheet p. 11 at 3/18/2014, **Exhibit 4**). Even though Defendants prevailed, and had to incur needless fees defending against this baseless action filed

in an improper forum, **Willard** is now requesting his fees incurred in that action. This untimely request, made in the wrong court, is for $35,000 that Willard purportedly incurred in fees in that action. (FAC ¶ 18, on file herein).

With respect to the "bankruptcy fees" damages, Willard filed a voluntary bankruptcy in 2013. *Id*. ¶ 17. Willard seeks to recover from Defendants $22,623 in legal fees and $15,000 in accounting fees purportedly incurred in connection with this bankruptcy. *Id*. However, there are no facts in the record that demonstrate that this bankruptcy was or would have been foreseeable to Defendants at the time the parties executed the Willard Lease. In fact, Willard has admitted that he never discussed with Defendants that a breach of the Willard Lease could result in him filing bankruptcy. (Deposition of L. Willard at 115, **Exhibit 6**). Further, Willard's purported need to file bankruptcy at all is questionable, as Willard voluntarily dismissed the bankruptcy a mere six months after filing it. (FAC ¶ 17, on file herein).

Finally, with respect to the "short sale" damages, in March 2014, Willard sold the Willard Property in a short sale. *Id*. ¶ 15. Willard's lenders then forgave any remaining debt owed on the Willard Property after the short sale. (Deposition of L. Willard at 89, **Exhibit 6**). Willard now seeks to hold Defendants liable for more than $5 million[3] of alleged tax consequences that purportedly resulted from the forgiven debt in the short sale, for $549,852 in closing costs, and for $4,437,500 of "lost earnest money" that Willard purportedly invested in the Willard Property. (FAC ¶ 15, on file herein). However, there are no facts in the record which demonstrate that this short sale was or would have been foreseeable at the time the parties executed the Willard Lease, nor that resulting tax consequences would have been foreseeable. (Affidavit of T. Herbst, **Exhibit 1**; Deposition of L. Willard p. 117-119, **Exhibit 6**). Further, Willard never actually paid the income tax or closing costs he seeks, and therefore, they are not recoverable as damages. (2014 Federal Tax Return for Overland, **Exhibit 7**; 2013

[3]Willard has estimated the tax consequences to be $2,430,000 for Overland and $3,152,000 for Mr. Willard. (Responses to First Set of Interrogatories at 7, **Exhibit 12**).

Federal Tax Return for Overland, **Exhibit 24**; 2014 Federal Tax Return for Mr. Willard, **Exhibit 8**; Seller's Final Closing Statement, **Exhibit 9**).

2. <u>The Wooley Leases</u>.

In 2005, BHI and Wooley entered into a commercial lease for the lease of property on Highway 50 ("Highway 50 Lease"). (Highway 50 Lease, **Exhibit 10**; FAC ¶ 28, on file herein). Mr. Herbst entered into a guaranty agreement on the lease in 2007. (Highway 50 Guaranty, **Exhibit 11**; FAC ¶ 31, on file herein). Wooley claims that BHI breached the Highway 50 Lease in 2013. (FAC ¶ 32, on file herein).

In 2006, Wooley bought property on Baring Boulevard (the "Baring Property"), and BHI and Wooley entered into a separate lease for that property (the "Baring Lease"). (Baring Purchase Agreement, **Exhibit 13**; Baring Lease, **Exhibit 14**; FAC ¶ 29, on file herein). Upon Wooley's purchase of the Baring Property, Wooley entered into a mortgage loan for the Baring Property which purportedly contained a clause which "cross-collateralized" the Baring Property and the Highway 50 Property. (Baring Property Loan at ECW78 1.7, **Exhibit 15**). However, it is undisputed that neither BHI nor Mr. Herbst were party to Wooley's mortgage loan, and that neither BHI nor Mr. Herbst knew about the cross-collateralization provisions that are apparently contained in Wooley's financing documents. (Deposition of E. Wooley p. 119, 120, **Exhibit 16**; Affidavit of T. Herbst, **Exhibit 1**).

In or about December 2009, BHI assigned its interests and obligations in the Baring Lease to Jacksons Food Stores, Inc. (Assignment, **Exhibit 17**). Wooley subsequently sold the Baring Property while Jacksons was still a tenant in the Baring Property, receiving more than $870,000 from the sale. (HUD Statement, **Exhibit 18**). BHI was not in breach of the Baring Lease when Wooley sold the Baring Property.[4] (Deposition of E. Wooley p. 99, 100, **Exhibit 16**).

[4]It is also undisputed that Jacksons was not in breach of the Baring Lease when Wooley initiated this lawsuit in Nevada. However, despite that fact, Wooley attempted to sue BHI for breach of the Baring Lease, seeking nearly $4 million in damages. (Initial Complaint at ¶¶ 34,

Wooley seeks two categories of purported damages which will be addressed in this Motion. First, even though it is undisputed that Defendants did not know about the cross-collateralization and were not in breach of the Baring Lease when Wooley sold the Baring Property, Wooley seeks to recover more than $600,000 in damages he purportedly incurred from selling the Baring Property based upon its cross-collateralization with the Highway 50 Property. Specifically, Wooley claims that because the Baring Property was cross-collateralized with the Highway 50 Property, Defendants' purported breach of the Highway 50 Property forced Wooley to sell the Baring Property "at a loss" and he "incurred tax liabilities."[5] (FAC, on file herein). Second, Wooley seeks $45,088 in attorneys' fees that he purportedly incurred in the baseless action that he and Willard improperly initiated against Defendants in California that was ultimately dismissed. *Id*.

3. <u>Present procedural posture</u>.

The parties have been conducting discovery for more than one year, and the facts pertinent to the consequential damages addressed in this Motion have been fully developed to allow this Court to grant summary judgment in Defendants' favor. (Decl. of B. Irvine, **Exhibit 25**). Both Mr. Willard and Mr. Wooley have stated that they have produced all pertinent documents to their counsel, and Mr. Wooley and Mr. Willard have each been deposed. (Deposition of L. Willard p. 131, **Exhibit 6**; Deposition of E. Wooley p. 14, **Exhibit 16**). No facts adduced thus far even remotely support an argument that the consequential damages

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42-44, on file herein.) Defendants were forced to bring this fact to Wooley's attention and threaten motion practice in this case before Wooley finally agreed to amend his pleading to remove a claim for breach of the Baring Lease. (November 2014 email exchange, **Exhibit 19**; January 2015 email exchange, **Exhibit 20**). This is another example of Plaintiffs' over-reaching approach to this entire case.

[5]Interestingly, in the original complaint, Wooley attributed BHI's purported breach of the **Baring Lease** as being the reason for these claimed damages. (Initial Complaint at ¶¶ 42-44, on file herein.) Upon revising the complaint to remove allegations of BHI's purported breach of the Baring Lease, Wooley now attributes these damages to BHI's purported breach of the Highway 50 Lease.

sought by Plaintiffs were foreseeable and possibly recoverable. Thus, Defendants are entitled to summary judgment in order to properly focus the issues in this case.

ARGUMENT

1. Legal standard.

"[S]ummary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute, and that the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 1221 P.3d 1026, 1029 (2005). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662 (1985). The United States Supreme Court has noted that summary judgment is "properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the determination of every action." *Celotex Com. v. Catlett*, 477 U.S. 317, 327 (1986). The moving party on a summary judgment motion does not need to negate the opponent's claim, but rather the opponent needs to make a showing sufficient to establish the existence of those elements necessary and essential to the case against the moving party on which the opponent will bear the burden of proof at trial. *Id*. at 322.

Because this motion addresses Plaintiffs' requests for consequential damages, one element essential to Plaintiffs' claims is the foreseeability of the damages sought. Ordinarily, foreseeability "presents a factual issue to be determined by the trier of fact. Only if it can be said that the damages are the direct or natural result of the breach can they be presumed foreseeable as a matter of law." *Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev. 113, 115-16, 642 P.2d 1086, 1087 (1982). Here, however, the damages sought can be presumed unforeseeable as a matter of law. Specifically, discovery is complete with regard to the issues addressed herein, and there are no facts in the record that would support a finding of foreseeability of the damages sought. In fact, Plaintiffs have expressly conceded that many of

the damages sought were not contemplated at the time of entry into the contracts. (Deposition of L. Willard p. 115, 117-119, **Exhibit 6**; Deposition of E. Wooley p. 119, 120, **Exhibit 16**). Further, Defendants are entitled to judgment on other bases in addition to the unforeseeable nature of the damages. Thus, summary judgment on Plaintiffs' request for consequential damages is appropriate. *Jackson v. Roadway Exp., Inc.*, 2007 WL 1875932, at *3 (S.D. Tex. June 27, 2007) (awarding summary judgment where there was no evidence in the record that would support the foreseeability requirement of plaintiff's claims for consequential damages). In fact, summary judgment is necessary to streamline the case and avoid further resources wasted resolving claims that can be decided on the undisputed facts.

2. Willard is not entitled to consequential damages as a matter of law.

As noted, Willard seeks the following damages as a result of Defendants' purported breach:[6] (1) Willard claims that "[Willard was] forced to sell the Willard Property in March 2014 in a short sale, thereby losing $4,437,500.00 of earnest money invested in the Willard Property and incurring at least $3,000,000.00 in tax consequences[7] and $549,852.00 in closing costs," (FAC ¶15, on file herein); (2) "Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and $15,000 in accounting fees in the process," *id*. ¶17; and (3) Willard "hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $35,000 in attorney's fees." *Id*. ¶ 18. Willard is not entitled to these damages as a matter of law.

a. Willard is not entitled to any "short sale" damages.

First, Willard seeks three categories of "short sale" damages that he claims to have incurred by being "forced to sell the Willard Property in March 2014 in a short sale" as a result

[6]Certain categories of consequential damages sought by Willard are not addressed in this Motion but will be addressed at a later time.

[7]Willard has since revised that estimate to be $2,430,000 for Overland and $3,152,000 for Mr. Willard. (Responses to First Set of Interrogatories at 7, **Exhibit 12**).

of Defendants' purported breach: (1) earnest money invested in the Willard Property; (2) tax consequences resulting from his mortgage debt cancelled by the short sale; and (3) closing costs. (FAC ¶ 15, on file herein). Willard is not entitled to these damages as a matter of law for two independent reasons: (1) the loss and resulting damages were not foreseeable at the time the parties entered into the contracts; and (2) Willard did not actually incur many, if not all, of the damages sought.

i. <u>The loss was not foreseeable at the time the parties entered into the contracts</u>.

As a threshold matter, these damages are categorically not recoverable because the short sale and the resulting claimed damages were not a foreseeable consequence of Defendants' purported breach. There is no allegation by Willard that the short sale damages are direct damages that would necessarily result from a breach of the Willard Lease, such as lost rent. Nor does the Willard Lease address these damages in any way. Thus, Willard's request is properly classified as one for consequential damages.

"Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made." Restatement (Second) of Contracts § 351(1); *Hilton Hotels Corp.*, 98 Nev. at 115, 642 P.2d at 1087 ("There can be no recovery for damages that are not reasonably foreseeable at the time of the contract."). Indeed, a contracting party is not "liable in the event of breach for loss that he did not at the time of contracting have reason to foresee as a probable result of the breach." Restatement (Second) of Contracts § 351at cmt. a.

The only way such damages can be foreseeable is if the loss is a probable result of the breach: "loss may be foreseeable as a probable result of the breach because it follows from the breach (a) in the ordinary course of events, or (b) as a result of special circumstances, beyond the ordinary course of events, that the party in breach had reason to know." *Id*. at 351(2); *Margolese v. Bruce*, 902 F.2d 1578 (9th Cir. 1990) ("To recover consequential damages for

breach of contract, plaintiffs must prove either: (1) the losses were reasonably foreseeable by the party to be charged at the time the contract was made; or (2) if the injury was not foreseeable, that the defendant had special knowledge of the risk he was undertaking."). Unless the loss is probable, "the mere circumstance that some loss was foreseeable, or even that some loss of the same general kind was foreseeable, will not suffice if the loss that actually occurred was not foreseeable." Restatement (Second) of Contracts § 351 at cmt. a. The burden of proving foreseeability is on the plaintiff. *Margolese*, 902 F.2d 1578 (discussing what the plaintiff must prove). Thus, for Willard's purported short sale damages to be recoverable, Willard must prove that the short sale and the resulting requested damages were a probable result of a breach at the time of the execution of the Willard Lease because they followed from the breach in the ordinary course of events or as a result of special circumstances that Defendants had reason to know.

The undisputed facts demonstrate that Willard cannot satisfy this burden as a matter of law. First, the claimed "forced sale" of a landlord's property would not occur in the ordinary course of events of a tenant's breach. Indeed, "[i]n the case of a lessee, **the lessee generally does not expect that the lessor will lose his property if the lease is breached**. Rather, a lessee would expect to be liable for lost rent and any physical damage to the premises." *Margolese*, 902 F.2d at 1578 (emphasis added); *Enak Realty Corp. v. City of New York,* 109 A.D.2d 814 (N.Y. Sup. 1985) ("We modify Special Term's order to the extent of striking plaintiff's demands for damages resulting from the foreclosure inasmuch as such damages were not a foreseeable result of the breach of the lease…."); *Boise Joint Venture v. Moore*, 806 P.2d 707, 710 (Or. Ct. App. 1991) ("To recover its equity as consequential damages, BJV had to prove that, at the time of contracting, the parties contemplated that, as the probable result of defendant's failing to make lease payments, BJV would allow its interest to be foreclosed and forfeit its equity. We agree with the trial court that BJV failed to prove that, when the parties contracted to lease the motel, they contemplated that defendant would be liable for repayment of BJV's equity.").

Discovery has revealed no evidence that Defendants knew anything, at the time the Willard Lease was executed, that would lead them to believe that a breach of that Lease would force Willard to sell the property at a short sale.

Even less foreseeable in the ordinary course of events are Willard's claimed tax consequences purportedly resulting from the claimed forced sale. *See In re Coombs*, 2012 WL 1578756, at *3 (Bankr. D.N.M. May 4, 2012). Even if Defendants had some knowledge that a future breach would have forced Willard to sell the property, they certainly would have had no idea that such sale would have caused income tax damages to Willard. Thus, the claimed damages were not possibly foreseeable in the ordinary course of events.

Because the loss claimed by Willard would not be a probable result of the purported breach in the ordinary course of events, Willard cannot recover the requested damages unless Willard can prove that Defendants had actual special knowledge at the time the parties entered into the contracts that it was probable that such a loss could occur in the event of a breach. It is undisputed that Willard cannot meet this burden. (Affidavit of T. Herbst, **Exhibit 1**). It is settled law that foreseeability is measured as of the time the parties enter into a contract. *Hilton Hotels Corp.*, 98 Nev. at 115, 642 P.2d at 1087 ("There can be no recovery for damages that are not reasonably foreseeable **at the time of the contract**."); Restatement (Second) of Contracts § 351 at cmt. a ("A contracting party is generally expected to take account of those risks that are foreseeable **at the time he makes the contract**. He is not, however, liable in the event of breach for loss that he did not **at the time of contracting** have reason to foresee as a probable result of such a breach."). Here, the evidence adduced through discovery shows that Willard's claimed loss was not foreseeable at the time the parties entered into the contracts. In fact, Mr. Willard himself testified that he only spoke with Tim Herbst several years **after** the execution of the Lease (in 2008, or possibly 2012). (Willard Deposition at 117, 118:20-25, 119, **Exhibit 6**; Willard Lease, **Exhibit 2**; Willard Guaranty, **Exhibit 3**). Even then, Mr. Willard did not discuss the possibility, much less probability, of a forced sale. *Id.*; Restatement (Second) of Contracts §

351 at cmt. a. Mr. Willard has also not indicated that he spoke with any other representative of Defendants about these topics. Thus, while Defendants dispute ever having any knowledge that such loss or damages would be a probable result of any breach of the Willard Lease, it is undisputed that Defendants did not have any such knowledge at the time of entry into the contracts. Nor were there any objective indicia that the loss would be foreseeable. In other words, it is undisputed Defendants had no "special knowledge of the risk [they were] undertaking" at the time they entered into the contracts, and therefore such a risk cannot be attributed to them. *Margolese*, 902 F.2d at 1578.

Therefore, because the claimed loss was not foreseeable to Defendants at the time they entered into the contracts, either in the ordinary course of events or through special knowledge, the undisputed facts and law demonstrate that Willard is not entitled to recover these damages from Defendants. Defendants respectfully request that this Court deny Willard's claim for its short sale consequential damages as a matter of law.

ii. <u>Willard did not incur many of the claimed short sale damages</u>.

Further, even if the claimed damages were somehow foreseeable, Willard never actually incurred many, if not all, of the damages sought. Willard is not entitled to damages not incurred: "the party seeking damages has the burden of proving both the fact of damages and the amount thereof." *Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989); 22 Am. Jur. 2d *Damages* § 48 ("As a general rule, a non-breaching party is not entitled, through the award of damages, to achieve a better or superior position to the one it would reasonably have occupied had the breach not occurred.").

Specifically, with respect to the purported tax consequences, Willard claims to have incurred "at least $3,000,000 in tax consequences" from the short sale. (FAC ¶ 15, on file herein). Willard has since revised that estimate to be $2,430,000 for Overland and $3,152,000 for Mr. Willard. (Responses to First Set of Interrogatories at 7, **Exhibit 12**). Presumably, these "tax consequences" were incurred as a result of mortgage debt forgiven by the lender as part of

the short sale. (Deposition of L. Willard at 89, **Exhibit 6**). However, the tax returns for both Overland and Mr. Willard demonstrate that neither Overland nor Mr. Willard ever actually paid income tax on the forgiven debt; in fact, they did not pay any income taxes at all for 2014, when the short sale closed. (2014 Federal Tax Return Overland, **Exhibit 7**; 2014 Federal Tax Return Mr. Willard, **Exhibit 8**). Rather, both Overland and Mr. Willard avoided those taxes entirely by claiming to be insolvent prior to the cancellation of the mortgage debt, relieving their obligation to include the canceled debt in their taxable income. *Id*.;(IRS Publication 4681 at 5, **Exhibit 21** ("Don't include a canceled debt income to the extent that you were insolvent immediately before the cancellation.")); IRC 108(a)(1)(B) ("Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if the discharge occurs when the taxpayer is insolvent.").

Specifically, in describing the short sale and cancellation of debt resulting from the short sale, Overland's tax return stated as follows:

> NCUAB/TCCU Bank, - Account #[redacted], first loan on the [Willard Property] has issued form 1099-C debt cancelled in the total amount of $8,597,250 under debtor's ID# [redacted] and debtor's name Overland Development Corp., Inc. The property is 41% owned by Overland Development Inc. and 59% owned by Larry J. Willard, Truste[e] of the Larry James Willard Trust dated 11/14/1987. The amount of cancellation of debt for Overland development Inc. is $3,524,873. Overland Development Inc.'s total of all its liabilities exceed the [fair market value] of all of its assets immediately before the cancellation of this debt. Therefore Overland Development Inc. is considered insolvent.

(2014 Federal Tax Return Overland at Federal Supplemental Information pg. 1, **Exhibit 7**). Overland claimed $3,524,873 as "discharged indebtedness excluded from gross income." *Id*. at Form 982. Overland did not pay or owe anything in income tax for the year 2014, the year the short sale occurred. Tax Return at pg. 1, lines 32, 34; (2013 Federal Tax Return Overland at pg. 1, lines 30, 34, Federal Statements pg. 2, **Exhibit 24**).

Similarly, in describing the short sale and cancellation of debt resulting from the short sale, Mr. Willard's tax return stated that:

> NCUAB/TCCU Bank, - Account #[redacted], first loan on the [Willard Property] has issued form 1099-C debt cancelled in the total amount of $8,597,250 under debtor's ID#[redacted] and debtor's name Overland Development Corp., Inc. The property is 41% owned by Overland Development Inc. and 59% owned by Larry J. Willard, Truste[e] of the Larry James Willard Trust dated 11/14/1987. Taxpayer's total of all his liabilities exceed the [fair market value] of all of his assets immediately before the cancellation of this debt. Therefore taxpayer is considered insolvent.

(2014 Federal Tax Return for Mr. Willard at Federal Supplemental Information, **Exhibit 8**). Mr. Willard put $4,196,190 as the "total amount of discharged indebtedness excluded from gross income." *Id*. at Form 982. Mr. Willard did not pay or owe anything in income tax for 2014, the year the short sale occurred. *Id*. at Form 1040, lines 63, 74, 78.

Thus, as Overland and Mr. Willard did not actually pay any taxes for 2014, much less the more than $5 million claimed, Overland and Mr. Willard cannot recover the claimed tax damages that they seek from Defendants, for the simple reason that they did not actually incur those damages by paying the taxes. Indeed, "a breach of contract claim fails as a matter of law if the plaintiff cannot establish that he or she has been damaged by the alleged breach." *Roberts v. Brunswick Corp.*, 783 N.W.2d 226, 233 (Minn. Ct. App. 2010). Further, to award Willard this amount would be to inequitably make Willard far more than whole because these damages were not actually incurred by Willard. 22 Am. Jur. 2d *Damages* § 48 ("As a general rule, a non-breaching party is not entitled, through the award of damages, to achieve a better or superior position to the one it would reasonably have occupied had the breach not occurred."). Therefore, Willard is not entitled to his claimed tax consequences damages as a matter of law, and judgment should be entered in Defendants' favor.

With respect to the closing cost damages, Willard claims to have incurred "$549,852 in closing costs" as a result of the purported forced sale. (FAC ¶ 15, on file herein). The only

evidentiary support that Willard has ever provided for this allegation is the "Seller's Final Closing Statement." (Closing Statement, **Exhibit 9**; Responses to Interrogatories at 7, **Exhibit 12** ("Damages for closing costs were calculated from the values appearing on the Seller's Final Closing Statement.")). However, the Closing Statement does not support Willard's claim for damages.

First, there is absolutely no indication that Willard actually paid the costs in the Closing Statement. *Mort Wallin*, 105 Nev. at 857, 784 P.2d at 955 ("The party seeking damages has the burden of proving both the fact of damages and the amount thereof."). According to the Closing Statement, Willard's **lenders** received all of the proceeds from the short sale, while Willard received nothing. (Closing Statement, **Exhibit 9**). Willard's lenders then forgave any remaining debt owed on the Willard Property after the short sale. (Deposition of L. Willard at 89, **Exhibit 6**). Therefore, the closing costs for the sale **only** impacted how much Willard's lenders received in payoff from the purchase price. Further, the payoff amount made no difference to Willard's damages because the lenders forgave any remaining debt outstanding on the mortgage (and Willard did not claim that debt forgiveness as gross income). Thus, the Closing Statement only reflects that the lenders were paid the purchase price minus the closing costs, not that Willard actually paid any closing costs—or incurred any other financial consequences from the closing costs since the lenders forgave any outstanding remaining debt owed by Willard. As Willard did not pay any closing costs or incur financial consequences from the amount of closing costs (only the lenders' payoff amount was impacted by the closing costs, which was irrelevant to Willard because the lenders forgave Willard's remaining debt), Willard is not entitled to recover these costs as a matter of law.

Even if Willard did incur any purported closing costs, the total closing costs listed in the Closing Statement, including commissions paid to the broker, are $134,615. (Closing Statement, **Exhibit 9**). After a reduction is made for the credits from the buyer, the net closing costs total $84,260. *Id.* Thus, Willard's claim for closing costs—assuming that those costs were

foreseeable and actually incurred by Willard (neither of which is satisfied here)—are overstated by $465,592. Therefore, Willard is not entitled to his claimed costs of $549,852 as a matter of law.

Finally, with respect to the purported earnest money damage, Willard claims to have incurred "$4,437,500.00 of earnest money invested in the Willard Property" as a result of the purported forced sale. Assuming the existence of any documentary support for this claim (Willard has not provided any), nothing in the Willard Lease requires or even contemplates Defendants paying Willard his purported invested earnest money in the event of a breach. Indeed, it would be categorically unreasonable to require a tenant to be responsible for a landlord's purported lost earnest money in the property absent an express agreement in the lease to do so. Thus, Willard is not entitled to recover this money from Defendants as a matter of law.

b. Willard is not entitled to its attorneys' fees consequential damages.

In addition to the short sale damages, Willard also sought the following consequential damages: (1) attorneys' fees incurred in a California action that Willard brought against Defendants for breach of the Willard Lease; and (2) attorneys' fees and accounting fees incurred in a bankruptcy action that Willard filed as a result of Defendants' purported breach. Willard is not entitled to these damages as a matter of law.

i. The California action.

Willard claims that "as a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs "hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $35,000 in attorney's fees." (FAC ¶ 18, on file herein). This action was a complaint filed in California against Defendants for breach of the Willard Lease. (Docket Sheet, **Exhibit 4**). Unsurprisingly, as all Defendants and the lease are Nevada-based, and the lease specifically requires lawsuits to be brought in Nevada, Defendants obtained a dismissal of the action for lack of personal jurisdiction. *Id*. at 11. The fees purportedly incurred by Willard in that action are clearly not recoverable. These attorneys' fees

could only be recoverable as litigation fees or as special damages, neither of which applies to this case. *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001), *receded from on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007); *Liu v. Christopher Homes, LLC*, 130 Nev. ___, ___, 321 P.3d 875, 878 (2014) (noting the general rule that attorneys' fees cannot be awarded absent a statute, rule, or contract provision, and that "as an exception to the general rule, attorney fees may be awarded as special damages in limited circumstances.").

First, "when parties seek attorney fees as a cost of litigation, documentary evidence of the fees is presented to the trial court, generally in a post-trial motion." *Sandy Valley*, 117 Nev. at 956, 35 P.3d at 969. However, "generally, attorney fees are not recoverable absent authority under a statute, rule, or contract." *Christopher Homes, LLC*, 130 Nev. at ___, 321 P.3d at 878. Here, to the extent that Willard is seeking the California action attorneys' fees as a cost of litigation, Willard has not identified any statute, rule, or contract provision that would entitle Willard to fees incurred in the futile and now dismissed California action. Nor could he: Plaintiffs chose an improper forum, and Defendants were the prevailing party in the California action and successfully obtained dismissal of the case for lack of jurisdiction. (Docket Sheet at 11, **Exhibit 4**). Thus, if anyone is entitled to their fees from the California action, it is Defendants. Further, even if Willard was somehow able to provide a basis for recovering attorneys' fees in the California action, it is wholly unclear why this Court, as opposed to the court in the California action, should determine the award of attorneys' fees incurred in that action. Not only is Willard's request for fees in this Court untimely, it would be inappropriate for this Court, rather than the presiding court, to make determinations regarding the reasonableness of the fees. *See* NRCP 54(d)(2). Thus, Willard is not entitled to the fees in the California action as a cost of that litigation.

Second, "when a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages."

Sandy Valley, 117 Nev. at 956, 35 P.3d at 969. Special damages can only be sought in a narrow set of circumstances: (1) a party to a contract can seek to recover from a breaching party the attorneys' fees that arise from the breach that caused the former party to accrue attorneys' fees in defending himself against a third party's legal action; and (2) in cases concerning title to real property, attorneys' fees can be allowable as special damages in slander of title actions. *Christopher Homes, LLC*, 130 Nev. at ___, 321 P.3d at 875. Here, no purported breach by Defendants has caused Willard to have to defend himself against a third party's legal action. Rather, Willard seeks attorneys' fees purportedly incurred from **Willard** bringing an improper action against Defendants in California, not a third-party action. (FAC ¶ 18, on file herein (Willard "hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $35,000 in attorney's fees.")). "Attorneys' fees and other expenses of former litigation, particularly suits prosecuted by the plaintiff against the defendant, ordinarily are not recoverable in a subsequent action." Robert Rossi, 1 Attorneys' Fees 8:1 (3d ed.). The Nevada Supreme Court has been clear that such fees are only recoverable, if at all, in defending against a third-party action. *Christopher Homes, LLC*, 130 Nev. at ___, 321 P.3d at 875. Thus, the first circumstance does not apply. Further, the California action had nothing to do with real property claims, much less slander of title claims. Thus, the attorneys' fees are not recoverable as special damages.[8]

Accordingly, because Willard is not entitled to recover the attorneys' fees allegedly incurred in the California action as either a cost of that litigation or as special damages,

[8]Even if Willard's claim was entitled to seek the attorneys' fees in the California action as special damages, "as a practical matter, attorney fees are rarely awarded as damages simply because parties have a difficult time demonstrating that the fees were proximately and necessarily caused by the actions of the opposing party and that the fees were a reasonably foreseeable consequence of the breach or conduct. Because parties always know lawsuits are possible when disputes arise, the mere fact that a party was forced to file or defend a lawsuit is insufficient to support an award of attorney fees as damages." *Sandy Valley*, 117 Nev. at 957, 35 P.3d at 969-70.

Defendants respectfully request that this Court deny Willard's request for such damages as a matter of law.

ii. <u>The bankruptcy</u>.

Willard also claims that "as a further direct and proximate result of BHI breaching the Willard Lease, Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and $15,000 in accounting fees in the process." (FAC ¶ 17, on file herein). Willard is not entitled to these fees as a matter of law.

First, it is undisputed that Willard's bankruptcy was not foreseeable at the time the parties entered into the contracts. Willard expressly admitted that he never had any discussions with Defendants that a breach of the lease could result in him filing bankruptcy. (Deposition of L. Willard at 115, **Exhibit 6**; Affidavit of T. Herbst, **Exhibit 1**). In fact, not only was the bankruptcy unforeseeable, it was frivolous: Willard admits that a mere six months after filing the bankruptcy, Willard voluntarily withdrew his bankruptcy petition upon the advice of his counsel. (FAC ¶ 17, on file herein). If Willard's bankruptcy was not a foreseeable consequence of a breach of the Willard Lease, then any fees incurred "in the process" of Willard filing and pursuing his six-month voluntary bankruptcy are also not foreseeable, and therefore not recoverable by Willard. Footnote 8; Restatement (Second) of Contracts § 351(1) ("Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.").

Second, even if the bankruptcy was somehow foreseeable, Willard does not meet any of the requirements to seek his fees purportedly incurred as a result of the bankruptcy.[9] If Willard wanted to recover his fees as a cost of litigation of the bankruptcy, he should have sought them with the bankruptcy court, although the availability of such fees upon a voluntarily dismissed

[9]While the law cited herein discusses attorneys' fees, Willard appears to claim that his accounting fees were a cost of the bankruptcy litigation. Thus, the analysis should be the same for both.

voluntary bankruptcy would be questionable at best. Further, if Willard seeks these fees as special damages, Willard does not fall within the specific categories of damages permitted to be sought as special damages. *Christopher Homes, LLC*, 130 Nev. at ___, 321 P.3d at 875. Thus, Willard is not entitled to the attorneys' fees or accounting fees purportedly incurred in the bankruptcy as a matter of law.

Thus, Willard is not entitled to any of the consequential damages discussed herein, and summary judgment is appropriate on these claims.

3. Wooley is not entitled to consequential damages as a matter of law.

Wooley also seeks consequential damages, claiming that as a result of Defendants' purported breach:[10] (1) "because the [Baring] Property was cross-collateralized with the Highway 50 Property, the Wooley Plaintiffs were forced to sell the [Baring] Property at a loss of $147,847.30"; (2) "because the [Baring] Property was cross-collateralized with the Highway 50 Property and the Wooley Plaintiffs were forced to sell the [Baring] Property, the Wooley Plaintiffs incurred tax liabilities in an amount to be proven at trial but which is at least $600,000"; and (3) Wooley "hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $45,088.00 in attorney's fees." (FAC ¶¶ 34, 39-42, on file herein). As will be discussed herein, Wooley is not entitled to these damages as a matter of law.

a. Cross-collateralization with the Baring Property.

With respect to the purported "Baring Property" damages, Wooley claims that because Defendants allegedly breached the Highway 50 Lease, and Wooley's mortgage loan for the Highway 50 Property was cross-collateralized with his loan for a separate property, the Baring Property,[11] Defendants' purported breach of the Highway 50 Lease forced Wooley to sell the

[10]Certain consequential damages sought by Wooley are not addressed in this Motion but will be addressed at a later time.

[11]According to Mr. Wooley, this means that "if you do not make your payments on either one of the properties, they can foreclose on both of the properties." (Deposition of E. Wooley p. 105, **Exhibit 16**).

Baring Property "at a loss" and caused him to incur tax liabilities. *Id*.; (Deposition of E. Wooley p. 104-106, **Exhibit 16**).Wooley is not entitled to these purported damages because they were unforeseeable as a matter of law.

Specifically, nothing in the Highway 50 Lease mentioned that a consequence for a breach was that BHI would be liable for damages incurred with respect to selling one of Wooley's **other** properties, the Baring Property. (Highway 50 Lease, **Exhibit 10**). Thus, the only way that Wooley could recover these consequential damages is by proving that such a loss was foreseeable as a probable result of the breach at the time the parties entered into the Highway 50 Lease. Restatement (Second) of Contracts § 351(1).

The undisputed facts show that Wooley cannot satisfy this burden as a matter of law. First, it would be impossible for anyone to know at the time of execution of the Highway 50 Lease that the Highway 50 and Baring Properties were cross-collateralized, or that breach of the Highway 50 Lease could impact the Baring Property, because Wooley did not even enter into the Baring Property loan until **after** the execution of the Highway 50 Lease.[12] (Highway 50 Lease, **Exhibit 10**; Baring Loan, **Exhibit 15**). The Baring cross-collateralization language is found in the **July 18, 2006**, Baring Property Loan, which was executed months after the **December 2005** Highway 50 Lease. (Highway 50 Lease, **Exhibit 10**; Baring Property Loan at ECW78 1.7, **Exhibit 15**). Because foreseeability is measured at the time of entry into a contract,

[12]Defendants were also tenants to the Baring Lease, but later assigned its lease to Jackson's. Importantly, it is undisputed that Defendants were not in breach of the Baring Lease when Wooley sold the Baring Property. (Deposition of E. Wooley p. 99-100, **Exhibit 16**; Lease Assignment, **Exhibit 17**; Second Amendment to Baring Lease, **Exhibit 22**). However, despite that fact, Wooley attempted to sue BHI for breach of the Baring Lease, seeking nearly $4 million in damages. (Initial Complaint ¶¶ 34, 42-44, on file herein.) Defendants were forced to bring this fact to Wooley's attention and threaten motion practice in this case before Wooley finally agreed to amend his pleading to remove a claim for breach of the Baring Lease. (November 2014 email exchange, **Exhibit 19**; January 2015 email exchange, **Exhibit 20**). Interestingly, Wooley originally attempted to claim that BHI's purported breach of the **Baring** Lease caused the claimed damages discussed herein. (Initial Complaint ¶¶ 42-44, on file herein.)

this precludes Wooley from claiming foreseeability as a matter of law. Restatement (Second) of Contracts § 351 at cmt. a.

Second, regardless, it is undisputed that Defendants did not know about the Highway 50 Property being cross-collateralized with the Baring Property. (Affidavit of T. Herbst at ___, **Exhibit 1**). In written discovery, Defendants asked Wooley to "please identify and describe in detail any and all facts demonstrating that BHI knew at the time [Wooley] and BHI entered into the Highway 50 Lease that the Highway 50 property was cross-collateralized with the Baring Property." (Wooley Responses to Second Set of Interrogatories at 3, **Exhibit 23**). In response, Wooley stated that Wooley "is presently unaware of facts responsive to this request," and reserved the right to amend the response. *Id*. Mr. Wooley agreed with this response during his deposition, and elaborated "I don't know why they would even know…. They're not party to getting a loan. I am. They take the check and cash it." (Deposition of E. Wooley p.119, **Exhibit 16**). Mr. Wooley's description could hardly be plainer.

Defendants also asked Wooley to "please identify and describe in detail any and all facts demonstrating that Jerry Herbst at the time [Wooley] and BHI entered into the Highway 50 lease that the Highway 50 property was cross-collateralized with the Baring Property." (Wooley Responses to Second Set of Interrogatories at 4, **Exhibit 23**). In response, Wooley stated that Wooley "is presently unaware of facts responsive to this request," and reserved the right to amend the response. *Id*. Wooley agreed with this answer at his deposition. (Deposition of E. Wooley p. 120, **Exhibit 16**).

Finally, it is not clear how Wooley both sold the Baring Property "at a loss" yet also had to pay "at least $600,000" in tax liabilities. (FAC, on file herein). Contrary to Wooley's claim that the Baring Property was sold at a loss, the closing statement for the sale of the Baring Property states that Wooley sold the Baring Property at a gain of $870,844.39, (Closing Statement, **Exhibit 9**), which Wooley admits that he deposited in his bank account. (Deposition of E. Wooley p. 111, **Exhibit 16**).

Thus, it is undisputed that Defendants did not have reason to foresee this purported "loss" as a probable result of their alleged breach when the contracts were made, precluding Wooley from recovering any damages as a matter of law.[13] Restatement (Second) of Contracts § 351(1).

b. Fees in the California action.

Wooley claims that as a result of Defendants' purported breach, Wooley "hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $45,088.00 in attorney's fees." (FAC ¶ 42, on file herein). This is the same California action as that pursued by Willard. (Docket Sheet, **Exhibit 4**). Wooley's claim also has the same deficiencies as Willard's and was dismissed as such.

Specifically, as explained *supra* p. 17-19, no rule, statute, or contractual provision entitles Wooley to these fees as a cost of litigating the California action. Indeed, Defendants, who obtained a full dismissal of the case, were unequivocally the prevailing party, and regardless, a request for fees incurred as a cost of the California litigation would have only been appropriate in the California court. Further, the California action was not within the limited set of actions that would entitle Wooley to seek these fees as special damages. Thus, Wooley is not entitled to these fees as a matter of law.

CONCLUSION

Defendants respectfully request that this Court conclude that Plaintiffs are not entitled to recover the following as a matter of law: (1) Willard's "short sale" damages, including tax consequences, closing costs, and earnest money; (2) Willard's attorneys' fees incurred in the California action; (3) Willard's attorneys' and accounting fees incurred in the bankruptcy; (4) Wooley's "Baring Property" damages, including tax consequences and purported lost monies as

[13]Nor can any argument be made that it is foreseeable, in the ordinary course of events, that a tenant's breach of a lease will result in a landlord having to sell one of the landlord's other properties. *See Margolese,* 902 F.2d at 1578.

a result of the sale; and (5) Wooley's attorneys' fees incurred in the California action. Thus, Defendants respectfully request summary judgment in their favor on these damages requests.

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 1st day of August, 2016.

DICKINSON WRIGHT, PLLC

/s/ Brian R. Irvine
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

Attorneys 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' MOTION FOR PARTIAL SUMMARY JUDGMENT** 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
david@omaralaw.net

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

DATED this 1st day of August, 2016.

/s/ Mina Reel
An employee of Dickinson Wright, PLLC

EXHIBIT TABLE

Exhibit	Description	Pages[14]
1	Affidavit of Tim Herbst	4
2	Willard Lease	35
3	Willard Guaranty	4
4	Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021	11
5	Second Amended Motion to Dismiss	17
6	Deposition Excerpts of Larry Willard	10
7	2014 Federal Tax Return for Overland	11
8	2014 Willard Federal Tax Return -redacted	25
9	Seller's Final Closing Statement	1
10	Highway 50 Lease	43
11	Highway 50 Guaranty	4
12	Willard Responses to Defendants' First Set of Interrogatories	11
13	Baring Purchase and Sale Agreement	22
14	Baring Lease	35
15	Baring Property Loan	35
16	Deposition Excerpts of Edward Wooley	13
17	Assignment of Baring Lease	7
18	HUD Statement	2
19	November 2014 email exchange	9
20	January 2015 email exchange	5
21	IRS Publication 4681	16
22	Second Amendment to Baring Lease	2
23	Wooley Responses to Second Set of Interrogatories	7
24	2013 Overland Federal Income Tax Return	14
25	Declaration of Brian Irvine	4

[14] Exhibit page counts are exclusive of exhibit slip sheets.

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EXHIBIT 1

EXHIBIT 1

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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

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,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO. CV14-01712

DEPT. 6

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.

AFFIDAVIT OF TIMOTHY HERBST

STATE OF NEVADA)
)ss.
COUNTY OF Clark)

I, TIMOTHY HERBST, declare and state as follows:

1. I am over the age of 18 years and have personal knowledge of and am competent to testify concerning the facts stated herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true..

2. I make this affidavit in support of Defendants/Counterclaimants' Motion for Partial Summary Judgment ("Motion").

3. I am a citizen and resident of the State of Nevada.

4. I am the Treasurer for Berry-Hinckley Industries, a Nevada corporation ("BHI"), and have served in that capacity since 2007.

5. BHI is a wholly-owned subsidiary of JH, Inc.

6. On or about November 18, 2005, BHI entered into a lease agreement (the "Willard Lease") on property owned by the Willard Plaintiffs located at 7695-7699 S. Virginia Street, Reno, Nevada (the "Willard Property").

7. A true and correct copy of the Willard Lease is attached to the Motion as **Exhibit 2.**

8. On information and belief, BHI had no knowledge or reason to believe, at the time of execution of the Willard Lease, that a breach of the Willard Lease could cause the Willard Plaintiffs to be forced to sell the Willard Property, or to incur tax consequences, closing costs, or lost earnest money as a result of such a sale.

9. On information and belief, BHI had no knowledge or reason to believe, at the time of execution of the Willard Lease, that a breach of the Willard Lease could cause Larry Willard to declare bankruptcy.

10. On or about June 28, 2007, JH, Inc. entered into an Amended and Restated Stock Purchase Agreement whereby JH, Inc. purchased all of the issued and outstanding stock of BHI.

11. On information and belief, at this time, BHI had no knowledge or reason to believe that a breach of the Willard Lease could cause the Willard Plaintiffs to be forced to sell the Willard Property, or to incur tax consequences, closing costs, or lost earnest money as a result of such a sale.

12. On information and belief, BHI also had no knowledge at this time that a breach of the Willard Lease could cause Larry Willard to declare bankruptcy.

13. On or about December 2, 2005, BHI entered into a lease agreement (the "Highway 50 Lease") for property owned by the Wooley Plaintiffs located at 1820 Highway 50 East, Carson City, Nevada (the "Highway 50 Property").

14. A true and correct copy of the Highway 50 Lease is attached to the Motion as **Exhibit 10**.

15. On information and belief, BHI had no knowledge or reason to believe, at the time of execution of the Highway 50 Lease, that the Highway 50 Property was cross-collateralized with property owned by the Wooley Plaintiffs located at 1365 Baring Boulevard, Sparks, Nevada (the "Baring Property"), or that a breach of the Highway 50 Lease could cause the Wooley Plaintiffs to have to sell the Baring Property.

16. As noted, on or about June 28, 2007, JH, Inc. entered into an Amended and Restated Stock Purchase Agreement whereby JH purchased all of the issued and outstanding stock of BHI.

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17. On information and belief, at this time, BHI had no knowledge or reason to believe that the Highway 50 Property was cross-collateralized with the Baring Property, or that a breach of the Highway 50 Lease could cause the Wooley Plaintiffs to have to sell the Baring Property.

18. I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 29 day of July, 2016.

TIMOTHY HERBST

SUBSCRIBED and SWORN to before me this 29 day of July, 2016, by TIMOTHY HERBST.

ALICIA NECOCHEA
Notary Public, State of Nevada
Appointment No. 05-93959-1
My Appt. Expires Jun 29, 2017

Alicia Necochea
NOTARY PUBLIC in and for said County and State Clark County, Nevada

RENO 65540-1 9952v1

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Clerk of the Court
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EXHIBIT 2

EXHIBIT 2

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of November 18, 2005 by and between **OVERLAND DEVEOPMENT CORPORATION INC. dba LJW ENTERPIRSES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030, and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, NV 89511

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

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

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

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

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 untenantability 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 Projection, 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 it 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 withhold 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:	Overland Development Corporation Inc. Attn: Larry Willard 133 Glenridge Avenue Los Gatos, CA 95030
With a copy to	Sam Chuck, Esq. Rossi, Hamerslough, Reischl & Chuck 1960 The Alameda, Suite 200 San Jose, CA 95126 Telephone: (408) 261-4252 Facsimile: (408) 261-4292

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

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

26. **Intentionally Omitted.**

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

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]

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

LESSOR:

LARRY WILLARD

Tax Identification No. [redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

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

Tina Y. Seda
Notary Public

My Commission Expires: 10-15-07

TINA Y. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

STATE OF CALIFORNIA) S.S.
COUNTY OF Santa Clara

On December 2, 2005 before me,

Tina T. Seda

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

Larry J. Willard

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

TINA T. SEDA
Commission # 1441979
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

(This area for official notarial seal)

notyack rev. (01/05/01)

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____
Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

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

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

ANNA-LISA LONER
Commission# 1400598
Notary Public - California
Orange County
My Comm. Expires Feb 14, 2007

EXHIBIT A

DEFINED TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

"*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

(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.

"*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: 7695 - 7699 S. Virginia Street, Reno, Nevada (APN 043-011-48)

PROPERTY LEGAL DESCRIPTION:

Parcel I

The land referred to herein is situated in the City of Reno, County of Washoe, State of Nevada, located within a portion of the South Half (S 1/2) of the Northwest Quarter (NW 1/4) of Section 6, Township 19 North, Range 20 East, M.D.M., and being more particularly described as follows:

Commencing at the Southwest corner as Parcel "C", a found nail and tag on a fence post, as shown on Parcel Map No. 218, File No. 388954, on file in the County Recorders Office, Washoe County, Nevada; thence North 00°16'56" East, a distance of 579.25 feet to the Northerly side of Longley Lane, Thence along said Northerly side South 69°21'09" West, a distance of 21.41 feet to the true point of beginning.

Thence along the said Northerly line of Longley Lane South 69°21'09" West, a distance of 301.22 feet to the Easterly line of U.S. 395; thence along said Easterly line North 21°04'38" West, a distance of 653.04 feet; thence leaving said Easterly line North 14°55'49" East, a distance of 126.66 feet, thence North 89°52'07" East, a distance of 458.81 feet; thence North 19°19'30" West, a distance of 0.78 feet; thence North 84°51'10" East, a distance of 213.17 feet to the Westerly line of South Virginia Street; thence along said Westerly line South 20°39'19" East, a distance of 257.92 feet; thence leaving said westerly line of South Virginia North 89°40'18" West, a distance of 275.76 feet; thence South 00°16'56" West, a distance of 406.67 feet to the true point of beginning.

Parcel II

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

Note: The above metes and bounds legal description appeared previously in that certain document recorded August 27, 1996, in Book 4656, Page 716, as Instrument No. 2024695.

F I L E D
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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 3

EXHIBIT 3

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 9th day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Overland Development Corporation Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (collectively, the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 7695 South Virginia, Reno, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) falls to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership,

insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

OVERLAND DEVELOPMENT CORPORATION INC.

By:
Name:
Title:

LARRY JAMES WILLARD TRUST

By:
Name: Larry J. Willard
Title: Trustee

Herbst Lease Guaranty - 7695 South Virginia.DOC

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,

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and TIMOTHY P. HERBST, as Special Administrator of the ESTATE OF JERRY HERBST, deceased,

Respondents.

No. 83640
District Court Case No. CV14-01712

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 3 OF 18

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 0950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
RICHARD D. WILLIAMSON (SBN 9932)
JONATHAN JOEL TEW (SBN 11874)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS LARRY J. WILLARD, et al.

Docket 83640 Document 2022-06442

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 1)	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel – Brian P. Moquin, Esq.	10/28/14	1	202-206
	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brian P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340
	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547
	Exhibit 9: Seller's Final Closing Statement		3	548-549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 15)	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		4	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Larry J. Willard	08/30/16	4	798-806
18.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	807-837
	Exhibit 1: *Purchase and Sale Agreement* dated July 1, 2005 for Purchase of the Highway 50 Property		4	838-851

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 2: *Lease Agreement* dated December 2, 2005 for the Highway 50 Property		4	852-895
	Exhibit 3: *Three Year Adjustment Term Note* dated January 19, 2007 in the amount of $2,200,00.00 for the Highway 50 Property		4	896-900
	Exhibit 4: *Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	901-918
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		5	919-934
	Exhibit 6: *First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property		5	935-942
	Exhibit 7: *Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property		5	943-947
	Exhibit 8: *Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property		5	948-950
	Exhibit 9: *Purchase and Sale Agreement* Dated July 14, 2006 for the Baring Property		5	951-973
	Exhibit 10: *Lease Agreement* dated June 6, 2006 for the Baring Property		5	974-1009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 11: *Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,00.00 for the Baring Property		5	1010-1028
	Exhibit 12*: Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1029-1046
	Exhibit 13: *First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property		5	1047-1054
	Exhibit 14: *Guaranty Agreement* dated March 12, 2007 for the Baring Property		5	1055-1059
	Exhibit 15: *Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1060-1071
	Exhibit 16: *Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1072-1079
	Exhibit 17: *Substitution of Attorney* forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1080-1084
	Exhibit 18: *Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California Case		5	1085-1088
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and		5	1089-1093

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Brian Moquin re Joint Stipulation in California Case			
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court Property		5	1094-1100
	Exhibit 21: *Request for Dismissal* without prejudice filed May 19, 2014 in the California case		5	1101-1102
	Exhibit 22: *Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1103-1111
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1112-1113
	Exhibit 24: *Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property		5	1114-1116
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1117-1152
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1153-1155
	Exhibit 27: *Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property		6	1156-1168

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 28: *Lease Agreement* dated November 18, 2005 for the Virginia Property		6	1169-1204
	Exhibit 29: *Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property		6	1205-1207
	Exhibit 30: *Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1208-1225
	Exhibit 31: *Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1226-1230
	Exhibit 32: *Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1231-1245
	Exhibit 33: *Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1246-1271
	Exhibit 34: *Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1272-1273
	Exhibit 35: *Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1274-1275

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 36: *Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property		6	1276-1281
	Exhibit 37: *Guaranty Agreement* dated March 9, 2007 for the Virginia Property		6	1282-1286
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1287-1291
	Exhibit 39: Letter dated March 18,2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1292-1294
	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1295-1297
	Exhibit 41: *Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1298-1302
	Exhibit 42: *Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1303-1305
	Exhibit 43: *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 2013		6	1306-1309
	Exhibit 44: *Declaration in Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013,		6	1310-1314

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Northern District of California Bankruptcy Court Case No. 13-53293 CN			
	Exhibit 45: *Substitution of Attorney* forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1315-1319
	Exhibit 46: *Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1320-1327
	Exhibit 47: *Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00		6	1328-1334
	Exhibit 48: *Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1335-1354
	Exhibit 49: *Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1355-1356
	Exhibit 50: *Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property		6	1357-1358
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland		6	1359-1360

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000,000.00			
19.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1361-1380
	Exhibit 1: Declaration of John P. Desmond		6	1381-1384
20.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgement	12/20/16	7	1385-1390
	Exhibit 1: Expert Report of Michelle Salazar		7	1391-1424
21.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1425-1443
22.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgement in Favor of Defendants	02/02/17	7	1444-1451
	Exhibit 1: January 19-25, 2017, Email Exchange		7	1452-1454
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1455-1479
23.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1480-1488
24.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1489-1512

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
25.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1513-1516
	Exhibit 1: May 30, 2017 Order		7	1517-1541
26.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1542-1549
27.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1550-1557
28.	Affidavit of Larry Willard	10/18/17	7	1558-1574
29.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1575-1602
	Contents of DVD of Exhibits (filed manually)		7	1603-1615
30.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	8	1616-1659
	Exhibit 1: Declaration of Brian R. Irvine		8	1660-1666
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		8	1667-1674
	Exhibit 3: February 12, 2015 Letter		8	1675-1677
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		8	1678-1689
	Exhibit 5: August 28, 2015, Letter		8	1690-1701
	Exhibit 6: March 3, 2016, Letter		8	1702-1790
	Exhibit 7: March 15, 2016 Letter		9	1791-1882
	Exhibit 8: April 20, 2016, Letter		9	1883-1909

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		9	1910-1918
	Exhibit 10: December 5, 2016 Email		9	1919-1925
	Exhibit 11: December 9, 2016 Email		9	1926-1927
	Exhibit 12: December 23, 2016 Email		9	1928-1931
	Exhibit 13: December 27, 2016 Email		9	1932-1935
	Exhibit 14: February 3, 2017, Letter		9	1936-1963
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		9	1964-1973
	Exhibit 16: April 1, 2016 Email		9	1974-1976
	Exhibit 17: May 3, 2016 Email		9	1977-1978
	Exhibit 18: June 21, 2016 Email Exchange		9	1979-1985
	Exhibit 19: July 21, 2016 Email		9	1986-2002
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		9	2003-2012
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		9	2013-2023
	Exhibit 22: Defendants' First Requests for Production on Willard		9	2024-2031
	Exhibit 23: Defendants' Second Request for Production on Willard		9	2032-2039

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 24: Defendants' Third Request for Production on Willard		10	2040-2045
	Exhibit 25: Defendants Requests for Admission to Willard		10	2046-2051
	Exhibit 26: Willard Lease		10	2052-2087
	Exhibit 27: Willard Response to Second Set of Interrogatories		10	2088-2096
	Exhibit 28: Deposition of L. Willard Excerpt		10	2097-2102
	Exhibit 29: April 12, 2013 Letter		10	2103-2105
	Exhibit 30: Declaration of G. Gordon		10	2106-2108
	Exhibit 31: Declaration of C. Kemper		10	2109-2112
31.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	10	2113-2135
	Exhibit 1: Plaintiffs' Initial Disclosures		10	2136-2143
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		10	2144-2152
	Exhibit 3: December 5, 2016 Email		10	2153-2159
	Exhibit 4: December 9, 2016 Email		10	2160-2161
	Exhibit 5: December 23, 2016 Email		10	2162-2165
	Exhibit 6: December 27, 2016 Email		10	2166-2169
	Exhibit 7: February 3, 2017 Letter		10	2170-2197

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 31)	Exhibit 8: Deposition Excerpts of D. Gluhaich		10	2198-2207
	Exhibit 9: Declaration of Brian Irvine		10	2208-2211
32.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	10	2212-2228
	Exhibit 1: Highway 50 Lease		10	2229-2272
	Exhibit 2: Declaration of Chris Kemper		10	2273-2275
	Exhibit 3: Wooley Deposition at 41		10	2276-2281
	Exhibit 4: Virginia Lease		11	2282-2317
	Exhibit 5: Little Caesar's Sublease		11	2318-2337
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		11	2338-2346
	Exhibit 7: Willard Deposition at 89		11	2347-2352
33.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	11	2353-2390
	Exhibit 1: Plaintiffs' Initial Disclosures		11	2391-2398
	Exhibit 2: November 2014 Email Exchange		11	2399-2408
	Exhibit 3: January 2015 Email Exchange		11	2409-2414
	Exhibit 4: February 12, 2015 Letter		11	2415-2417
	Exhibit 5: Willard July 2015 Interrogatory Reponses		11	2418-2429

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 6: Wooley July 2015 Interrogatory Responses		11	2430-2439
	Exhibit 7: August 28, 2015 Letter		11	2440-2451
	Exhibit 8: March 3, 2016 Letter		12	2452-2540
	Exhibit 9: March 15, 2016 Letter		12	2541-2632
	Exhibit 10: April 20, 2016 Letter		12	2633-2659
	Exhibit 11: December 2, 2016 Expert Disclosure		12	2660-2668
	Exhibit 12: December 5, 2016 Email		12	2669-2675
	Exhibit 13: December 9, 2016 Email		12	2676-2677
	Exhibit 14: December 23, 2016 Email		12	2678-2681
	Exhibit 15: December 27, 2016 Email		12	2682-2685
	Exhibit 16: February 3, 2017 Letter		13	2686-2713
	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		13	2714-2723
	Exhibit 18: Wooley Deposition Excerpts		13	2724-2729
	Exhibit 19: Highway 50 Lease		13	2730-2773
	Exhibit 20: April 1, 2016 Email		13	2774-2776
	Exhibit 21: May 3, 2016 Email Exchange		13	2777-2778
	Exhibit 22: June 21, 2016 Email Exchange		13	2779-2785

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 23: July 21, 2016 Letter		13	2786-2802
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		13	2803-2812
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		13	2813-2822
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		13	2823-2830
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		13	2831-2838
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		13	2839-2844
	Exhibit 29: Defendants' Requests for Admission on Wooley		13	2845-2850
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		13	2851-2860
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		13	2861-2871
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		13	2872-2879
	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		13	2880-2887
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		13	2888-2893
	Exhibit 35: Defendants' Requests for Admission on Willard		13	2894-2899

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
34.	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	13	2900-2904
35.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	13	2905-2908
36.	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	13	2909-2912
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	13	2913-2916
38.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	13	2917-2921
39.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	13	2922-2926
40.	Order Granting Defendants' Motion for Partial Summary Judgment	01/04/18	14	2927-2931
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	14	2932-2935
42.	Notice of Entry of Order re Defendants' Motion to Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	14	2936-2939

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	14	2940-2943
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	14	2944-2977
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	14	2978-2981
46.	Order Denying Plaintiffs' Motion to Partially Dismiss Plaintiffs' Complaint as Moot	03/06/18	14	2982-2985
47.	Notice of Entry of Order re Order Denying Motion to Partially Dismiss Complaint	03/06/18	14	2986-2989
48.	Request for Entry of Judgment	03/09/18	14	2990-2998
49.	Notice of Withdrawal of Local Counsel	03/15/18	14	2999-3001
50.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	14	3002-3004
51.	Opposition to Request for Entry of Judgment	03/26/18	14	3005-3010
52.	Reply in Support of Request for Entry of Judgment	03/27/18	14	3011-3016
53.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	14	3017-3019
54.	Notice of Entry of Order re Order Granting Defendants' Motion to Dismiss Counterclaims	04/16/18	14	3020-3023
55.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	14	3024-3041

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 55)	Exhibit 1: Declaration of Larry J. Willard		14	3042-3051
	Exhibit 2: Lease Agreement dated 11/18/05		14	3052-3087
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		14	3088-3090
	Exhibit 4: Operation and Management Agreement dated 5/1/13		14	3091-3095
	Exhibit 5: 13 Symptoms of Bipolar Disorder		14	3096-3098
	Exhibit 6: Emergency Protective Order dated 1/23/18		14	3099-3101
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		14	3102-3104
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		14	3105-3118
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		14	3119-3147
56.	Opposition to Rule 60(b) Motion for Relief	05/18/18	15	3148-3168
	Exhibit 1: Declaration of Brian R. Irvine		15	3169-3172
	Exhibit 2: Transcript of Hearing, January 10, 2017		15	3173-3242

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 56)	Exhibit 3: Transcript of Hearing, December 12, 2017		15	3243-3271
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		15	3272-3280
	Exhibit 5: Attorney status according to the California Bar		15	3281-3282
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		15	3283-3290
57.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	15	3291-3299
	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		15	3300-3307
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		15	3308-3311
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		15	3312-3314
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		15	3315-3324
	Exhibit 5: Receipt		15	3325-3326
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018		15	3327-3331

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 57)	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		15	3332-3338
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		15	3339-3343
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		15	3344-3346
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		15	3347-3349
	Exhibit 11: Notice of Withdrawal of Local Counsel		15	3350-3353
58.	Order re Request for Entry of Judgment	06/04/18	15	3354-3358
59.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	15	3359-3367
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		15	3368-3385
60.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	16	3386-3402
61.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	16	3403-3409
62.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	16	3410-3441

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
63.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	16	3442-3478
64.	Judgment	12/11/18	16	3479-3481
65.	Notice of Entry of Order re Judgment	12/11/18	16	3482-3485
66.	Notice of Appeal	12/28/18	16	3486-3489
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		16	3490-3524
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		16	3525-3557
	Exhibit 3: Judgment, entered December 11, 2018		16	3558-3561
67.	Motion to Substitute Proper Party	02/22/19	16	3562-3576
68.	Addendum to Motion to Substitute Proper Party	02/26/19	16	3577-3588
69.	Opinion	08/06/20	16	3589-3597
70.	Notice of Related Action	08/19/20	16	3598-3601
	Exhibit 1: Conditional Guilty Plea in Exchange for a Stated Form of Discipline		16	3602-3612
	Exhibit 2: Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing		16	3613-3623

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 70)	Exhibit 3: Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney from Practicing Law in Nevada		17	3624-3632
71.	Order to Set Status Conference	09/18/20	17	3633-3634
72.	Order Denying Rehearing	11/03/20	17	3635
73.	Order Denying En Banc Reconsideration	02/23/21	17	3636-3637
74.	Notice of Association of Counsel	03/29/21	17	3638-3640
75.	Request for Status Conference	03/30/21	17	3641-3645
76.	Notice of Submission of Proposed Order	05/21/21	17	3646-3649
	Exhibit 1: [Plaintiffs' proposed] Order Granting in Part and Denying in Part the Willard Plaintiffs' Rule 60(b)(1) Motion for Relief		17	3650-3664
77.	Notice of Submission of Proposed Order	05/21/21	17	3665-3668
	Exhibit 1: [Defendants' proposed] Order Denying Plaintiffs' Rule 60(b) Motion for Relief on Remand		17	3669-3714
78.	Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/09/21	17	3715-3722
79.	Defendants' Opposition to Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/23/21	17	3723-3735
80.	Reply in Support of Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/29/21	17	3736-3742
81.	Order Denying Motion to Strike	09/10/21	17	3743-3749

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
82.	Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief	09/13/21	17	3750-3795
83.	Notice of Filing Cost Bond	10/11/21	17	3796-3798
84.	Notice of Appeal	10/11/21	17	3799-3802
	Exhibit 1: Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief		17	3803-3849
85.	Case Appeal Statement	10/11/21	17	3850-3855
	Transcripts			
86.	Transcript of Proceedings – Status Hearing	08/17/15	18	3856-3873
87.	Transcript of Proceedings – Hearing on Motion for Partial Summary Judgment	01/10/17	18	3874-3942
88.	Transcript of Proceedings – Pre-Trial Conference	12/12/17	18	3943-3970
89.	Transcript of Proceedings – Oral Arguments – Plaintiffs' Rule 60(b) Motion	09/04/18	18	3971-3991
90.	Transcript of Proceedings – Status Conference	04/21/21	18	3992-4010

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 4

EXHIBIT 4

2013-1-CV-245021 - L. Willard, et al vs J. Herbst, et al

Case Number: 2013-1-CV-245021
File Date: 04/19/2013
Case Status: Closed/Inactive

Court: Superior Court of Santa Clara - Civil
Case Type: Breach of Contract/Warranty Unlimited (06)

Plaintiff : Willard, Larry J.
Aliases:
TRF The Larry James Willard Trust Fund

Active Attorneys
Lead Attorney:
Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Plaintiff : Overland Development Corporation, Inc.

Active Attorneys
Lead Attorney:
Zlotoff, Stanley A.
Retained
Work Phone: 408-287-5087

Attorney: Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Plaintiff : Wooley, Edward C.
Aliases:
TRF The Wooley Intervivos Revocable Trust 2000

Active Attorneys
Lead Attorney:
Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Plaintiff : Wooley, Judith A.
Aliases:
TRF The Wooley Intervivos Revocable Trust 2000

Active Attorneys
Lead Attorney:
Moquin, Brian P.
Retained
Work Phone: 408-300-0022

Defendant : Herbst, Jerry

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Herbst, Maryanne

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Herbst, Timothy

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : JH, Inc.

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : BHI (Berry-Hinkley, Inc.)

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Terrible Herbst, Inc.

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Berger, Marc

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : X-Roads Solutions Group, LLC

Active Attorneys
Lead Attorney:
Desmond, John P
Retained
Work Phone: 775-343-7500

Defendant : Business Partners, LLC

Aliases:
SCO In Interest To Santa Barbara Bank & Trust, AKA SBB&T

Defendant : Union Bank
Aliases:
SCO By Merger To Santa Barbara Bank & Trust Aka SBB&T

Active Attorneys
Lead Attorney:
Pearson, Stephen W.
Retained
Work Phone: 831-424-1414

07/09/2013 Judgment

Judgment Type: Dismissal - No ADR (CV)

Party
Name: Business Partners, LLC

01/23/2014 Judgment

Judgment Type: Dismissal - No ADR (CV)

Party
Name: Union Bank

05/19/2014 Judgment

Judgment Type: Dismissal - No ADR (CV)

Party
Name: X-Roads Solutions Group, LLC

Party
Name: Berger, Marc

Party
Name: Terrible Herbst, Inc.

Party
Name: BHI (Berry-Hinkley, Inc.)

Party
Name: JH, Inc.

Party

Name: Herbst, Timothy

Party
Name: Herbst, Maryanne

Party
Name: Herbst, Jerry

Party
Name: Wooley, Judith A.

Party
Name: Wooley, Edward C.

Party
Name: Overland Development Corporation, Inc.

Party
Name: Willard, Larry J.

04/19/2013 Civil Case Cover Sheet
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Case Cover Sheet Decision = M Closed = 04/19/2013

04/19/2013 Complaint (Unlimited) (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = Atty: Goldblatt, (408) 848-4396 Legacy Name = CV Complaint Filed/Summs Issued Decision = M Closed = 04/19/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/19/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/19/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed

Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

04/19/2013 Summons: Issued/Filed
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Summons Filed Decision = M Closed = 04/22/2013

05/10/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/10/2013

05/10/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/10/2013

05/14/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/14/2013

05/22/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/22/2013

05/22/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/22/2013

05/24/2013 Declaration: Non-Service
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl:Non-Service Decision = M Closed = 05/24/2013

05/24/2013 Declaration: Non-Service
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl:Non-Service Decision = M Closed = 05/24/2013

05/24/2013 Declaration: Non-Service
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl:Non-Service Decision = M Closed = 05/24/2013

05/29/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 05/31/2013

07/09/2013 Request: Dismissal
Judicial Officer: Kirwan, Peter
Comment: Text = with prejudice as to def Business Partners LLC only by atty Steven Goldblatt Legacy Name = CV Req:Dismissal, Partial Decision = M Closed = 07/10/2013

07/18/2013 Answer (Unlimited) (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = Atty: Desmond Legacy Name = CV Answer, Unltd, w/fees Decision = M Closed = 07/18/2013

07/18/2013 Motion: Quash
Judicial Officer: Kirwan, Peter
Comment: Text = service of summons & complt and/or dismiss or stay Complt Atty: Desmond 10/10/13, 9am, d8 Legacy Name = CV Ntc:Mtn to Quash Decision = M Closed = 07/18/2013

07/18/2013 Motion: Other
Judicial Officer: Kirwan, Peter
Comment: Text = service of summons & complt and/or dismiss or stay Complt Atty: Desmond 10/10/13, 9am, d8 Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 07/18/2013

07/18/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 07/18/2013

07/19/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = **DENIED BY JUDGE KIRWAN WITHOUT SINGING AN ORDER** for an Order to exceed page limits on Memo ofo P's & A's by Def (John P. Desmond) Legacy Name = CV Ex Parte Appl Decision = M Closed = 07/19/2013

07/23/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = for ost for mtn for sum jgmt; decl of Wooley An Willard in sup thereof; memo p&as, L. Steven Goldblatt Legacy Name = CV Ex Parte Appl Decision = M Closed = 07/23/2013

07/23/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Text = ex parte appl for ost for mtn for sum jgmt L. Steven Goldblatt Legacy Name = CV Memo:Ps & As/Suppt of Mtn Decision = M Closed = 07/23/2013

07/23/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Text = of shorten time for ost for mtn for sum jgmt L. Steven Goldblatt Legacy Name = CV Memo:Ps & As/Suppt of Mtn

Decision = M Closed = 07/23/2013

07/24/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = Denied not a proper basis for Ex Parte Rrequest by Judge Kirwan Legacy Name = CV Ex Parte Order Decision = M Closed = 07/24/2013

07/29/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = order re: ex parte application to exceed the page limit - Denied, no good cause shown; signed by Judge Kirwan Legacy Name = CV Ex Parte Order Decision = D Closed = 07/29/2013

08/01/2013 Motion: to be Relieved as Counsel
Judicial Officer: Kirwan, Peter
Comment: Text = 8/27/13 at 9am, dept 8; atty Goldblatt Legacy Name = CV Ntc:Mtn/Relieve as Counsel Decision = M Closed = 08/01/2013

08/01/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 08/01/2013

08/06/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = atty Goldblatt Legacy Name = CV Case Mgmt Statement Decision = M Closed = 08/06/2013

08/07/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = J. Desmond Legacy Name = CV Case Mgmt Statement Decision = M Closed = 08/07/2013

08/07/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = telephonic appearance Legacy Name = CV Ntc of... Decision = M Closed = 08/07/2013

08/08/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = for cont cmc (John Desmond) Legacy Name = CV Ex Parte Appl Decision = M Closed = 08/08/2013

08/08/2013 Answer (Unlimited) (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = (JOHN P. DESMOND) Legacy Name = CV First Paper Def - Unltd Decision = M Closed = 08/08/2013

08/08/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = request for cont. of cmc is DENIED Legacy Name = CV Ex Parte Order Decision = D Closed = 08/08/2013

08/08/2013 Notice: Appearance
Judicial Officer: Kirwan, Peter
Comment: Text = atty Stephen Pearson Legacy Name = CV Ntc of Appearance Decision = M Closed = 08/08/2013

08/09/2013 Application: Ex Parte (Fee Applies)
Judicial Officer: Kirwan, Peter
Comment: Text = for an Order to Continue CMC by Def (John P. Desmond) Legacy Name = CV Ex Parte Appl Decision = M Closed = 08/09/2013

08/09/2013 Order: Ex Parte
Judicial Officer: Kirwan, Peter
Comment: Text = to reschedule cmc: CMC is cont'd to 9-24-13, 10am, dept. 8, granted by Judge Kirwan Legacy Name = CV Ex Parte Order Decision = G Closed = 08/09/2013

08/12/2013 Motion: to be Relieved as Counsel
Judicial Officer: Kirwan, Peter
Comment: Text = 8-27-13, 9am, dept. 8, L. Steven Goldblatt Legacy Name = CV Ntc:Mtn/Relieve as Counsel Decision = M Closed = 08/12/2013

08/12/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = telephonic appearance of Defs Counsel for Motion to be Relieved as Counsel (John P. Desmond) 8-27-13 @9am in d8 Legacy Name = CV Ntc of... Decision = M Closed = 08/12/2013

08/12/2013 Request: Telephonic Appearance
Judicial Officer: Kirwan, Peter
Comment: Text = for mtn to quash Legacy Name = CV Ntc:Intent/Appear by Phone Decision = M Closed = 08/12/2013

08/13/2013 Conference: Case Management
Original Type: Conference: Case Management
Judicial Officer: Kirwan, Peter
Hearing Time: 3:00 PM
Result: Set for: further CMC
Comment: Result By = K Result Judge = PK - Kirwan, Peter Result Date = 08/09/2013

08/27/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter

08/27/2013 Motion: Withdraw as attorney
Original Type: Motion: Withdraw as attorney
Judicial Officer: Arand, Mary E
Hearing Time: 9:00 AM
Result: Heard: Denied
Comment: Text = Plf Edward C. Wooley (L. Steven Goldblatt) Result By = C Result Judge = PK - Kirwan, Peter Result Date = 08/27/2013

08/27/2013 Motion: Withdraw as attorney
Original Type: Motion: Withdraw as attorney
Judicial Officer: Arand, Mary E
Hearing Time: 9:00 AM
Result: Heard: Denied
Comment: Text = Larry J. Willard (L. Steven Goldblatt) *Court Reporter Fee Due* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 08/27/2013

09/04/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 09/04/2013

09/04/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 09/04/2013

09/04/2013 Proof of Service: Summons DLR (Civil)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Proof of Svc Compl/Pet/Summons Decision = M Closed = 09/04/2013

09/04/2013 Motion: Strike
Judicial Officer: Kirwan, Peter
Comment: Text = 10-10-13, 9am, d.8; atty goldblatt Legacy Name = CV Ntc:Mtn to Strike Decision = M Closed = 09/04/2013

09/04/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 09/04/2013

09/04/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Memo:Ps & As/Suppt of Mtn Decision = M Closed = 09/04/2013

09/04/2013 Declaration
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Declaration Decision = M Closed = 09/04/2013

09/17/2013 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = atty goldblatt Legacy Name = CV Case Mgmt Statement Decision = M Closed = 09/17/2013

09/18/2013 Motion: Leave
Judicial Officer: Kirwan, Peter
Comment: Text = complaint; 10-10-13, 9am, d.8; atty goldblatt Legacy Name = CV Ntc:Mtn for Leave to Amend Decision = M Closed = 09/18/2013

09/18/2013 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Court Reporter Per Diem Fees Decision = M Closed = 09/18/2013

09/18/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Memo:Ps & As/Suppt of Mtn Decision = M Closed = 09/18/2013

09/18/2013 Declaration: In Support
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl in Support Decision = M Closed = 09/18/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = to dismiss or stay cmplt J. Desmond 10/10/13, 9a, D-8 Legacy Name = CV Amended Pleading Decision = M Closed = 09/20/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = to quash service of summons & cmplt J. Desmond 10/10/13, 9a, D8 Legacy Name = CV Amended Pleading Decision = M Closed = 09/20/2013

09/20/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = of telephonic appearance Legacy Name = CV Ntc of... Decision = M Closed = 09/20/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = amended mtn to quash summons & cmplt Legacy Name = CV Amended Pleading Decision = M Closed =

09/20/2013

09/20/2013 Pleading: Amended
Judicial Officer: Kirwan, Peter
Comment: Text = mtn to dismiss or stay cmplt Legacy Name = CV Amended Pleading Decision = M Closed = 09/20/2013

09/24/2013 Opposition/Objections
Judicial Officer: Kirwan, Peter
Comment: Text = to mtn to quash; 10-10-13, 9a, d.8; atty goldblatt Legacy Name = CV Opposition Decision = M Closed = 09/24/2013

09/24/2013 Memorandum: Points and Authorities
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Memo:Ps & As/Opposn to Mtn Decision = M Closed = 09/24/2013

09/24/2013 Declaration: In Support
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl in Support Decision = M Closed = 09/24/2013

09/24/2013 Declaration: In Support
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = CV Decl in Support Decision = M Closed = 09/24/2013

09/24/2013 Substitution: Attorney
Judicial Officer: Kirwan, Peter
Comment: Text = old goldblatt new zlotoff Legacy Name = CV Substitution of Attorney Decision = M Closed = 09/24/2013

09/24/2013 Conference: Further Case Management
Original Type: Conference: Further Case Management
Judicial Officer: Kirwan, Peter
Hearing Time: 10:00 AM
Result: Referral: Mediation
Comment: Text = Set per 8-09-13 Order *Telephonic Appearance by John P. Desmond for Def Barry-Hinckley Industries; and Stephen W. Pearson for Def Union Bank, Successor in Interest to Santa Barbara Bank & Trust* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 09/24/2013

09/25/2013 Errata
Judicial Officer: Kirwan, Peter
Comment: Text = To answer to complt; Atty Desmond Legacy Name = CV Errata Decision = M Closed = 09/25/2013

09/25/2013 Objection: Evidence
Judicial Officer: Kirwan, Peter
Comment: Text = in sup of mtn to strike, John P. Demond Legacy Name = CV Obj:Evidence Decision = M Closed = 09/25/2013

09/25/2013 Opposition/Objections
Judicial Officer: Kirwan, Peter
Comment: Text = to mtn to strike answer & enter def's default, J. Desmond Legacy Name = CV Opposition Decision = M Closed = 09/25/2013

09/26/2013 Notice of Hearing (no fee)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = ARB-Ntc of Mediation Status Conf Decision = M Closed = 09/26/2013

09/26/2013 Motion: Strike
Original Type: Motion: Strike
Judicial Officer: Kirwan, Peter
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = Answer by Plts Larry J. Willard and Judith Wooley (L. Steven Goldblatt) *Off Calendar by Moving Party, moved to 10/10/13--rta)* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 09/09/2013

10/01/2013 Notice of Hearing (no fee)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = ARB-Ntc of Mediation Status Conf Decision = M Closed = 10/01/2013

10/01/2013 Notice of Hearing (no fee)
Judicial Officer: Kirwan, Peter
Comment: Legacy Name = ARB-Ntc of Mediation Status Conf Decision = M Closed = 10/01/2013

10/03/2013 Response/Reply
Judicial Officer: Kirwan, Peter
Comment: Text = to Plt's Opposition to Def's Motion to Quash Service of Summons and Complaint by Def (John P. Dessmond) 10-10-13 29am in D-8 Legacy Name = CV Reply Decision = M Closed = 10/03/2013

10/10/2013 Stipulation and Order
Judicial Officer: Kirwan, Peter
Comment: Text = stip and order for leave to file 1st amended complaint; Granted by Judge Kirwan Legacy Name = CV Stip & Order/$20 fee Decision = G Closed = 10/10/2013

10/10/2013 Motion: Quash
Original Type: Motion: Quash

Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = Service of Summons and/or to Dismiss or Stay Complaint by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond) *Off Calendar by Moving Party Per Cindy/rta 10/7/13* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 10/07/2013

10/10/2013 Motion: Strike
Original Type: Motion: Strike
Judicial Officer: Kirwan, Peter
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = Defendant's Answer and Enter Default by Plts Larry J. Willard and Judith Wooley (L. Steven Goldblatt) *Off Calendar per Stanley Zlotoff for Steven Goldblatt - md 10/7/13* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 10/07/2013

10/10/2013 Motion: Leave to File
Original Type: Motion: Leave to File
Judicial Officer: Kirwan, Peter
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = a First Amended Complaint by Plts Larry J. Willard and Judith Wooley (L. Steven Goldblatt) *Off Calendar per Stanley Zlotoff for Steven Goldblatt - md 10/7/13* Result By = C Result Judge = PK - Kirwan, Peter Result Date = 10/07/2013

10/21/2013 Substitution: Attorney
Judicial Officer: Kirwan, Peter
Comment: Text = old: goldblatt new: zlotoff Legacy Name = CV Substitution of Attorney Decision = M Closed = 10/21/2013

10/24/2013 Notice
Judicial Officer: Kirwan, Peter
Comment: Text = of telephonic appearance. atty Desmond Legacy Name = CV Ntc of... Decision = M Closed = 10/24/2013

01/16/2014 Statement: Case Management Conference
Judicial Officer: Kirwan, Peter
Comment: Text = atty pearson Legacy Name = CV Case Mgmt Statement Decision = M Closed = 01/16/2014

01/23/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old atty zlotoff, new atty Goldblatt Legacy Name = CV Substitution of Attorney Decision = M Closed = 01/23/2014

01/23/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old atty zlotoff, new atty Goldblatt Legacy Name = CV Substitution of Attorney Decision = M Closed = 01/23/2014

01/23/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old pro per , new atty Goldblatt Legacy Name = CV Substitution of Attorney Decision = M Closed = 01/23/2014

01/23/2014 Notice: Association/Co-Counsel
Judicial Officer: Lucas, Patricia M
Comment: Text = Associating counsel Tim W. English 408-605-8068 Legacy Name = CV Association of Attys Decision = M Closed = 01/23/2014

01/23/2014 Statement: Case Management Conference
Judicial Officer: Lucas, Patricia M
Comment: Text = atty goldblatt Legacy Name = CV Case Mgmt Statement Decision = M Closed = 01/23/2014

01/23/2014 Request: Dismissal
Judicial Officer: Lucas, Patricia M
Comment: Text = as to all causes of action as to Def Union Bank/only filed by Attorney L. Steven Goldblatt Legacy Name = CV Req:Dismissal, Partial Decision = M Closed = 01/24/2014

01/24/2014 Statement: Case Management Conference
Judicial Officer: Lucas, Patricia M
Comment: Text = Atty Desmond. Legacy Name = CV Case Mgmt Statement Decision = M Closed = 01/24/2014

01/24/2014 Proof of Service: Mail
Judicial Officer: Lucas, Patricia M
Comment: Text = req/dismiss Legacy Name = CV Proof of Svc/Regular Mail Decision = M Closed = 01/24/2014

01/30/2014 Review: Mediation Status
Original Type: Review: Mediation Status
Judicial Officer: Lucas, Patricia M
Hearing Time: 10:30 AM
Result: Mediated: not settled
Comment: Text = Court Call by John P. Desmond For Defendant(s), Barry-Hinckley Industries and Stephen W. Pearson Defendant(s), Union Bank (successor in interest to Santa Barbara Bank & Trust) Result By = C Result Judge = PML - Lucas,

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second amended motion to quash service of summons and complaint, 03/18/14 at 9am dept 2 atty desmond Legacy Name = CV Ntc:Motion/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second amended motion to quash service of summons and complaint, 03/18/14 at 9am dept 2 atty desmond Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded ntc of motion to dismiss, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Ntc:Motion/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded motion to dismiss, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded ntc of motion to quash, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Ntc:Motion/no fee Decision = M Closed = 02/11/2014

02/11/2014 Motion: Other
Judicial Officer: Lucas, Patricia M
Comment: Text = second ameneded of motion to quash, 03/18/14 at 9am, dept 2 atty desmond. Legacy Name = CV Mtn:Other/no fee Decision = M Closed = 02/11/2014

02/13/2014 Disassociation of Counsel
Judicial Officer: Lucas, Patricia M
Comment: Text = Disassociating Atty English Legacy Name = CV Disassociation of Counsel Decision = M Closed = 02/19/2014

02/13/2014 Proof of Service
Judicial Officer: Lucas, Patricia M
Comment: Legacy Name = CV Proof of Svc Decision = M Closed = 02/19/2014

02/21/2014 Request: Telephonic Appearance
Judicial Officer: Lucas, Patricia M
Comment: Text = 03/18/14 @ 9am Legacy Name = CV Ntc:Intent/Appear by Phone Decision = M Closed = 02/21/2014

02/21/2014 Request: Telephonic Appearance
Judicial Officer: Lucas, Patricia M
Comment: Text = 04/29/14 @ 10am Legacy Name = CV Ntc:Intent/Appear by Phone Decision = M Closed = 02/21/2014

02/24/2014 Application: Ex Parte (Fee Applies)
Judicial Officer: Lucas, Patricia M
Comment: Text = to reschedule the hearing on the motion to stay discovery or, alternatively motion for protective order and sanctions Legacy Name = CV Ex Parte Appl Decision = M Closed = 02/24/2014

02/24/2014 Motion: Stay
Judicial Officer: Lucas, Patricia M
Comment: Text = discovery or mtn for protective Order and sanctions Atty: Desmond 4/4/14, 9am, D19 Legacy Name = CV Mtn to Stay Decision = M Closed = 02/24/2014

02/24/2014 Court Reporter Per Diem Fees - Half Day
Judicial Officer: Lucas, Patricia M
Comment: Legacy Name = CV Court Reporter Fee < 1 Hour Decision = M Closed = 02/24/2014

02/24/2014 Notice
Judicial Officer: Lucas, Patricia M
Comment: Text = telephonic appearance for hrg on mtn to stay discovery Legacy Name = CV Ntc of... Decision = M Closed = 02/24/2014

03/06/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/06/2014

03/06/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/06/2014

03/06/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/06/2014

03/13/2014 Request: Telephonic Appearance

Comment: Legacy Name = CV Req:Appear Telephonically Decision = M Closed = 03/13/2014

03/13/2014 Substitution: Attorney
Judicial Officer: Lucas, Patricia M
Comment: Text = old L. Goldblatt; new Brian Moquin Legacy Name = CV Substitution of Attorney Decision = M Closed = 03/13/2014

03/13/2014 Stipulation
Judicial Officer: Lucas, Patricia M
Comment: Text = to take pending hrgs off cal Legacy Name = CV Stipulation Decision = M Closed = 03/13/2014

03/18/2014 Motion: Quash
Original Type: Motion: Quash
Judicial Officer: Lucas, Patricia M
Hearing Time: 9:00 AM
Result: Moot
Comment: Text = Service of Summons and Complaint by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond) Result By = C Result Judge = PML - Lucas, Patricia Result Date = 03/18/2014

03/18/2014 Hearing: Dismissal
Original Type: Hearing: Dismissal
Judicial Officer: Lucas, Patricia M
Hearing Time: 9:00 AM
Result: Heard: Granted
Comment: Text = Pursuant to CCP 418.10 by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond) Result By = C Result Judge = PML - Lucas, Patricia Result Date = 03/18/2014

04/04/2014 Motion: Stay
Original Type: Motion: Stay
Judicial Officer: Manoukian, Socrates P
Hearing Time: 9:00 AM
Result: Off Calendar (before hearing)
Comment: Text = for Discovery Pending Resolution of Certain Defs' Second Amended Motions to Quash Serivce of Summons and Second Amended Motion to Dismiss, Alternatively, Motion for Protective Order by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH, Inc., Berry-Hinckley Industries, Terrible Herbst, Inc. Marc Berger, and X-Roads Solutions Group (John Desmond) *Off Calendar by Moving Party/Cindy Grisntead ms 3/14/14* Result By = C Result Judge = SPM - Manoukian, Socrates Result Date = 03/14/2014

05/01/2014 Review: Case Status
Original Type: Review: Case Status
Judicial Officer: Stoelker, James L
Hearing Time: 10:00 AM
Result: Continued: Court
Comment: Text = Re: Status *Court Call by John P. Desmond For Defendant(s), Barry-Hinckley Industries* Result By = C Result Judge = JLS - Stoelker, James Result Date = 05/01/2014

05/08/2014 Notice
Judicial Officer: Lucas, Patricia M
Comment: Text = telephonic appearance of defendants counsel for hearing on status of case. Atty John Desmond Legacy Name = CV Ntc of... Decision = M Closed = 05/08/2014

05/19/2014 Dismissal
Judicial Officer: Lucas, Patricia M
Comment: Text = as to the Complaint/filed by Attorney Brian P. Moquin *This closes the Case* Legacy Name = CV Req:Dismissal, Partial W/O Prej Decision = M Closed = 05/21/2014

06/12/2014 Review: Case Status
Original Type: Review: Case Status
Judicial Officer: Lucas, Patricia M
Hearing Time: 10:00 AM
Result: Vacated; dismissal filed
Comment: Text = Re: Status *Continued from 5/01/14* Result By = C Result Judge = PML - Lucas, Patricia Result Date = 05/19/2014

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CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 5

EXHIBIT 5

JOHN P. DESMOND, ESQ.
California Bar No. 176430
GORDON SILVER
100 W. Liberty Street
Suite 940
Reno, Nevada 89501
Telephone: (775) 343-7500
Facsimile: (775) 786-0131
E-Mail: jdesmond@gordonsilver.com

Attorneys for Defendants

FILED
2014 FEB 11 P 3:50
By: Gagliardi

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA, SAN JOSE DIVISION

LARRY J. WILLARD, Trustee of the LARRY JAMES WILLARD TRUST FUND, OVERLAND DEVELOPMENT CORPORATION, INC., EDWARD C. WOOLEY and JUDITH A. WOLLEY, Trustees of the EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTERVIVOS REVOCABLE TRUST 2000,

Plaintiff,

vs.

JERRY HERBST, MARYANNE HERBST, TIMOTHY HERBST, JH, INC., and its wholly owned subsidiary, BHI (BERRY-HINCKLEY, INC.), TERRIBLE HERBST, INC., MARC BERGER, X-ROADS SOLUTIONS GROUP, LLC, BUSINESS PARTNERS, LLC, UNION BANK (successor in interest to SANTA BARBARA BANK & TRUST, *aka* SBB&T),

Defendants.

Case No. 113CV245021

Dept. 2

SECOND AMENDED MOTION TO DISMISS

Defendants Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH, Inc., Berry-Hinkley Industries, Terrible Herbst, Inc., Marc Berger, and X-Roads Solutions Group (collectively "Defendants"), by and through their counsel of record, Gordon Silver, move this Court to dismiss or stay the Complaint. This Motion to Quash is being re-filed with the Court at this time because of Plaintiffs' failure to file a first amended complaint despite a court order permitting them to do so.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This is an action for breach of lease agreements and guaranty agreements that were entered into by Jerry Herbst and Berry-Hinckley Industries ("BHI") and two separate and distinct groups of Plaintiffs. In 2007, JH, a Nevada holding corporation, entered into a transaction to purchase all of the issued and outstanding stock of BHI, a Nevada corporation operating gas stations and convenience stores in Northern Nevada. At the time, BHI was the lessee of the property at issue in this case. Specifically, BHI leased one parcel of Nevada real property from Overland Development Corporations Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (the "Willard Plaintiffs"). BHI also leased two parcels of Nevada real property from Edward C. Wooley and Judith A. Wooley (the "Wooley Plaintiffs").

The three lease agreements contain an identical forum selection clause identifying Nevada as the proper forum for any action or proceeding arising out of the lease. Section 38(H) of the lease agreements contains a general consent to Nevada jurisdiction and provides the Plaintiffs with the right 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." As all of the real property at issue in this case is located in Nevada, the contract requires any lawsuit to be maintained in Nevada.

At the time JH purchased the stock of BHI, BHI entered into amended lease agreements with the Willard Plaintiffs and the Wooley Plaintiffs. BHI negotiated and entered into these agreements in Nevada. The amended lease agreements all expressly incorporate the forum selection provisions contained in Section 38(H) of the original contracts, thus designating Nevada as the proper forum for litigation.

In or around the same time, Jerry Herbst, a Nevada resident and domiciliary, negotiated and entered into a guaranty agreement with the Willard Plaintiffs in Nevada. Mr. Herbst also negotiated and entered into two guarantees with the Wooley Plaintiffs in Nevada. Each of the three guarantees contains a choice of law provision providing that the contracts are governed by Nevada law.

The Willard and Wooley Plaintiffs, claiming that the guarantees and lease agreements were breached, have now joined forces to sue numerous defendants that have nothing to do with the allegations in the Complaint and who are not parties to the underlying lease agreements. The Court should dismiss this case in order to enforce the forum selection clauses contained in the Lease Agreements. Alternatively, in light of the fact this is a Nevada action involving Nevada individuals and entities and the lease of Nevada real property, this action should be stayed or dismissed pursuant to the doctrine of forum non conveniens.

II. FACTUAL BACKGROUND

The allegations in the Complaint refer to two separate and distinct transactions. The only similarity between the transactions is that they involve the same defendants. The Plaintiffs are wholly separate as are the referenced leaseholds.

A. Procedural History

Plaintiffs originally filed the Complaint in this matter on April 19, 2013 (the "Complaint"). On July 18, 2013, prior to filing an answer or making a general appearance, certain Defendants filed a Motion to Quash Service of Summons and/or to Dismiss or Stay Complaint (the "Consolidated Motion"). The Consolidated Motion exceeded the maximum allowable page limit. Therefore, on September 20, 2013, the moving Defendants bifurcated the Consolidated Motion and filed an Amended Motion to Dismiss or Stay Complaint and an Amended Motion to Quash Service of Summons and Complaint (collectively, the "Amended Motions"). Prior to a hearing on the Amended Motions, on October 9, 2013, Defendants and Plaintiffs entered into a Stipulation and [Proposed] Order for Leave to File First Amended Complaint (the "Stipulation"). The Stipulation expressly provided that Plaintiffs were permitted to file a First Amended and Verified Complaint (the "First Amended Complaint"), in the form attached as an exhibit to the Stipulation, adding additional claims and parties. The Stipulation also provided that the Amended Motions were to be deemed withdrawn upon the filing of the First Amended Complaint, without prejudice to Defendants' ability to re-file them and challenge the jurisdiction of this Court and the sufficiency of the Plaintiffs claims by renewing the Amended Motions. Thereafter, on October 9, 2013, the Court entered an order

affirming the terms of the Stipulation, and expressly permitting the filing of the First Amended Complaint (the "Order").

The Order was entered by the Court nearly four (4) months ago on October 9, 2013. Notwithstanding this Court's Order, and repeated requests by Defendants (See Order, **Exhibit 1**), Plaintiffs have failed to file the First Amended Complaint. Even though Plaintiffs have failed to file the First Amended Complaint, Plaintiffs have recently sought written discovery from Defendants (See Discovery dated February 3, 2014 [unsigned], **Exhibit 2**), are seeking to engage in mediation (See **Exhibit 3**) and have recently informed Defendants that they intend to commence certain motion practice (See **Exhibit 4**) relating to claims and parties who are included in the unfiled first amended complaint. As such, Defendants hereby renew the previously filed Amended Motions. Because the only operative complaint on file is the original Complaint filed on April 19, 2013, this Motion attacks jurisdiction based on the allegations contained therein.

B. Parties

Plaintiff Larry J. Willard ("Willard") is the trustee of the Larry James Willard Trust. (Compl. ¶ 3, on file herein.) Mr. Willard is the co-owner and lessor of 7695 – 7699 South Virginia Street, Reno, Nevada. *Id.* ¶ 4. Mr. Willard is also the president of Overland Development Corporation, Inc. *Id.* ¶ 4. Mr. Willard is a resident of Santa Clara County. *Id.* ¶ 3.

Plaintiffs Edward C. Wooley and Judith A. Wooley (the "Wooleys") are the trustees of the Wooley Intervivos Revocable Trust 2000, which is the co-owner and lessor of 1365 Baring Blvd, Sparks, Nevada. *Id.* ¶ 7. The current residence of the Wooleys is unknown. *Id.* However, the Wooleys do not reside in Santa Clara County and their connection to the State of California is unknown. *Id.*

Defendant Jerry Herbst is a resident and domicillary of the State of Nevada and resides in Las Vegas, Nevada. (Decl. of J. Herbst ¶ 2, **Exhibit 5**.) Mr. Herbst is the president, treasurer, secretary, director and sole shareholder of JH, Inc. ("JH"). *Id.* ¶ 3. Mr. Herbst is also the President of Berry-Hinckley Industries ("BHI"), a wholly-owned subsidiary of JH. *Id.* ¶ 4. Finally, Mr. Herbst is the President and sole shareholder of Terrible Herbst, Inc. ("THI"). *Id.* ¶

10.

Defendant Maryanne Herbst is the wife of Jerry Herbst. (Decl. of M. Herbst ¶ 3, **Exhibit 6.**) Mrs. Herbst is a resident and domiciliary of the State of Nevada and resides in Las Vegas, Nevada. Contrary to the allegations in the Complaint, Mrs. Herbst does not reside in the State of California. *Id.* ¶ 2. Mrs. Herbst is not an officer, director or employee of JH, Inc. or Berry-Hinckley Industries. *Id.* ¶ 4.

Defendant Tim Herbst is one of sons of Jerry Herbst. (Decl. of T. Herbst ¶ 3, **Exhibit 7.**) Tim Herbst is a resident and domiciliary of the State of Nevada and resides in Las Vegas, Nevada. *Id.* ¶ 2. Mr. Tim Herbst is the Treasurer of BHI. *Id.* ¶ 5.

Defendant JH is a Nevada corporation headquartered in Reno, Nevada. (Decl. of J. Herbst ¶ 5, **Exhibit 5.**) JH is a holding company and does not own any other assets nor does it engage in any independent business activity of any kind. *Id.* ¶ 5. All of JH's business activity associated with owning BHI occurs in Nevada. *Id.* ¶ 5.

JH does not maintain an office in California. *Id.* ¶ 6. JH does not advertise or solicit business in California and does not make any business decisions in California. *Id.* ¶ 6. JH does not lease or own any property in California. *Id.* ¶ 6.

BHI is a Nevada corporation headquartered in Reno, Nevada. *Id.* ¶ 4. BHI is the owner and operator of gas stations and convenience stores in Northern Nevada. *Id.* ¶ 7. BHI does not engage in any business in California. *Id.* ¶ 7. BHI does not maintain an office in California, and does not have any officer, director or employees within the State of California. *Id.* ¶ 7. BHI does not advertise or solicit business in California and does not make any business decisions in California. *Id.* ¶ 8. BHI does not lease or own any property in California. *Id.* ¶ 9.

C. <u>The Willard Transaction</u>

On or about November 18, 2005, BHI entered into a Lease Agreement with Overland Development Corporation Inc. *dba* LJW Enterprises Trust for the lease of 7695-7699 South Virginia, Reno, Nevada. (S. Virginia Lease Agreement, **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5.**) The Lease Agreement explicitly provides that any action or proceeding arising out of the Lease must be commenced in the State of Nevada. *Id.* § 38(H).

///

At the time the Lease Agreement was entered into, the Chief Executive Officer of BHI was Paul Morabito and the stock of BHI was owned by P.A. Morabito & Co., Limited ("PAMCO"). *Id.* at 28; (ARSPA, **Exhibit 8.**) On or about June 28, 2007, JH entered into an Amended and Restated Stock Purchase Agreement ("ARSPA") with PAMCO, whereby JH purchased all of the issued and outstanding stock of BHI. (ARSPA, **Exhibit 8**)

On or about March 9, 2007, Mr. Herbst entered into a Guaranty Agreement (the "Willard Guaranty Agreement") with Willard and Overland (collectively, the "Willard Plaintiffs") to amend the Lease to reflect the transaction that led to the ARSPA. (Compl. ¶ 6, Guaranty Agreement, Exhibit 1 to the Compl.) Pursuant to the Agreement, Mr. Herbst agreed to guaranty certain obligations of BHI under the lease with the Willard Plaintiffs. (Guaranty Agreement, Exhibit 1 to the Compl.) The Willard Guaranty Agreement contains the following choice of law provision: "This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles." *Id.* ¶ 7.

On or about March 9, 2007, BHI entered into an Amendment to Lease Agreement with Overland Development Corp., *dba* LJW Enterprises Inc. and Larry Willard, Trustee of the Larry James Willard Trust. (Amendment to Lease Agreement, **Exhibit B** to the Declaration of J. Herbst, **Exhibit 5.**) Mr. Willard claims to have executed the agreement in on or about March 9, 2007, in Santa Clara, California. *Id.* BHI, through Trevor Lloyd, its Corporate Secretary at the time, signed the lease in Washoe County, Nevada, on June 19, 2007, more than three months after it was signed by Larry Willard. *Id.*

D. <u>The Wooley Transactions</u>

On or about January of 2006, BHI entered into a Lease Agreement with Edward C. Wooley and Judith A. Wooley, for the property located at U.S. Highway 50 in Sparks, Nevada. (US Highway 50 Lease Agreement, **Exhibit E** to the Declaration of J. Herbst, **Exhibit 5.**) In 2006, BHI also entered into a Lease Agreement with the Wooley Plaintiffs for the property located at 1365 Baring Blvd., Sparks, Nevada. (Baring Lease Agreement, **Exhibit C** to the Declaration of J. Herbst, **Exhibit 5.**) Both agreements expressly provide that any action or

proceeding arising out of the Lease must be commenced in the State of Nevada. (US Highway 50 Lease Agreement § 38(H), **Exhibit E** to the Declaration of J. Herbst, **Exhibit 5**; Baring Lease Agreement § 38(H), **Exhibit C** to the Declaration of J. Herbst, **Exhibit 5.**)

At the time the Lease Agreements were executed, the Chief Executive Officer of BHI was Paul Morabito and the stock of BHI was owned by P.A. Morabito & Co., Limited ("PAMCO"). *Id.* at 28; (ARSPA, **Exhibit 8.**) On or about June 28, 2007, JH entered into an Amended and Restated Stock Purchase Agreement ("ARSPA") with PAMCO, whereby JH purchased all of the issued and outstanding stock of BHI. (ARSPA, **Exhibit 8.**)

Jerry Herbst also entered into two Guaranty Agreements (the "Wooley Guaranty Agreements") with the Wooley Plaintiffs. (Wooley Guaranty Agreement, Exhibit 2 to the Compl.) Pursuant to the Agreements, Mr. Herbst agreed to guaranty certain obligations of BHI under the leases with Mr. and Mrs. Wooley. *Id.* The Wooley Guaranty Agreements each contain the following choice of law provision: "This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles." *Id.* ¶ 7.

D. Plaintiffs Improperly Filed This Action in California

Despite the unequivocal choice of law and venue provisions, along with the nature of this dispute regarding real property located in Nevada, Plaintiffs inexplicably filed this action in the Superior Court of the State of California on or about April 17, 2013. (Compl.) The gravamen of the actions consists of Plaintiffs' allegations that BHI and Mr. Herbst breached the three leases and the three guaranty agreements by failing to remit the March 1, 2013 payments due under the leases. (Compl. ¶ 19.) The Complaint sets forth eleven (11) claims for relief. *Id.*

III. DISCUSSION

In the event this Court denies Defendants' Motion to Quash and finds the existence of personal jurisdiction, the Court should still dismiss all or part of this case for the following reasons: (1) the contracts at issues contain Nevada choice of law and venue provisions; (2) the doctrine of forum non conveniens; and (3) Plaintiffs' claim for tortious interference with contract fails to state a claim upon which relief can be granted.

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A. **The Court Should Dismiss this Action Pursuant to the Nevada Choice of Law and Venue Provisions in the Relevant Contracts**

The Court should dismiss this action as the underlying Lease Agreements **require** Plaintiffs to file suit in Nevada. Specifically, both the Lease Agreements and their amendments provide that any action to enforce any rights under such agreement must be brought in Nevada.

California courts may dismiss a complaint in order to enforce a forum selection clause. *Miller-Leigh LLC v. Henson*, 152 Cal. App. 4th 1143, 1146, 62 Cal. Rptr. 3d 83, 85 (2007); Code of Civil Procedure 410.30. "A forum selection clause is valid in the absence of the resisting party meeting a heavy burden of proving enforcement of the clause would be unreasonable under the circumstances of the case." *Bancomer, S. A. v. Superior Court*, 44 Cal. App. 4th 1450, 1457, 52 Cal. Rptr. 2d 435 (1996) (citing *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal.3d 491, 496, 131 Cal.Rptr. 374, 551 P.2d 1206 (1976)). A party opposing enforcement of a forum selection clause bears the burden of showing it "will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court. Absent that, there is no basis for concluding that it would be unfair, unjust, or unreasonable to hold that party to his bargain." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972).

In this case, each of the Lease Agreements contains the following identical choice of forum provision:

> 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 the Lease.**

(S. Virginia Lease Agreement § 38(H), **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5**; US Highway 50 Lease Agreement § 38(H), **Exhibit E** to the Declaration of J. Herbst, **Exhibit 5**; Baring Lease Agreement § 38(H), **Exhibit C to the Declaration of J. Herbst, Exhibit 5**) (emphasis added). This provision was expressly adopted by each of the amendments to the Lease Agreements. (Amendments to Lease Agreements § 6, **Exhibits B, D,** and **F** to the Declaration of J. Herbst, **Exhibit 5.**)

"It is a general rule governing the construction of contracts that unless a contract is ambiguous, its meaning must be determined from the words used." *S. California Gas Co. v. Ventura Pipe Line Const.Co.*, 150 Cal. App. 2d 253, 257, 309 P.2d 849, 852 (1957). Contracts must not be construed to add new terms that do not otherwise exist. *Id.* (citing *Westinghouse Electric Elevator Co. v. La Salle Monroe Bldg. Corp.*, 395 Ill. 429, 70 N.E.2d 604, 606, 607 (1946)). Moreover, "[c]ourts must interpret contractual language in a manner which gives force and effect to *every* provision, and not in a way which renders some clauses nugatory, inoperative or meaningless." *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal. App. 4th 445, 473, 80 Cal. Rptr. 2d 329, 349 (1998) (citing *New York Life Ins. Co. v. Hollender*, 38 Cal.2d 73, 81–82, 237 P.2d 510 (1951)).

Here, the forum selection provisions, by their plain terms, select the State of Nevada as the proper forum for any action or proceeding arising out of the lease. Pursuant to Section 38(H), the parties first consented to the jurisdiction of the State of Nevada. *See, e.g.*, (S. Virginia Lease Agreement § 38(H), **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5.**) BHI further agreed that it would not challenge jurisdiction in Nevada, assert Nevada as an inconvenient forum, or challenge venue in Nevada. *Id.* Finally, the forum selection clauses specifically state that the Plaintiffs have the right to commence any proceeding where the property is located, which is the State of Nevada. *Id.* Thus, this action should be dismissed.

In the event the Court finds § 38(H) ambiguous, such ambiguity can be resolved by the maxim of *expressio unius est exclusio alterius*. *White v. W. Title Ins. Co.*, 40 Cal. 3d 870, 882, 710 P.2d 309, 314 (1985). Under this maxim, the specific expression of one thing is the exclusion of all others. *Id.* Because the contract specifically expresses Nevada as the venue to

decide disputes, the contract excludes all other venues.

Thus, this action should be dismissed due to the forum selection clause appearing in the Lease Agreements and amendments thereto. Plaintiffs cannot demonstrate that enforcement of the clause would be unreasonable under the circumstances of the case.

B. **The Court Should Dismiss this Action Pursuant to the Doctrine of Forum Non Conveniens**

The center of gravity of this case lies in Northern Nevada. This action concerns contracts entered into by Nevada defendants in connection with doing business in Nevada. The contracts with Plaintiffs involve the lease of real property located in Nevada. The contractual documents include Nevada choice of law and venue provisions. In contradistinction to these numerous contacts, the connection between this action and California consists entirely of Plaintiffs' decision to reside in California. Again, the unilateral act of a plaintiff cannot support the exercise or jurisdiction over a particular defendant as a matter of law. Because this is a Nevada action regarding Nevada property, the interests of justice favor dismissing or staying this action to allow Plaintiffs to pursue their case in Nevada.

Section 410.30(a) of the California Code of Civil Procedure provides for the stay or dismissal of an action on the grounds of forum non conveniens. Section 410.30(a) provides as follows: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." Cal. Code Civ. P. 410.30. "Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." *Stangvik v. Shiley Inc.*, 54 Cal. 3d 744, 751, 819 P.2d 14 (1991) (citing *Leet v. Union Pac. R. R. Co.*, 25 Cal.2d 605, 609, 155 P.2d 42 (1944)).

In considering a motion to dismiss based on forum non conveniens, the court's inquiry is twofold: (1) whether the alternate forum is a "suitable" place for trial; and (2) the private interests of the litigants and the interests of the public in retaining the action for trial in

California. *Id.* at 751, 819 P.2d 14. Defendants bear the ultimate burden of showing that California is a seriously inconvenient forum. *Morris v. AGFA Corp.*, 144 Cal. App. 4th 1452, 1464, 51 Cal. Rptr. 3d 301, 310 (2006) (citations omitted). Each prong of the forum non conveniens analysis is discussed separately below.

1. **Nevada is a Suitable Place for Trial**

As a threshold matter there is no question that Nevada is a "suitable" alternative forum. "An alternative forum is suitable if it has jurisdiction and the action in that forum will not be barred by the statute of limitations." *Guimei v. Gen. Elec. Co.*, 172 Cal. App. 4th 689, 696, 91 Cal. Rptr. 3d 178, 185 (2009).

In this case, there can be no good faith dispute that Nevada courts have jurisdiction. Jerry Herbst, Maryanne Herbst and Tim Herbst are all residents and domiciliaries of Nevada. (Decls. of J. Herbst ¶ 2, **Exhibit 5**; Decl. of M. Herbst ¶ 23, **Exhibit 6**; Decl. of T. Herbst ¶ 2, **Exhibit 7**.) JH, BHI and THI are all Nevada corporations. (Decl. of J. Herbst ¶¶ 4, 7, 11, **Exhibit 5**.) Defendants X Roads and Mr. Berger do not contest personal jurisdiction in Nevada. Thus, Nevada courts have personal jurisdiction over all defendants such that Plaintiffs can bring their action in Nevada.

It should also be noted that Plaintiffs have each expressly consented to the jurisdiction of the State of Nevada. Section 38(H) of each of the lease agreements at issue in this case provides, in part, as follows: "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." (S. Virginia Lease Agreement § 38(H), **Exhibit A** to the Declaration of J. Herbst, **Exhibit 5**; US Highway 50 Lease Agreement § 38(H), **Exhibit E**, to the Declaration of J. Herbst, **Exhibit 5**; Baring Lease Agreement § 38(H), **Exhibit C**, to the Declaration of J. Herbst, **Exhibit 5**).

In addition, the statute of limitations in Nevada has not run. As the claims at issue are breach of contract claims, the statute of limitations in Nevada is six years. NRS 11.190. As the alleged breaches in this allegedly occurred during the 2008-2012 timeframe, the statute of limitation is no bar to Plaintiffs' ability to bring an action in Nevada.

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2. **The Private and Public Interest Factors Favor Dismissal**

Because Nevada is indisputably a suitable place for trial, the Court must analyze the private and public interest factors. "The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." *Stangvik*, 54 Cal. 3d at 751, 819 P.2d 14.

In this case, the private interest factors favor trial in Nevada. First, as this is a Nevada dispute involving a Nevada corporation's lease of real property located in Nevada, the great weight of the evidence will be located in Nevada. In fact, other than Plaintiffs themselves, all witnesses in this case will be located in Nevada. As a result, the cost of litigating this matter in California is overly burdensome on Defendants. Moreover, Defendants will have no ability to compel the attendance of witnesses located in Nevada. For these reasons, the private interest factors favor suit in Nevada.

Similarly, the public interest factors also favor suit in Nevada. Public interest factors include (1) the court's congested calendar, (2) protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and (3) weighing the competing interests of California and the alternate jurisdiction in the litigation. *Stangvik*, 54 Cal. 3d at 751.

Here, two separate and distinct sets of Plaintiffs have filed a thirty-page Complaint with eleven separate claims for relief against ten separate defendants. The gravamen of this case relates to real property located in the State of Nevada that was leased by a Nevada corporation to provide services to Nevada residents. As a result, the public interest in avoiding overburdening the local California court about a case centered in Nevada weighs in favor of a Nevada forum. For the same reasons, the public interest in protecting potential jurors from having to decide a Nevada case weighs in favor of a Nevada forum.

Similarly, an analysis of the competing interests of California and Nevada to this

A.App.493

litigation favors litigation in Nevada. California's interest in this action is limited to ensuring Plaintiffs, California residents, a venue to litigate their dispute.

In contrast, Nevada has a much larger interest in the dispute. Plaintiffs have named as defendants three Nevada individuals and residents and three Nevada corporations. The real property at issue is located in Nevada. Such property was used by a Nevada corporation to operate a Nevada business. As the nature of the Nevada business was the operation of gas stations and convenience stores, the business primarily, if not exclusively, served Nevada residents. Moreover, the guarantees at issue in this case contain a Nevada choice of law provision. Nevada certainly has an interest in applying its own law. In short, Nevada has a much greater interest in this litigation than California and the case should be heard tried in Nevada.

C. **The Court Should Dismiss Plaintiffs' Seventh Claim for Relief**

Finally, the Court should sustain Defendants' general demurrer and dismiss Plaintiffs' seventh claim pursuant to Code of Civil Procedure Section 430.10 et seq. for failure to state a claim upon which relief can be granted. Plaintiffs' seventh claim for relief is for tortious interference with contract.

In California, a general demurer can be raised to challenge whether the complaint contains a claim upon which relief can be granted. *See Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 879, 6 Cal. Rptr. 2d 151 (1992). To establish a valid cause of action, a plaintiff must plead facts sufficient to establish every element of that cause of action. *Id.* In considering the allegations of a complaint, the court accepts "as true all properly pleaded allegations and do[es] not go beyond the four corners of the complaint except as to matters which are judicially noticeable." *Saunders v. Superior Court*, 27 Cal. App. 4th 832, 837-38, 33 Cal. Rptr. 2d 438 (1994).

To state a claim for relief for intentional interference with contractual relations, Plaintiffs must allege each of the following (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the

contractual relationship; and (5) resulting damage. *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126, 791 P.2d 587, 589-90 (1990).

Here, Plaintiffs allege that Jerry Herbst and Tim Herbst instructed Marc Berger to interfere with Mr. Willard's notes and deeds of trust entered into with Business Partners, Inc. ("Business Partners.") (Compl. ¶ 106.) Mr. Berger allegedly contacted Business Partners and demanded a fifty percent reduction of Mr. Willard's principal on his loan with Business Partners. *Id.* ¶ 107. Plaintiffs further allege that Mr. Willard subsequently defaulted on his contractual obligations through his own volition. *Id.* ¶ 108.

These allegations are insufficient in that they fail to plead intentional acts designed to induce breach or disruption of a contractual relationship and that such relationship was actually disrupted. Specifically, Plaintiffs allege that Tim Herbst[1] intentionally breached the guarantees (which he was not a party to) and the lease agreements such that the Willard Plaintiffs' lender would place Willard in default. (Compl. ¶ 106.) Plaintiffs further allege that the Willard Plaintiffs breached their own agreement with their lender. *See id.* ¶ 108.

The actions of BHI in allegedly defaulting under the Lease Agreement did not, by Plaintiffs' own allegations, cause a breach their loan agreement. Rather, the Willard Plaintiffs choose to breach their loan agreement by their own conduct. The Willard Plaintiffs could have simply paid their lender regardless of BHI's alleged breach. To the extent the Willard Plaintiffs failed to meet their own contractual obligations, such failure was caused solely by the actions of the Willard Plaintiffs. The risk of a tenant defaulting was inherent in the Willard Plaintiffs' decision to borrow money to purchase property and rely upon a lessee to make the payment on said property. Thus, by Plaintiffs' own allegations, their breach of their own contract was simply not caused by any tortious actions of BHI or Tim Herbst.

V. CONCLUSION

Based on all the foregoing, Defendants respectfully request that this action be dismissed or stayed, in whole or part, to enforce the forum selection clause contained in the Lease

[1] Plaintiffs make the same allegations with respect to Jerry Herbst, Marc Berger and X Roads Solutions. The arguments raised here equally apply to these three defendants.

A.App.495

Agreements and their amendments or pursuant to the doctrine of forum non conveniens. Defendants further request an order sustaining their general demurer to the seventh claim for relief for failure to state a claim upon which relief can be granted.

DATED this 11th day of February, 2014.

GORDON SILVER



JOHN P. DESMOND, ESQ.
California Bar No. 176430
100 W. Liberty Street
Suite 940
Reno, Nevada 89501
Telephone: (775) 343-7500
Facsimile: (775) 786-0131
E-Mail: jdesmond@gordonsilver.com

Attorneys for Defendants

PROOF OF SERVICE

The undersigned declares: I am over the age of 18 years and not a party to the within action. I am employed in the county where this service occurs. My business address is 100 W. Liberty Street, Suite 940, Reno, NV 89501, my facsimile number is (775) 786-0131. On the date shown below I served the following document(s) on the interested parties named herein and in the manner indicated below:

SECOND AMENDED MOTION TO DISMISS

__XX__ **FIRST CLASS U.S. MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons listed [below/above] by placing the envelope(s) for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

_____ **FACSIMILE:** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at the fax numbers listed [above\below]. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

____ **MESSENGER SERVICE:** I served the document(s) by placing them in an envelope or package

L. Steven Goldblatt. Esq.
The Goldblatt Law Firm
22 Martin St.
Gilroy, CA 95020
l.steven.goldblatt@gmail.com

Stephen W. Pearson
Noland, Hamerly, Etienne & Hoss
333 Salinas Street
Salinas, CA 93901

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED this 11th day of February, 2014.

Emily S. Grinstead
An employee of Gordon Silver

EXHIBITS

Exhibit	Description	Pages
1	Order, October 9, 2013	5
2	Plaintiffs' Written Discovery, February 3, 2013 [unsigned]	243
3	Plaintiffs' Attempt to Engage in Mediation	4
4	Plaintiffs' Intent to Commence Certain Motion Practice	1
5	Declaration of Jerry Herbst	147
6	Declaration of Maryanne Herbst	2
7	Declaration of Timothy Herbst	2
8	Amended and Restated Stock Agreement (ARSPA)	31

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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 6

EXHIBIT 6

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

---o0o---

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

Plaintiffs,

vs. Case No. CV14-01712

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; and JERRY HERBST, an individual, Dept. No. 6

Defendants.

And Related Counterclaim.

/

DEPOSITION OF LARRY WILLARD

AUGUST 21, 2015

RENO, NEVADA

Reported by: JULIE ANN KERNAN, CCR #427, RPR

MOLEZZO REPORTERS (775) 322-3334

APPEARANCES

For the Plaintiffs: LAW OFFICES OF BRIAN P. MOQUIN
By: Brian P. Moquin, Esq.
3506 La Castellet Court
San Jose, California 95148

For the Defendants: DICKINSON WRIGHT PLLC
Attorneys at Law
By: Brian R. Irvine, Esq.
By: Katy Brady, Esq.
100 West Liberty Street
Suite 940
Reno, Nevada 89501

Q Okay.

A So that's kind of that scenario. So in answer to your question, I think it was about three seven, thereabouts, that went to the lender.

Q Okay.

A And that was --

Q You certainly didn't get any money out of this formally.

A Not a penny. Not a red cent.

Q But as a result of this sale --

A Uh-hum.

Q -- the NCUA agreed to forgive the remaining balance on your loan. Correct?

A That's right.

Q And --

A That's correct.

Q -- Ms. Khazen also agreed to get rid of that mortgage.

A The hundred 50, yeah.

Q So you don't owe any more money to anybody for debt on the South Virginia property, as you sit here today. Correct?

A No. The only liability I'm going to have is the debt forgiveness, according to my C.P.A.

Q Yeah. We'll get to that. And what was Mr.

Q Okay. Let me ask this. When you purchased this property from Berry-Hinckley when it was owned by Mr. Morabito.

A Right.

Q Did you ever have any discussions with him saying hey, I need this rent or I'm going to have to file bankruptcy?

A With Morabito?

Q Yeah.

A No.

Q And when Jerry Herbst came in and purchased BHI and signed a guarantee of this lease --

A Uh-hum.

Q -- did you ever have any discussions with him?

A With Mr. Herbst?

Q Yes.

A No.

Q Okay. If you could go back to your declaration there from the bankruptcy court? Right there. Yes. Exhibit 38.

A Okay.

Q Paragraph 9. Wait.

A Okay.

Q Actually, I've got the wrong documents.

A Now, this is this -- this is your bankruptcy.

Q Okay. And then I wanted to go to page 2 at Paragraph 9, which reads "As a direct and proximate result of Herbst breach in failing to remit the required rent of $140,175 on March 1st, 2013, or curing such default by May 1st, 2013, Jerry Herbst knew that his failure to pay the guarantee would cause and did cause me to default on my loan."

A Yes.

Q So what is the basis for your statement in this declaration that Mr. Herbst knew that his failure to pay the guarantee would cause you to default on your loan?

A I think my discussions, I had prior discussions on a couple of occasions with Ken Herbst, his son. And during those meetings, when they were trying to either restructure or trying to do something with this property, I felt somewhat intimidated, and I never will forget one of the meetings where they were talking about this type of a situation. I said look. I have -- I told Tim and I think his -- it might -- one of his brothers were there, nice guy, but I told him, I said "Tim, this is a very delicate situation. I have everything I have that I worked very hard for invested in this property. I have a blind father I'm supporting." And I was at the time paying for his assisted living. I was in the midst of going through some difficult domestic situations. And I took out a little

bottle of nitroglycerin, and I sat it down on the table. I said "This discussion that we're having is gonna cause something to happen here, I'm afraid." Because I'd had some panic type of -- that's why I had that.

So in answer to your question? They were very aware. Not Mr. Herbst. Well, I would think -- I never had the occasion to talk to Jerry. I would like to have had. In fact, I tried to appeal to him with a letter when they breached that he did not answer. So in answer to that question, they were very aware, as well as knowing the situation through Dan of what we were -- what I was going through. They knew, without a doubt. So yes. I affirmatively say yes, they knew.

Q You told Tim?

A Tim knew.

Q And whichever one of his brothers was there, Troy or Ed?

A Oh, yeah. I think it was maybe Troy. I think maybe, yeah.

Q And this was, to the best of your recollection, 2008 time frame?

A It might have been. Might have been at that time, or I think it was an occasion maybe in 2012 because -- yeah. I think there was a couple meetings -- I had a couple meetings in Las Vegas.

Q With Tim?

A So I knew -- I knew Tim and, you know, I thought he was a real upstanding guy. And, you know, we had some nice -- we had civil discussions.

Q Paragraph 17 of the same document, Mr. Willard?

A Yes, sir.

Q Sort of a similar line of questions.

A Okay.

Q Starts at the very last line on that page, it says "Jerry Herbst knew with substantial certainty that the reasonable rental value of the property would be reduced to zero dollars, knew that his breach of the lease under the interim operating agreement," I'll paraphrasing a little bit, would result in my inability pay to pay Business Partners the $87,000 plus monthly payment.

Then you go on to say "And then it would be foreclosed on." Again, same question. What's your basis for saying what Jerry Herbst knew about the rent being diminished and the consequences of nonpayment?

A I'd have to refer to the same answer that I gave you to the previous question.

Q Okay.

A He knew my situation. Unless he does not communicate with his boys, and I don't think that is the case.

Q Okay.

A And that would be -- that would be the answer that I would give you, yes.

Q Okay. And you mentioned you had a paper file at home. Right?

A Yeah. But there's just very -- I mean, it's just a lot of loose ends of --

Q Well, as you sit here today, are you confident that you've given your attorney everything you have in your possession that's relevant to that case?

A Absolutely.

Q Okay. And what about emails, are you confident that you've given your attorney all your emails that are relevant to this case?

A One hundred percent.

Q Are there any other responsive documents that you have in your possession that you haven't given to your lawyer?

A I've given him everything that I -- that he could of and I could think of.

Q Okay. Now, have you taken any steps to go get documents from people that have worked for you? And by that I mean other lawyers, accountants, brokers, anyone like that, have you personally done anything like that?

A Pertaining to this?

---o0o---

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.

_____ _____
LARRY WILLARD

STATE OF NEVADA)

COUNTY OF WASHOE)

I, JULIE ANN KERNAN, a notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That on Friday, the 21st day of August, 2015, at the hour of 9:28 a.m. of said day, at the Law Offices of Dickinson Wright, 100 West Liberty Street, Suite 940, Reno, Nevada, personally appeared LARRY WILLARD, who was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That said deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages numbered 1 through 137, is a full, true and correct transcript of my said stenotype notes of said deposition to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 24th day of August, 2015.

JULIE ANN KERNAN, CCR #427

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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 7

EXHIBIT 7

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2014 or tax year beginning 7/01 , 2014, ending 6/30 , 2015

► Information about Form 1120 and its separate instructions is at *www.irs.gov/form1120.*

OMB No. 1545-0123

2014

A Check if:
1 a Consolidated return (attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co. (attach Sch PH) ☐
3 Personal service corp (see instrs) ☐
4 Schedule M-3 attached ☐

TYPE OR PRINT

OVERLAND DEVELOPMENT, INC.
826 VANDERBILT PLACE
SAN DIEGO, CA 92103

B Employer identification number [redacted]

C Date incorporated 4/14/1971

D Total assets (see instructions) $ 88.

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

INCOME	1 a	Gross receipts or sales	1 a	
	b	Returns and allowances	1 b	
	c	Balance. Subtract line 1b from line 1a	1 c	
	2	Cost of goods sold (attach Form 1125-A)	2	
	3	Gross profit. Subtract line 2 from line 1c	3	
	4	Dividends (Schedule C, line 19)	4	
	5	Interest	5	
	6	Gross rents	6	
	7	Gross royalties	7	
	8	Capital gain net income (attach Schedule D (Form 1120))	8	
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	
	10	Other income (see instructions — attach statement)	10	
	11	**Total income.** Add lines 3 through 10 ►	11	0.
DEDUCTIONS (SEE INSTRUCTIONS FOR LIMITATIONS ON DEDUCTIONS)	12	Compensation of officers (see instructions — attach Form 1125-E) ►	12	
	13	Salaries and wages (less employment credits)	13	
	14	Repairs and maintenance	14	
	15	Bad debts	15	
	16	Rents	16	
	17	Taxes and licenses	17	800.
	18	Interest	18	
	19	Charitable contributions	19	
	20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	20	58.
	21	Depletion	21	
	22	Advertising	22	
	23	Pension, profit-sharing, etc, plans	23	
	24	Employee benefit programs	24	
	25	Domestic production activities deduction (attach Form 8903)	25	
	26	Other deductions (attach statement) See Statement 1	26	1,700.
	27	**Total deductions.** Add lines 12 through 26 ►	27	2,558.
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	-2,558.
	29 a	Net operating loss deduction (see instructions) See St 2.	29 a	0.
	b	Special deductions (Schedule C, line 20)	29 b	
	c	Add lines 29a and 29b	29 c	
TAX, REFUNDABLE CRS AND PMTS	30	**Taxable income.** Subtract line 29c from line 28 (see instructions)	30	-2,558.
	31	Total tax (Schedule J, Part I, line 11)	31	0.
	32	Total payments and refundable credits (Schedule J, Part II, line 21)	32	0.
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐	33	
	34	**Amount owed.** If line 32 is smaller than the total of lines 31 and 33, enter amount owed	34	0.
	35	**Overpayment.** If line 32 is larger than the total of lines 31 and 33, enter amount overpaid	35	
	36	Enter amount from line 35 you want: Credited to 2015 estimated tax ►	Refunded ►	36

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► Signature of officer | Date | ► President & CEO Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [X] if self-employed / PTIN
MITRA EHSANIPOUR CPA	MITRA EHSANIPOUR CPA		P00090914
Firm's name ► MITRA EHSANIPOUR CPA			Firm's EIN ► [redacted]
Firm's address ► 205 PARK RD STE 207 BURLINGAME, CA 94010-4220			Phone no. 650-348-9444

BAA For Paperwork Reduction Act Notice, see separate instructions. CPCA0205L 08/07/14 Form **1120** (2014)

Schedule C **Dividends and Special Deductions** (see instructions)

		(a) Dividends received	(b) Percentage	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	**Total.** Add lines 1 through 8. See instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members		100	
12	Dividends from certain FSCs		100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	**Total dividends.** Add lines 1 through 17. Enter here and on page 1, line 4 ►			
20	**Total special deductions.** Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ►			

Schedule J Tax Computation and Payment (see instructions)

Part I — Tax Computation

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) ► ☐			
2	Income tax. Check if a qualified personal service corporation (see instructions) ► ☐		2	0.
3	Alternative minimum tax (attach Form 4626)		3	
4	Add lines 2 and 3		4	0.
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834 (see instructions)	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d	0.	
e	Bond credits from Form 8912	5e		
6	**Total credits.** Add lines 5a through 5e		6	
7	Subtract line 6 from line 4		7	
8	Personal holding company tax (attach Schedule PH (Form 1120))		8	
9a	Recapture of investment credit (attach Form 4255)	9a		
b	Recapture of low-income housing credit (attach Form 8611)	9b		
c	Interest due under the look-back method — completed long-term contracts (attach Form 8697)	9c		
d	Interest due under the look-back method — income forecast method (attach Form 8866)	9d		
e	Alternative tax on qualifying shipping activities (attach Form 8902)	9e		
f	Other (see instructions — attach statement)	9f		
10	**Total.** Add lines 9a through 9f		10	
11	**Total tax.** Add lines 7, 8, and 10. Enter here and on page 1, line 31		11	0.

Part II — Payments and Refundable Credits

12	2013 overpayment credited to 2014		12	
13	2014 estimated tax payments		13	
14	2014 refund applied for on Form 4466		14	
15	Combine lines 12, 13, and 14		15	0.
16	Tax deposited with Form 7004		16	
17	Withholding (see instructions)		17	
18	**Total payments.** Add lines 15, 16 and 17		18	0.
19	Refundable credits from:			
a	Form 2439	19a		
b	Form 4136	19b		
c	Form 8827, line 8c	19c		
d	Other (attach statement — see instructions)	19d		
20	**Total credits.** Add lines 19a through 19d		20	
21	**Total payments and credits.** Add lines 18 and 20. Enter here and on page 1, line 32		21	0.

Schedule K Other Information (see instructions)

		Yes	No
1	Check accounting method a ☐ Cash b ☒ Accrual c ☐ Other (specify) ►		
2	See the instructions and enter the:		
a	Business activity code no. ► 531390		
b	Business activity ► REAL ESTATE		
c	Product or service ► DEVELOPMENT		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?		X
	If 'Yes,' enter name and EIN of the parent corporation ►		
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If 'Yes,' complete Part I of Schedule G (Form 1120) (attach Schedule G)		X
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If 'Yes,' complete Part II of Schedule G (Form 1120) (att Schedule G)	X	

Schedule K Other Information *continued* (see instructions)

		Yes	No
5	At the end of the tax year, did the corporation:		
a	Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on **Form 851,** Affiliations Schedule? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below.		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

b	Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below.		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

6	During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If 'Yes,' file **Form 5452,** Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary		X
7	At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of **(a)** the total voting power of all classes of the corporation's stock entitled to vote or **(b)** the total value of all classes of the corporation's stock? For rules of attribution, see section 318. If 'Yes,' enter: **(i)** Percentage owned ► _____ and **(ii)** Owner's country ► _____ **(c)** The corporation may have to file **Form 5472,** Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached ► _____		X
8	Check this box if the corporation issued publicly offered debt instruments with original issue discount ► ☐ If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
9	Enter the amount of tax-exempt interest received or accrued during the tax year ► $ None		
10	Enter the number of shareholders at the end of the tax year (if 100 or fewer) ► 1		
11	If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ► ☒ If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.		
12	Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) ► $ 3,671,800.		
13	Are the corporation's total receipts (page 1, line 1a, plus lines 4 through 10) for the tax year **and** its total assets at the end of the tax year less than $250,000? If 'Yes,' the corporation is not required to complete Schedules L, M-1, and M-2. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year ► $ None	X	
14	Is the corporation required to file Schedule UTP (Form 1120), Uncertain Tax Position Statement (see instructions)? If 'Yes,' complete and attach Schedule UTP.		X
15a	Did the corporation make any payments in 2014 that would require it to file Form(s) 1099?		X
b	If 'Yes,' did or will the corporation file required Forms 1099?		
16	During this tax year, did the corporation have an 80% or more change in ownership, including a change due to redemption of its own stock?		X
17	During or subsequent to this tax year, but before the filing of this return, did the corporation dispose of more than 65% (by value) of its assets in a taxable, non-taxable, or tax deferred transaction?		X
18	Did the corporation receive assets in a section 351 transfer in which any of the transferred assets had a fair market basis or fair market value of more than $1 million?		X

Schedule L Balance Sheets per Books	Beginning of tax year		End of tax year	
Assets	(a)	(b)	(c)	(d)
1 Cash				
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach statement)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach statement)				
15 Total assets				
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt)				
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach statement)				
22 Capital stock: a Preferred stock				
b Common stock				
23 Additional paid-in capital				
24 Retained earnings — Approp (att stmt)				
25 Retained earnings — Unappropriated				
26 Adjmt to shareholders' equity (att stmt)				
27 Less cost of treasury stock				
28 Total liabilities and shareholders' equity				

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: The corporation may be required to file Schedule M-3 (see instructions).

1 Net income (loss) per books		7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $	
2 Federal income tax per books			
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize): a Depreciation $ b Charitable contribns $	
5 Expenses recorded on books this year not deducted on this return (itemize): a Depreciation $ b Charitable contributions $ c Travel & entertainment $			
6 Add lines 1 through 5		9 Add lines 7 and 8	
		10 Income (page 1, line 28) — line 6 less line 9	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year		5 Distributions a Cash	
2 Net income (loss) per books		b Stock c Property	
3 Other increases (itemize):		6 Other decreases (itemize):	
4 Add lines 1, 2, and 3		7 Add lines 5 and 6	
		8 Balance at end of year (line 4 less line 7)	

SCHEDULE G (Form 1120)
(Rev December 2011)
Department of the Treasury
Internal Revenue Service

Information on Certain Persons Owning the Corporation's Voting Stock

► Attach to Form 1120.
► See instructions.

OMB No. 1545-0123

Name: OVERLAND DEVELOPMENT, INC.

Employer identification number (EIN): [redacted]

Part I Certain Entities Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4a).
Complete columns (i) through (v) below for any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Percentage Owned in Voting Stock

Part II Certain Individuals and Estates Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4b).
Complete columns (i) through (iv) below for any individual or estate that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Individual or Estate	(ii) Identifying Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Percentage Owned in Voting Stock
LARRY J. WILLARD	[redacted]	United States	100.00%

A.App.516

Form **982**
(Rev. July 2013)
Department of the Treasury
Internal Revenue Service

Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

► Attach this form to your income tax return.
► Information about Form 982 ad its instructions is at *www.irs.gov/form982*

OMB No. 1545-0046
Attachment Sequence No. **94**

Name shown on return: OVERLAND DEVELOPMENT, INC.
Identifying number: [redacted]

Part I General Information (see instructions)

1 Amount excluded is due to (check applicable box(es)):

a Discharge of indebtedness in a title 11 case ☐
b Discharge of indebtedness to the extent insolvent (not in a title 11 case) ☒
c Discharge of qualified farm indebtedness ☐
d Discharge of qualified real property business indebtedness ☐
e Discharge of qualified principal residence indebtedness ☐

2 Total amount of discharged indebtedness excluded from gross income — 2: 3,524,873.

3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property? ☐ Yes ☒ No

Part II Reduction of Tax Attributes

You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

Enter amount excluded from gross income:

4 For a discharge of qualified real property business indebtedness applied to reduce the basis of depreciable real property	4	
5 That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property	5	
6 Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge	6	3,524,873.
7 Applied to reduce any general business credit carryover to or from the tax year of the discharge	7	
8 Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge	8	
9 Applied to reduce any net capital loss for the tax year of the discharge, including any capital loss carryovers to the tax year of the discharge	9	
10a Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. *DO NOT use in the case of discharge of qualified farm indebtedness*	10a	
b Applied to reduce the basis of your principal residence. *Enter amount here ONLY if line 1e is checked*	10b	
11 For a discharge of qualified farm indebtedness applied to reduce the basis of:		
a Depreciable property used or held for use in a trade or business or for the production of income if not reduced on line 5	11a	
b Land used or held for use in a trade or business of farming	11b	
c Other property used or held for use in a trade or business or for the production of income	11c	
12 Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge	12	
13 Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge	13	

Part III Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded $ _____ from its gross income for the tax year beginning _____ and ending _____.

Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of _____.
(State of incorporation)

Note: *You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.*

A.App.517

Form **4562**

Department of the Treasury
Internal Revenue Service (99)

Depreciation and Amortization
(Including Information on Listed Property)

► Attach to your tax return.
► Information about Form 4562 and its separate instructions is at *www.irs.gov/form4562.*

OMB No. 1545-0172

2014

Attachment Sequence No. **179**

Name(s) shown on return

OVERLAND DEVELOPMENT, INC.

Identifying number [redacted]

Business or activity to which this form relates

Form 1120

Part I Election To Expense Certain Property Under Section 179

Note: *If you have any listed property, complete Part V before you complete Part I.*

1	Maximum amount (see instructions)	1	
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2013 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2015. Add lines 9 and 10, less line 12 ►	13	

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2014	17	58.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ► ☐		

Section B — Assets Placed in Service During 2014 Tax Year Using the General Depreciation System

	(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property						
b	5-year property						
c	7-year property						
d	10-year property						
e	15-year property						
f	20-year property						
g	25-year property			25 yrs		S/L	
h	Residential rental property			27.5 yrs	MM	S/L	
				27.5 yrs	MM	S/L	
i	Nonresidential real property			39 yrs	MM	S/L	
					MM	S/L	

Section C — Assets Placed in Service During 2014 Tax Year Using the Alternative Depreciation System

20a	Class life				S/L	
b	12-year			12 yrs	S/L	
c	40-year			40 yrs	MM	S/L

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	58.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Form **8827**

Department of the Treasury
Internal Revenue Service

Credit for Prior Year Minimum Tax — Corporations

► Attach to the corporation's tax return.
► Information about Form 8827 and its instructions is at *www.irs.gov/form8827.*

OMB No. 1545-0123

2014

Name

OVERLAND DEVELOPMENT, INC.

Employer identification number

[redacted]

1	Alternative minimum tax (AMT) for 2013. Enter the amount from line 14 of the 2013 Form 4626	1	
2	Minimum tax credit carryforward from 2013. Enter the amount from line 9 of the 2013 Form 8827	2	5,908.
3	Enter any 2013 unallowed qualified electric vehicle credit (see instructions)	3	
4	Add lines 1, 2, and 3	4	5,908.
5	Enter the corporation's 2014 regular income tax liability minus allowable tax credits (see instructions)	5	
6	Is the corporation a 'small corporation' exempt from the AMT for 2014 (see instructions)? • **Yes.** Enter 25% of the excess of line 5 over $25,000. If line 5 is $25,000 or less, enter -0- • **No.** Complete Form 4626 for 2014 and enter the tentative minimum tax from line 12	6	
7a	Subtract line 6 from line 5. If zero or less, enter -0-	7a	0.
b	For a corporation electing to accelerate the minimum tax credit, enter the bonus depreciation amount attributable to the minimum tax credit (see instructions)	7b	0.
c	Add lines 7a and 7b	7c	
8a	Enter the **smaller** of line 4 or line 7c. If the corporation had a post-1986 ownership change or has pre-acquisition excess credits, see instructions	8a	
b	**Current year minimum tax credit.** Enter the smaller of line 4 or line 7a here and on Form 1120, Schedule J, Part I, line 5d (or the applicable line of your return). If the corporation had a post-1986 ownership change or has pre-acquisition excess credits, see instructions. If you made an entry on line 7b, go to line 8c. Otherwise, skip line 8c	8b	0.
c	Subtract line 8b from line 8a. This is the refundable amount for a corporation electing to accelerate the minimum tax credit. Include this amount on Form 1120, Schedule J, Part II, line 19c (or the applicable line of your return)	8c	
9	**Minimum tax credit carryforward to 2015.** Subtract line 8a from line 4. Keep a record of this amount to carry forward and use in future years	9	5,908.

BAA

Form **8827** (2014)

CPCA2201L 07/11/14

OVERLAND DEVELOPMENT, INC.

Statement 1
Form 1120, Line 26
Other Deductions

Office Expense	$ 600.
Travel	1,100.
Total	$ 1,700.

Statement 2
Form 1120, Line 29a
Net Operating Loss Deduction

Carryover Generated From Year End	6/30/00		$ 281,264.	
Amount Utilized in 2013		183,877.		
Total Utilization			$ 183,877.	
Available for Carryover to 2014				97,387.
Carryover Generated From Year End	6/30/04		$ 55,381.	
Available for Carryover to 2014				55,381.
Carryover Generated From Year End	6/30/05		$ 1,468,972.	
Available for Carryover to 2014				1,468,972.
Carryover Generated From Year End	6/30/06		$ 950,365.	
Available for Carryover to 2014				950,365.
Carryover Generated From Year End	6/30/09		$ 46,245.	
Available for Carryover to 2014				46,245.
Carryover Generated From Year End	6/30/11		$ 594,046.	
Available for Carryover to 2014				594,046.
Carryover Generated From Year End	6/30/12		$ 459,404.	
Available for Carryover to 2014				459,404.
Net Operating Losses Available in 2014				$ 3,671,800.
Taxable Income				-2,558.
Total Net Operating Loss Deduction (Limited to Taxable Income)				0.

2014 **Federal Supplemental Information** Page 1

OVERLAND DEVELOPMENT, INC. [redacted]

NCUAB/TCCU BANK,- ACCOUNT# [redacted] FIRST LOAN ON THE PROPERTY LOCATED AT 7963 TO 7699 SOUTH VIRGINIA STREET, RENO, NEVADA 89511- HAS ISSUED FORM 1099-C DEBT CANCELLED IN THE TOTAL AMOUNT OF $8,597,250 UNDER DEBTOR'S ID# [redacted] AND DEBTOR'S NAME OVERLAND DEVELOPMENT CORP. , INC. THE PROPERTY IS 41% OWNED BY OVERLAND DEVELOPMENT INC. AND 59% OWNED BY LARRY J. WILLARD, TRUSTE OF THE LARRY JAMES WILLARD TRUST DATED 11/14/1987. THE AMOUNT OF CANCELLATION OF DEBT FOR OVERLAND DEVELOPMENT INC. IS $3,524,873. OVERLAND DEVELOPMENT INC. TOTAL OF ALL ITS LIABILITIES EXCEED THE FMV OF ALL OF ITS ASSETS IMMEDIATELY BEFORE THE CANCELLATION OF THIS DEBT. THEREFORE OVERLAND DEVELOPMENT INC. CONSIDER INSOLVENT.

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 8

EXHIBIT 8

Form **1040** Department of the Treasury — Internal Revenue Service (99)

U.S. Individual Income Tax Return

2014 OMB No. 1545-0074 | IRS Use Only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2014, or other tax year beginning , 2014, ending , 20 — See separate instructions.

Your first name and initial: LARRY J. | Last name: WILLARD | Your social security number: [redacted]

If a joint return, spouse's first name and initial | Last name | Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. | Apartment no.

826 VANDERBILT PLACE

▲ Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

SAN DIEGO, CA 92103-3819

Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign

Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse

Filing Status

Check only one box.

1 [X] Single

2 [ ] Married filing jointly (even if only one had income)

3 [ ] Married filing separately. Enter spouse's SSN above & full name here. ►

4 [ ] Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ►

5 [ ] Qualifying widow(er) with dependent child

Exemptions

6a [X] **Yourself.** If someone can claim you as a dependent, **do not** check box 6a

b [ ] **Spouse**

Boxes checked on 6a and 6b: 1

No. of children on 6c who:
- lived with you:
- did not live with you due to divorce or separation (see instrs):

Dependents on 6c not entered above:

Add numbers on lines above ►: 1

c **Dependents:**

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if child under age 17 qualifying for child tax cr (see instrs)

If more than four dependents, see instructions and check here ► [ ]

d Total number of exemptions claimed: 1

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	
8a	**Taxable** interest. Attach Schedule B if required	8a	13.
b	**Tax-exempt** interest. **Do not** include on line 8a (8b)		
9a	Ordinary dividends. Attach Schedule B if required	9a	235.
b	Qualified dividends (9b) 235.		
10	Taxable refunds, credits, or offsets of state and local income taxes Statement 1	10	0.
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here ► ☐	13	-3,000.
14	Other gains or (losses). Attach Form 4797	14	-912,240.
15a	IRA distributions (15a)	b Taxable amount	15b	
16a	Pensions and annuities (16a)	b Taxable amount	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	-162,829.
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits (20a) 20,339.	b Taxable amount	20b	0.
21	Other income See Statement 3 Statement 2	21	-876,188.
22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ►	22	-1,954,009.

Adjusted Gross Income

23	Educator expenses	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	Health savings account deduction. Attach Form 8889	25	
26	Moving expenses. Attach Form 3903	26	
27	Deductible part of self-employment tax. Attach Schedule SE	27	
28	Self-employed SEP, SIMPLE, and qualified plans	28	
29	Self-employed health insurance deduction	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ►	31a	
32	IRA deduction	32	
33	Student loan interest deduction	33	
34	Tuition and fees. Attach Form 8917	34	
35	Domestic production activities deduction. Attach Form 8903	35	
36	Add lines 23 through 35	36	0.
37	Subtract line 36 from line 22. This is your **adjusted gross income** ►	37	-1,954,009.

Form **1040** (2014) LARRY J. WILLARD [redacted] Page **2**

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	-1,954,009.
	39a	Check if: [X] **You** were born before January 2, 1950, [ ] Blind. [ ] **Spouse** was born before January 2, 1950, [ ] Blind. Total boxes checked ► 39a	1	
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ► 39b		
Standard Deduction for – • People who check any box on line 39a or 39b **or** who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, $6,200 Married filing jointly or Qualifying widow(er), $12,400 Head of household, $9,100	40	Itemized deductions (from Schedule A) or your **standard deduction** (see left margin)	40	8,077.
	41	Subtract line 40 from line 38	41	-1,962,086.
	42	**Exemptions.** If line 38 is $152,525 or less, multiply $3,950 by the number on line 6d. Otherwise, see instrs	42	3,950.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	0.
	44	**Tax** (see instrs). Check if any from: a [ ] Form(s) 8814 c [ ] b [ ] Form 4972	44	0.
	45	**Alternative minimum tax** (see instructions). Attach Form 6251	45	0.
	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45 and 46 ►	47	0.
	48	Foreign tax credit. Attach Form 1116 if required		
	49	Credit for child and dependent care expenses. Attach Form 2441		
	50	Education credits from Form 8863, line 19		
	51	Retirement savings contributions credit. Attach Form 8880		
	52	Child tax credit. Attach Schedule 8812, if required		
	53	Residential energy credits. Attach Form 5695		
	54	Other crs from Form: a [ ] 3800 b [ ] 8801 c [ ]		
	55	Add lines 48 through 54. These are your **total credits**	55	
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ►	56	0.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	
	58	Unreported social security and Medicare tax from Form: a [ ] 4137 b [ ] 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [ ] Form 8959 b [ ] Form 8960 c [ ] Instrs; enter code(s)	62	
	63	Add lines 56-62. This is your **total tax** ►	63	0.
Payments If you have a qualifying child, attach Schedule EIC.	64	Federal income tax withheld from Forms W-2 and 1099		
	65	2014 estimated tax payments and amount applied from 2013 return		
	66a	**Earned income credit (EIC)**		
	b	Nontaxable combat pay election ► 66b		
	67	Additional child tax credit. Attach Schedule 8812		
	68	American opportunity credit from Form 8863, line 8		
	69	Net premium tax credit. Attach Form 8962		
	70	Amount paid with request for extension to file		
	71	Excess social security and tier 1 RRTA tax withheld		
	72	Credit for federal tax on fuels. Attach Form 4136		
	73	Credits from Form: a [ ] 2439 b [ ] Reserved c [ ] Reserved d [ ]		
	74	Add lns 64, 65, 66a, & 67-73. These are your **total pmts** ►	74	0.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you **overpaid**	75	
	76a	Amount of line 75 you want **refunded to you.** If Form 8888 is attached, check here ► [ ]	76a	
Direct deposit? See instructions.	b	► Routing number ► c Type: [ ] Checking [ ] Savings		
	d	► Account number		
	77	Amount of line 75 you want **applied to your 2015 estimated tax** ►		
Amount You Owe	78	**Amount you owe.** Subtract line 74 from line 63. For details on how to pay, see instructions ►	78	0.
	79	Estimated tax penalty (see instructions)		

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] **Yes.** Complete below. [ ] **No**

Designee's name ► MITRA EHSANIPOUR CPA Phone no. ► 650-348-9444 Personal identification number (PIN) ► 94065

Sign Here Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
		EXECUTIVE	408-891-7971
Spouse's signature. If a joint return, **both** must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see instrs)

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check [X] if self-employed	PTIN
MITRA EHSANIPOUR CPA	MITRA EHSANIPOUR CPA			P00090914

Firm's name ► MITRA EHSANIPOUR CPA

Firm's address ► 205 PARK RD STE 207 BURLINGAME, CA 94010-4220

Firm's EIN ► [redacted]

Phone no. 650-348-9444

FDIA0112L 12/29/14 Form **1040** (2014)

SCHEDULE A (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Itemized Deductions

► Information about Schedule A and its separate instructions is at *www.irs.gov/scheduleа.*
► Attach to Form 1040.

OMB No. 1545-0074

2014

Attachment Sequence No. 07

Name(s) shown on Form 1040: LARRY J. WILLARD

Your social security number: [redacted]

Medical and Dental Expenses		**Caution.** Do not include expenses reimbursed or paid by others.				
	1	Medical and dental expenses (see instructions)	1	5,254.		
	2	Enter amount from Form 1040, line 38	2	-1,954,009.		
	3	Multiply line 2 by 10% (.10). But if either you or your spouse was born before January 2, 1950, multiply line 2 by 7.5% (.075) instead	3			
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4	5,254.
Taxes You Paid	5	State and local **(check only one box):** a [ ] Income taxes, **or** b [X] General sales taxes	5	596.		
	6	Real estate taxes (see instructions)	6			
	7	Personal property taxes	7	350.		
	8	Other taxes. List type and amount ►	8			
	9	Add lines 5 through 8			9	946.
Interest You Paid	10	Home mtg interest and points reported to you on Form 1098	10			
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ►	11			
Note. Your mortgage interest deduction may be limited (see instructions).	12	Points not reported to you on Form 1098. See instrs for spcl rules	12			
	13	Mortgage insurance premiums (see instructions)	13			
	14	Investment interest. Attach Form 4952 if required. (See instrs.)	14			
	15	Add lines 10 through 14			15	0.
Gifts to Charity	16	Gifts by cash or check. If you made any gift of $250 or more, see instrs	16			
If you made a gift and got a benefit for it, see instructions.	17	Other than by cash or check. If any gift of $250 or more, see instructions. You **must** attach Form 8283 if over $500	17			
	18	Carryover from prior year	18	200.		
	19	Add lines 16 through 18 ..... Disallowed contributions ..... -200.			19	0.
Casualty and Theft Losses	20	Casualty or theft loss(es). Attach Form 4684. (See instructions.)			20	0.
Job Expenses and Certain Miscellaneous Deductions	21	Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ►	21			
	22	Tax preparation fees	22	1,560.		
	23	Other expenses — investment, safe deposit box, etc. List type and amount ► KAUAI EXPENSES 317.	23	317.		
	24	Add lines 21 through 23	24	1,877.		
	25	Enter amount from Form 1040, line 38	25	-1,954,009.		
	26	Multiply line 25 by 2% (.02)	26			
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-			27	1,877.
Other Miscellaneous Deductions	28	Other — from list in instructions. List type and amount ►			28	0.
Total Itemized Deductions	29	Is Form 1040, line 38, over $152,525? [X] No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. [ ] Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.			29	8,077.
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here ► [ ]				

SCHEDULE D (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Capital Gains and Losses

► Attach to Form 1040 or Form 1040NR.

► Information about Schedule D and its separate instructions is at *www.irs.gov/scheduled.*

► Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

OMB No. 1545-0074

2014

Attachment Sequence No. 12

Name(s) shown on return: LARRY J. WILLARD

Your social security number: [redacted]

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b	76.	70.		6.
1b Totals for all transactions reported on Form(s) 8949 with **Box A** checked				
2 Totals for all transactions reported on Form(s) 8949 with **Box B** checked				
3 Totals for all transactions reported on Form(s) 8949 with **Box C** checked				

4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4	
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5	
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** in the instructions	6	-29,912.
7 **Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). If you have any long-term capital gain or losses, go to Part II below. Otherwise, go to Part III on page 2	7	-29,906.

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b	167.	154.		13.
8b Totals for all transactions reported on Form(s) 8949 with **Box D** checked				
9 Totals for all transactions reported on Form(s) 8949 with **Box E** checked	13,938.	4,650.		9,288.
10 Totals for all transactions reported on Form(s) 8949 with **Box F** checked				

11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11	
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12	
13 Capital gain distributions. See instrs.	13	
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** in the instructions	14	-1,018,200.
15 **Net long-term capital gain or (loss).** Combine lines 8a through 14 in column (h). Then go to Part III on page 2	15	-1,008,899.

Part III Summary

16 Combine lines 7 and 15 and enter the result • If line 16 is a **gain,** enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • If line 16 is a **loss,** skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • If line 16 is **zero,** skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then to go line 22.	16	-1,038,805.
17 Are lines 15 and 16 **both** gains? ☐ **Yes.** Go to line 18. ☐ **No.** Skip lines 18 through 21, and go to line 22.		
18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions ►	18	
19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions ►	19	
20 Are lines 18 and 19 **both** zero or blank? ☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below. ☐ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.		
21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of: • The loss on line 16 or • ($3,000), or if married filing separately, ($1,500) **Note.** When figuring which amount is smaller, treat both amounts as positive numbers.	21	-3,000.
22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? ☒ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). ☐ **No.** Complete the rest of Form 1040 or Form 1040NR.		

Form **8949** (2014) Attachment Sequence No. **12A** Page **2**

Name(s) shown on return. Name and SSN or taxpayer identification no. not required if shown on other side. **SSN or taxpayer identification no.**

LARRY J. WILLARD [redacted]

Before you check Box D, E, or F below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either may show your basis (usually your cost) even if your broker did not report it to the IRS. Brokers must report basis to the IRS for most stock you bought in 2011 or later (and for certain debt instruments you bought in 2014 or later).

Part II **Long-Term.** Transactions involving capital assets you held more than 1 year are long term. For short-term transactions, see page 1.

Note. You may aggregate all long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the total directly on Schedule D, line 8a; you are not required to report these transactions on Form 8949 (see instructions).

You *must* check Box D, E, *or* F below. Check only one box. If more than one box applies for your long-term transactions, complete a separate Form 8949, page 2, for each applicable box. If you have more long-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

- [ ] **(D)** Long-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)
- [X] **(E)** Long-term transactions reported on Form(s) 1099-B showing basis was **not** reported to the IRS
- [ ] **(F)** Long-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 shares XYZ Co)	(b) Date acquired (Mo, day, yr)	(c) Date sold or disposed (Mo, day, yr)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis. See the **Note** below and see *Column (e)* in the separate instructions	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). See the separate instructions. (f) Code(s) from instructions	(g) Amount of adjustment	(h) Gain or (loss). Subtract column (e) from column (d) and combine the result with column (g)
120 PHILIP MORRIS INTERNATIONAL INC	Various	1/24/14	9,773.	3,258.			6,515.
27 KRAFT	Various	1/24/14	1,400.	459.			941.
83 MONDELEZ	Various	1/29/14	2,765.	933.			1,832.
2 Totals. Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 8b** (if **Box D** above is checked), **line 9** (if **Box E** above is checked), or **line 10** (if **Box F** above is checked) ▶			13,938.	4,650.		0.	9,288.

Note. If you checked Box D above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See *Column (g)* in the separate instructions for how to figure the amount of the adjustment.

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)
► Attach to Form 1040, 1040NR, or Form 1041.
► Information about Schedule E and its separate instructions is at *www.irs.gov/schedulee*.

OMB No. 1545-0074

2014

Attachment Sequence No. 13

Name(s) shown on return: LARRY J. WILLARD

Your social security number: [redacted]

Part I (1) **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2014 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No

B If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

	1a Physical address of each property (street, city, state, ZIP code)	1b Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	Fair Rental Days	Personal Use Days	QJV
A	7693-7699 S. VIRGINA STREET, RENO, NV 89511	4	A			
B			B			
C			C			

Type of Property:
1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Income: / Properties:		A	B	C
3 Rents received	3			
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6	1,800.		
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9			
10 Legal and other professional fees	10	1,650.		
11 Management fees	11			
12 Mortgage interest paid to banks, etc (see instructions)	12			
13 Other interest	13			
14 Repairs	14			
15 Supplies	15			
16 Taxes	16	38,903.		
17 Utilities	17			
18 Depreciation expense or depletion	18	54,026.		
19 Other (list) ► See Stm 4	19	1,474.		
20 Total expenses. Add lines 5 through 19	20	97,853.		
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	-97,853.		
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	-162,829.		
23a Total of all amounts reported on line 3 for all rental properties	23a			
b Total of all amounts reported on line 4 for all royalty properties	23b			
c Total of all amounts reported on line 12 for all properties	23c			
d Total of all amounts reported on line 18 for all properties	23d		54,026.	
e Total of all amounts reported on line 20 for all properties	23e		97,853.	
24 **Income.** Add positive amounts shown on line 21. **Do not** include any losses	24			
25 **Losses.** Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25			-162,829.
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26			-162,829.

Schedule E (Form 1040) 2014 Attachment Sequence No. 13 Page 2

Name(s) shown on return. Do not enter name and social security number if shown on Page 1. Your social security number

LARRY J. WILLARD [redacted]

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which **any** amount is **not** at risk, you **must** check the box in column **(e)** on line 28 and attach **Form 6198**. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered 'Yes,' see instructions before completing this section. ☐ Yes ☒ No

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	US IMMIGRANT INVESTMENT CENTER LLC	P		[redacted]	
B					
C					
D					

	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
29a Totals	[redacted]		[redacted]		
b Totals		[redacted]			

30	Add columns (g) and (j) of line 29a	30	
31	Add columns (f), (h), and (i) of line 29b	31	
32	**Total partnership and S corporation income or (loss).** Combine lines 30 and 31. Enter the result here and include in the total on line 41 below	32	

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
34a Totals	[redacted]		[redacted]	
b Totals		[redacted]		

35	Add columns (d) and (f) of line 34a	35	
36	Add columns (c) and (e) of line 34b	36	
37	**Total estate and trust income or (loss).** Combine lines 35 and 36. Enter the result here and include in the total on line 41 below	37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) — Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below	39	

Part V Summary

40	Net farm rental income or (loss) from **Form 4835**. Also, complete line 42 below	40	
41	**Total income or (loss).** Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18 ►	41	-162,829.
42	**Reconciliation of farming and fishing income.** Enter your **gross** farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code V; and Schedule K-1 (Form 1041), box 14, code F (see instructions)	42	
43	**Reconciliation for real estate professionals.** If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

A.App.530

Form **1116**

Department of the Treasury Internal Revenue Service (99)

Foreign Tax Credit

(Individual, Estate, or Trust)

► Attach to Form 1040, 1040NR, 1041, or 990-T.

► Information about Form 1116 and its separate instructions is at *www.irs.gov/form1116.*

OMB No. 1545-0121

2014

Attachment Sequence No. **19**

Name: LARRY J. WILLARD

ID no. as shown on page 1 of your tax return: [redacted]

Use a separate Form 1116 for each category of income listed below. See **Categories of Income** in the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

a [X] Passive category income
b [ ] General category income
c [ ] Section 901(j) income
d [ ] Certain income re-sourced by treaty
e [ ] Lump-sum distributions

f Resident of (name of country) ►

Note: *If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to* ***more than one*** *foreign country or U.S. possession, use a separate column and line for each country or possession.*

Part I Taxable Income or Loss From Sources Outside the United States (for Category Checked Above)

	Foreign Country or U.S. Possession A	B	C	Total (Add columns A, B, and C.)
g Enter the name of the foreign country or U.S. possession ►	VARIOUS			
1a Gross income from sources within country shown above and of the type checked above (see instructions):				1a
b Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is $250,000 or more, and you used an alternative basis to determine its source (see instructions) ► [ ]				
Deductions and losses *(Caution: See instructions):*				
2 Expenses **definitely related** to the income on line 1a (attach statement)				
3 Pro rata share of other deductions **not definitely related:**				
a Certain itemized deductions or standard deduction (see instructions)	5,850.			
b Other deductions (attach statement)				
c Add lines 3a and 3b	5,850.			
d Gross foreign source income (see instructions)				
e Gross income from all sources (see instructions)	54,705.			
f Divide line 3d by line 3e (see instructions)				
g Multiply line 3c by line 3f				
4 Pro rata share of interest expense (see instructions):				
a Home mortgage interest (use the Worksheet for Home Mortgage Interest in the instructions)				
b Other interest expense				
5 Losses from foreign sources				
6 Add lines 2, 3g, 4a, 4b, and 5				6
7 Subtract line 6 from line 1a. Enter the result here and on line 15, page 2 ►				7

Part II Foreign Taxes Paid or Accrued (see instructions)

COUNTRY	Credit is claimed for taxes (you must check one) (h) [X] Paid (i) [ ] Accrued	Foreign taxes paid or accrued: In foreign currency — Taxes withheld at source on:			(n) Other foreign taxes paid or accrued	In U.S. dollars — Taxes withheld at source on:			(r) Other foreign taxes paid or accrued	(s) Total foreign taxes paid or accrued (add columns (o) through (r))
	(j) Date paid or accrued	(k) Dividends	(l) Rents & royalties	(m) Interest		(o) Dividends	(p) Rents & royalties	(q) Interest		
A										
B										
C										

8 **Add lines A through C, column (s). Enter the total here and on line 9, page 2** ► 8

BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2612L 09/03/14 Form **1116** (2014)

Part III Figuring the Credit

9	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I	9		
10	Carryback or carryover (attach detailed computation) See Stmt 5	10	14.	
11	Add lines 9 and 10	11	14.	
12	Reduction in foreign taxes (see instructions)	12		
13	Taxes reclassified under high tax kickout (see instructions)	13		
14	Combine lines 11, 12 and 13. This is the total amount of foreign taxes available for credit		14	14.
15	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I (see instructions)	15		
16	Adjustments to line 15 (see instructions)	16		
17	Combine the amounts on lines 15 and 16. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 18 through 22. However, if you are filing more than one Form 1116, you must complete line 20.)	17		
18	**Individuals:** Enter the amount from Form 1040, line 41, or Form 1040NR, line 39. **Estates and trusts:** Enter your taxable income without the deduction for your exemption	18		
	Caution: *If you figured your tax using the lower rates on qualified dividends or capital gains, see instructions.*			
19	Divide line 17 by line 18. If line 17 is more than line 18, enter '1'		19	
20	**Individuals:** Enter the amounts from Form 1040, lines 44 and 46. If you are a nonresident alien, enter the amounts from Form 1040NR, lines 42 and 44. **Estates and trusts:** Enter the amount from Form 1041, Schedule G, line 1a, or the total of Form 990-T, lines 36 and 37		20	
	Caution: *If you are completing line 20 for separate category* **e** *(lump-sum distributions), see instructions.*			
21	Multiply line 20 by line 19 (maximum amount of credit)		21	
22	Enter the **smaller** of line 14 or line 21. If this is the only Form 1116 you are filing, skip lines 23 through 27 and enter this amount on line 28. Otherwise, complete the appropriate line in Part IV (see instructions) ►		22	

Part IV Summary of Credits From Separate Parts III (see instructions)

23	Credit for taxes on passive category income	23		
24	Credit for taxes on general category income	24		
25	Credit for taxes on certain income re-sourced by treaty	25		
26	Credit for taxes on lump-sum distributions	26		
27	Add lines 23 through 26		27	
28	Enter the **smaller** of line 20 or line 27		28	
29	Reduction of credit for international boycott operations. See instructions for line 12		29	
30	Subtract line 29 from line 28. This is your **foreign tax credit.** Enter here and on Form 1040, line 48; Form 1040NR, line 46; Form 1041, Schedule G, line 2a; or Form 990-T, line 40a ►		30	

Form **1116**

Department of the Treasury
Internal Revenue Service (99)

Alternative Minimum Tax

Foreign Tax Credit

(Individual, Estate, or Trust)

► **Attach to Form 1040, 1040NR, 1041, or 990-T.**

► **Information about Form 1116 and its separate instructions is at *www.irs.gov/form1116.***

OMB No. 1545-0121

2014

Attachment Sequence No. **19**

Name

LARRY J. WILLARD

ID no. as shown on page 1 of your tax return

[redacted]

Use a separate Form 1116 for each category of income listed below. See **Categories of Income** in the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

a [X] Passive category income
b [ ] General category income
c [ ] Section 901(j) income
d [ ] Certain income re-sourced by treaty
e [ ] Lump-sum distributions

f Resident of (name of country) ►

Note: *If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to* ***more than one*** *foreign country or U.S. possession, use a separate column and line for each country or possession.*

Part I Taxable Income or Loss From Sources Outside the United States (for Category Checked Above)

	Foreign Country or U.S. Possession A	B	C	Total (Add columns A, B, and C.)
g Enter the name of the foreign country or U.S. possession ►	VARIOUS			
1a Gross income from sources within country shown above and of the type checked above (see instructions):				
				1a
b Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is $250,000 or more, and you used an alternative basis to determine its source (see instructions) ► [ ]				
Deductions and losses ***(Caution:*** *See instructions)*:				
2 Expenses **definitely related** to the income on line 1a (attach statement)				
3 Pro rata share of other deductions **not definitely related:**				
a Certain itemized deductions or standard deduction (see instructions)	5,254.			
b Other deductions (attach statement)				
c Add lines 3a and 3b	5,254.			
d Gross foreign source income (see instructions)				
e Gross income from all sources (see instructions)	54,705.			
f Divide line 3d by line 3e (see instructions)				
g Multiply line 3c by line 3f				
4 Pro rata share of interest expense (see instructions):				
a Home mortgage interest (use the Worksheet for Home Mortgage Interest in the instructions)				
b Other interest expense				
5 Losses from foreign sources				
6 Add lines 2, 3g, 4a, 4b, and 5				**6**
7 Subtract line 6 from line 1a. Enter the result here and on line 15, page 2 ►				**7**

Part II Foreign Taxes Paid or Accrued (see instructions)

COUNTRY	Credit is claimed for taxes (you must check one) (h) [X] Paid (i) [ ] Accrued	Foreign taxes paid or accrued: In foreign currency — Taxes withheld at source on: (k) Dividends	(l) Rents & royalties	(m) Interest	(n) Other foreign taxes paid or accrued	In U.S. dollars — Taxes withheld at source on: (o) Dividends	(p) Rents & royalties	(q) Interest	(r) Other foreign taxes paid or accrued	(s) Total foreign taxes paid or accrued (add columns (o) through (r))
	(j) Date paid or accrued									
A										
B										
C										

8 **Add lines A through C, column (s). Enter the total here and on line 9, page 2** ► **8**

BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2612L 09/03/14 Form **1116** (2014)

Alternative Minimum Tax

Form **1116** (2014) LARRY J. WILLARD [redacted]

Part III Figuring the Credit

9	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I	9			
10	Carryback or carryover (attach detailed computation) See Stmt 6	10	8.		
11	Add lines 9 and 10	11	8.		
12	Reduction in foreign taxes (see instructions)	12			
13	Taxes reclassified under high tax kickout (see instructions)	13			
14	Combine lines 11, 12 and 13. This is the total amount of foreign taxes available for credit			14	8.
15	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I (see instructions)	15			
16	Adjustments to line 15 (see instructions)	16			
17	Combine the amounts on lines 15 and 16. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 18 through 22. However, if you are filing more than one Form 1116, you must complete line 20.)	17			
18	**Individuals:** Enter the amount from Form 1040, line 41, or Form 1040NR, line 39. **Estates and trusts:** Enter your taxable income without the deduction for your exemption	18			
	Caution: *If you figured your tax using the lower rates on qualified dividends or capital gains, see instructions.*				
19	Divide line 17 by line 18. If line 17 is more than line 18, enter '1'			19	
20	**Individuals:** Enter the amounts from Form 1040, lines 44 and 46. If you are a nonresident alien, enter the amounts from Form 1040NR, lines 42 and 44. **Estates and trusts:** Enter the amount from Form 1041, Schedule G, line 1a, or the total of Form 990-T, lines 36 and 37			20	
	Caution: *If you are completing line 20 for separate category* **e** *(lump-sum distributions), see instructions.*				
21	Multiply line 20 by line 19 (maximum amount of credit)			21	
22	Enter the **smaller** of line 14 or line 21. If this is the only Form 1116 you are filing, skip lines 23 through 27 and enter this amount on line 28. Otherwise, complete the appropriate line in Part IV (see instructions) ►			22	

Part IV Summary of Credits From Separate Parts III (see instructions)

23	Credit for taxes on passive category income	23			
24	Credit for taxes on general category income	24			
25	Credit for taxes on certain income re-sourced by treaty	25			
26	Credit for taxes on lump-sum distributions	26			
27	Add lines 23 through 26			27	
28	Enter the **smaller** of line 20 or line 27			28	
29	Reduction of credit for international boycott operations. See instructions for line 12			29	
30	Subtract line 29 from line 28. This is your **foreign tax credit.** Enter here and on Form 1040, line 48; Form 1040NR, line 46; Form 1041, Schedule G, line 2a; or Form 990-T, line 40a ►			30	

Form **4797**

Department of the Treasury
Internal Revenue Service

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

► Attach to your tax return.

► Information about Form 4797 and its separate instructions is at *www.irs.gov/form4797.*

OMB No. 1545-0184

2014

Attachment Sequence No. **27**

Name(s) shown on return: LARRY J. WILLARD

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2014 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) ... 1 **2,389,709.**

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft — Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
See Statement 7						-957,390.

3	Gain, if any, from Form 4684, line 39	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	45,150.
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	-912,240.
	Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.		
	Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	-912,240.
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	
14	Net gain or (loss) from Form 4684, lines 31 and 38a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	-912,240.
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from 'Form 4797, line 18a.' See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	-912,240.

BAA For Paperwork Reduction Act Notice, see separate instructions. Form **4797** (2014)

FDIZ1001L 06/24/14

Form **4797** (2014) LARRY J. WILLARD [redacted] Page **2**

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo, day, yr)	(c) Date sold (mo, day, yr)
A EDPA BUILDING	3/04/06	3/03/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D. ►		Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** *See line 1 before completing.*)	20	2,389,709.			
21 Cost or other basis plus expense of sale	21	2,649,765.			
22 Depreciation (or depletion) allowed or allowable	22	305,206.			
23 Adjusted basis. Subtract line 22 from line 21	23	2,344,559.			
24 Total gain. Subtract line 23 from line 20	24	45,150.			
25 **If section 1245 property:**					
a Depreciation allowed or allowable from line 22	25a				
b Enter the **smaller** of line 24 or 25a	25b				
26 **If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instrs)	26a				
b Applicable percentage multiplied by the **smaller** of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 & before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g	0.			
27 **If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 **If section 1254 property:**					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions)	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 **If section 1255 property:**					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the smaller of line 24 or 29a (see instrs)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	45,150.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	0.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	45,150.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

Form **4952**

Department of the Treasury
Internal Revenue Service (99)

Investment Interest Expense Deduction

► Information about Form 4952 and its instructions is at *www.irs.gov/form4952*
► Attach to your tax return.

OMB No. 1545-0191

2014

Attachment Sequence No. **51**

Name(s) shown on return

LARRY J. WILLARD

Identifying number [redacted]

Part I Total Investment Interest Expense

1	Investment interest expense paid or accrued in 2014 (see instructions)	1	
2	Disallowed investment interest expense from 2013 Form 4952, line 7	2	782,223.
3	**Total investment interest expense.** Add lines 1 and 2	3	782,223.

Part II Net Investment Income

4a	Gross income from property held for investment (excluding any net gain from the disposition of property held for investment)	4a	248.		
b	Qualified dividends included on line 4a	4b	235.		
c	Subtract line 4b from line 4a			4c	13.
d	Net gain from the disposition of property held for investment	4d			
e	Enter the **smaller** of line 4d or your net capital gain from the disposition of property held for investment (see instructions)	4e			
f	Subtract line 4e from line 4d			4f	
g	Enter the amount from lines 4b and 4e that you elect to include in investment income (see instructions)			4g	
h	Investment income. Add lines 4c, 4f, and 4g			4h	13.
5	Investment expenses (see instructions)			5	317.
6	**Net investment income.** Subtract line 5 from line 4h. If zero or less, enter -0-			6	0.

Part III Investment Interest Expense Deduction

7	Disallowed investment interest expense to be carried forward to 2015. Subtract line 6 from line 3. If zero or less, enter -0-	7	782,223.
8	**Investment interest expense deduction.** Enter the **smaller** of line 3 or 6. See instructions	8	0.

BAA For Paperwork Reduction Act Notice, see separate instructions. Form **4952** (2014)

FDIZ1201L 06/13/14

Form **8582**

Department of the Treasury Internal Revenue Service (99)

Passive Activity Loss Limitations

► See separate instructions.
► Attach to Form 1040 or Form 1041.
► Information about Form 8582 and its instructions is available at *www.irs.gov/form8582.*

OMB No. 1545-1008

2014

Attachment Sequence No. **88**

Name(s) shown on return

LARRY J. WILLARD

Identifying number [redacted]

Part I 2014 Passive Activity Loss

Caution: *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)				
1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d	Combine lines 1a, 1b, and 1c		1d	
Commercial Revitalization Deductions From Rental Real Estate Activities				
2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c	Add lines 2a and 2b		2c	
All Other Passive Activities				
3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a		
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	-4.	
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c		
d	Combine lines 3a, 3b, and 3c		3d	-4.
4	Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used		4	-4.

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: *If your filing status is married filing separately and you lived with your spouse at any time during the year,* ***do not*** *complete Part II or Part III. Instead, go to line 15.*

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: *Enter all numbers in Part II as positive amounts. See instructions for an example.*

5	Enter the **smaller** of the loss on line 1d or the loss on line 4		5	
6	Enter $150,000. If married filing separately, see instructions	6		
7	Enter modified adjusted gross income, but not less than zero (see instrs)	7		
	Note: *If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.*			
8	Subtract line 7 from line 6	8		
9	Multiply line 8 by 50% (.5). **Do not** enter more than $25,000. If married filing separately, see instructions		9	
10	Enter the **smaller** of line 5 or line 9		10	0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: *Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.*

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the **smallest** of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2014.** Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	

Caution: *The worksheets must be filed with your tax return. Keep a copy for your records.*

Worksheet 1 — For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c ►					

Worksheet 2 — For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ►			

Worksheet 3 — For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
US IMMIGRANT INVESTMENT CENTER		4.			4.
Total. Enter on Form 8582, lines 3a, 3b, and 3c ►		4.			

Worksheet 4 — Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ►			1.00		

Worksheet 5 — Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
US IMMIGRANT INVESTMENT CENTER L	Sch E Ln 28	4.	1.000000	4.
Total ►		4.	1.00	4.

Worksheet 6 — Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
US IMMIGRANT INVESTMENT CENTER L	Sch E Ln 28	4.	4.	0.
Total ►		4.	4.	0.

Worksheet 7 — Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►		0.	1.00	0.	0.
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►		0.	1.00	0.	0.

Form **982**
(Rev. July 2013)
Department of the Treasury
Internal Revenue Service

Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

► Attach this form to your income tax return.
► Information about Form 982 ad its instructions is at *www.irs.gov/form982*

OMB No. 1545-0046
Attachment Sequence No. **94**

Name shown on return: LARRY J. WILLARD
Identifying number: [redacted]

Part I General Information (see instructions)

1 Amount excluded is due to (check applicable box(es)):

a Discharge of indebtedness in a title 11 case	
b Discharge of indebtedness to the extent insolvent (not in a title 11 case)	X
c Discharge of qualified farm indebtedness	
d Discharge of qualified real property business indebtedness	
e Discharge of qualified principal residence indebtedness	

2 Total amount of discharged indebtedness excluded from gross income — 2: 4,196,190.

3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property? [X] Yes [ ] No

Part II Reduction of Tax Attributes

You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

Enter amount excluded from gross income:

4 For a discharge of qualified real property business indebtedness applied to reduce the basis of depreciable real property	4	
5 That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property	5	
6 Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge	6	1,951,257.
7 Applied to reduce any general business credit carryover to or from the tax year of the discharge	7	
8 Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge	8	
9 Applied to reduce any net capital loss for the tax year of the discharge, including any capital loss carryovers to the tax year of the discharge	9	1,038,805.
10a Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. *DO NOT use in the case of discharge of qualified farm indebtedness*	10a	
b Applied to reduce the basis of your principal residence. *Enter amount here ONLY if line 1e is checked*	10b	
11 For a discharge of qualified farm indebtedness applied to reduce the basis of:		
a Depreciable property used or held for use in a trade or business or for the production of income if not reduced on line 5	11a	
b Land used or held for use in a trade or business of farming	11b	
c Other property used or held for use in a trade or business or for the production of income	11c	
12 Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge	12	
13 Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge	13	14.

Part III Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded $ _____ from its gross income for the tax year beginning _____ and ending _____.

Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of _____.
(State of incorporation)

Note: *You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.*

A.App.541

LARRY J. WILLARD [redacted]

Statement 1
Form 1040, Page 1, Line 10
Taxable Refunds of State and Local Income Taxes

1.	State and local income tax refunds (prior year)		$ 1,171.
2.	Refunds attributable to post 12/31/2013 payments per IRS Pub. 525		0.
3.	Net state and local income tax refunds		1,171.
4.	State and local taxes paid from prior year Sch. A, line 5		1,171.
5.	Prior year allowable sales tax deduction		574.
6.	Excess of income taxes deducted over sales taxes		597.
7.	Enter the smaller of line 3 or line 6		597.
8.	Itemized deduction from prior year Sch. A, line 29		94,001.
9.	Prior year recomputed itemized deductions (if phaseout)		0.
10.	Prior year base standard deduction	6,100.	
11.	Prior year add'l standard deduction for age/blindness	1,500.	
12.	Prior year total standard deduction (add line 10 and 11)		7,600.
13.	Enter the larger of line 9 or line 12		7,600.
14.	Subtract line 13 from line 8 (not less than 0)		86,401.
15.	Enter the smaller of line 7 or line 14		597.
16.	Negative taxable income (prior year)		-152,599.
17.	Refund with no benefit due to AMT, nonref. cred., 0% cap gain rate		0.
18.	State and local refunds taxable this year (add lines 15, 16, and 17, but not less than 0)		$ 0.

Statement 2
Form 1040, Line 21
Computation of 2014 Taxable Income for NOL Utilization

Taxable income (Form 1040, line 41)	-1,962,086.
Less: Deduction for exemptions (Form 1040, Line 42)	-3,950.
Plus: NOL carryovers from 2011 and later years	876,188.
2014 Taxable income before NOL deduction	-1,089,848.

Statement 2
Form 1040, Line 21
2011 NOL Utilization

Initial Loss	1,049,662.
NOL carryover available in 2014	851,188.
Modifed taxable income (from line 9 below)	0.
NOL absorbed this Year	0.
Taxable income after NOL deduction	0.
NOL carryover to 2015	851,188.

Worksheet for NOL carryover
Computed for first NOL that reduces taxable income below zero
Per IRS Publication 536

NOL YEAR: 2011
Use your 2014 Form 1040 or Form 1040NR to complete this worksheet

1.	NOL deduction for the NOL year entered above	851,188.
2.	Taxable income before the NOL deduction for 2011 and later years	-1,089,848.
3.	Net capital loss deduction	3,000.

Worksheet for NOL carryover (continued)
Computed for first NOL that reduces taxable income below zero
Per IRS Publication 536

4. Gain excluded on sale of small business stock	0.
5. Domestic production activities deduction	0.
6. Adjustments to adjusted gross income	0.
7. Adjustments to itemized deductions (line 35)	0.
8. Deduction for exemptions	3,950.
9. Modified taxable income	0.
10. NOL carryover to 2015	851,188.

Statement 2
Form 1040, Line 21
2013 NOL Utilization

Initial Loss	25,000.
NOL carryover available in 2014	25,000.
Taxable income before NOL deduction	0.
NOL absorbed this Year	0.
Section 1411 (Form 8960) NOL absorbed this Year	0.
Taxable income after NOL deduction	0.
NOL carryover to 2015	25,000.
Section 1411 (Form 8960) NOL carryover to 2015	25,000.

Statement 3
Form 1040, Line 21
Other Income

Cancellation of Debt	$ 4,196,190.
EXCLUDE FROM INCOME FORM 982	-4,196,190.
NOL	-876,188.
Total	$ -876,188.

Statement 4
Schedule E, Line 19 - 7693-7699 S. VIRGINA STREET
Other Rental and Royalty Expenses

Amortization	$ 1,474.
Total	$ 1,474.

Statement 5
Form 1116, Line 10
Foreign Tax Credit Carryovers

Passive Income

	Foreign Taxes Paid	Foreign Taxes Disallowed	Foreign Taxes Claimed	Foreign Tax Credit Carryover
2013 Foreign tax credit	5.	0.	0.	5.
2012 Foreign tax credit	0.	0.	0.	0.
2011 Foreign tax credit	0.	0.	0.	0.
2010 Foreign tax credit	3.	0.	0.	3.
2009 Foreign tax credit	8.	0.	8.	6.
2008 Foreign tax credit	0.	0.	0.	0.
2007 Foreign tax credit	0.	0.	0.	0.
2006 Foreign tax credit	0.	0.	0.	0.
2005 Foreign tax credit	0.	0.	0.	0.
2004 Foreign tax credit	0.	0.	0.	0.
Total Foreign Tax Credit Carryover - Form 1116, Line 10				$ 14.

Statement 6
Form 1116, Line 10
Foreign Tax Credit Carryovers

Passive Income - AMT

	Foreign Taxes Paid	Foreign Taxes Disallowed	Foreign Taxes Claimed	Foreign Tax Credit Carryover
2013 Foreign tax credit	5.	0.	0.	5.
2012 Foreign tax credit	0.	0.	0.	0.
2011 Foreign tax credit	0.	0.	0.	0.
2010 Foreign tax credit	3.	0.	0.	3.
2009 Foreign tax credit	8.	0.	8.	0.
2008 Foreign tax credit	0.	0.	0.	0.
2007 Foreign tax credit	0.	0.	0.	0.
2006 Foreign tax credit	0.	0.	0.	0.
2005 Foreign tax credit	0.	0.	0.	0.
2004 Foreign tax credit	0.	0.	0.	0.
Total Foreign Tax Credit Carryover - Form 1116, Line 10				$ 8.

Statement 7
Form 4797, Page 1, Part I
Sales or Exchanges of Certain Property Held Over One Year

Description of Property	Date Acquired	Date Sold	Sales Price	Depreciation Allowed	Cost or Basis	Gain or Loss
EDPA SVC.STATION & LAND IMPROV	3/04/06	3/03/14		1,076,606.	1,927,849.	$ -851,243.
EDPA FURNITURE & FIXTURES	3/04/06	3/03/14		6,811.	6,811.	0.
EDPA LOAN FEES	3/04/06	3/03/14		70,767.	176,914.	-106,147.

Statement 7 (continued)
Form 4797, Page 1, Part I
Sales or Exchanges of Certain Property Held Over One Year

Description of Property	Date Acquired	Date Sold	Sales Price	Depreciation Allowed	Cost or Basis	Gain or Loss
EDPA DISTRIBUTIVE TRADE & SERV	3/04/06	3/03/14		908,133.	908,133.	$ 0.
					Total	$ -957,390.

LARRY J. WILLARD [redacted]

NCUAB/TCCU BANK,- ACCOUNT [redacted] FIRST LOAN ON THE PROPERTY LOCATED AT 7963 TO 7699 SOUTH VIRGINIA STREET, RENO, NEVADA 89511- HAS ISSUED FORM 1099-C DEBT CANCELLED IN THE TOTAL AMOUNT OF $8,597,250 UNDER DEBTOR'S ID# [redacted] AND DEBTOR'S NAME OVERLAND DEVELOPMENT CORP. , INC. THE PROPERTY IS 41% OWNED BY OVERLAND DEVELOPMENT INC. AND 59% OWNED BY LARRY J. WILLARD, TRUSTE OF THE LARRY JAMES WILLARD TRUST DATED 11/14/1987. TAXPAYER'S TOTAL OF ALL HIS LIABILITIES EXCEED THE FMV OF ALL OF HIS ASSETS IMMEDIATELY BEFORE THE CANCELLATION OF THIS DEBT. THEREFORE TAXPAYER CONSIDER INSOLVENT.

LARRY J. WILLARD [redacted]

Election to Waive Net Operating Loss Carryback

Pursuant to IRC Section 172(b)(3), the Taxpayer hereby elects to relinquish the entire carryback period with respect to the net operating loss incurred for the tax year ended 12/31/14.

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CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 9

EXHIBIT 9

NorCal Escrow Solutions, Inc. (408) 842-1760

Seller's Final Closing Statement

Seller(s)	Overland Development Corporation, Inc., 826 Vanderbuilt Place, San Diego, CA 92103 Larry J. Willard, Truste of the Larry James Willard Trust dated 11/14/1987, 826 Vanderbuilt Place, San Diego, CA 92103
Buyer(s)	Longley Partners, LLC, 1200 Financial Boulevard, Reno, NV 89502
Lender	Heritage Bank of Nevada, 1401 S. Virginia Street, Reno, NV 89502
Property	7693 S Virginia St., Reno, NV 89511

Closing date	03/03/2014	Proration date	None
Bank	BOW - BANK OF THE WEST		
Escrow Unit	1 - NorCal Escrow Solutions, Inc.		
Escrow Officer	Lucinda A. Reinecclus		

	Debit	Credit
Contract Sales Price		4,000,000.00
Other Adjustments:		
Credit from Realtor for closing costs from Colliers Nevada LLC dba Colliers International		354.68
Credit from buyer to seller		50,000.00
Payoffs:		
Payoff of first mortgage loan to National Credit Union Administration Boad	3,699,802.70	
Principal Balance Good Thru $3,699,802.70		
Payoff of second mortgage loan to Vaam and Assoc	150,000.00	
Principal Balance Good Thru $150,000.00		
Commissions:		
$120,000.00 to Colliers International	120,000.00	
Title Charges:		
Settlement or closing fee to NorCal Escrow Solutions, Inc	1,750.00	
Owner's title insurance to Stewart Title of Nevada		
Liability amount $4,000,000.00	4,000.00	
Notary Fee to Notary Public	100.00	
Document Preparation to NorCal Escrow Solutions, Inc	300.00	
Courier/Mail Service Fee to NorCal Escrow Solutions, Inc	85.00	
Wire Fee to NorCal Escrow Solutions, Inc	60.00	
Recording/Filing fees for recons & UCC to NorCal Escrow Solutions, Inc	120.00	
Recording Fees/Transfer Charges:		
State tax/stamps to Stewart Title of Nevada	8,200.00	
Additional Charges:		
2012/2013 Tax Year to Washoe County Tax Collector	65,936.98	
Subtotal:	4,050,354.68	4,050,354.68
Balance due to Seller:		
Totals:	4,050,354.68	4,050,354.68

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL.

BY: _____

F I L E D
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CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 10

EXHIBIT 10

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of December ___, 2005 by and between [**EDWARD C. WOOLEY** and **JUDITH A. WOOLEY**], a _____ _____ ("Lessor"), whose address is _____, 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 untenantability 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 Projection, 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 it 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 withhold 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]

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

_____

LESSOR:

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Tax Identification No. [redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

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

Notary Public

My Commission Expires: Apr 1, 2009

CHRIS GONZALES
Commission # 1566164
Notary Public - California
Santa Clara County
My Comm. Expires Apr 1, 2009

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____
Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

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

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.

"*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

(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.

"*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).

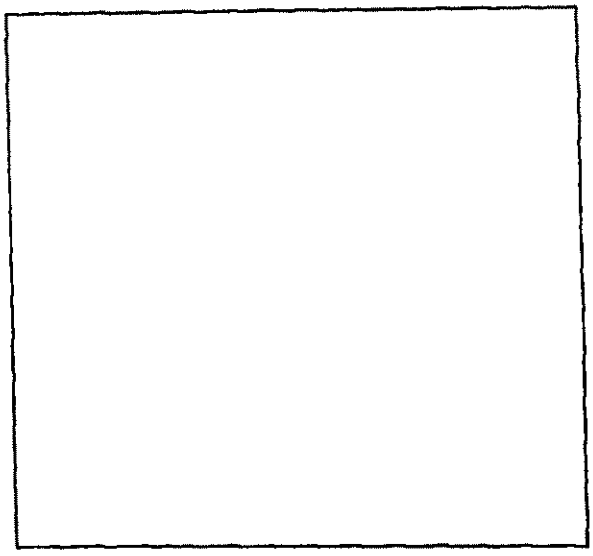
EXHIBIT B

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 _____, 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)

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Clerk of the Court
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EXHIBIT 11

EXHIBIT 11

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for property located on U.S. Highway 50 in Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the

provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Herbst Lease Guaranty - US I Hwy 50 (Wooley).DOC

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EXHIBIT 12

EXHIBIT 12

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

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

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

v.

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

Defendants.

AND RELATED COUNTERCLAIM

Case No. CV14-01712

Dept. No. 6

PLAINTIFF LARRY J. WILLARD'S RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

RESPONSES TO INTERROGATORIES

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.

RESPONSE TO INTERROGATORY NO. 1:

In early March 2013, immediately upon learning that BHI was walking out on their lease of the Property, Respondent engaged Daniel Gluhaich to try to find another lessee. Respondent was never informed of and is not currently aware of all the details of measures taken by Mr. Gluhaich to re-let or sell the Property. In or around April 2013, in an attempt to maintain the value of the Property to prospective lessees or purchasers, Mr. Gluhaich and Respondent's counsel negotiated the Interim Operating Agreement with BHI, which took effect on May 1, 2013. On or about May 18, 2013, Respondent's counsel notified BHI that BHI was in default of the Interim Operating Agreement. When BHI then willfully breached the Interim Operating Agreement, Respondent contacted Mr. Gluhaich and had him redouble his efforts to re-let or sell the Property. In or around August/September 2013, Respondent began negotiating with the mortgage holder to allow the property to be sold via a short sale. Mr. Gluhaich served as my broker for the short sale. The property was sold to Longley Partners, LLC for $4,150,000.00 on February 14, 2014.

INTERROGATORY NO. 2:

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

RESPONSE TO INTERROGATORY NO. 2:

Respondent is not directly aware of the persons or entities who expressed interest in leasing or purchasing the Property since the Lease was breached by BHI. Information responsive to this request is within the knowledge of Respondent's broker, Daniel J. Gluhaich. Concurrent with these Responses, Respondent will produce documents obtained from Mr. Gluhaich responsive to this Request.

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INTERROGATORY NO. 3:

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.

RESPONSE TO INTERROGATORY NO. 3:

Respondent is not aware of all methods that were utilized by Respondent's broker, Daniel J. Gluhaich, to advertise the availability of the Property for lease or sale. Concurrent with these Responses, Respondent will produce documents obtained from Mr. Gluhaich responsive to this Request.

INTERROGATORY NO. 4:

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

RESPONSE TO INTERROGATORY NO. 4:

The Property was already being advertised for sale at the time that the Lease was breached by BHI.

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.

RESPONSE TO INTERROGATORY NO. 5:

Daniel J. Gluhaich
Intero Real Estate Services
175 E. Main Ave. #130
Morgan Hill, CA 95037
Tel.: (408) 201-0120

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.

RESPONSE TO INTERROGATORY NO. 6:

May 31, 2013.

INTERROGATORY NO. 7:

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

RESPONSE TO INTERROGATORY NO. 7:

Damages alleged in Paragraph 13 were calculated using the actual notices from the City of Reno forwarded by Propounding Parties to Respondent's counsel. Such damages are expressly the responsibility of Defendants under, *inter alia*, Sections 4(A), 7, 13, 15, 20(B)(i)(vi), 20(B)(v) of the Lease.

Damages alleged in Paragraph 14 were calculated by computing the Base Monthly Rental from 3/1/2013 through 8/23/2023, including the annual 2% adjustment authorized under Lease § 4(B), as follows:

RENTAL PERIOD	ANNUAL PAYMENTS	MONTHLY
3/2006 - 2/2007	1,464,375.00	122,031.25
3/2007 - 2/2008	1,493,662.50	124,471.88
3/2008 - 2/2009	1,523,535.75	126,961.31
3/2009 - 2/2010	1,554,006.47	129,500.54
3/2010 - 2/2011	1,585,086.59	132,090.55
3/2011 - 2/2012	1,616,788.33	134,732.36
3/2012 - 2/2013	1,649,124.09	137,427.01
3/2013 - 2/2014	1,682,106.57	140,175.55
3/2014 - 2/2015	1,715,748.71	142,979.06
3/2015 - 2/2016	1,750,063.68	145,838.64
3/2016 - 2/2017	1,785,064.95	148,755.41
3/2017 - 2/2018	1,820,766.25	151,730.52
3/2018 - 2/2019	1,857,181.58	154,765.13
3/2019 - 2/2020	1,894,325.21	157,860.43
3/2020 - 2/2021	1,932,211.71	161,017.64
3/2021 - 2/2022	1,970,855.95	164,238.00
3/2022 - 2/2023	2,010,273.07	167,522.76
3/2023 - 8/23/2023	1,025,239.26	170,873.21

The 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 $19,443,836.94. 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, yielding a Net Present Value of $15,741,360.75. This figure was independently verified to be correct by Hratch Karakachian, a Certified Public Accountant and attorney-associate of

Respondent's counsel in California.

Damages alleged in Paragraph 15 were calculated using the actual value of earnest money invested by Respondent when the Property was purchased, $4,437,500.00. The tax consequences in the amount of at least $3,000,000.00 was obtained from Respondent's accountant, Mitra Ehsanipour. This figure was revised on March 1, 2015 by Ms. Ehsanipour to be $2,430,000.00 for Overland Development Corporation and $3,152,000.00 for Larry Willard. Damages for closing costs were calculated from the values appearing on the Seller's Final Closing Statement.

Damages alleged in Paragraph 16 were calculated from the actual invoices received by Respondent in the amount of $4,554.53 for insurance, $2,668.62 for installation of a security fence, and $10,393.35 from Nevada Energy.

Damages alleged in Paragraph 17 were calculated from the actual invoices received and paid by Respondent from Respondent's bankruptcy attorney and accountant.

Damages alleged in Paragraph 18 were calculated from the actual invoices received and paid by Respondent from Respondent's initial California attorney, L. Steven Goldblatt.

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.

RESPONSE TO INTERROGATORY NO. 8:

The terms of the Interim Operating Agreement at Section 4 expressly provides that Operator, i.e., BHI, shall have fifty days from the end of each month to tender the Net Profits to Owner and provide Owner with a certified accounting of the subject month's Net Profits upon which payments owed to or by Respondent shall be calculated. The first such accounting was due from BHI on July 20, 2013, but BHI never provided Respondent with any such accounting. In addition, on or about May 18, 2013, BHI was served with a notice of default by Respondent's attorney but failed to cure the breach of their obligation under Section 5 of the Interim Operating Agreement to continuously operate the Property, instead abandoning the Property on May 31,

2013. As a result of this willful breach by BHI of the Interim Operating Agreement and BHI's failure to comply with their duties under Sections 4 and 5 thereof, both of which constitute overt misrepresentations if not outright fraud in the inducement, the Interim Operating Agreement is voidable at Respondent's election, which Respondent in fact elected. Respondent has not pled any causes of action based on BHI's breach of the Interim Operating Agreement, nor has Respondent sought damages for said breach.

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.

RESPONSE TO INTERROGATORY NO. 9:

With Defendants having left the Property in an utterly disheveled and unpresentable condition upon abandoning the Property by virtue of which Respondent was unable to sell or re-let the Property, and Respondent, by virtue of Defendants' breach and having left Respondent with no income whatsoever but with liability to pay $87,000.00 per month in mortgage payments on the Property, Respondent had no choice but to negotiate with the mortgage holder to allow a short sale to occur. These negotiations began in or around August 2013 and the short sale was completed on February 14, 2014, with the Property being sold to Longley Partners, LLC for $4,050,354.68 with Daniel J. Gluhaich representing Respondent.

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.

RESPONSE TO INTERROGATORY NO. 10:

Respondent obtained liability insurance from Redwood Fire & Casualty on June 1, 2013, policy no. NVM500990. A true and correct copy of the Final Premium Notice on this policy was already provided to Defendants, Bates Number LJW000294. Respondent now produces the Certificate of Liability Insurance in response to Propounding Party's Request for Production.

On June 4, 2013, Respondent hired Tholl Fence to install a security fence as required by Respondent's mortgage holder. A copy of the Statement of Account as of July 31, 2013 from Tholl Fence is being produced in response to Propounding Party's Request for Production.

Propounding Party has already been provided with the invoices sent to Respondent by Nevada Energy, Bates Numbers LJW000339 through LJW000355.

INTERROGATORY NO. 11:

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

RESPONSE TO INTERROGATORY NO. 11:

The terms of the Lease expressly provide in Section 20(B)(i)(vi) that Propounding Parties are liable for "any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default." Section 20(B)(v) provides that Respondent is entitled "[t]o 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."

In addition, Respondent contends that it is beyond dispute that cessation of rental payments in the amount of $140,175.55 per month, with Respondent still being liable for monthly mortgage payments of $87,000.00 per month, renders Respondent's action of filing for bankruptcy protection a foreseeable consequence of Defendants' breach, thereby entitling Respondent to consequential damages for costs incurred in having sought bankruptcy protection as a direct result of Defendants' breach.

INTERROGATORY NO. 12:

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

RESPONSE TO INTERROGATORY NO. 12:

The terms of the Lease expressly provide in Section 20(B)(i)(vi) that Propounding Parties are liable for "any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default." Section 20(B)(v) provides

that Respondent is entitled "[t]o 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." Section 34 provides that "In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party [*sic*] 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."

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Larry J. Willard, being first duly sworn, under oath and under the penalties of perjury aver as follows: I am the Larry J. Willard in the above-entitled action. I am competent to testify as to the contents of the foregoing Responses to Defendants' First Set of Interrogatories of my own knowledge. I have read the foregoing Responses and know the contents thereof. The foregoing Responses are true to the best of my own knowledge, save and except for those matters therein stated upon information and belief upon which, as to those matters, I believe the same to be true.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Larry J. Willard

State of California, County of San Diego
On July 9, 2015 before me, Ashley Newnam, Notary Public personally appeared Larry J. Willard, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

ASHLEY NEWNAM
Commission # 2018035
Notary Public - California
San Diego County
My Comm. Expires Apr 6, 2017

WITNESS my hand and official seal.

Ashley Newnam
Signature of Notary Public

AFFIRMATION

(Pursuant to NRS 239B.030)

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

LAW OFFICES OF BRIAN P. MOQUIN

DATED: July 8, 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

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 13

EXHIBIT 13

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made by and between Spirit SPE Portfolio 2005-5, LLC a Delaware limited liability company ("Seller"), and Edward Wooley an individual ("Purchaser"). Except as otherwise expressly defined herein, capitalized terms will have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference.

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

ARTICLE I

PURCHASE OF PROPERTY

Section 1.01. Agreement To Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the "Transaction"), all of Seller's right, title and interest in and to (a) the real property as more particularly described on Exhibit B attached hereto, and any and all improvements thereon and appurtenances thereto (collectively, the "Real Property"); (b) the fixtures affixed thereto; (c) all leases and rental agreements relating to the Real Property or any portion thereof, including, without limitation, the Lease, and to the extent held by Seller, all rent, prepaid rent, security deposits and other tenant payments and deposits; and (d) all other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (d) above, now or hereafter existing, collectively, the "Property").

Section 1.02. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property is Three Million Two Hundred Eighty Six Thousand Five Hundred Fifty Two and 00/100 Dollars ($3,286,552) (the "Purchase Price"). The Purchase Price, as may be adjusted pursuant to requirements of this Agreement, shall be paid by Purchaser in immediately available federal funds at Closing.

Section 1.03. Earnest Money Deposit. Within three (3) Business Days after the Effective Date of this Agreement, Purchaser shall deposit with the Title Company the sum of Twenty Five Thousand and 00/100 Dollars ($25,000) (together with all interest accrued thereon, the "Initial Deposit"). Upon the expiration of the Inspection Period, as defined below, Purchaser shall deposit an additional sum of Twenty Five Thousand and 00/100 Dollars ($25,000) (together with the Initial Deposit and all interest accrued thereon, the "Earnest Money Deposit"). The Earnest Money Deposit shall be placed in an interest-bearing account by the Title Company, and shall be held by the Title Company and applied against the Purchase Price at Closing or disbursed as provided herein.

Section 1.04. Prorations. All taxes, insurance, utilities and maintenance expenses relating to the Property for the year of the Closing to be paid by the tenant pursuant to the Lease shall not be prorated; all other amounts, if any, shall be prorated as of the Closing Date. Rents

actually paid to and received by Seller with respect to the Property for the month in which the Closing occurs shall be prorated as of the Closing Date.

Section 1.05. Purchaser's Financial Contingency. Within twenty one (21) Business Days after execution of this Agreement (the "Loan Commitment Deadline"), Purchaser shall have obtained a loan commitment for market rate financing (the "Loan"). Purchaser shall diligently and timely pursue obtaining the Loan in good faith and shall execute all documents and furnish all information and documents required by the lender and shall timely pay the costs and fees of obtaining the Loan. Purchaser agrees to satisfy reasonable requirements of lender and shall not withdraw Purchaser's loan application nor intentionally cause any change in circumstances that would prejudice lender's approval of the loan application or funding of the Loan. Purchaser must provide written notice to Seller by the Loan Commitment Deadline of Purchaser's inability to obtain a loan commitment for the Loan. If Purchaser so notifies Seller, this Agreement shall terminate, in which event the Initial Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein. If Seller does not receive timely written notice to terminate and Purchaser does not close, Purchaser shall be in default under this Agreement.

Section 1.06. Condition of Property. Seller and Purchaser understand and agree that Purchaser's purchase of the Property and other rights to be conveyed, sold, transferred and/or assigned pursuant to this Agreement shall be on an "AS IS" "WHERE IS" physical basis, "WITH ALL FAULTS," without representation or warranty, express or implied, with regard to physical condition, including without limitation, any latent or patent defects, conditions of soils or groundwater, existence or nonexistence of hazardous materials, quality of construction, workmanship, merchantability or fitness for any particular purpose as to the physical measurements or useable space thereof. Purchaser hereby acknowledges that Purchaser has inspected or will inspect the Property to Purchaser's satisfaction and that Seller does not plan to conduct its own inspection and shall not be liable for any latent or patent defects in the Property. Purchaser acknowledges that neither Seller nor any representative or agent of Seller has made any representation or warranty as to any of the following: (a) the physical or environmental condition (including surface and subsurface conditions), state of repair, income, expenses, operations of the Property and surrounding property; (b) the assignability, assumability, transferability or validity of any licenses, permits, government approvals, warranties or guaranties relating to the Property or the use and operation thereof; (c) the accuracy or completeness of any information provided by Seller with respect to environmental matters; (d) compliance or noncompliance with local, state or federal statutes, ordinances, orders or regulations concerning the Property or the use thereof; (e) prior or current operations conducted on the Property; or (f) any matter or thing affecting or relating to the Property or this Agreement not expressly stated in this Section 1.06. Purchaser has not been induced by and has not relied upon any statement, representation or agreement, whether express or implied, not specifically set forth in this Agreement. Seller shall not be liable or bound in any manner by any oral or written statement, agreement or information pertaining to the Property or this Agreement furnished by any agent, employee or other Person.

ARTICLE II

DUE DILIGENCE

Section 2.01. Title Insurance.

(a) ***Title Commitment and Title Policy.*** Within five (5) days of execution of this Agreement, Seller shall order an owner's title insurance commitment ("Title Commitment") with respect to the Property issued by the Title Company, for an owner's title insurance policy (the "Title Policy"). Seller shall cause a copy of the Title Commitment and copies of the Schedule B-2 exceptions to be delivered to Purchaser. The premium related to the Title Policy shall be paid by Purchaser and costs for endorsements, if any, shall be the responsibility of Purchaser.

(b) ***Title Company.*** The Title Company is hereby employed by the parties to act as escrow agent in connection with this Transaction. This Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however,* that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail. The Title Company's receipt of this Agreement and the opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of the Title Company's agreement to be bound by the terms and conditions of this Agreement pertaining to the Title Company.

(c) ***Title Company Actions.*** The Title Company is authorized to pay, from any funds held by it for each party's respective credit and in accordance with the closing statements executed by both parties, all amounts set forth on the closing statements as necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them, respectively. Seller and Purchaser will pay all charges payable by them to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Seller and Purchaser to do so. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any such court. Deposit by the Title Company of such documents and funds, after deducting therefrom its reasonable expenses and attorneys' fees incurred in connection with any such court action, shall relieve the Title Company of all further liability and responsibility for such documents and funds.

(d) ***Title Objections.***

(i) Within three (3) days after the Purchaser's receipt of both the Title Commitment and the Survey, Purchaser shall notify Seller in writing of Purchaser's objection, if any, to any exceptions or other title matters shown on the

Title Commitment or the Survey (each, a "Title Objection"). If any Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(ii) If any supplement to the Title Commitment or the Survey discloses any additional title defects which were not created by or with the consent of Purchaser, and which are not acceptable to Purchaser, Purchaser shall notify Seller in writing of its objection thereto (each, an "Additional Title Objection") within three (3) days following receipt of such supplement or revision. If any Additional Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(iii) Purchaser's failure to timely deliver a Title Objection or an Additional Title Objection shall be deemed Purchaser's acceptance of the matters disclosed by the Title Commitment and the Survey. If Purchaser does not terminate this Agreement by reason of any Title Objection or Additional Title Objection as provided in this Section, then such Title Objection or Additional Title Objection shall be deemed waived and approved by Purchaser and shall thereafter be deemed a Permitted Encumbrance.

Section 2.02. Seller Documents. With reasonable promptness, but in no event later than five (5) days from the Effective Date, Seller shall deliver to Purchaser the following items which are in Seller's possession or under its control (collectively, the "Seller Documents"):

(a) survey related to the Property (the "Survey");

(b) environmental report related to the Property (the "Environmental Report"); and

(c) a full and complete copy of the Lease, together with all amendments, modifications and guaranties relating thereto, and to the extent that the same is not proprietary or confidential, all financial information related to the tenant under the Lease.

Section 2.03. Survey. Purchaser may, at its expense, order an update to the Survey if required by the Title Company or otherwise required by Purchaser.

Section 2.04. Environmental. Purchaser may, at its expense, order an update to the Environmental Report, if deemed necessary by Purchaser in its sole discretion.

Section 2.05. Tenant Estoppel. Seller shall use commercially reasonable efforts to obtain and deliver to Purchaser, at least three (3) days prior to Closing, a tenant estoppel certificate from the tenant under the Lease certifying (a) that the Lease is in full force and effect and that, except as otherwise stated therein, the Lease has not been amended or modified; (b) the commencement and expiration dates of the Lease; (c) the rent due and payable under the Lease; (d) the security deposits, if any, held by Seller, as landlord under the Lease; (e) except as otherwise stated therein, that no party is in default under the Lease.

Section 2.06. Inspections. From the Effective Date and for a period of ten (10) Business Days after Purchaser's receipt of the Seller Documents (the "Inspection Period"), Purchaser may perform whatever investigations, tests and inspections upon the Property during normal business hours or as otherwise requested by Seller, that Purchaser deems reasonably appropriate (collectively, the "Inspections"); *provided, however,* that prior thereto, (a) Purchaser shall give Seller at least three (3) days' prior notice thereof; and (b) Seller and any representative of Seller shall have the right to be present during any Inspection. Purchaser shall have the right to terminate this Agreement by written notice to Seller on or before the expiration of the Inspection Period if, based upon the Inspections, Purchaser determines, in its sole discretion, that the Property is not satisfactory, in which event, this Agreement shall terminate without further liability to the parties except as expressly set forth herein and the Initial Deposit shall be returned to Purchaser. In the event that Purchaser fails to provide such written notice to Seller on or before expiration of the Inspection Period, Purchaser shall be deemed to have waived any objections based upon the Inspections and subject to Sections 2.01(d), 6.02(a) and 7.01, the Initial Deposit shall be non-refundable.

ARTICLE III

CLOSING

Section 3.01. Closing Date. Subject to the provisions of Article V of this Agreement, the closing date of the Transaction contemplated by this Agreement (the "Closing") shall be set by mutual agreement within ten (10) days after the expiration of the Inspection Period, but in no event later than sixty (60) days after the Effective Date (the "Closing Date"). Pre-closing, which includes the parties' deposit with Seller's counsel (or, if directed by Seller's counsel, with the Title Company) of all documents (including without limitation, the executed Transaction Documents), all as necessary to comply with the parties' respective obligations hereunder, shall occur three (3) Business Days prior to the Closing Date or as otherwise mutually agreed upon by the parties. The parties shall deposit all funds required hereunder with the Title Company on or before the Closing Date.

Section 3.02. Possession. Possession of the Property, free and clear of all tenants or other parties in possession, except for the tenant under the Lease, shall be delivered to Purchaser upon Closing.

Section 3.03. Transaction Costs. Except as otherwise expressly provided in this Agreement, Purchaser shall pay for all costs associated with the updates of the Survey and Environmental Report, procurement of the Loan, endorsements to the Title Policy, recording

fees, transfer taxes and closing costs. Each party shall pay its own legal fees. Costs for the closing and escrow shall be split between Purchaser and Seller as usual and customary in the jurisdiction in which the Property is located. In no event shall Seller's costs for this Transaction exceed Twenty Thousand and 00/100 Dollars ($20,000).

Section 3.04. Tenant's Letter. Upon Closing, Purchaser shall deliver the Tenant Letter to the tenant under the Lease in the manner described in the Lease for the giving of notice, or if not so described, by certified or registered U.S. mail, return receipt requested, postage prepaid. The obligation of Purchaser in this Section 3.04 shall survive Closing.

ARTICLE IV

REPRESENTATIONS WARRANTIES AND COVENANTS

Section 4.01. Seller. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) ***Organization and Authority.*** Seller is duly organized or formed, validly existing and in good standing under the laws of its state of formation. Seller has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents, and to carry out the Transaction. The Person who has executed this Agreement on behalf of Seller has been duly authorized to do so.

(b) ***Enforceability of Documents.*** Upon execution by Seller, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

All representations and warranties of Seller made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Seller herein, shall survive for six (6) months following Closing.

Section 4.02. Purchaser. Purchaser represents and warrants to, and covenants with, Seller as follows:

(a) ***Organization and Authority.*** Purchaser is duly organized and formed, validly existing and in good standing under the laws of its state of formation. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents and to carry out the Transaction. The Person who has executed this Agreement on behalf of Purchaser has been duly authorized to do so.

(b) ***Enforceability of Documents.*** Upon execution by Purchaser, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) ***Litigation.*** There are no actions or proceedings pending against or involving Purchaser before any Governmental Authority which in any way adversely affect or may adversely affect Purchaser or Purchaser's ability to perform under this Agreement and the other Transaction Documents.

(d) ***OFAC List.*** Purchaser is not currently identified on the OFAC List, and is not a person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

All representations and warranties of Purchaser made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Purchaser herein, except as otherwise expressly set forth herein, shall survive Closing.

ARTICLE V

CONDITIONS PRECEDENT TO CLOSING

Section 5.01. Purchaser's Conditions to Closing. Purchaser shall not be obligated to close and fund the Transaction until Seller shall have delivered to Purchaser or the Title Company, as applicable, the following items:

(a) the Deed;

(b) documents that may be required by the Title Company for issuance of the Title Policy;

(c) fully executed originals of (i) the Assignment and Assumption of Leases and Rents substantially in the form attached as Exhibit C to this Agreement with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property; and (ii) all of the other Transaction Documents;

(d) a duly executed letter addressed to the tenant under the Lease, in form and substance satisfactory to the parties (the "Tenant Letter"), notifying the tenant of the change in ownership and providing an address for future rent payments;

(e) a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(f) all documents required to be delivered by this Agreement and the other Transaction Documents; and

(g) such further documents as reasonably may be required in order to fully and legally close this Transaction, including any required assignments and assumptions of operating agreements related to the Property.

Upon the fulfillment or Purchaser's written waiver of all of the above conditions, Purchaser shall deposit immediately available federal funds necessary to close this Transaction with the Title Company and this Transaction shall close in accordance with the terms and conditions of this Agreement. Unless otherwise dated, all of the documents to be delivered at Closing shall be dated as of the Closing Date.

Section 5.02. Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the fulfillment (or written waiver by Seller) of all of the following conditions:

(a) Purchaser shall have delivered to the Title Company the Purchase Price, as adjusted pursuant to the requirements of this Agreement in immediately available federal funds;

(b) Purchaser shall have caused to be executed and delivered to the appropriate Persons fully executed originals of (i) the Assignment and Assumption of Leases and Rents, with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property, and (ii) all of the other Transaction Documents;

(c) Purchaser shall have delivered to the Title Company a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(d) The parties shall have executed the Tenant Letter for delivery to the tenant under the Lease as described in Section 3.04; and

(e) Purchaser shall have delivered to Seller and/or the Title Company such further documents as may reasonably be required in order to fully and legally close this Transaction.

ARTICLE VI

DEFAULTS; REMEDIES

Section 6.01. Default. Each of the following shall be deemed an event of default (each, an "Event of Default"):

(a) if any representation or warranty of a party set forth in this Agreement or any other Transaction Document is false in any material respect or if a party renders any false statement; or

(b) if a party fails to keep or perform any of the terms or provisions of this Agreement or if any condition precedent is not satisfied by the other party at or prior to the Closing Date.

Section 6.02. Purchaser Remedies. In the event of any Event of Default by Seller, Purchaser shall be entitled to exercise, at its option, any one of the following:

(a) Purchaser may terminate this Agreement by giving written notice to Seller in which case the Earnest Money Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement; or

(b) Purchaser may proceed to Closing.

Section 6.03. Seller Remedies. In the event of any Event of Default by Purchaser, Seller shall be entitled to receive the Earnest Money Deposit as liquidated damages and terminate this Agreement such that neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Risk of Loss.

(a) ***Condemnation.*** If, prior to Closing, action is initiated to take the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, or (ii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority, to the extent that the amount of such award does not exceed the Purchase Price, shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.

(b) *Casualty.* Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If the Property, or any part thereof, suffers any damage prior to the Closing from fire or other casualty, which Seller, at its sole option, does not elect to repair, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or (ii) consummate the Closing, in which event all of Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expense and costs incurred by Seller to repair or restore the Property and any portion paid or to be paid on account of the loss of rents or other income from the Property for the period prior to the Closing Date, all of which shall be payable to Seller), to the extent that the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at Closing.

Section 7.02. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") shall be in writing and given by (a) hand delivery; (b) express overnight delivery service; (c) certified or registered mail, return receipt requested; or (d) electronic mail message, provided that a copy of such electronic mail message is also sent via certified or registered mail, return receipt requested, within one Business Day of the transmission of such electronic mail message, 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 electronic mail pursuant to the requirements of Section 7.03(d) above. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Purchaser: Esward Wooley
_____
_____
Telephone: _____
Facsimile: _____
E-Mail: _____

If to Seller: Spirit SPE Portfolio 2005-5, LLC
Suite 200
14631 North Scottsdale Road
Scottsdale, AZ 85254-2711
Attention: Mr. Gregg Seibert
Mr. Barry VanNorman
Telephone: (480) 606-0820
Facsimile: (480) 606-0826
E-Mail: gseibert@spiritfinance.com
E-Mail: bvannorman@spiritfinance.com

With a copy to:

Kutak Rock LLP
Suite 3100
1801 California Street
Denver, CO 80202
Attention: Michael C. Bullock, Esq.
Telephone: (303) 297-2400
Facsimile: (303) 292-7799
E-Mail: michael.bullock@kutakrock.com

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. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

Section 7.03. Assignment. Purchaser may not assign its rights under this Agreement in whole or in part without the prior written consent of Seller. No assignment of Purchaser's right and interest hereunder shall relieve Purchaser of any liability for the performance of any obligation of Purchaser contained herein.

Section 7.04. Indemnity. Purchaser shall indemnify, defend and hold harmless Seller and its directors, officers, shareholders, managers, members, officers, employees, representatives, successors, assigns, agents, lenders, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees and invitees, as applicable (collectively, the "Indemnified Parties"), from and against any and all Losses of any nature arising from or connected with (a) breach of any of the representations, warranties, covenants, agreements or obligations of Purchaser set forth in this Agreement; and (b) the ownership and operation of the Property on and after the Closing Date. Without limiting the generality of the foregoing, such indemnity shall include, without limitation, any Losses incurred by Seller with respect to any Inspections performed pursuant to Section 2.06. Purchaser's obligations under this Section 7.04 shall survive Closing or termination of this Agreement.

Section 7.05. Brokerage Commission. Each of the parties represents and warrants to the other that neither party has dealt with, negotiated through or communicated with any broker in connection with this Transaction except for Sperry Van Ness on behalf of Purchaser. Upon the Closing and funding of this Transaction, Seller agrees to pay Sperry Van Ness a commission equal to 2% of the Purchase Price paid by Purchaser under this Agreement. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against such party by any broker claiming a commission or fee by, through or under the other party. The parties' respective obligations under this Section 7.05 shall survive Closing or termination of this Agreement.

Section 7.06. Reporting Requirements. The parties agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

Section 7.07. Disclosure. Except as expressly provided in Section 7.06, in this Section 7.07 and by law or judicial action, neither Seller nor Purchaser will make any public disclosure of this Agreement or the other Transaction Documents, the Transaction or the provisions of the Transaction Documents without the prior written consent of the other party hereto. The parties also agree that, notwithstanding any provision contained in this Agreement, any party (and each employee, representative or other agent of any party) may disclose to *any and all Persons, without limitation of any kind,* any matter required under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 7.08. Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Agreement.

Section 7.09. Non-Business Days. If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which any Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 7.10. Waiver and Amendment. No provision of this Agreement 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.

Section 7.11. Personal Liability. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Seller, that (i) there shall be absolutely no personal liability on the part of any shareholder, director, officer, manager, member, officer or employee of Seller with respect to any of the terms, covenants and conditions of this Agreement; and (ii) Purchaser waives all claims, demands and causes of action against Seller's officers, directors, managers, members, employees and agents in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by the other party.

Section 7.12. Headings; Internal References. The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement. Unless stated to the contrary, any references to any section, subsection, exhibit and the like contained herein are to the respective section, subsection, exhibit and the like of this Agreement.

Section 7.13. Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction and the other Transaction Documents, is entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and 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. Seller and Purchaser were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

Section 7.14. Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

Section 7.15. Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, 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.

Section 7.16. Entire Agreement. This Agreement and all other Transaction Documents, and all other certificates, instruments or agreements to be delivered hereunder and thereunder constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of this Agreement by Seller and Purchaser, (a) this Agreement shall supersede any previous discussions, agreements and/or term or commitment letters relating to the Transaction, any and all agreements related to confidentiality, exclusivity, non-competition, non-solicitation of employees, non-solicitation or pursuit of any business opportunity represented by the Transaction, or any other term or condition which restricts any business activity of Seller or its affiliates, (b) the terms and conditions of this Agreement shall control notwithstanding that such terms are inconsistent with or vary from those set forth in any of the foregoing agreements, and (c) this Agreement may only be amended by a written agreement executed by Seller and Purchaser. The provisions of this Section shall survive the Closing.

Section 7.17. Recording. This Agreement shall not be recorded in any governmental office.

Section 7.18. Forum Selection; Jurisdiction; Venue; Choice of Law. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona, and consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Nothing contained in this section shall limit or restrict the right of Seller to commence any proceeding in the federal or state courts located in the state or states in which the Property is located to the extent Seller deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

Section 7.19. Separability; Binding Effect; Governing Law. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or

unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 7.03, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the applicable state or states in which the Property are located, without giving effect to any state's conflict of laws principles.

Section 7.20. Survival. Except for the conditions of Closing set forth in Article V, which shall be satisfied or waived in writing as of the Closing Date, and except as otherwise expressly set forth herein, all representations, warranties, agreements, obligations and indemnities of Seller and Purchaser set forth in this Agreement shall survive the Closing.

Section 7.21. Waiver of Jury Trial and Certain Damages. THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

Section 7.22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same instrument.

Section 7.23. IRC Section 1031 Exchange of Property. The parties agree that a party may elect to complete an Internal Revenue Code 1031 tax-deferred exchange that will not affect the terms and conditions of this Agreement; *provided, however,* that (a) the non-requesting party will cooperate with the requesting party to complete such exchange in a timely manner on the conditions that the non-requesting party shall not be obligated to pay, suffer or incur any additional expenses or liabilities as a result of cooperating in the requesting party's exchange and the non-requesting party shall not be obligated to acquire any other real property in connection with such exchange; (b) the non-requesting party shall not have any liability to the requesting party for failure of the exchange to qualify under the Internal Revenue Code and Treasury Regulations; (c) any assignment(s) made by the requesting party in connection with such exchange shall not relieve the requesting party of its obligations under this Agreement; (d) the requesting party shall cause all documentation necessary or appropriate in connection with such exchange to be prepared and available for execution no later than the Closing; and (e) the completion of one or more tax-deferred exchanges is not a condition to the performance by the requesting party of its obligations set forth in this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a Delaware limited liability company

By _____
Name Gregg A. Seibert
Title Senior Vice President
Date: 5/16/06

PURCHASER:

_____
Edward Wooley
Date: 5/4/06

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a Delaware limited liability company

By _____
Name _____
Title _____

Date: _____

PURCHASER:

_____
Edward Wooley

Date: 5/4/06

EXHIBIT A

DEFINED TERMS

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

"*Additional Title Objection*" has the meaning set forth in Section 2.01(d)(ii).

"*Agreement*" means this Purchase and Sale Agreement.

"*Assignment and Assumption of Leases and Rents*" means the Assignment and Assumption of Leases and Rents substantially in the form attached hereto as Exhibit C.

"*Business Day*" means a day on which banks located in Scottsdale, Arizona are not required or authorized to remain closed.

"*Closing*" shall have the meaning set forth in Section 3.01.

"*Closing Date*" means the date specified as the closing date in Section 3.01.

"*Deed*" means that special warranty deed (or its equivalent under the law of the state in which the Property is located) whereby Seller conveys to Purchaser all of Seller's right, title and interest in and to the Property.

"*Earnest Money Deposit*" has the meaning set forth in Section 1.03.

"*Effective Date*" shall be the last date that any party executes this Agreement.

"*Environmental Report*" has the meaning set forth in Section 2.02(b).

"*Event of Default*" has the meaning set forth in Section 6.01.

"*Governmental Authority*" means the United States of America, any state, local or other political subdivision thereof, any other entity exercising executive, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"*Indemnified Parties*" has the meaning set forth in Section 7.04.

"*Inspection Period*" has the meaning set forth in Section 2.06.

"*Inspections*" has the meaning set forth in Section 2.06.

"*Lease*" means that certain Lease Agreement dated _____ and between _____, as landlord, and _____, as tenant, together with all other amendments, modifications and

Assessor's Parcel Number: 01-071-02

Recording requested by and
when recorded return to:

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

MEMORANDUM OF LEASE

On July 14, 2006, the undersigned Lessor and Lessee entered into a certain Lease, wherein Lessor leased to Lessee the real property located in the County of Washoe, State of Nevada, which is described on Exhibit "A" attached hereto and incorporated herein by reference for a term commencing on July ___, 2006 and continuing until December 31, 2023. Lessee has the option, pursuant to the Lease, to extend the initial term for four (4) additional successive periods of five (5) years each.

DATED: July 14, 2006

[SIGNATURES ARE CONTAINED ON THE NEXT PAGE]

1365 BARING BLVD
[redacted]
045651/00021 GRDOCS 578491v1

ECW002171

LESSOR:

EDWARD & JUDITH WOOLEY

By: Judith A. Wooley
Name: Edward C. Wooley
Title: Trustees

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: [signature]
Name: Paul Morabito
Title: Chairman

STATE OF California)
) :SS
COUNTY OF Orange)

This instrument was acknowledged before me on July 14, 2006 by _____ as _____.

_____
NOTARY PUBLIC

My Commission expires: _____

STATE OF California)
) :SS
COUNTY OF Orange)

This instrument was acknowledged before me on July 14, 2006 by Paul Morabito as Chairman of BERRY-HINCKLEY INDUSTRIES.

JEANETTE TEDER
Commission # 1[illegible]
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2009

_____
NOTARY PUBLIC

My Commission expires: Sept 20, 2009

045651/00021 GBDOCS 578491v1

ECW002172

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Santa Clara } ss.

On July 17, 2006 before me, Brenda Baker Notary Public
Date (Here Insert Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Edward S. and Judith Wesley
Name(s) of Signer(s)

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

WITNESS my hand and official seal.

Brenda Baker
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Lease

Document Date: July 17, 2006 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

Top of thumb here

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ECW002173

EXHIBIT A

Property Address: 1365 Baring Blvd, Sparks, NV

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 14

EXHIBIT 14

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of _____, 2006 by and between **EDWARD WOOLEY AND JUDITH WOOLEY**, individuals (collectively "Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 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) and commonly known as 1365 Baring Boulevard, Sparks, Nevada, 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 for the operation of a Permitted Facility, and lawful or related purposes such as ingress, egress and parking.

3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May __, 2006 ("Effective Date") and shall expire at midnight on October 31, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this 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 (2) percent 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 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 teh (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 untenantability 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 Winner's Gaming Inc. ("WGI") or its successor in making application to the Nevada Gaming Control Board if such application or approval is 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.

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

(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 due to any act or omission of Lessee.

(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 Projection, 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.

(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.

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,

(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.

B. *Remedies.* Upon the occurrence of an Event of Default, Lessor shall provide notice thereof to WGI and shall provide WGI with a thirty day period in which to elect, by notice to Lessor, to cure such Event of Default, in which case, Lessor will provide WGI reasonable access to the Premises to cure such Event of Default, and will accept such cure as if performed by Lessee. WGI may also elect within such thirty day period, to take an assignment of tenant's interests under this Lease, in which case, WGI will have a period of one hundred twenty (120) days following such assignment in which to further assign such tenant's rights, or to sublet the Premises, to a entity or person which will operate the Premises as a Permitted Facility, without the need for Lessor's consent or approval.

If WGI does not elect either such option then, 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 it 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.** Except as provided in Section 20, above, 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 withhold 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

And with a copy to: Winners Gaming Inc.
Attn: Paul A. Morabito
425 Maestro Drive
Reno, NV 89511
Telephone: (775) 689-1222
Facsimile: (775) 689-1232

If to Lessor:

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

A.App.656

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]

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

LESSOR:

Ed Wooley, Trustee
EDWARD WOOLEY

Judith Wooley Trustee
JUDITH WOOLEY

Tax Identification or Social Security No.
[redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

The foregoing instrument was acknowledged before me on June, 16, 2006 by Edward Wooley and, an individual with an address of Judith Wooley - 41 Pescadita Ave Los Gatos, CA. 95030.

Tina T. Seda
Notary Public

My Commission Expires: 10-15-07

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

Wooley Sirta/BHI
_____, Carson City
5/31/2006
000160/09959 GBDOCS 576954v1

STATE OF CALIFORNIA) S.S
COUNTY OF Santa Clara

On June 6, 2006 before me,

Tina T. Seda
a Notary Public, personally appeared

Edward Wooley
Judith Wooley

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

WITNESS my hand and official seal.

Signature Tina T. Seda

(This area for official notorial seal)

notaryack.rev. (12/16/05)

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____

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

The foregoing instrument was acknowledged before me on July 14, 2007 by Paul Morabito as Chairman of **BERRY- HINCKLEY INDUSTRIES**, a Nevada corporation.

_____
Notary Public

My Commission Expires: Sept 20, 2009

JEANETTE TEDER
Commission # 1608087
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2009

Wesley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160/09959 GBDOCS 576954v2

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 the first anniversary of the Effective Date, 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 $238,275.

"*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.

A.App.663

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

"*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 (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.

"*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:

Wooley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
00D160/09959 GRDOCS 576954v2

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 15

EXHIBIT 15

The Network of Preferred Community Banks℠

Loan No. 100798974

FIVE YEAR ADJUSTABLE TERM NOTE

July 18, 2006

$2,100,000.00

For value received, the undersigned **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a **California** trust, with an address of **41 Peralta Avenue, Los Gatos, California 95030** (collectively, the "Borrower"), jointly and severally, promise to pay to the order of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (together with its successors and assigns, the "Bank"), the principal amount of **Two Million One Hundred Thousand Dollars and Zero Cents ($2,100,000.00)** on or before **July 18, 2016** (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full. The Borrower shall pay consecutive monthly installments of principal and interest, as follows: **$13,971.35** on **August 18, 2006**, and the same amount (except the last installment which shall be the unpaid balance) on the 18th day of each month thereafter. The aggregate principal balance outstanding shall initially bear interest thereon at a per annum rate equal to **7.00%**. The interest rate on the aggregate principal balance shall change on **July 18, 2011** and on that day every sixtieth month thereafter (each a "Change Date") to a fixed rate equal to **Two and One-Half Percent (2.50%)** above the Treasury Index (as hereinafter defined) on each such Change Date. On each Change Date each monthly installment due and payable until the next Change Date shall be recalculated (increased or reduced) to reflect the adjusted interest rate, the outstanding principal balance at such time and the remaining term of the 360-month amortization period commencing on the date of this Note in accordance with the Bank's calculation in the Bank's sole discretion.

Notwithstanding anything to the contrary in this Note, the interest rate on this Note is limited by a floor as follows: the minimum interest rate (i.e. floor) is **5.25%**.

Treasury Index means the weekly average yield on United States Treasury securities, adjusted to a constant maturity equal to the Applicable Treasury Rate Period (as hereinafter defined), or, in the event the Treasury Index is no longer available, the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto. The Applicable Treasury Rate Period is 5 years.

Principal and interest shall be payable at the Bank's main office or at such other place as the Bank may designate in writing in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

At the option of the Bank, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower or any guarantor hereof to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor hereof under any other loan document delivered by the Borrower or any guarantor, or in connection with the loan evidenced by this Note or any other agreement by the Borrower or any guarantor with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default; (2) failure of the Borrower or any guarantor hereof to maintain aggregate collateral security value satisfactory to the

Bank continuing for 30 days; (3) default of any material liability, obligation or undertaking of the Borrower or any guarantor hereof to any other party continuing for 30 days; (4) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor hereof in connection with the loan evidenced by this Note or in any supporting financial statement of the Borrower or any guarantor hereof shall be determined by the Bank to have been false in any material respect when made; (5) if the Borrower or any guarantor hereof is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or any guarantor hereof and, if the Borrower or any guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor hereof; (9) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor hereof, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor hereof; (11) the termination or revocation of any guaranty hereof; or (12) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor hereof, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor hereof to the Bank has been or may be impaired.

Any payments received by the Bank on account of this Note shall, at the Bank's option, be applied first, to accrued and unpaid interest; second, to the unpaid principal balance hereof; third to any costs, expenses or charges then owed to the Bank by the Borrower; and the balance to escrows, if any. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Bank may determine. The Borrower hereby authorizes the Bank to charge any deposit account which the Borrower may maintain with the Bank for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. More specifically, if from any circumstances whatsoever, fulfillment of any provision of this Note or any other loan document excuted and delivered in connection with this Note, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Bank may, at its option (a) reduce the obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the obligations, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Bank had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note or any other loan document that is in excess of the applicable limit on interest. It is the intention of Borrower and Bank that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this paragraph shall control every other provision of this Note, and any provision of any other loan document in conflict with this paragraph.

The Borrower represents to the Bank that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the

Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each guarantor hereof grant to the Bank a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and each guarantor hereof and any cash, securities, instruments or other property of the Borrower and each guarantor hereof in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any guarantor hereof to the Bank or any Bank Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any guarantor hereof to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

No delay or omission on the part of the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Bank, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally, including any defense based on impairment of collateral.

The Borrower and each guarantor of this Note shall indemnify, defend and hold the Bank and the Bank Affiliates and their directors, officers, employees, agents and attorneys harmless against any claim brought or threatened against the Bank by the Borrower, by any guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower or any guarantor hereof (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's selection, but at the expense of the Borrower and any guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Bank.

The Borrower and each guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 3.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 15 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Bank's other remedies on account thereof), a late charge equal to the greater of $10.00 or 10.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Bank and its successors, endorsees and assigns.

The Borrower and each guarantor, if any, hereby waive presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of any kind, in each case that would otherwise be available in connection with this Note including, without limitation, any right (whether now or hereafter existing) to require the holder hereof to first proceed against the Borrower, or any guarantor, for any security.

The Borrower and each guarantor, if any, further waive to the extent permited by law any and all rights and defenses that each may have because the debt evidenced by this Note is secured by real property: this means, among other things, that: (1) the Bank may collect from the Borrower and any guarantor, without first foreclosing on any real or personal property, collateral pledged by the Borrower and any guarantor; and (2) if the Bank forecloses on any real property collateral pledged by the Borrower or any guarantor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Bank may collect from the Borrower even if the Bank, by foreclosing on the real property collateral, has destroyed any right the Borrower may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Borrower may have because the underlying debt is secured by real property. These rights and defenses being waived by the Borrower include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Borrower further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to the Borrower under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

In the event that at any time, a surety is liable upon only a portion of the Borrower's or any guarantor's obligations under this Note and the Borrower provides partial satisfaction of any such obligation(s), each of the Borrower and each guarantor hereof, if any, hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of this Note, be made by the Bank rather than Borrower.

The liabilities of the Borrower and any guarantor of this Note are joint and several; provided, however, the release by the Bank of the Borrower or any one or more guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Bank. Each reference in this Note to the Borrower, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Bank of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Bank of any collateral shall not release any person obligated on account of this Note.

The Borrower and each guarantor hereof each authorizes the Bank to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Bank, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

The Borrower will from time to time execute and deliver to the Bank such documents, and take or cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Note or any other loan documents related thereto (including, without limitation, to correct clerical errors) or to vest more fully in or assure to the Bank the security interest in any collateral securing this Note or to comply with applicable statute or law.

This Note is delivered to the Bank at one of its offices in California and shall be governed by the laws of the State of California.

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

The Borrower and each guarantor of this Note acknowledges that the Bank is entitled to a minimum interest charge of $75.00.

The Borrower and each guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower and each guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's or guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Borrower(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such guarantor.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND EACH GUARANTOR AND THE BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER AND EACH GUARANTOR TO THE BANK, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH GUARANTOR AND THE BANK EACH CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

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

Due on Sale or Transfer. Bank may, at it option, declare immediately due and payable all sums secured by one or more deed of trusts provided by Borrower to secure this Note upon the sale or transfer, without Bank's prior written consent, of all or any part of the real property covered by any such deed of trust, or any interest in such real property. A "sale or transfer" means the conveyance of the such real property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, option contract, or by sale, assignment or transfer of any beneficial interest in or to any land trust holding title to such real property, or by any other method of conveyance of a real property interest. If Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more that 20% of the voting stock, partnership interests or limited liability company interest, as the case may be, of Borrower. This option shall not be exercised by Bank if such exercise is prohibited by applicable law.

Executed as of **July 18, 2006.**

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

41 Peralta Avenue
Los Gatos, California
95030

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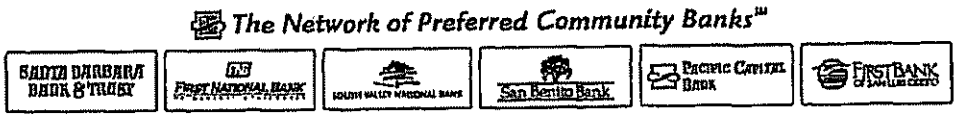

Loan No. 100798974

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") entered into as of **July 18, 2006**, between **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a **California** trust, with an address of **41 Pertalta Avenue, Los Gatos, California 95030** (the "Borrower") and Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

FOR VALUE RECEIVED, and in consideration of the granting by the Bank of financial accommodations to or for the benefit of the Borrower, including without limitation respecting the Obligations (as hereinafter defined), the Borrower represents and agrees with the Bank, as of the date hereof and as of the date of each loan, credit and/or other financial accommodation, as follows:

1. THE LOAN

1.1 Loan. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to make a loan to the Borrower in the original principal amount of **$2,100,000.00** (the "Loan"). The Loan shall be evidenced by that certain Five Year Adjustable Term Note, of even date herewith (the "Note") by Borrower in favor of the Bank in the original principal amount of **$2,100,000.00**. This Agreement, the Note, and any and all other documents, amendments or renewals executed and delivered in connection with any of the foregoing are collectively hereinafter referred to as the "Loan Documents".

1.2 Definitions. The following definitions shall apply:

(a) "Code" shall mean the Uniform Commercial Code of California as amended from time to time.

(b) "Obligation(s)" shall mean, without limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Borrower to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Bank; or are due indirectly by the Borrower to the Bank as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Bank from time to time and all costs and expenses referred to in this Agreement.

(c) "Person" or "party" shall mean individuals, partnerships, corporations, limited liability companies and all other entities.

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

2. REPRESENTATIONS AND WARRANTIES

2.1 Records. All books and records of the Borrower's business, including but not limited to its books of account, are accurate and up to date and will be so maintained.

2.2 Title to Properties; Absence of Liens. Borrower has good and clear record and marketable title to all of its properties and assets, and all of its properties and assets are free and clear of all mortgages, liens, pledges, charges, encumbrances and setoffs, except those mortgages, deeds of trust, leases of personal property and security interests previously specifically consented to in writing by the Bank.

2.3 Places of Business. Borrower shall, during the term of this Agreement, keep the Bank currently and accurately informed in writing of each of Borrower's place of residence and Borrower's places of business, and shall not open or close, move or change any existing or new place of business without giving the Bank at least thirty (30) days prior written notice thereof.

2.4 Valid Obligations. The Loan Documents represent legal, valid and binding obligations of Borrower and are fully enforceable according to their terms, except as limited by laws relating to the enforcement of creditors' rights.

2.5 Conflicts. There is no provision in any indenture, contract or agreement to which Borrower is a party which prohibits, limits or restricts the execution, delivery or performance of the Loan Documents.

2.6 Governmental Approvals. The execution, delivery and performance of the Loan Documents does not require any approval of or filing with any governmental agency or authority.

2.7 Litigation. There are no actions, suits or proceedings pending or to the knowledge of Borrower threatened against Borrower which might materially adversely affect the ability of Borrower to conduct its business or to pay or perform the Obligations.

2.8 Taxes. Borrower has filed all Federal, state and other tax returns required to be filed (except for such returns for which current and valid extensions have been filed), and all taxes, assessments and other governmental charges due from the Borrower have been fully paid. The Borrower has established on its books reserves adequate for the payment of all Federal, state and other tax liabilities (if any).

2.9 Use of Proceeds. No portion of any loan is to be used for (i) the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224 or (ii) primarily personal, family or household purposes.

2.10 Environmental. Except as heretofore disclosed to Bank in writing, as of the date hereof neither the Borrower nor any of Borrower's agents, employees or independent contractors (1) have caused or are aware of a release or threat of release of Hazardous Materials (as defined herein) on any of the premises or personal property owned or controlled by Borrower, or any abutting property, which could give rise to liability under any Environmental Law (as defined herein) or any other Federal, state or local law, rule or regulation; (2) have arranged for the transport of or transported any Hazardous Materials in a manner as to violate, or result in potential liabilities under, any Environmental Law; (3) have received any notice, order or demand from the Environmental Protection Agency or any other Federal, state or local agency under any Environmental Law; (4) have incurred any liability under any Environmental Law in connection with the mismanagement, improper disposal or release of Hazardous Materials; or (5) are aware of any inspection or investigation of any of the premises or personal property owned or controlled

by Borrower or abutting property by any Federal, state or local agency for possible violations of any Environmental Law.

To the best of Borrower's knowledge, no prior owner or tenant of any premises or property presently controlled or owned by Borrower committed or omitted any act which caused the release of Hazardous Materials on such premises or property which could give rise to a lien thereon by any Federal, state or local government. No notice or statement of claim or lien affecting any property or premises owned or controlled by Borrower has been recorded or filed in any public records by any Federal, state or local government for costs, penalties, fines or other charges as to such property.

Borrower agrees to indemnify and hold Bank harmless from all liability, loss, cost, damage and expense, including attorney fees and costs of litigation, arising from any and all of its violations of any Environmental Law (including those arising from any lien by any Federal, state or local government arising from the presence of Hazardous Materials) or from the presence of Hazardous Materials located on or emanating from any of the premises owned or controlled by the Borrower. Borrower further agrees to reimburse Bank upon demand for any costs incurred by Bank in connection with the foregoing. Borrower agrees that its obligations hereunder shall be continuous and shall survive the repayment of all debts to Bank.

The term "Hazardous Materials" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

The term "Environmental Law" means any present and future Federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to liability for or costs of remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

3. AFFIRMATIVE COVENANTS

3.1 Payments and Performance. Borrower will duly and punctually pay all Obligations becoming due to the Bank and will duly and punctually perform all Obligations on its part to be done or performed under this Agreement.

3.2 Books and Records; Inspection. Borrower will at all times keep proper books of account in which full, true and correct entries will be made of its transactions in accordance with generally accepted accounting principles, consistently applied and which are, in the opinion of a Certified Public Accountant acceptable to Bank, adequate to determine fairly the financial condition and the results of operations of Borrower. Borrower will at all reasonable times make its books and records available in its offices for inspection, examination and duplication by the Bank and the Bank's representatives and will permit inspection of all of its properties by the Bank and the Bank's representatives. Borrower will from time to

time furnish the Bank with such information and statements as the Bank may request in its sole discretion with respect to the Obligations.

3.3 Financial Statements. Borrower will furnish to Bank:

(a) as soon as available to Borrower, but in any event within 30 days after the end of the prior calendar year in any year and upon request therefor, with personal financial statements addressed to the Bank in form satisfactory to the Bank;

(b) Borrower's filed Federal tax returns, including all schedules thereto and K-1's or copy of extension, for the prior year within 30 days after the date that Borrower's tax returns are actually filed each such year or by such other date approved by the Bank;

(c) from time to time, such financial data and information about Borrower as Bank may reasonably request; and

(d) any financial data and information about any guarantors of the Obligations as Bank may reasonably request.

3.4 Conduct of Business. The Borrower will comply with all laws and regulations of the United States and of any state or states thereof and of any political subdivision thereof, and of any governmental authority which may be applicable to it or to its business; provided that this covenant shall not apply to any tax, assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.5 Taxes. Borrower will promptly pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, old age benefits, withholding, sales and other taxes assessed against it or payable by it before delinquent; provided that this covenant shall not apply to any tax assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.6 Maintenance. Borrower will keep and maintain its properties, if any, in good repair, working order and condition. The Borrower will immediately notify the Bank of any loss or damage to or any occurrence which would adversely affect the value of any such property.

3.7 Insurance. Borrower will maintain in force property and casualty insurance on any property of the Borrower, if any, against risks customarily insured against by companies engaged in businesses similar to that of the Borrower containing such terms and written by such companies as may be satisfactory to the Bank, such insurance to be payable to the Bank as its interest may appear in the event of loss and to name the Bank as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Bank's approval; and all such policies shall provide that they may not be canceled without first giving at least Thirty (30) days written notice of cancellation to the Bank. In the event that the Borrower fails to provide evidence of such insurance, the Bank may, at its option, secure such insurance and charge the cost thereof to the Borrower. At the option of the Bank, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair thereof or as a payment on account of the Obligations. From and after the occurrence of an Event of Default, the Bank is authorized to cancel any insurance maintained hereunder and apply any returned or unearned premiums, all of which are hereby assigned to the Bank, as a payment on account of the Obligations.

3.8 Notification of Default. Upon becoming aware of the existence of any condition or event which constitutes an Event of Default, or any condition or event which would upon notice or lapse of time, or both, constitute an Event of Default, Borrower shall promptly give Bank written notice thereof specifying the nature and duration thereof and the action being or proposed to be taken with respect thereto.

3.9 Notification of Material Litigation. Borrower will promptly notify the Bank in writing of any litigation or of any investigative proceedings of a governmental agency or authority commenced or threatened against it which would or might be materially adverse to the financial condition of Borrower or any guarantor of the Obligations.

3.10 Pension Plans. With respect to any pension or benefit plan maintained by Borrower, or to which Borrower contributes ("Plan"), the benefits under which are guaranteed, in whole or in part, by the Pension Benefit Guaranty Corporation created by the Employee Retirement Income Security Act of 1974, P.L. 93-406, as amended ("ERISA") or any governmental authority succeeding to any or all of the functions of the Pension Benefit Guaranty Corporation ("Pension Benefit Guaranty Corporation"), Borrower will (a) fund each Plan as required by the provisions of Section 412 of the Internal Revenue Code of 1986, as amended; (b) cause each Plan to pay all benefits when due; (c) furnish Bank (i) promptly with a copy of any notice of each Plan's termination sent to the Pension Benefit Guaranty Corporation (ii) no later than the date of submission to the Department of Labor or to the Internal Revenue Service, as the case may be, a copy of any request for waiver from the funding standards or extension of the amortization periods required by Section 412 of the Internal Revenue Code of 1986, as amended and (iii) notice of any Reportable Event as such term is defined in ERISA; and (d) subscribe to any contingent liability insurance provided by the Pension Benefit Guaranty Corporation to protect against employer liability upon termination of a guaranteed pension plan, if available to Borrower.

4. NEGATIVE COVENANTS

4.1 Limitations on Indebtedness. Borrower shall not issue any evidence of indebtedness or create, assume, guarantee, become contingently liable for, or suffer to exist indebtedness in addition to indebtedness to the Bank, except indebtedness or liabilities of Borrower, other than for money borrowed, incurred or arising in the ordinary course of business.

4.2 Loans or Advances. Borrower shall not make any loans or advances to any individual, firm or corporation, including without limitation its employees; provided, however, that Borrower may make advances to its employees, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.

4.3 Capital Expenditures. The Borrower shall not, directly or indirectly, make or commit to make capital expenditures by lease, purchase, or otherwise, except in the ordinary and usual course of business for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business.

4.4 Sale of Assets. Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary and usual course of business and except for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business, provided that fair consideration is received therefor; provided, however, in no event shall the Borrower sell, lease or otherwise dispose of any equipment purchased with the proceeds of any loans made by the Bank.

4.5 Restriction on Liens. Borrower shall not grant any security interest in, or mortgage of, any of its properties or assets. Borrower shall not agree with any person other than the Bank to not grant any security interest in, or mortgage of, any of its properties or assets.

4.6 Other Business. Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably allied thereto.

4.7 Change of Name. Borrower shall not change its legal name or his or her primary residence,

without giving the Bank at least 30 days prior written notice thereof.

5. DEFAULT

5.1 Default. "Event of Default" shall mean the occurrence of one or more of any of the following events:

(a) default of any liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

(b) failure of the Borrower or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;

(c) default of any material liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to any other party continuing for 30 days;

(d) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Borrower or any guarantor of the Obligations shall be determined by the Bank to have been false in any material respect when made;

(e) if the Borrower or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(f) the death of the Borrower or any guarantor of the Obligations and, if the Borrower or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(g) the institution by or against the Borrower or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(h) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor of the Obligations;

(i) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(j) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor of the Obligations;

(k) Borrower shall fail or neglect to perform, keep or observe any financial covenant set forth in this Agreement;

(l) Borrower shall fail or neglect to perform, keep or observe any financial reporting requirement set forth in this Agreement and the breach is not cured to Bank's satisfaction within 30 days;

(m) the termination or revocation of any guaranty of the Obligations; or

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

5.2 Acceleration. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations payable on DEMAND, which shall be due and payable on DEMAND, whether or not an Event of Default has occurred.

5.3 Nonexclusive Remedies. All of the Bank's rights and remedies not only under the provisions of this Agreement but also under any other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

6. MISCELLANEOUS

6.1 Waivers. The Borrower waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof.

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

6.3 Deposit Collateral. The Borrower hereby grants to the Bank a continuing lien and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and any cash, securities, instruments or other property of the Borrower in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower to the Bank or any Bank Affiliate and such deposits and other sums may be applied against such liabilities and obligations of the Borrower to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

6.4 Indemnification. The Borrower shall indemnify, defend and hold the Bank harmless of and from any claim brought or threatened against the Bank by the Borrower, any guarantor or endorser of the Obligations, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Borrower), except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Borrower.

6.5 Costs and Expenses. The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to any collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of any Obligation.

6.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

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

6.8 Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until terminated as to future transactions by written notice from either party to the other party of the termination hereof; provided that any such termination shall not release or affect any Obligations incurred or rights accrued hereunder prior to the effective date of such notice (as hereinafter defined) of such termination. The Bank may transfer and assign this Agreement and deliver it to the assignee, who shall thereupon have all of the rights of the Bank; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

6.9 Further Assurances. Borrower will from time to time execute and deliver to Bank such documents, and take or cause to be taken, all such other or further action, as Bank may request in order to effect and confirm or vest more securely in Bank all rights contemplated by this Agreement and the other Loan Documents (including, without limitation, to correct clerical errors) or to comply with applicable statute or law.

6.10 Amendments and Waivers. This Agreement may be amended and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if Borrower shall obtain the Bank's prior written consent to each such amendment, action or omission to act. No course of dealing and no delay or omission on the part of Bank in exercising any right hereunder shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Bank on any future occasion.

6.11 Terms of Agreement. This Agreement shall continue in full force and effect so long as any Obligations or obligation of Borrower to Bank shall be outstanding, or the Bank shall have any obligation to extend any financial accommodation hereunder, and is supplementary to each and every other agreement between Borrower and Bank and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and the Bank be construed to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower hereunder, unless such other agreement specifically refers to this Agreement and expressly so provides.

6.12 Notices. Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9 of the Code). Any such notice shall be deemed duly

received and effective (i) if delivered in hand to, or received by, any officer or agent of the Borrower or the Bank, upon such delivery or receipt, or (ii) if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the Borrower or the Bank, two (2) business days after being so mailed. A party's proper address is that set forth for such party in this Agreement or such address as that party may from time to time hereafter designate by notice to the other party.

6.13 Governing Law. This Agreement has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

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

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

6.16 Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of Borrower's obligations under the Loan Documents and Borrower provides partial satisfaction of any such obligation(s), Borrower hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than Borrower.

6.17 **JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.**

6.18 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF

SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

Executed as of **July 18, 2006.**

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____, Trustee
Edward C. Wooley, Trustee

By: Judith A. Wooley, Trustee
Judith A. Wooley, Trustee

Accepted: Pacific Capital Bank, N.A.

By: Melinda Cabral by _____
Name: Melinda Cabral
Title: Vice President/Relationship Manager

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The Network of Preferred Community Banks℠

Loan No. 100798974

DISBURSEMENT AUTHORIZATION

DATE: July 18, 2006

BORROWER: Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000
41 Pertalta Avenue
Los Gatos, California
95030

BANK: Pacific Capital Bank, N.A.
c/o Loan Services, PO Box 60654
Santa Barbara, California
93160-0654

LOAN: $2,100,000.00 Term Loan (the "Loan")

The undersigned hereby authorizes and directs the Bank, in its discretion pursuant to the terms of the loan documents (the "Loan Documents") between the Bank and the undersigned respecting the Loan, to disburse $2,100,000.00 of the loan proceeds available respecting the Loan as set forth below.

Disbursement	Amounts Paid by Customer at Closing	Amount Paid from Loan Proceeds
1. Facility Fee	$	$21,000.00
2. Appraisal Fee	$	$7,000.00
3. Appraisal Review	$	$500.00
4. Environmental Fee	$	$300.00
5. Title Policy	$	$250.00
6. Flood Fee	$	$10.00
7. Tax Service Fee	$	$279.00
8. Payable to LandAmerica Lawyers Title	$	$2,070,661.00
Total	**$ 0.00**	**$ 2,100,000.00**

The undersigned represents and warrants to the Bank that there has been no material adverse change in the undersigned's financial condition since the date of the latest financial statements delivered by the undersigned to the Bank. In addition, the undersigned affirms that the representations and warranties contained in the Loan Documents are true and correct as of the date hereof.

The balance of the loan proceeds of $ 0.00 shall be held by the Bank pending further instruction from the undersigned pursuant to the terms of the Loan Documents.

By your signature below, you agree to the terms and acknowledge receipt of a copy of this Disbursement Authorization.

Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

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A.App.688

COPY - has not been compared with the Original Document - WCR

DOC # 3415811

Conformed Copy
07/21/2006 10:49A Fee:55.00
RPTT 0.00
BK1
Requested By
LANDAMERICA FINANCIAL GROUP INC
Washoe County Recorder
Kathryn L. Burke - Recorder

ASSESSOR'S PARCEL NUMBER: 030-041-08

UPON RECORDATION RETURN TO:

Pacific Capital Bank, N.A.

c/o Loan Services, PO Box 60654

Santa Barbara, California 93160-0654

MAIL TAX STATEMENTS TO:
Edward C. Wooley
Judith A. Wooley
41 Pertalta Avenue
Los Gatos, CA 95030

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

06-48646

This DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this "Deed of Trust") entered into as of **July 18, 2006**, among **Edward C. Wooley and Judith A. Wooley, Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000** (collectively and jointly and severally, the "Trustor"), LandAmerica Lawyers Title, with an address of **1850 North Central Avenue, Suite 300 Phoenix, AZ 85004**(the "Trustee") for the use and benefit of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es): **1365 Baring Blvd., Sparks, Nevada 89434** (the "Address(es)").

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

1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain **Five Year Adjustable Term Note**, dated **July 18,**

2006, by **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000** in favor of the Beneficiary in the original principal amount of **$2,100,000.00** (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

This Deed of Trust shall secure the principal amount of Obligations of up to $2,100,000.00. The maximum amount of principal secured hereby may be increased or decreased by amendment to this Deed of Trust. This Deed of Trust shall nevertheless secure payment and performance of all Obligations including, without limitation, any other liabilities and future advances, direct or indirect, absolute or contingent, now existing or hereafter arising from the Trustor to the Beneficiary. Future advances hereunder are governed by Nevada Revised Statutes Sections 106.300 to 106.400, inclusive.

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

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

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

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or

business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgements, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

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

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

2. REPRESENTATIONS, WARRANTIES, COVENANTS

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

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

(b) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Bank in connection with this Deed of Trust (the "Permitted Encumbrances");

(c) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;

(d) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and

(e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

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

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

(a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust;

(b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or

(c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the

Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

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

(a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;

(b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;

(c) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;

(d) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and

(e) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

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

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

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

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

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

3. CERTAIN RIGHTS OF THE BENEFICIARY

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

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

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

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

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

4. DEFAULTS AND REMEDIES

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

(a) default of any liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

(b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents continuing for 30 days;

(c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;

(d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary continuing for 30 days;

(e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party continuing for 30 days;

(f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false in any material respect when made;

(g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;

(k) a judgement or judgements for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;

(m) the termination or revocation of any guaranty of the Obligations; or

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

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

(a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;

(b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;

(c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;

(d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. In the event this Deed of Trust shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Beneficiary shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Beneficiary may in its discretion subordinate this Deed of Trust to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;

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

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

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

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

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

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

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

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

4.7 Effect of Sale. Any sale or sales made by virtue of or under this Deed of Trust, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the property so sold, or any part thereof from, through or under Trustor, its successors and

assigns. The receipt by Trustee shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Deed of Trust, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

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

5. MISCELLANEOUS

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

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

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

5.4 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Deed of Trust or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Trustor or other person or entity, then the Trustor shall indemnify, defend and hold

each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgement. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Beneficiary in favor of the Trustor.

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

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

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

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

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

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

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

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

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

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

EXECUTED under seal as of the date first above written.

Trustor:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On July 17, 2009 before me, Brenda Baker Notary Public,
personally appeared **Edward C. Wooley**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and offical seal.

Signature Brenda Baker (Seal)

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On July 17, 2009 before me, Brenda Baker Notary Public,
personally appeared **Judith A. Wooley**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and offical seal.

Signature Brenda Baker (Seal)

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

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EXHIBIT "A

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

PARCEL I:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

BEGINNING at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "PARCEL MAP FOR FOOTHILL INVESTMENT CO. AND LEWIS BUILDING CO, INC." recorded January 26, 1983 in the Office of the County Recorder of Washoe County, Nevada, as Parcel Map NO. 1418, File No. 835532 and proceeding;
Thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing South 44°11'14" East 42.43 feet;
Thence South 0°48'46" West 15.00 feet;
Thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet;
Thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet;
Thence leaving Sorensen Way North 89°11'14" West 150.00 feet;
Thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard;
Thence along Baring Boulevard South 89°11'14" East 169.67 feet to the Point of Beginning.

NOTE: The above metes and bounds description appeared previously in that certain Document recorded March 3, 1997 in Book 4801, Page 0141, as Instrument No. 2076862, Washoe County Official Records.

PARCEL II:

EXHIBIT "A" - Continued

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 32, under Document No. 1248846, Official Records.

NOTE: (The above metes and bounds Legall Description was previously shown on Grant, Bargain, Sale Deed recorded October 13, 2005 Doc/Inst. No. 3291758 of Official Records.

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,

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and TIMOTHY P. HERBST, as Special Administrator of the ESTATE OF JERRY HERBST, deceased,

Respondents.

No. 83640
District Court Case No. CV14-01712

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 4 OF 18

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 0950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
RICHARD D. WILLIAMSON (SBN 9932)
JONATHAN JOEL TEW (SBN 11874)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS LARRY J. WILLARD, et al.

Docket 83640 Document 2022-06442

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 1)	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel – Brian P. Moquin, Esq.	10/28/14	1	202-206
	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brian P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340
	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547
	Exhibit 9: Seller's Final Closing Statement		3	548-549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 15)	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		4	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Larry J. Willard	08/30/16	4	798-806
18.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	807-837
	Exhibit 1: *Purchase and Sale Agreement* dated July 1, 2005 for Purchase of the Highway 50 Property		4	838-851

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 2: *Lease Agreement* dated December 2, 2005 for the Highway 50 Property		4	852-895
	Exhibit 3: *Three Year Adjustment Term Note* dated January 19, 2007 in the amount of $2,200,00.00 for the Highway 50 Property		4	896-900
	Exhibit 4: *Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	901-918
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		5	919-934
	Exhibit 6: *First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property		5	935-942
	Exhibit 7: *Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property		5	943-947
	Exhibit 8: *Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property		5	948-950
	Exhibit 9: *Purchase and Sale Agreement* Dated July 14, 2006 for the Baring Property		5	951-973
	Exhibit 10: *Lease Agreement* dated June 6, 2006 for the Baring Property		5	974-1009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 11: *Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,00.00 for the Baring Property		5	1010-1028
	Exhibit 12*: Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1029-1046
	Exhibit 13: *First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property		5	1047-1054
	Exhibit 14: *Guaranty Agreement* dated March 12, 2007 for the Baring Property		5	1055-1059
	Exhibit 15: *Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1060-1071
	Exhibit 16: *Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1072-1079
	Exhibit 17: *Substitution of Attorney* forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1080-1084
	Exhibit 18: *Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California Case		5	1085-1088
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and		5	1089-1093

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Brian Moquin re Joint Stipulation in California Case			
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court Property		5	1094-1100
	Exhibit 21: *Request for Dismissal* without prejudice filed May 19, 2014 in the California case		5	1101-1102
	Exhibit 22: *Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1103-1111
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1112-1113
	Exhibit 24: *Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property		5	1114-1116
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1117-1152
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1153-1155
	Exhibit 27: *Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property		6	1156-1168

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 28: *Lease Agreement* dated November 18, 2005 for the Virginia Property		6	1169-1204
	Exhibit 29: *Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property		6	1205-1207
	Exhibit 30: *Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1208-1225
	Exhibit 31: *Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1226-1230
	Exhibit 32: *Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1231-1245
	Exhibit 33: *Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1246-1271
	Exhibit 34: *Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1272-1273
	Exhibit 35: *Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1274-1275

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 36: *Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property		6	1276-1281
	Exhibit 37: *Guaranty Agreement* dated March 9, 2007 for the Virginia Property		6	1282-1286
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1287-1291
	Exhibit 39: Letter dated March 18,2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1292-1294
	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1295-1297
	Exhibit 41: *Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1298-1302
	Exhibit 42: *Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1303-1305
	Exhibit 43: *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 2013		6	1306-1309
	Exhibit 44: *Declaration in Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013,		6	1310-1314

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Northern District of California Bankruptcy Court Case No. 13-53293 CN			
	Exhibit 45: *Substitution of Attorney* forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1315-1319
	Exhibit 46: *Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1320-1327
	Exhibit 47: *Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00		6	1328-1334
	Exhibit 48: *Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1335-1354
	Exhibit 49: *Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1355-1356
	Exhibit 50: *Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property		6	1357-1358
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland		6	1359-1360

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000,000.00			
19.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1361-1380
	Exhibit 1: Declaration of John P. Desmond		6	1381-1384
20.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgement	12/20/16	7	1385-1390
	Exhibit 1: Expert Report of Michelle Salazar		7	1391-1424
21.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1425-1443
22.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgement in Favor of Defendants	02/02/17	7	1444-1451
	Exhibit 1: January 19-25, 2017, Email Exchange		7	1452-1454
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1455-1479
23.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1480-1488
24.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1489-1512

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
25.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1513-1516
	Exhibit 1: May 30, 2017 Order		7	1517-1541
26.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1542-1549
27.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1550-1557
28.	Affidavit of Larry Willard	10/18/17	7	1558-1574
29.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1575-1602
	Contents of DVD of Exhibits (filed manually)		7	1603-1615
30.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	8	1616-1659
	Exhibit 1: Declaration of Brian R. Irvine		8	1660-1666
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		8	1667-1674
	Exhibit 3: February 12, 2015 Letter		8	1675-1677
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		8	1678-1689
	Exhibit 5: August 28, 2015, Letter		8	1690-1701
	Exhibit 6: March 3, 2016, Letter		8	1702-1790
	Exhibit 7: March 15, 2016 Letter		9	1791-1882
	Exhibit 8: April 20, 2016, Letter		9	1883-1909

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		9	1910-1918
	Exhibit 10: December 5, 2016 Email		9	1919-1925
	Exhibit 11: December 9, 2016 Email		9	1926-1927
	Exhibit 12: December 23, 2016 Email		9	1928-1931
	Exhibit 13: December 27, 2016 Email		9	1932-1935
	Exhibit 14: February 3, 2017, Letter		9	1936-1963
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		9	1964-1973
	Exhibit 16: April 1, 2016 Email		9	1974-1976
	Exhibit 17: May 3, 2016 Email		9	1977-1978
	Exhibit 18: June 21, 2016 Email Exchange		9	1979-1985
	Exhibit 19: July 21, 2016 Email		9	1986-2002
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		9	2003-2012
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		9	2013-2023
	Exhibit 22: Defendants' First Requests for Production on Willard		9	2024-2031
	Exhibit 23: Defendants' Second Request for Production on Willard		9	2032-2039

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 24: Defendants' Third Request for Production on Willard		10	2040-2045
	Exhibit 25: Defendants Requests for Admission to Willard		10	2046-2051
	Exhibit 26: Willard Lease		10	2052-2087
	Exhibit 27: Willard Response to Second Set of Interrogatories		10	2088-2096
	Exhibit 28: Deposition of L. Willard Excerpt		10	2097-2102
	Exhibit 29: April 12, 2013 Letter		10	2103-2105
	Exhibit 30: Declaration of G. Gordon		10	2106-2108
	Exhibit 31: Declaration of C. Kemper		10	2109-2112
31.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	10	2113-2135
	Exhibit 1: Plaintiffs' Initial Disclosures		10	2136-2143
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		10	2144-2152
	Exhibit 3: December 5, 2016 Email		10	2153-2159
	Exhibit 4: December 9, 2016 Email		10	2160-2161
	Exhibit 5: December 23, 2016 Email		10	2162-2165
	Exhibit 6: December 27, 2016 Email		10	2166-2169
	Exhibit 7: February 3, 2017 Letter		10	2170-2197

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 31)	Exhibit 8: Deposition Excerpts of D. Gluhaich		10	2198-2207
	Exhibit 9: Declaration of Brian Irvine		10	2208-2211
32.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	10	2212-2228
	Exhibit 1: Highway 50 Lease		10	2229-2272
	Exhibit 2: Declaration of Chris Kemper		10	2273-2275
	Exhibit 3: Wooley Deposition at 41		10	2276-2281
	Exhibit 4: Virginia Lease		11	2282-2317
	Exhibit 5: Little Caesar's Sublease		11	2318-2337
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		11	2338-2346
	Exhibit 7: Willard Deposition at 89		11	2347-2352
33.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	11	2353-2390
	Exhibit 1: Plaintiffs' Initial Disclosures		11	2391-2398
	Exhibit 2: November 2014 Email Exchange		11	2399-2408
	Exhibit 3: January 2015 Email Exchange		11	2409-2414
	Exhibit 4: February 12, 2015 Letter		11	2415-2417
	Exhibit 5: Willard July 2015 Interrogatory Reponses		11	2418-2429

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 6: Wooley July 2015 Interrogatory Responses		11	2430-2439
	Exhibit 7: August 28, 2015 Letter		11	2440-2451
	Exhibit 8: March 3, 2016 Letter		12	2452-2540
	Exhibit 9: March 15, 2016 Letter		12	2541-2632
	Exhibit 10: April 20, 2016 Letter		12	2633-2659
	Exhibit 11: December 2, 2016 Expert Disclosure		12	2660-2668
	Exhibit 12: December 5, 2016 Email		12	2669-2675
	Exhibit 13: December 9, 2016 Email		12	2676-2677
	Exhibit 14: December 23, 2016 Email		12	2678-2681
	Exhibit 15: December 27, 2016 Email		12	2682-2685
	Exhibit 16: February 3, 2017 Letter		13	2686-2713
	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		13	2714-2723
	Exhibit 18: Wooley Deposition Excerpts		13	2724-2729
	Exhibit 19: Highway 50 Lease		13	2730-2773
	Exhibit 20: April 1, 2016 Email		13	2774-2776
	Exhibit 21: May 3, 2016 Email Exchange		13	2777-2778
	Exhibit 22: June 21, 2016 Email Exchange		13	2779-2785

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 23: July 21, 2016 Letter		13	2786-2802
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		13	2803-2812
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		13	2813-2822
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		13	2823-2830
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		13	2831-2838
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		13	2839-2844
	Exhibit 29: Defendants' Requests for Admission on Wooley		13	2845-2850
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		13	2851-2860
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		13	2861-2871
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		13	2872-2879
	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		13	2880-2887
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		13	2888-2893
	Exhibit 35: Defendants' Requests for Admission on Willard		13	2894-2899

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
34.	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	13	2900-2904
35.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	13	2905-2908
36.	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	13	2909-2912
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	13	2913-2916
38.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	13	2917-2921
39.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	13	2922-2926
40.	Order Granting Defendants' Motion for Partial Summary Judgment	01/04/18	14	2927-2931
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	14	2932-2935
42.	Notice of Entry of Order re Defendants' Motion to Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	14	2936-2939

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	14	2940-2943
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	14	2944-2977
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	14	2978-2981
46.	Order Denying Plaintiffs' Motion to Partially Dismiss Plaintiffs' Complaint as Moot	03/06/18	14	2982-2985
47.	Notice of Entry of Order re Order Denying Motion to Partially Dismiss Complaint	03/06/18	14	2986-2989
48.	Request for Entry of Judgment	03/09/18	14	2990-2998
49.	Notice of Withdrawal of Local Counsel	03/15/18	14	2999-3001
50.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	14	3002-3004
51.	Opposition to Request for Entry of Judgment	03/26/18	14	3005-3010
52.	Reply in Support of Request for Entry of Judgment	03/27/18	14	3011-3016
53.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	14	3017-3019
54.	Notice of Entry of Order re Order Granting Defendants' Motion to Dismiss Counterclaims	04/16/18	14	3020-3023
55.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	14	3024-3041

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 55)	Exhibit 1: Declaration of Larry J. Willard		14	3042-3051
	Exhibit 2: Lease Agreement dated 11/18/05		14	3052-3087
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		14	3088-3090
	Exhibit 4: Operation and Management Agreement dated 5/1/13		14	3091-3095
	Exhibit 5: 13 Symptoms of Bipolar Disorder		14	3096-3098
	Exhibit 6: Emergency Protective Order dated 1/23/18		14	3099-3101
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		14	3102-3104
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		14	3105-3118
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		14	3119-3147
56.	Opposition to Rule 60(b) Motion for Relief	05/18/18	15	3148-3168
	Exhibit 1: Declaration of Brian R. Irvine		15	3169-3172
	Exhibit 2: Transcript of Hearing, January 10, 2017		15	3173-3242

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 56)	Exhibit 3: Transcript of Hearing, December 12, 2017		15	3243-3271
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		15	3272-3280
	Exhibit 5: Attorney status according to the California Bar		15	3281-3282
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		15	3283-3290
57.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	15	3291-3299
	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		15	3300-3307
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		15	3308-3311
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		15	3312-3314
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		15	3315-3324
	Exhibit 5: Receipt		15	3325-3326
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018		15	3327-3331

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 57)	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		15	3332-3338
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		15	3339-3343
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		15	3344-3346
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		15	3347-3349
	Exhibit 11: Notice of Withdrawal of Local Counsel		15	3350-3353
58.	Order re Request for Entry of Judgment	06/04/18	15	3354-3358
59.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	15	3359-3367
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		15	3368-3385
60.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	16	3386-3402
61.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	16	3403-3409
62.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	16	3410-3441

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
63.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	16	3442-3478
64.	Judgment	12/11/18	16	3479-3481
65.	Notice of Entry of Order re Judgment	12/11/18	16	3482-3485
66.	Notice of Appeal	12/28/18	16	3486-3489
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		16	3490-3524
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		16	3525-3557
	Exhibit 3: Judgment, entered December 11, 2018		16	3558-3561
67.	Motion to Substitute Proper Party	02/22/19	16	3562-3576
68.	Addendum to Motion to Substitute Proper Party	02/26/19	16	3577-3588
69.	Opinion	08/06/20	16	3589-3597
70.	Notice of Related Action	08/19/20	16	3598-3601
	Exhibit 1: Conditional Guilty Plea in Exchange for a Stated Form of Discipline		16	3602-3612
	Exhibit 2: Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing		16	3613-3623

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 70)	Exhibit 3: Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney from Practicing Law in Nevada		17	3624-3632
71.	Order to Set Status Conference	09/18/20	17	3633-3634
72.	Order Denying Rehearing	11/03/20	17	3635
73.	Order Denying En Banc Reconsideration	02/23/21	17	3636-3637
74.	Notice of Association of Counsel	03/29/21	17	3638-3640
75.	Request for Status Conference	03/30/21	17	3641-3645
76.	Notice of Submission of Proposed Order	05/21/21	17	3646-3649
	Exhibit 1: [Plaintiffs' proposed] Order Granting in Part and Denying in Part the Willard Plaintiffs' Rule 60(b)(1) Motion for Relief		17	3650-3664
77.	Notice of Submission of Proposed Order	05/21/21	17	3665-3668
	Exhibit 1: [Defendants' proposed] Order Denying Plaintiffs' Rule 60(b) Motion for Relief on Remand		17	3669-3714
78.	Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/09/21	17	3715-3722
79.	Defendants' Opposition to Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/23/21	17	3723-3735
80.	Reply in Support of Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/29/21	17	3736-3742
81.	Order Denying Motion to Strike	09/10/21	17	3743-3749

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
82.	Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief	09/13/21	17	3750-3795
83.	Notice of Filing Cost Bond	10/11/21	17	3796-3798
84.	Notice of Appeal	10/11/21	17	3799-3802
	Exhibit 1: Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief		17	3803-3849
85.	Case Appeal Statement	10/11/21	17	3850-3855
	Transcripts			
86.	Transcript of Proceedings – Status Hearing	08/17/15	18	3856-3873
87.	Transcript of Proceedings – Hearing on Motion for Partial Summary Judgment	01/10/17	18	3874-3942
88.	Transcript of Proceedings – Pre-Trial Conference	12/12/17	18	3943-3970
89.	Transcript of Proceedings – Oral Arguments – Plaintiffs' Rule 60(b) Motion	09/04/18	18	3971-3991
90.	Transcript of Proceedings – Status Conference	04/21/21	18	3992-4010

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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 16

EXHIBIT 16

IN THE SECOND JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

-o0o-

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,

vs.

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

Defendants.

_____/

Case No. CV14-01712
Dept. No. 6

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)

A.App.707

A P P E A R A N C E S

FOR PLAINTIFF:

LAW OFFICES OF BRIAN P. MOQUIN
BY: BRIAN P. MOQUIN, ATTORNEY AT LAW
3506 La Castellet Court
San Jose, CA 95148
408.300.0022, bmoquin@BrianMoquin.com

FOR DEFENDANTS:

DICKINSON WRIGHT PLLC
BY: ANJALI D. WEBSTER, ATTORNEY AT LAW
BRIAN IRVINE, ATTORNEY AT LAW
100 W. Liberty Street, Suite 940
Reno, NV 89501
775.343.7498, awebster@dickinsonwright.com

ALSO PRESENT: Larry Willard

-o0o-

A Every email. That's a hard question.
Q Okay.
A I've kept some, yeah.
Q Okay. But not all?
A On my most recent laptop.
Q Okay. Have you kept all correspondence that would be pertinent to this case?
A I've kept a lot of it, yes.
Q Okay.
A In paper form and some of it on my hard drive in my laptop.
Q Okay. Have you kept all documents that would be pertinent to this case?
A All documents?
Q Like any leases?
A Yeah, I have all that.
Q Okay. Have you provided all that information to your attorney?
A My attorney, yes.
Q So let's talk about your ownership of properties generally. How many properties do you own at the present?
A Two.
Q And how many of those are nonresidential?
A One.

Q On the Baring property?
A Yes.
Q When did they stop paying on the Baring property?
A Okay. We discussed this 2009 they stopped payment.
Q Okay, correct. And then you said that they repaid everything.
A Yes, they did.
Q So as of May 2014 when you sold the Baring property, can you list for me every breach that BHI had committed as of that time?
MR. MOQUIN: Objection, calls for a legal conclusion.
THE WITNESS: We've already covered this ground.
BY MS. WEBSTER:
Q Could you state it for me again?
A They stopped payment somewhere in the neighborhood of 2007 to 2010. I went after them with my lawyers and they relented and they paid me. The total amount was about 190-something thousand dollars.
Then they assigned the lease for Sparks Avenue -- Baring Boulevard -- that's another

breach -- without my notification. What else? I think that's it.

Q Were those breaches cured by the time that you sold the Baring property?

A Well, I guess I got notified by this document, which I don't recognize, and it was a check from Jacksons Foods and I cashed it.

Q Correct. So were they in default when you sold the Baring property? Was BHI in default when you sold the Baring property?

A Well, I consider it to be defaulted -- well, okay. I would say no.

Q Okay. So I may have asked you this. I apologize if I'm repeating it.

When did you sell the Baring property?

A May of 2014.

Q Okay.

(Deposition Exhibit 19 marked for identification.)

(Witness reviewing document.)

THE WITNESS: Yeah, I should have sold it in 2012.

BY MS. WEBSTER:

Q Okay. So have you produced the January 21st, 2012, exclusive listing agreement to

Q Okay. Do you know if he ever adjusted the sales price?
A When I sold it, yeah, it went down.
Q You did from the time -- from what you originally listed the sales price for?
A Yes.
Q And why did you do that?
A We weren't getting any offers.
Q How long was the property on the market before you got offers?
A I don't recall.
Q When did you first decide to sell the Baring property?
A When I was forced to.
Q Okay. And can you explain the circumstances of that?
A Herbst Oil stopped payments on my leases.
Q On the Baring lease?
A No. But they stopped everything on the Highway 50 so that I was in debt on Highway 50 and way behind in my mortgage payments and I was being foreclosed on.
Q On the Highway 50 property?
A Yes.
Q Okay. And so in March of 2013, is that

when you were being foreclosed on?
A No. It took a while.
Q Okay. Approximately when?
A Oh, probably the first part of '14.
Q Okay. And so was that when you decided to sell the Baring property?
A I didn't decide. I had to.
Q Okay. But that's when you first put it on the market?
A Otherwise, I was going to lose both properties.
Q And why would that be?
A Because they were cross collateralized.
Q Can you explain that a little bit more, please?
A The properties were collateralized.
Q Can you explain that a little bit more?
A The properties are collateral for the note.
Q Correct.
A So if you've -- if you do not make your payments on either one of the properties, they can foreclose on both of the properties.
Q Okay. And is that in your agreements?
A It's in the note with the bank.
Q So once you had the property on the market,

did you receive offers on this property -- offers to buy the property?

A Yeah, I got an offer.

Q Did you only get one offer?

A I don't recall. There might have been another one. I don't recall really.

Q Who was the purchaser?

A His name was Mr. Tway or Tray, or something like that.

Q Richard Ray?

A Ray. That's it.

Q Okay. And do you remember what the purchase price was?

A Somewhere around a million-one. A million-one, something like that.

Q Okay. And so you don't know if you had multiple offers?

A Not a million-one. Three.1.

Q Okay. And you don't remember if you had more than just Mr. Ray's offer on this property?

A I had some people showing interest.

Q Okay.

A I couldn't tell you who --

Q Okay.

A -- or when.

A How much?
Q $1,308,792.85 in principal.
A For Sparks?
Q For the Carson City loan.
A This says "Sparks loan" and I don't know. You know, I paid off the loan. I took some of the proceeds and I paid off what was delinquent on Highway 50.
Q Okay. So back to the HUD 1 settlement statement, if you look at line 603, what was the total cash to seller?
A $870,844.39.
Q Okay. And what did you do with that cash?
A I put it in my bank account.
Q Okay. So how much of that went to paying off the Highway 50 or Carson property loan?
A I don't recall.
Q Did any of it?
A Absolutely.
Q Okay.
A I was being foreclosed on.
Q Okay. And then did you have any 1031 tax consequences from the sale of the Baring property?
A Sure I did. Absolutely.
Q Let's talk about those.

Q Interrogatory No. 3, "Please identify and describe in detail any and all facts demonstrating that the BHI knew at the time you and BHI entered into the Highway 50 lease that the Highway 50 property was cross-collateralized with the Baring property."

And then your response is "Respondent is presently unaware of facts responsive to this request. Respondent reserves the right to amend this response in light of future discovery."

Do you agree with that?

(Witness reviewing document.)

THE WITNESS: I don't know why they would even know.

BY MS. WEBSTER:

Q Okay.

A They're not party to getting a loan. I am. They take the check and cash it.

Q Okay. So Interrogatory No. 4, "Please identify and describe in detail any and all facts demonstrating that Jerry Herbst at the time you and BHI entered into the lease that the Highway 50 property was cross-collateralized with the Baring property."

The response on the next page is,

"Respondent is presently unaware of facts responsive to this request. Respondent reserves the right to amend this response."

A I agree with that.

Q Okay. So Interrogatory No. 5, "Please identify any documents which entitled you to the security deposit from the subtenant at the Highway 50 property in the amount of two thousand" -- and I believe it's a typo. It should be "2,485 as set forth in paragraph 39 of the First Amended Complaint."

And your answer is that "Respondent bases this contention on the fact that the propounding party breached the Highway 50 lease."

Do you see agree with that?

A Well, in my experience a deposit is something that goes with the people that are responsible for paying it back to the tenant.

So they're asking me what? Did I know that Jerry Herbst knew, no. I don't have any documentation.

Q Okay.

A It's just common sense.

Q Okay. And then we also went through Interrogatory No. 6 and you said that you do not

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-

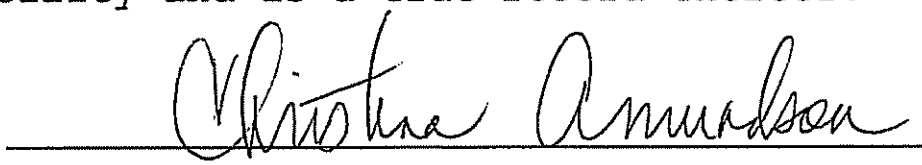
A.App.718

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

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

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



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

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Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 17

EXHIBIT 17

APN: 030-041-08
Recording Requested By and
When Recorded Return to:
Brian L. Ballard
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, Idaho 83701

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

ASSIGNMENT AND ASSUMPTION OF LEASE

This ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of this 29 day of DECEMBER 2009, by **BERRY-HINCKLEY INDUSTRIES, INC., a Nevada corporation** ("Assignor"), and **JACKSONS FOOD STORES, INC., a Nevada corporation** ("Assignee").

RECITALS:

A. Assignor is presently the "tenant" under that certain Lease Agreement dated May of 2006, by and between Assignor and Edward Wooley and Judith Wooley as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (collectively, the "Landlord"), as amended by that certain First Amendment to Lease Agreement dated March 12, 2007 (collectively, the "Lease"), which Lease affects the real property located in the County of Washoe, State of Nevada more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

B. Pursuant to that certain Asset Transfer Agreement, dated as of August 31, 2009 (the "Agreement"), by and between Assignor and Assignee, Assignor has agreed to assign, and Assignee has agreed to accept, all of Assignor's rights, title, estate, interest, duties and obligations under the Lease.

NOW, THEREFORE, in order to carry out the terms of the Agreement, and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby grants, transfers, conveys and assigns to Assignee all of Assignor's right, title, estate and interest in, to and under the Lease, together with any right, title, and interest of Assignor in and to any subleases, if any, relating to any portion of the Property.

2. Assumption. Assignee hereby accepts such assignment of Assignor's right, title, estate and interest in, to and under the Lease, and, in addition, (i) assumes and agrees to be bound by all of the terms of the Lease, and (ii) agrees to keep, perform, fulfill, and observe all of the terms, covenants, obligations, agreements, and conditions required to be kept, performed,

fulfilled, and observed by the Assignor or tenant under the Lease or any sublease thereof from and after the execution and delivery of this Assignment.

3. Indemnification of Assignor. Assignee hereby agrees to indemnify, defend, and hold Assignor harmless from and against any and all liability, losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and costs including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignee's failure to keep, perform, fulfill and observe any of the terms, covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease from and after the execution and delivery of this Assignment.

4. Indemnification of Assignee. Assignor hereby agrees to indemnify, defend, and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignor's failure to keep, perform, fulfill, and observe any of the terms covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease prior to the execution and delivery of this Assignment by Assignor and Assignee.

5. Rentals. All rents payable under or pursuant to the Lease shall be prorated as between Assignor and Assignee pursuant to, and in accordance with, the terms of the Agreement.

6. Further Assurances. Assignor hereby covenants that it will, at any time and from time to time following a written request therefor, execute and deliver to Assignee and its successors and assigns, any additional or confirmatory instruments and take such further acts as Assignee may reasonably request to evidence fully the assignment contained herein.

7. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. Survival of Certain Provisions. The provisions of Sections 2, 3, 4, 5 and 6 hereof shall survive the execution and delivery of this Assignment by Assignor and Assignee and the assignment of the Lease pursuant hereto.

9. Governing Law. This Assignment shall be construed in accordance with and governed by the laws of the State of Nevada.

10. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[Signatures Appear on Following Page]

ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By: _____
Name: Jerry Herbst
Title: President

STATE OF NEVADA)
) ss.
County of Clark)

On this 17 day of December, 2009, before me, Jenifer E Cannon, a Notary Public in and for said State, personally appeared Jerry Herbst, known or identified to me to be the President [title] of Berry-Hinckley Industries, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of Nevada
Residing at Las Vegas, NV
My commission expires _____

JENIFER E. CANNON
NOTARY PUBLIC
STATE OF NEVADA
APPT. NO. 03-80018-1
MY APPT. EXPIRES FEB. 12, 2011

ASSIGNEE:

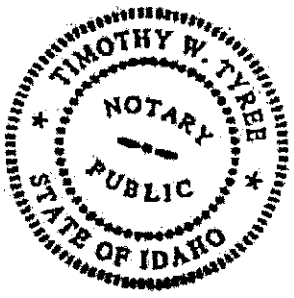
JACKSONS FOOD STORES, INC.,
a Nevada corporation

By: _____
John D. Jackson, CEO

STATE OF IDAHO)
) ss.
County of Ada)

On this 23 day of December, 2009, before me, TIMOTHY W. TYREE, a Notary Public in and for said State, personally appeared John D. Jackson, known or identified to me to be the CEO of Jacksons Food Stores, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



_____
Notary Public for the State of Idaho
Residing at BOISE ID
My commission expires 12-14-2010

CONSENT AND AGREEMENT

OF

EDWARD C. WOOLEY AND JUDITH A. WOOLEY,
AS TRUSTEES OF THE EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTERVIVOS REVOCABLE TRUST YEAR 2000

The undersigned, being the current Landlord under the above referenced Lease which is being assigned from BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, to and for the benefit of JACKSONS FOOD STORES, INC., a Nevada corporation, hereby acknowledge the above and agree and consent to the assignment of the Lease on the terms of the foregoing Assignment.

Date:_____

_____
Edward C. Wooley, Trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

Date:_____

_____
Judith A. Wooley, Trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared Edward C. Wooley, known or identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, and acknowledged to me that he executed the instrument in his capacity as trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of_____
Residing at_____
My commission expires_____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared Judith A. Wooley, known or identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, and acknowledged to me that she executed the instrument in her capacity as trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of _____
Residing at _____
My commission expires _____

Exhibit A

LEGAL DESCRIPTION
1365 Baring Blvd., Sparks, NV

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

PARCEL 1:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

Beginning at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "Parcel Map for Foothill Investment Co. and Lewis Building Co., Inc.", recorded January 26, 1983 in the office of the County Recorder of Washoe County, Nevada, as Parcel Map No. 1418, File No. 835532 and proceeding thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing south 44°11'14" East 42.45 feet; thence South 0°48;46: West 15.00 feet; thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet; thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet; thence leaving Sorenson Way North 89°11'14" West 150.00 feet; thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard; thence along Baring Boulevard South 89°11'14" East 169.67 feet to the point of beginning.

PARCEL 2:

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 321, under Document No. 128846, Official Records.

APN: 030-041-08

Document Number 3291758 provided pursuant to the requirements of Section 1.NRS 111.312

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Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 18

EXHIBIT 18

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv Unins 4. ☐ VA 5. ☐ Conv Ins. 6. ☐ Seller Finance	6. File Number 062749-PAH	7. Loan Number	8. Mortgage Ins Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower	E. Name & Address of Seller	F. Name & Address of Lender
Asset Exchange Company As QI for The Richard Wray 1981 Family Trust	The Edward C. Wooley and Judith A. Wooley Intervivos Revocable Living Trust	

G. Property Location	H. Settlement Agent Name	I. Settlement Date
1365 Baring Blvd Sparks, NV 89436	Western Title Company, LLC 5390 Kietzke Ln, Suite 101 Reno, NV 89511 Tax ID: 88-0263542 Underwritten By: First American Title Company	5/20/2014 Fund:
	Place of Settlement Western Title Company Kietzke Office 5390 Kietzke Ln Suite 101 Reno, NV 89511	

J. Summary of Borrower's Transaction			K. Summary of Seller's Transaction		
100. Gross Amount Due from Borrower			400. Gross Amount Due to Seller		
101. Contract Sales Price		$3,100,000.00	401. Contract Sales Price		$3,100,000.00
102. Personal Property			402. Personal Property		
103. Settlement Charges to borrower		$8,695.00	403.		
104.			404.		
105.			405.		
Adjustments for items paid by seller in advance			Adjustments for items paid by seller in advance		
106. County Property Taxes	05/20/14 to 06/30/14	$1,225.34	406. County Property Taxes	05/20/14 to 06/30/14	$1,225.34
107. Sewer Use Fee	05/20/14 to 05/31/14	$156.49	407. Sewer Use Fee	05/20/14 to 05/31/14	$156.49
108. HOA Dues			408. HOA Dues		
109. Assessments			409. Assessments		
110. RENTS			410. RENTS		
111.			411.		
112.			412.		
113.			413.		
114.			414.		
115.			415.		
116.			416.		
120. Gross Amount Due From Borrower		$3,110,076.83	420. Gross Amount Due to Seller		$3,101,381.83
200. Amounts Paid By Or In Behalf Of Borrower			500. Reductions In Amount Due to Seller		
201. Deposit or earnest money		$100,000.00	501. Excess Deposit		
202. Principal amount of new loan(s)			502. Settlement Charges to Seller (line 1400)		$147,847.30
203. Existing loan(s) taken subject to			503. Existing Loan(s) Taken Subject to		
204. Loan Amount 2nd Lien			504. Payoff of first mortgage loan		
205.			505. Payoff of second mortgage loan		
206. EXCHANGE FUNDS -			506. PAYOFF UNION BANK		$2,075,236.35
207.			507.		
208.			508.		
209.			509.		
Adjustments for items unpaid by seller			Adjustments for items unpaid by seller		
210. County Property Taxes			510. County Property Taxes		
211. Sewer Use Fee			511. Sewer Use Fee		
212. HOA Dues			512. HOA Dues		
213. Assessments			513. Assessments		
214. RENTS	05/20/14 to 05/31/14	$7,453.79	514. RENTS	05/20/14 to 05/31/14	$7,453.79
215.			515.		
216.			516.		
217.			517.		
218.			518.		
219.			519.		
220. Total Paid By/For Borrower		$107,453.79	520. Total Reduction Amount Due Seller		$2,230,537.44
300. Cash At Settlement From/To Borrower			600. Cash At Settlement To/From Seller		
301. Gross Amount due from borrower (line 120)		$3,110,076.83	601. Gross Amount due to seller (line 420)		$3,101,381.83
302. Less amounts paid by/for borrower (line 220)		$107,453.79	602. Less reductions in amt. due seller (line 520)		$2,230,537.44
303. Cash From Borrower		$3,002,623.04	603. Cash To Seller		$870,844.39

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; • Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; • Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.

Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper.

The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information requested does not lend itself to confidentiality.

File No. 062749-PAH

L. Settlement Charges			Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price $3,100,000.00 @4.25 % = $131,750.00				
Division of Commission (line 700) as follows:				
701. $65,875.00	to	Colliers International		
702. $65,875.00	to	Perkins Company of Nevada		
703. Commission Paid at Settlement			$0.00	$131,750.00
800. Items Payable in Connection with Loan				
801. Loan Origination Fee %	to			
802. Loan Discount %	to			
803. Appraisal Fee	to			
804. Credit Report	to			
805. Lender's Inspection Fee	to			
806. Mortgage Insurance Application	to			
807. Assumption Fee	to			
900. Items Required by Lender To Be Paid in Advance				
901. Interest from 5/20/2014 to 6/1/2014 @ $0/day				
902. Mortgage Insurance Premium for months	to			
903. Hazard Insurance Premium for years	to			
1000. Reserves Deposited With Lender				
1001. Hazard insurance	months @	per month		
1002. Homeowner's insurance	months @	per month		
1003. County Property Taxes	months @	per month		
1004. Sewer Use Fee	months @	per month		
1005. HOA Dues	months @	per month		
1006. Assessments	months @	per month		
1007.	months @	per month		
1008.	months @	per month		
1011. Aggregate Adjustment				
1100. Title Charges				
1101. Escrow Fee	to	Western Title Company FEES	$2,000.00	$2,000.00
1102. Abstract or title search	to			
1103. Title examination	to	Western Title Company FEES		
1104. Title insurance binder	to	Western Title Company FEES		
1105. Document preparation	to	Western Title Company FEES		
1106. Notary fees	to			
1107. Attorney's fees	to			
(includes above items numbers:)			[redacted]	[redacted]
1108. Title insurance	to	Western Title Company FEES		$6,617.50
(includes above items numbers:)			[redacted]	[redacted]
1109. Lender's coverage	$0.00/$0.00			
1110. Owner's coverage	$3,100,000.00/$6,617.50			
1111. Wire Fees	to	Western Title Company FEES	$20.00	$20.00
1112. Courier/Messenger Fee	to	Western Title Company FEES	$20.00	$40.00
1113. E-mail Documents	to	Western Title Company FEES		
1200. Government Recording and Transfer Charges				
1201. Recording Fees Deed $38.00 ; Mortgage ; Rel $20.00		to Western Title Company FEES	$38.00	$20.00
1202. City/county tax/stamps Deed $32,710.00 ; Mortgage		to Western Title Company FEES	$6,355.00	$6,355.00
1203. State tax/stamps Deed ; Mortgage		to		
1204. Tax certificates	to			
1205. Misc. Recordings- IF ANY- ESTIMATE	to	Western Title Company FEES	$50.00	$50.00
1206. Recording Submission Fee-ESTIMATE	to	Western Title Company FEES	$20.00	$20.00
1300. Additional Settlement Charges				
1301. Survey	to			
1302. Pest inspection	to			
1303. PAY SEWER CURRENT	to	City of Sparks		$723.58
1304. PAY WASTE MANAGEMENT to 5-16-14	to	Waste Management of Nevada		$251.72
1305. EXCHANGE FEE	to	ASSET EXCHANGE COMPANY POC (B) $200.00		
1306. PAD IF NEEDED	to	Western Title Company	$200.00	
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			$8,695.00	$147,847.30

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 19

EXHIBIT 19

Mina Reel

From: Brian R. Irvine
Sent: Wednesday, November 26, 2014 12:55 PM
To: 'David O'Mara, Esq.'; Brian Moquin
Cc: Stephanie J. Glantz
Subject: RE: Willard v. Berry-Hinckley
Attachments: Assignment and Assumption of Lease.pdf

Dear Brian and David-

I have been reviewing documents for disclosure in this case this week. Yesterday, I came across documents showing that the lease for the 1365 Baring Blvd. in Sparks, Nevada location was assigned from Berry Hinckley Industries, Inc. ("BHI") to Jacksons Food Stores, Inc. ("Jacksons") in late 2009. I contacted both my client and counsel for Jacksons about this issue and learned that Jacksons has been operating that location since 2010, and that the Wooley plaintiffs collected rent from Jacksons from 2010 forward. In addition, I am informed that when the Wooley plaintiffs sold the Baring Blvd. location earlier this year, the rent for the site was fully-paid and up to date. Now, I understand Jacksons continues to pay rent to the new owner at that location.

Based upon these facts, it is clear to me that your clients have no basis to maintain a claim in this case for breach of the Baring Blvd. lease. Your clients were paid in full for the rent to which they were entitled prior to the sale of that location, and they have no standing to seek damages for future rent at that location because they no longer own it. I assume that both of you had no knowledge of these facts, or you would not have filed the complaint as written. However, it seems apparent that your clients must have known all of these facts, and therefore the complaint should never have been filed with any claims related to Baring Blvd.

I note that the amended complaint that you drafted does not appear to have been filed, so it seems to be a good time to clean up plaintiffs' complaint to remove all claims related to Baring Blvd. as part of plaintiffs' amended complaint. Please confirm that your clients will agree to remove all claims for relief related to Baring Blvd., and send me a new amended complaint to consider at your earliest convenience.

I have attached the Assignment and Assumption of Lease document for your convenience. I also expect to receive a letter from counsel for Jacksons with some accounting documentation showing rental payments for the last several years early next week, and I can forward that to you if you wish.

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

Sincerely,

Brian Irvine

From: David O'Mara, Esq. [mailto:david@omaralaw.net]
Sent: Monday, November 03, 2014 11:24 AM
To: Brian Moquin; Brian R. Irvine
Subject: Willard v. Berry-Hinckley

Brian,

I apologize for the delay in getting you the First Amended Compliant but I thought I sent this before the Nevada day holiday. While you review the document, I will work on a simple stipulation for your review.

Additionally, I would like to set up a time to conduct the 16.1 Case Conference. Would you be available next week. I was supposed to be in San Francisco for mediations on Monday and Tuesday but those were cancelled. Please let me know if you are available.

If you have any questions, please do not hesitate to contact me.

David

David C. O'Mara, Esq.
The O'Mara Law Firm, P.C.
311 East Liberty Street
Reno, Nevada 89501
Telephone: (775) 323-1321
Facsimile: (775) 323-4082
david@omaralaw.net
www.omaralaw.net

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APN: 030-041-08
Recording Requested By and
When Recorded Return to:
Brian L. Ballard
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, Idaho 83701

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

ASSIGNMENT AND ASSUMPTION OF LEASE

This ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of this 23 day of December 2009, by BERRY-HINCKLEY INDUSTRIES, INC., a Nevada corporation ("Assignor"), and JACKSONS FOOD STORES, INC., a Nevada corporation ("Assignee").

RECITALS:

A. Assignor is presently the "tenant" under that certain Lease Agreement dated May of 2006, by and between Assignor and Edward Wooley and Judith Wooley as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (collectively, the "Landlord"), as amended by that certain First Amendment to Lease Agreement dated March 12, 2007 (collectively, the "Lease"), which Lease affects the real property located in the County of Washoe, State of Nevada more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

B. Pursuant to that certain Asset Transfer Agreement, dated as of August 31, 2009 (the "Agreement"), by and between Assignor and Assignee, Assignor has agreed to assign, and Assignee has agreed to accept, all of Assignor's rights, title, estate, interest, duties and obligations under the Lease.

NOW, THEREFORE, in order to carry out the terms of the Agreement, and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby grants, transfers, conveys and assigns to Assignee all of Assignor's right, title, estate and interest in, to and under the Lease, together with any right, title, and interest of Assignor in and to any subleases, if any, relating to any portion of the Property.

2. Assumption. Assignee hereby accepts such assignment of Assignor's right, title, estate and interest in, to and under the Lease, and, in addition, (i) assumes and agrees to be bound by all of the terms of the Lease, and (ii) agrees to keep, perform, fulfill, and observe all of the terms, covenants, obligations, agreements, and conditions required to be kept, performed,

fulfilled, and observed by the Assignor or tenant under the Lease or any sublease thereof from and after the execution and delivery of this Assignment.

3. Indemnification of Assignor. Assignee hereby agrees to indemnify, defend, and hold Assignor harmless from and against any and all liability, losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and costs including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignee's failure to keep, perform, fulfill and observe any of the terms, covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease from and after the execution and delivery of this Assignment.

4. Indemnification of Assignee. Assignor hereby agrees to indemnify, defend, and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignor's failure to keep, perform, fulfill, and observe any of the terms covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease prior to the execution and delivery of this Assignment by Assignor and Assignee.

5. Rentals. All rents payable under or pursuant to the Lease shall be prorated as between Assignor and Assignee pursuant to, and in accordance with, the terms of the Agreement.

6. Further Assurances. Assignor hereby covenants that it will, at any time and from time to time following a written request therefor, execute and deliver to Assignee and its successors and assigns, any additional or confirmatory instruments and take such further acts as Assignee may reasonably request to evidence fully the assignment contained herein.

7. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. Survival of Certain Provisions. The provisions of Sections 2, 3, 4, 5 and 6 hereof shall survive the execution and delivery of this Assignment by Assignor and Assignee and the assignment of the Lease pursuant hereto.

9. Governing Law. This Assignment shall be construed in accordance with and governed by the laws of the State of Nevada.

10. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[Signatures Appear on Following Page]

ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By: [signature]
Name: Jerry Herbst
Title: President

STATE OF NEVADA)
) ss.
County of Clark)

On this 11 day of December, 2009, before me, Jenifer E Cannon, a Notary Public in and for said State, personally appeared Jerry Herbst, known or identified to me to be the President [title] of Berry-Hinckley Industries, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[signature]
Notary Public for the State of Nevada
Residing at Las Vegas, NV
My commission expires _____

JENIFER E. CANNON
NOTARY PUBLIC
STATE OF NEVADA
APPT. NO. 03-80016-1
MY APPT. EXPIRES FEB. 12, 2011

BHI-WW000314

ASSIGNEE:

JACKSONS FOOD STORES, INC.,
a Nevada corporation

By: _____
John D. Jackson, CEO

STATE OF IDAHO)
) ss.
County of Ada)

On this 23 day of December, 2009, before me, TIMOTHY W. TYREE, a Notary Public in and for said State, personally appeared John D. Jackson, known or identified to me to be the CEO of Jacksons Food Stores, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

TIMOTHY W. TYREE NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for the State of Idaho
Residing at BOISE ID
My commission expires 12-14-2010

1762106_1.DOC

00288.0003.1762106.1

BHI-WW000315

CONSENT AND AGREEMENT

OF

EDWARD C. WOOLEY AND JUDITH A. WOOLEY,
AS TRUSTEES OF THE EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTERVIVOS REVOCABLE TRUST YEAR 2000

The undersigned, being the current Landlord under the above referenced Lease which is being assigned from BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, to and for the benefit of JACKSONS FOOD STORES, INC., a Nevada corporation, hereby acknowledge the above and agree and consent to the assignment of the Lease on the terms of the foregoing Assignment.

Date:_____

_____
Edward C. Wooley, Trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

Date:_____

_____
Judith A. Wooley, Trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared Edward C. Wooley, known or identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, and acknowledged to me that he executed the instrument in his capacity as trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of_____
Residing at_____
My commission expires_____

1762306_1.DOC

08258.0068.1762306.1

BHI-WW000316

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared Judith A. Wooley, known or identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, and acknowledged to me that she executed the instrument in her capacity as trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of _____
Residing at _____
My commission expires _____

Exhibit A

LEGAL DESCRIPTION
1365 Baring Blvd., Sparks, NV

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

PARCEL 1:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

Beginning at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "Parcel Map for Foothill Investment Co. and Lewis Building Co., Inc.", recorded January 26, 1983 in the office of the County Recorder of Washoe County, Nevada, as Parcel Map No. 1418, File No. 835532 and proceeding thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing south 44°11'14" East 42.45 feet; thence South 0°48;46: West 15.00 feet; thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet; thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet; thence leaving Sorenson Way North 89°11'14" West 150.00 feet; thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard; thence along Baring Boulevard South 89°11'14" East 169.67 feet to the point of beginning.

PARCEL 2:

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 321, under Document No. 128846, Official Records.

APN: 030-041-08

Document Number 3291758 provided pursuant to the requirements of Section 1.NRS 111.312

1762306_1.DOC

08288.0088.1762306.1

BHI-WW000318

FILED
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 20

EXHIBIT 20

Mina Reel

From: Brian R. Irvine
Sent: Wednesday, January 14, 2015 9:25 AM
To: 'Brian Moquin'; 'David O'Mara, Esq.'
Cc: Stephanie J. Glantz
Subject: RE: Willard v. Berry-Hinckley

Dear Brian and David-

It has now been about six weeks since I first communicated with you about the need to dismiss the portion of the case related to the Baring Boulevard location, but I still have not seen an amended complaint. We need to proceed with written discovery, and the lack of a proper set of pleadings is impeding our ability to frame that discovery and prepare the case. Please provide me with a draft amended complaint to review by Tuesday, January 20, 2015. If I do not see it by then, I will move to dismiss and will also seek sanctions for being forced to file an unnecessary motion. Please let me know where you are on this.

Thank you,

Brian Irvine

From: Brian Moquin [mailto:bmoquin@lawprism.com]
Sent: Tuesday, December 30, 2014 12:41 PM
To: Brian R. Irvine; 'David O'Mara, Esq.'
Cc: Stephanie J. Glantz
Subject: Re: Willard v. Berry-Hinckley

Hi, Brian. My overseas trip turned out to be more cumbersome and less productive than I'd anticipated, and consequently I have not finished putting the draft together. I return to the States tomorrow and will have the amended pleading finished by this coming Monday. I apologize for the delay and appreciate your patience.

Brian

On 12/30/14 11:53 AM, Brian R. Irvine wrote:

> Dear Brian and David-
>
> I have not seen a new draft of the amended complaint from you and wanted to make sure I had not missed it. I would like to get the pleading amended and our answer to that pleading filed so we can proceed with discovery with the appropriate scope in mind.
>
> Please let me know where we are.
>
> Thanks,
>
> Brian Irvine
>
> ---
>
> **From:** Brian R. Irvine
> **Sent:** Thursday, December 18, 2014 11:26 AM
> **To:** 'Brian Moquin'; 'David O'Mara, Esq.'

Cc: Stephanie J. Glantz
Subject: RE: Willard v. Berry-Hinckley

Brian-

Thanks for the email. I will look for another draft amended complaint from you early next week.

Thanks,

Brian Irvine

From: Brian Moquin [mailto:bmoquin@lawprism.com]
Sent: Friday, December 12, 2014 3:00 PM
To: Brian R. Irvine; 'David O'Mara, Esq.'
Cc: Stephanie J. Glantz
Subject: Re: Willard v. Berry-Hinckley

Mr. Irvine--

I left a voicemail for you earlier today, am in the middle of a deposition and have been occupied with depositions every day for the past week and a half.

I agree that there is an issue in terms of the allegations in the complaint related to the Baring Blvd. location. We plan to amend the complaint to correct this. Unfortunately, I'm occupied with an expert witness deposition this coming Monday and fly to Germany for two weeks on Tuesday, so realistically the earliest date I can commit to having the amended complaint to you is Monday, December 22, 2014. If you find that unacceptable, please let me know.

Best,
Brian

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

skype: brianmoquin
408.300.0022
408.460.7787 cell
408.843.1678 fax

On 12/9/14, 12:06 PM, Brian R. Irvine wrote:

> Dear Brian and David-
>
> I have not received any response from you regarding my email below. As you are now aware, the allegations in the complaint made by the Wooley plaintiffs regarding the Baring Boulevard property are baseless and must be dismissed. Please find attached a letter and rent roll that we received from corporate counsel for Jacksons showing that the rent at that location has been paid throughout all of 2013-2014 by Jacksons, and that

such rent was received by the Wooley plaintiffs until they sold the property.

Please contact me about how you wish to proceed, or provide me with an updated draft amended complaint with claims related to the Baring Boulevard location removed. If I do not hear from you by the close of business this Friday, December 12, 2014, we will file a motion seeking dismissal of those claims and will also request sanctions for being forced to bring a motion to dismiss these claims.

Thank you,

Brian Irvine

From: Brian R. Irvine
Sent: Wednesday, November 26, 2014 12:55 PM
To: 'David O'Mara, Esq.'; Brian Moquin
Cc: Stephanie J. Glantz
Subject: RE: Willard v. Berry-Hinckley

Dear Brian and David-

I have been reviewing documents for disclosure in this case this week. Yesterday, I came across documents showing that the lease for the 1365 Baring Blvd. in Sparks, Nevada location was assigned from Berry Hinckley Industries, Inc. ("BHI") to Jacksons Food Stores, Inc. ("Jacksons") in late 2009. I contacted both my client and counsel for Jacksons about this issue and learned that Jacksons has been operating that location since 2010, and that the Wooley plaintiffs collected rent from Jacksons from 2010 forward. In addition, I am informed that when the Wooley plaintiffs sold the Baring Blvd. location earlier this year, the rent for the site was fully-paid and up to date. Now, I understand Jacksons continues to pay rent to the new owner at that location.

Based upon these facts, it is clear to me that your clients have no basis to maintain a claim in this case for breach of the Baring Blvd. lease. Your clients were paid in full for the rent to which they were entitled prior to the sale of that location, and they have no standing to seek damages for future rent at that location because they no longer own it. I assume that both of you had no knowledge of these facts, or you would not have filed the complaint as written. However, it seems apparent that your clients must have known all of these facts, and therefore the complaint should never have been filed with any claims related to Baring Blvd.

I note that the amended complaint that you drafted does not appear to have been filed, so it seems to be a good time to clean up plaintiffs' complaint to remove all claims related to Baring Blvd. as part of plaintiffs' amended complaint. Please confirm that your clients will agree to remove all claims for relief related to Baring Blvd., and send me a new amended complaint to consider at your earliest convenience.

I have attached the Assignment and Assumption of Lease document for your convenience. I also expect to receive a letter from counsel for Jacksons with some accounting documentation showing rental payments for the last several years early next week, and I can forward that to you if you wish.

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

Sincerely,

Brian Irvine

From: David O'Mara, Esq. [mailto:david@omaralaw.net]
Sent: Monday, November 03, 2014 11:24 AM
To: Brian Moquin; Brian R. Irvine
Subject: Willard v. Berry-Hinckley

Brian,

I apologize for the delay in getting you the First Amended Compliant but I thought I sent this before the Nevada day holiday. While you review the document, I will work on a simple stipulation for your review.

Additionally, I would like to set up a time to conduct the 16.1 Case Conference. Would you be available next week. I was supposed to be in San Francisco for mediations on Monday and Tuesday but those were cancelled. Please let me know if you are available.

If you have any questions, please do not hesitate to contact me.

David

David C. O'Mara, Esq.
The O'Mara Law Firm, P.C.

311 East Liberty Street
Reno, Nevada 89501
Telephone: (775) 323-1321
Facsimile: (775) 323-4082
david@omaralaw.net
www.omaralaw.net

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EXHIBIT 21

EXHIBIT 21

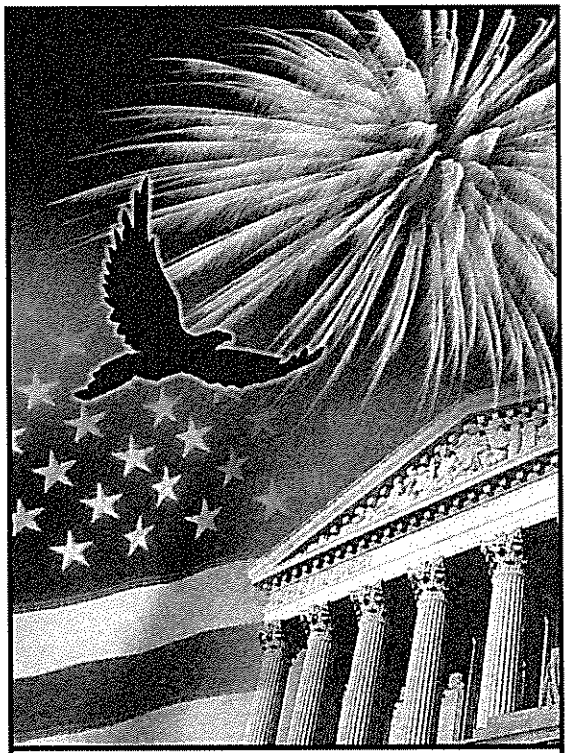
Department of the Treasury
Internal Revenue Service

Publication 4681
Cat. No. 51508F

Canceled Debts, Foreclosures, Repossessions, and Abandonments

(for Individuals)

For use in preparing
2015 Returns



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Contents

Reminder 1

Introduction 2

Common Situations Covered In This Publication 2

Chapter 1. Canceled Debts 2
- Form 1099-C 3
- Discounts and Loan Modifications 4
- Sales or Other Dispositions (Such as Foreclosures and Repossessions) 4
- Abandonments 4
- Stockholder Debt 4

Exceptions 4
- Gifts, Bequests, Devises, and Inheritances 4
- Student Loans 4
- Deductible Debt 5
- Price Reduced After Purchase 5
- Home Affordable Modification Program 5

Exclusions 5
- Bankruptcy 5
- Insolvency 5
- Qualified Farm Indebtedness 6
- Qualified Real Property Business Indebtedness 7
- Insolvency Worksheet 8
- Qualified Principal Residence Indebtedness 9

Reduction of Tax Attributes 9
- Qualified Principal Residence Indebtedness 9
- Bankruptcy and Insolvency 9
- Qualified Farm Indebtedness 11
- Qualified Real Property Business Indebtedness 11

Chapter 2. Foreclosures and Repossessions 11
- Worksheet for Foreclosures and Reposessions 12

Chapter 3. Abandonments 13

Chapter 4. How To Get Tax Help 14

Future Developments

For the latest information about developments related to Pub. 4681, such as legislation enacted after it was published, go to www.irs.gov/pub4681.

Reminder

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on

pages that otherwise would be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication explains the federal tax treatment of canceled debts, foreclosures, repossessions, and abandonments.

Generally, if you owe a debt to someone else and they cancel or forgive that debt for less than its full amount, you are treated for income tax purposes as having income and may have to pay tax on this income.

Note. This publication generally refers to debt that is canceled, forgiven, or discharged for less than the full amount of the debt as "canceled debt."

Sometimes a debt, or part of a debt, that you don't have to pay isn't considered canceled debt. These exceptions are discussed later under *Exceptions*.

Sometimes a canceled debt may be excluded from your income. But if you do exclude canceled debt from income, you may be required to reduce your "tax attributes." These exclusions and the reduction of tax attributes associated with them are discussed later under *Exclusions*.

Foreclosure and repossession are remedies that your lender may exercise if you fail to make payments on your loan and you have previously granted that lender a mortgage or other security interest in some of your property. These remedies allow the lender to seize or sell the property securing the loan. When your property is foreclosed upon or repossessed and sold, you are treated as having sold the property and you may recognize taxable gain. Whether you also recognize income from canceled debt depends in part on whether you are personally liable for the debt and in part on whether the outstanding loan balance is more than the fair market value (FMV) of the property. Figuring your gain or loss and income from canceled debt arising from a foreclosure or repossession is discussed later under *Foreclosures and Repossessions*.

Generally, you abandon property when you voluntarily and permanently give up possession and use of property you own with the intention of ending your ownership but without passing it on to anyone else. Figuring your gain or loss and income from canceled debt arising from an abandonment is discussed later under *Abandonments*.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments from www.irs.gov/formspubs. Click on "More Information" and then on "Give us feedback."

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs to download forms and publications. Otherwise, you can go to www.irs.gov/orderforms to order current and prior-year forms and instructions. Your order should arrive within 10 business days.

Tax questions. If you have a tax question not answered by this publication, check IRS.gov and *How To Get Tax Help* at the end of this publication.

Useful Items

You may want to see:

Publication

- ❑ **225** Farmer's Tax Guide
- ❑ **334** Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)
- ❑ **523** Selling Your Home
- ❑ **525** Taxable and Nontaxable Income
- ❑ **536** Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
- ❑ **542** Corporations
- ❑ **544** Sales and Other Dispositions of Assets
- ❑ **551** Basis of Assets
- ❑ **908** Bankruptcy Tax Guide

Form (and Instructions)

- ❑ **982** Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)
- ❑ **1099-C** Cancellation of Debt
- ❑ **1099-DIV** Dividends and Distributions
- ❑ **3800** General Business Credit

Common Situations Covered In This Publication

The sections of this publication that apply to you depend on the type of debt canceled, the tax attributes you have, and whether or not you continue to own the property that was subject to the debt. Some examples of common circumstances are provided in the following paragraphs to help guide you through this publication. These examples don't cover every situation but are intended to provide general guidance for the most common situations.

Nonbusiness credit card debt cancellation. If you had a nonbusiness credit card debt canceled, you may be able to exclude the canceled debt from income if the cancellation occurred in a title 11 bankruptcy case or you were insolvent immediately before the cancellation. You should read *Bankruptcy* or *Insolvency* under *Exclusions* in chapter 1 to see if you can exclude the canceled debt from income under one of those provisions. If you can exclude part or all of the canceled debt from income, you should also read *Bankruptcy and Insolvency* under *Reduction of Tax Attributes* in chapter 1.

Personal vehicle repossession. If you had a personal vehicle repossessed and disposed of by the lender during the year, you will need to determine your gain or nondeductible loss on the disposition. This is explained in chapter 2. If the lender also canceled all or part of the remaining amount of the loan, you may be able to exclude the canceled debt from income if the cancellation occurred in a title 11 bankruptcy case or you were insolvent immediately before the cancellation. You should read *Bankruptcy* or *Insolvency* under *Exclusions* in chapter 1 to see if you can exclude the canceled debt from income under one of those provisions. If you can exclude part or all of the canceled debt from income, you should also read *Bankruptcy and Insolvency* under *Reduction of Tax Attributes* in chapter 1.

Main home foreclosure or abandonment. If a lender foreclosed on your main home during the year, you will need to determine your gain or loss on the foreclosure. Foreclosures are explained in chapter 2 and abandonments are explained in chapter 3. If the lender also canceled all or part of the remaining amount on the mortgage loan, and you were personally liable for the debt, you should also read *Qualified Principal Residence Indebtedness* under *Exclusions* in chapter 1 to see if you can exclude part or all of the canceled debt from income.

Main home loan modification (workout agreement). If a lender agrees to a mortgage loan modification (a "workout") that includes a reduction in the principal balance of the loan, you should read *Qualified Principal Residence Indebtedness* under *Exclusions* in chapter 1 to see if you can exclude part or all of the canceled debt from income. If you can exclude part or all of the canceled debt from income, you should also read *Qualified Principal Residence Indebtedness* under *Reduction of Tax Attributes* in chapter 1.

1.

Canceled Debts

This chapter discusses the tax treatment of canceled debts.

A.App.749

General Rules

Generally, if a debt for which you are personally liable is forgiven or discharged for less than the full amount owed, the debt is considered canceled in whatever amount it remained unpaid. There are exceptions to this rule, discussed under *Exceptions*, later. Generally, you must include the canceled debt in your income. However, you may be able to exclude the canceled debt. See *Exclusions*, later.

Example. John owed $1,000 to Mary. Mary agreed to accept and John paid $400 in satisfaction of the entire debt. John has canceled debt of $600.

Example. Margaret owed $1,000 to Henry. Henry and Margaret agreed that Margaret would provide Henry with services (instead of money) in full satisfaction of the debt. Margaret doesn't have canceled debt. Instead, she has income from services.

A debt includes any indebtedness:

- For which you are liable, or
- Subject to which you hold property.

Debt for which you are personally liable is recourse debt. All other debt is nonrecourse debt.

If you aren't personally liable for the debt, you don't have ordinary income from the cancellation of debt unless you retain the collateral and either:

- The lender offers a discount for the early payment of the debt, or
- The lender agrees to a loan modification that results in the reduction of the principal balance of the debt.

See *Discounts and Loan Modifications*, later.

However, upon the disposition of the property securing a nonrecourse debt, the amount realized includes the entire unpaid amount of the debt, not just the FMV of the property. As a result, you may realize a gain or loss if the outstanding debt immediately before the disposition is more or less than your adjusted basis in the property. For more details on figuring your gain or loss, see chapter 2 of this publication or see Pub. 544, Sales and Other Dispositions of Assets.

There are several exceptions and exclusions that may result in part or all of a canceled debt being nontaxable. See *Exceptions* and *Exclusions*, later. You must report any taxable canceled debt as ordinary income on:

- Form 1040 or Form 1040NR, line 21, if the debt is a nonbusiness debt;
- Schedule C (Form 1040), line 6 (or Schedule C-EZ (Form 1040), line 1), if the debt is related to a nonfarm sole proprietorship;
- Schedule E (Form 1040), line 3, if the debt is related to nonfarm rental of real property;
- Form 4835, line 6, if the debt is related to a farm rental activity for which you use Form 4835 to report farm rental income based on crops or livestock produced by a tenant; or
- Schedule F (Form 1040), line 8, if the debt is farm debt and you are a farmer.

Form 1099-C

If you receive a Form 1099-C, that means an applicable entity has reported an identifiable event to the IRS regarding a debt you owe. The identifiable event may be an actual cancellation of the debt or it may be an event the applicable entity is required, solely for purposes of reporting to the IRS, to treat as a cancellation of debt. For information on the reasons an applicable entity files Form 1099-C, see *Identifiable event codes*, next. Unless you meet one of the exceptions or exclusions discussed later, this canceled debt is ordinary income and must be reported on the appropriate form discussed above.

An applicable entity includes:

1. A financial institution.
2. A credit union.
3. Any of the following, its successor, or subunit of one of the following:
   a. The Federal Deposit Insurance Corporation (FDIC),
   b. The Resolution Trust Corporation (RTC),
   c. The National Credit Union Administration (NCUA), or
   d. Any other federal executive agency, including government corporations, any military department, the U.S. Postal Service, or the Postal Rate Commission.
4. A corporate subsidiary of a financial institution or credit union (if the affiliation subjects the subsidiary to federal or state regulation).
5. A federal government agency, including a department, an agency, a court or court administrative office, or a judicial or legislative instrumentality.
6. Any organization a significant trade or business of which is lending money.

For more information on the applicable entities that must file a Form 1099-C, see the Instructions for Forms 1099-A and 1099-C, available at *www.irs.gov/instructions/i1099ac*.

Identifiable event codes. Box 6 of Form 1099-C should indicate the reason the creditor filed this form. The codes shown in box 6 are explained below. Also see the chart after the explanation for a quick reference guide for the codes used in box 6.

Note. Codes A through G and I identify specific occurrences involving an actual discharge of indebtedness. However, Code H, *Expiration of nonpayment testing period*, identifies an occurrence that doesn't necessarily involve an actual discharge of indebtedness.

Code A — Bankruptcy. Code A is used to identify cancellation of debt as a result of a title 11 bankruptcy case. See *Bankruptcy*, later.

Code B — Other judicial debt relief. Code B is used to identify cancellation of debt as a result of a receivership, foreclosure, or similar federal or state court proceeding other than bankruptcy.

Code C — Statute of limitations or expiration of deficiency period. Code C is used to identify cancellation of debt either when the statute of limitations for collecting the debt expires or when the statutory period for filing a claim or beginning a deficiency judgment proceeding expires. In the case of the expiration of a statute of limitations, an identifiable event occurs only if and when your affirmative defense of the statute of limitations is upheld in a final judgment or decision in a judicial proceeding, and the period for appealing the judgment or decision has expired.

Code D — Foreclosure election. Code D is used to identify cancellation of debt when the creditor elects foreclosure remedies that statutorily end or bar the creditor's right to pursue collection of the debt. This event applies to a mortgage lender or holder who is barred from pursuing debt collection after a power of sale in the mortgage or deed of trust is exercised.

Code E — Debt relief from probate or similar proceeding. Code E is used to identify cancellation of debt as a result of a probate court or similar legal proceeding.

Code F — By agreement. Code F is used to identify cancellation of debt as a result of an agreement between the creditor and the debtor to cancel the debt at less than full consideration.

Code G — Decision or policy to discontinue collection. Code G is used to identify cancellation of debt as a result of a decision or a defined policy of the creditor to discontinue collection activity and cancel the debt. For purposes of this identifiable event, a defined policy includes both a written policy and the creditor's established business practice.

Code H — Expiration of nonpayment testing period. Code H is used to indicate that the creditor hasn't received a payment on the debt during a testing period ending on December 31, 2015. The testing period is a 36-month period increased by the number of months the creditor was prevented from engaging in collection activity by a stay in bankruptcy or similar bar under state or local law. This identifiable event applies only for a creditor that is a financial institution or credit union (and certain of their subsidiaries), the FDIC, the RTC, the NCUA, any other federal executive agencies, and any successor or subunit of the FDIC, the RTC, the NCUA, or a federal executive agency.

Expiration of the nonpayment testing period doesn't necessarily result from an actual discharge of indebtedness.

Code I — Other actual discharge before identifiable event. Code I is used to identify an actual cancellation of debt that occurs before any of the identifiable events described in codes A through H.

Form 1099-C Reference Guide for Box 6 Identifiable Event Codes

A	Bankruptcy
B	Other judicial debt relief
C	Statute of limitations or expiration of deficiency period
D	Foreclosure election
E	Debt relief from probate or similar proceeding
F	By agreement
G	Decision or policy to discontinue collection
H	Expiration of nonpayment testing period
I	Other actual discharge before identifiable event

CAUTION *Even if you didn't receive a Form 1099-C, you must report canceled debt as gross income on your tax return unless one of the exceptions or exclusions described later applies.*

Amount of canceled debt. The amount in box 2 of Form 1099-C may represent some or all of the debt that has been canceled or treated as canceled. The amount in box 2 will include principal and may include interest and other nonprincipal amounts (such as fees or penalties). Unless you meet one of the exceptions or exclusions discussed later, the amount of the debt that has been canceled is ordinary income and must be reported on the appropriate form as discussed earlier.

Interest included in canceled debt. If any interest is included in the amount of canceled debt in box 2, it will be shown in box 3. Whether the interest portion of the canceled debt must be included in your income depends on whether the interest would be deductible if you paid it. See *Deductible Debt* under *Exceptions*, later.

Persons who each receive a Form 1099-C showing the full amount of debt. If you and another person were jointly and severally liable for a canceled debt, each of you may get a Form 1099-C showing the entire amount of the canceled debt. However, you may not have to report that entire amount as income. The amount, if any, you must report depends on all the facts and circumstances, including:

- State law,
- The amount of debt proceeds each person received,
- How much of any interest deduction from the debt was claimed by each person,
- How much of the basis of any co-owned property bought with the debt proceeds was allocated to each co-owner, and
- Whether the canceled debt qualifies for any of the exceptions or exclusions described in this publication.

See *Example 3* under *Insolvency*, later.

Discounts and Loan Modifications

If a lender discounts (reduces) the principal balance of a loan because you pay it off early, or agrees to a loan modification (a "workout") that includes a reduction in the principal balance of a loan, the amount of the discount or the amount of principal reduction is canceled debt. However, if the debt is nonrecourse and you didn't retain the collateral, you don't have cancellation of debt income. The amount of the canceled debt must be included in income unless one of the exceptions or exclusions described later applies. For more details, see *Exceptions* and *Exclusions*, later.

Sales or Other Dispositions (Such as Foreclosures and Repossessions)

Recourse debt. If you owned property that was subject to a recourse debt in excess of the FMV of the property, the lender's foreclosure or repossession of the property is treated as a sale or disposition of the property by you and may result in your realization of gain or loss. The gain or loss on the disposition of the property is measured by the difference between the FMV of the property at the time of the disposition and your adjusted basis (usually your cost) in the property. The character of the gain or loss (such as ordinary or capital) is determined by the character of the property. If the lender forgives all or part of the amount of the debt in excess of the FMV of the property, the cancellation of the excess debt may result in ordinary income. The ordinary income from the cancellation of debt (the excess of the canceled debt over the FMV of the property) must be included in your gross income reported on your tax return unless one of the exceptions or exclusions described later applies. For more details, see *Exceptions* and *Exclusions*, later.

Nonrecourse debt. If you owned property that was subject to a nonrecourse debt in excess of the FMV of the property, the lender's foreclosure on the property doesn't result in ordinary income from the cancellation of debt. The entire amount of the nonrecourse debt is treated as an amount realized on the disposition of the property. The gain or loss on the disposition of the property is measured by the difference between the total amount realized (the entire amount of the nonrecourse debt plus the amount of cash and the FMV of any property received) and your adjusted basis in the property. The character of the gain or loss is determined by the character of the property.

More information. See chapter 2 of this publication and Pubs. 523, 544, and 551 for more details.

Abandonments

Recourse debt. If you abandon property that secures a debt for which you are personally liable (recourse debt) and the debt is canceled, you will realize ordinary income equal to the canceled debt. You must report this income on your tax return unless one of the exceptions or exclusions described later applies. For more details, see *Exceptions* and *Exclusions*, later. This income is separate from any amount realized from the abandonment of the property. For more details, see chapter 3.

Nonrecourse debt. If you abandon property that secures a debt for which you aren't personally liable (nonrecourse debt), you may realize gain or loss but won't have cancellation of indebtedness income.

Stockholder Debt

If you are a stockholder in a corporation and the corporation cancels or forgives your debt to it, the canceled debt is a constructive distribution. For more information, see Pub. 542, Corporations.

Exceptions

There are several exceptions to the requirement that you include canceled debt in income. These exceptions apply before the exclusions discussed later and don't require you to reduce your tax attributes.

Gifts, Bequests, Devises, and Inheritances

In most cases, you don't have income from canceled debt if the debt is canceled as a gift, bequest, devise, or inheritance.

Student Loans

Certain student loans provide that all or part of the debt incurred to attend a qualified educational institution will be canceled if the person who received the loan works for a certain period of time in certain professions for any of a broad class of employers.

If your student loan is canceled as the result of this type of provision, the cancellation of this debt isn't included in your gross income. To qualify for this treatment, the loan must have been made by:

1. The Federal Government, a state or local government, or an instrumentality, agency, or subdivision of one of those governments,
2. A tax-exempt public benefit corporation that has assumed control of a state, county, or municipal hospital, and whose employees are considered public employees under state law, or
3. An educational institution (defined later):
   a. Under an agreement with an entity described in (1) or (2) that provided the funds to the institution to make the loan, or
   b. As part of a program of the institution designed to encourage students to serve in occupations or areas with unmet needs and under which the services provided are for or under the direction of a governmental unit or a tax-exempt section 501(c)(3) organization (defined later).

A loan to refinance a qualified student loan also will qualify if it was made by an educational institution or a tax-exempt section 501(a) organization under its program designed as described in (3)(b).

Exception. Generally, the cancellation of a student loan made by an educational institution because of services you performed for that institution or another organization that provided funds for the loan must be included in the gross income on your tax return.

Education loan repayment assistance. Education loan repayments made to you by the National Health Service Corps Loan Repayment Program or a state education loan repayment program eligible for funds under the Public Health Service Act aren't taxable if you agree to provide primary health services in health professional shortage areas.

Amounts you received after 2008 under any other state loan repayment or loan forgiveness program also aren't taxable. The program must be intended to increase the availability of health care services in underserved areas or areas with a shortage of health professionals.

Educational institution. An educational institution is an organization with a regular faculty and curriculum and a regularly enrolled body of students in attendance at the place where the educational activities are carried on.

Section 501(c)(3) organization. A section 501(c)(3) organization is a tax-exempt corporation, community chest, fund, or foundation organized and operated exclusively for one or more of the following purposes.

- Charitable.
- Educational.
- Fostering national or international amateur sports competition (but only if none of the organization's activities involve providing athletic facilities or equipment).
- Literary.
- Preventing cruelty to children or animals.
- Religious.
- Scientific.
- Testing for public safety.

Deductible Debt

If you use the cash method of accounting, you don't realize income from the cancellation of debt if the payment of the debt would have been a deductible expense. This exception applies before the price reduction exception discussed next.

Example. In December 2014, you get accounting services for your farm on credit. In early 2015, you have trouble paying your farm debts and your accountant forgives part of the amount you owe for the accounting services. How you treat the canceled debt depends on your method of accounting.

- Cash method. You don't include the canceled debt in income because payment of the debt would have been deductible as a business expense in 2015.
- Accrual method. Unless another exception or exclusion applies, you must include the canceled debt in ordinary income because the expense was deductible in 2014 when you incurred the debt.

Price Reduced After Purchase

If debt you owe the seller for the purchase of property is reduced by the seller at a time when you aren't insolvent and the reduction doesn't occur in a title 11 bankruptcy case, the reduction doesn't result in cancellation of debt income. However, you must reduce your basis in the property by the amount of the reduction of your debt to the seller. The rules that apply to bankruptcy and insolvency are explained in *Exclusions*, later.

Home Affordable Modification Program

Pay-for-Performance Success Payments and PRA investor incentive payments that reduce the principal balance of your home mortgage under the Home Affordable Modification Program (HAMP) are generally not taxable.

However, reductions of the principal balance of your home mortgage under HAMP's Principal Reduction Alternative may be taxable as cancellation of debt income. You may be able to recognize this income over a 3-year period. For more information, see *www.irs.gov/uac/Principal-Reduction-Alternative-Under-the-Home-Affordable-Modification-Program* and Revenue Procedure 2013-16, available at *www.irs.gov/irb/2013-07_IRB/ar09.html*.

Exclusions

After you have applied any exceptions to the general rule that a canceled debt is included in your income, there are several reasons why you might still be able to exclude a canceled debt from your income. These exclusions are explained next. If a canceled debt is excluded from your income, it is nontaxable. In most cases, however, if you exclude canceled debt from income under one of these provisions, you must also reduce your tax attributes (certain credits, losses, and basis of assets) as explained later under *Reduction of Tax Attributes*.

CAUTION ***Reacquisition of business debt.*** *If you elected to defer and ratably include income from the cancellation of business debt arising from the reacquisition of certain business debt in 2009 and/or 2010, you must include the second portion of the deferred debt in gross income on your 2015 return.*

Bankruptcy

Debt canceled in a title 11 bankruptcy case isn't included in your income. A title 11 bankruptcy case is a case under title 11 of the United States Code (including all chapters in title 11 such as chapters 7, 11, and 13), but only if the debtor is under the jurisdiction of the court and the cancellation of the debt is granted by the court or occurs as a result of a plan approved by the court.

How to report the bankruptcy exclusion. To show that your debt was canceled in a bankruptcy case and is excluded from income, attach Form 982 to your federal income tax return and check the box on line 1a. Lines 1b through 1e don't apply to a cancellation that occurs in a title 11 bankruptcy case. Enter the total amount of debt canceled in your title 11 bankruptcy case on line 2. You must also reduce your tax attributes in Part II of Form 982 as explained under *Reduction of Tax Attributes*, later.

Insolvency

Don't include a canceled debt in income to the extent that you were insolvent immediately before the cancellation. You were insolvent immediately before the cancellation to the extent that the total of all of your liabilities was more than the FMV of all of your assets immediately before the cancellation. For purposes of determining insolvency, assets include the value of everything you own (including assets that serve as collateral for debt and exempt assets which are beyond the reach of your creditors under the law, such as your interest in a pension plan and the value of your retirement account). Liabilities include:

- The entire amount of recourse debts,
- The amount of nonrecourse debt that isn't in excess of the FMV of the property that is security for the debt, and
- The amount of nonrecourse debt in excess of the FMV of the property subject to the nonrecourse debt to the extent nonrecourse debt in excess of the FMV of the property subject to the debt is forgiven.

TIP *You can use the Insolvency Worksheet, to help calculate the extent that you were insolvent immediately before the cancellation.*

Note. This exclusion doesn't apply to a cancellation of debt that occurs in a title 11 bankruptcy case. It also doesn't apply if the debt is qualified principal residence indebtedness (defined in this section under *Qualified Principal Residence Indebtedness*, later) unless you elect to apply the insolvency exclusion instead of the qualified principal residence indebtedness exclusion.

How to report the insolvency exclusion. To show that you are excluding canceled debt from income under the insolvency exclusion, attach Form 982 to your federal income tax return and check the box on line 1b. On line 2, include the smaller of the amount of the debt canceled or the amount by which you were insolvent immediately before the cancellation. You can use the Insolvency Worksheet, later, to help calculate the extent that you were insolvent immediately before the cancellation. You must also reduce your tax attributes in Part II of Form 982 as explained under *Reduction of Tax Attributes*, later.

Example 1—amount of insolvency more than canceled debt. In 2015, Greg was released from his obligation to pay his personal credit card debt in the amount of $5,000. Greg received a 2015 Form 1099-C from his credit card lender showing the entire amount of discharged debt of $5,000 in box 2. None of the exceptions to the general rule that canceled

debt is included in income apply. Greg uses the Insolvency Worksheet to determine that his total liabilities immediately before the cancellation were $15,000 and the FMV of his total assets immediately before the cancellation was $7,000. This means that immediately before the cancellation, Greg was insolvent to the extent of $8,000 ($15,000 total liabilities minus $7,000 FMV of his total assets). Because the amount by which Greg was insolvent immediately before the cancellation was more than the amount of his debt canceled, Greg can exclude the entire $5,000 canceled debt from income.

When completing his tax return, Greg checks the box on line 1b of Form 982 and enters $5,000 on line 2. Greg completes Part II to reduce his tax attributes as explained under *Reduction of Tax Attributes*, later. Greg doesn't include any of the $5,000 canceled debt on line 21 of his Form 1040. None of the canceled debt is included in his income.

Example 2—amount of insolvency less than canceled debt. The facts are the same as in Example 1 except that Greg's total liabilities immediately before the cancellation were $10,000 and the FMV of his total assets immediately before the cancellation was $7,000. In this case, Greg is insolvent to the extent of $3,000 ($10,000 total liabilities minus $7,000 FMV of his total assets) immediately before the cancellation. Because the amount of the canceled debt was more than the amount by which Greg was insolvent immediately before the cancellation, Greg can exclude only $3,000 of the $5,000 canceled debt from income under the insolvency exclusion.

Greg checks the box on line 1b of Form 982 and includes $3,000 on line 2. Also, Greg completes Part II to reduce his tax attributes as explained under *Reduction of Tax Attributes*, later. Additionally, Greg must include $2,000 of canceled debt on line 21 of his Form 1040 (unless another exclusion applies).

Example 3—joint debt and separate returns. In 2015, James and his wife Robin were released from their obligation to pay a debt of $10,000 for which they were jointly and severally liable. None of the exceptions to the general rule that canceled debt is included in income apply. They incurred the debt (originally $12,000) to finance James's purchase of a $9,000 motorcycle and Robin's purchase of a laptop computer and software for personal use for $3,000. They each received a 2015 Form 1099-C from the bank showing the entire canceled debt of $10,000 in box 2. Based on the use of the loan proceeds, they agreed that James was responsible for 75% of the debt and Robin was responsible for the remaining 25%. Therefore, James's share of the debt is $7,500 (75% of $10,000), and Robin's share is $2,500 (25% of $10,000). By completing the Insolvency Worksheet, James determines that, immediately before the cancellation of the debt, he was insolvent to the extent of $5,000 ($15,000 total liabilities minus $10,000 FMV of his total assets). He can exclude $5,000 of his $7,500 canceled debt. Robin completes a separate insolvency worksheet and determines she was insolvent to the extent of $4,000 ($9,000 total liabilities minus $5,000 FMV of her total assets). She can exclude her entire canceled debt of $2,500.

When completing his separate tax return, James checks the box on line 1b of Form 982 and enters $5,000 on line 2. He completes Part II to reduce his tax attributes as explained under *Reduction of Tax Attributes*, later. He must include the remaining $2,500 ($7,500 – $5,000) of canceled debt on line 21 of his Form 1040 (unless another exclusion applies).

When completing her return, Robin checks the box on line 1b of Form 982 and enters $2,500 on line 2. She completes Part II to reduce her tax attributes as explained under *Reduction of Tax Attributes*, later. She doesn't include any of the canceled debt on line 21 of her Form 1040. None of the canceled debt has to be included in her income.

Qualified Farm Indebtedness

You can exclude canceled farm debt from income on your 2015 return if all of the following apply.

- The debt was incurred directly in connection with your operation of the trade or business of farming.
- Fifty percent or more of your total gross receipts for 2012, 2013, and 2014 were from the trade or business of farming.
- The cancellation was made by a qualified person. A qualified person is an individual, organization, partnership, association, corporation, or other person, who is actively and regularly engaged in the business of lending money. A qualified person also includes any federal, state, or local government or agency or instrumentality of one of those governments. For example, the United States Department of Agriculture is a qualified person. A qualified person can't be related to you, can't be the person from whom you acquired the property (or a person related to this person), and can't be a person who receives a fee due to your investment in the property (or a person related to this person).

For the definition of the term "related person," see *Related persons* under *At-Risk Amounts* in Pub. 925, Passive Activity and At-Risk Rules.

Note. This exclusion doesn't apply to a cancellation of debt in a title 11 bankruptcy case or to the extent you were insolvent immediately before the cancellation. If qualified farm debt is canceled in a title 11 case, you must apply the bankruptcy exclusion rather than the exclusion for canceled qualified farm debt. If you were insolvent immediately before the cancellation of qualified farm debt, you must apply the insolvency exclusion before applying the exclusion for canceled qualified farm debt.

Exclusion limit. The amount of canceled qualified farm debt you can exclude from income under this exclusion is limited. It can't be more than the sum of:

- Your adjusted tax attributes, and
- The total adjusted bases of qualified property you held at the beginning of 2016.

If you excluded canceled debt under the insolvency exclusion, the adjusted basis of any qualified property and adjusted tax attributes are determined after any reduction of tax attributes required under the insolvency exclusion.

Any canceled qualified farm debt that is more than this limit must be included in your income.

For more information about the basis of property, see Pub. 551, Basis of Assets.

Adjusted tax attributes. Adjusted tax attributes means the sum of the following items.

1. Any net operating loss (NOL) for 2015 and any NOL carryover to 2015.
2. Any net capital loss for 2015 and any capital loss carryover to 2015.
3. Any passive activity loss carryover from 2015.
4. Three times the sum of any:
   a. General business credit carryover to or from 2015,
   b. Minimum tax credit available as of the beginning of 2016,
   c. Foreign tax credit carryover to or from 2015, and
   d. Passive activity credit carryover from 2015.

Qualified property. This is any property you use or hold for use in your trade or business or for the production of income.

How to report the qualified farm indebtedness exclusion. To show that all or part of your canceled debt is excluded from income because it is qualified farm debt, check the box on line 1c of Form 982 and attach it to your Form 1040. On line 2 of Form 982, include the amount of the qualified farm debt canceled, but not more than the exclusion limit (explained earlier). You must also reduce your tax attributes in Part II of Form 982 as explained under *Reduction of Tax Attributes*, later.

Example 1. In 2015, Chuck was released from his obligation to pay a $10,000 debt that was incurred directly in connection with his trade or business of farming. Chuck received a Form 1099-C from the qualified lender showing discharged debt of $10,000 in box 2. For his 2012, 2013, and 2014 tax years, at least 50% of Chuck's total gross receipts were from the trade or business of farming. Chuck's adjusted tax attributes are $5,000 and Chuck has $3,000 total adjusted bases in qualified property at the beginning of 2016. Chuck had no other debt canceled during 2015 and no other exception or exclusion relating to canceled debt income applies.

Chuck can exclude $8,000 ($5,000 of adjusted tax attributes plus $3,000 total adjusted bases in qualified property at the beginning of 2016) of the $10,000 canceled debt from income. Chuck checks the box on line 1c of Form 982 and enters $8,000 on line 2. Also, Chuck completes Part II to reduce his tax attributes as explained under *Reduction of Tax Attributes*, later. The remaining $2,000 of canceled qualified farm debt is included in Chuck's income on Schedule F, line 8.

Example 2. On March 2, 2015, Bob was released from his obligation to pay a $10,000 business credit card debt that was used directly in connection with his farming business. For his 2012, 2013, and 2014 tax years, at least 50% of Bob's total gross receipts were from the trade or business of farming. Bob received a 2015 Form 1099-C from the qualified lender showing discharged debt of $10,000 in box 2. The FMV of Bob's total assets on March 2, 2015 (immediately before the cancellation of the credit card debt), was $7,000 and Bob's total liabilities at that time were $11,000. Bob's adjusted tax attributes (a 2015 NOL) are $7,000 and Bob has $4,000 total adjusted bases in qualified property at the beginning of 2016.

Bob qualifies to exclude $4,000 of the canceled debt under the insolvency exclusion because he is insolvent to the extent of $4,000 immediately before the cancellation ($11,000 total liabilities minus $7,000 FMV of total assets). Bob must reduce his tax attributes under the insolvency rules before applying the rules for qualified farm debt.

Bob also qualifies to exclude the remaining $6,000 of canceled qualified farm debt. The limit on Bob's exclusion from income of canceled qualified farm debt is $7,000, the sum of his adjusted tax attributes of $3,000 (the $7,000 NOL minus the $4,000 reduction of tax attributes required because of the $4,000 exclusion of canceled debt under the insolvency exclusion) plus $4,000 (Bob's total adjusted bases in qualified property at the beginning of 2016).

Bob checks the boxes on lines 1b and 1c of Form 982 and enters $10,000 on line 2. Bob completes Part II to reduce his tax attributes as explained under *Reduction of Tax Attributes*, later. Bob doesn't include any of his canceled debt in income.

Example 3. The facts are the same as in Example 2 except that immediately before the cancellation Bob was insolvent to the extent of the full $10,000 canceled debt. Because the exclusion for qualified farm debt doesn't apply to the extent that Bob was insolvent immediately before the cancellation, he checks only the box on line 1b of Form 982 and enters $10,000 on line 2. Bob completes Part II to reduce his tax attributes based on the insolvency exclusion as explained under *Reduction of Tax Attributes*, later. Bob doesn't include any of the canceled debt in income.

Qualified Real Property Business Indebtedness

You can elect to exclude canceled qualified real property business indebtedness from income. Qualified real property business indebtedness is debt (other than qualified farm debt) that meets all of the following conditions.

1. It was incurred or assumed in connection with real property used in a trade or business.
2. It is secured by that real property. As long as certain other requirements are met, indebtedness that is secured by 100% of the ownership interest in a disregarded entity holding real property will be treated as indebtedness that is secured by real property. For more information, and for the requirements that must be met, see Revenue Procedure 2014-20 available at *www.irs.gov/irb/2014-9_IRB/ar09.html*.
3. It was incurred or assumed:
   a. Before 1993, or
   b. After 1992, if the debt is either (i) qualified acquisition indebtedness (defined next), or (ii) debt incurred to refinance qualified real property business debt incurred or assumed before 1993 (but only to the extent the amount of such debt doesn't exceed the amount of debt being refinanced).
4. It is debt to which you elect to apply these rules.

TIP *Residential rental property generally qualifies as real property used in a trade or business unless you also use the dwelling as a home. For more information, see* Dwelling Unit Used as a Home *in Pub. 527.*

Definition of qualified acquisition indebtedness. Qualified acquisition indebtedness is:

- Debt incurred or assumed to acquire, construct, reconstruct, or substantially improve real property that is used in a trade or business and secures the debt, or
- Debt resulting from the refinancing of qualified acquisition indebtedness, to the extent the amount of the debt doesn't exceed the amount of debt being refinanced.

Note. This exclusion doesn't apply to a cancellation of debt in a title 11 bankruptcy case or to the extent you were insolvent immediately before the cancellation. If qualified real property business debt is canceled in a title 11 bankruptcy case, you must apply the bankruptcy exclusion rather than the exclusion for canceled qualified real property business debt. If you were insolvent immediately before the cancellation of qualified real property business debt, you must apply the insolvency exclusion before applying the exclusion for canceled qualified real property business debt.

Exclusion limit. The amount of canceled qualified real property business debt you can exclude from income under this exclusion is limited to the excess (if any) of:

- The outstanding principal amount of the qualified real property business debt (immediately before the cancellation), over
- The FMV (immediately before the cancellation) of the business real property securing the debt, reduced by the outstanding principal amount of any other qualified real property business debt secured by that property (immediately before the cancellation).

In addition to this limit, a second overall limit applies. The amount of canceled qualified real property business debt you can exclude from income can't be more than the total adjusted bases of depreciable real property you held immediately before the cancellation of the qualified real property business indebtedness (other than depreciable real property acquired in contemplation of the cancellation). When figuring this overall limit, use the adjusted basis of the depreciable real property after any reductions in basis required because of the exclusion of debt canceled under the bankruptcy, insolvency, or farm debt provisions described in this publication.

For more information about the basis of property, see Pub. 551.

How to elect the qualified real property business debt exclusion. You must make an election to exclude canceled qualified real property business debt from gross income. The election must be made on a timely filed (including extensions) federal income tax return for 2015 and can be revoked only with IRS consent. The election is made by completing Form 982 in accordance with its instructions. Attach Form 982 to your federal income tax return for 2015 and check the box on line 1d. Include the amount of canceled qualified real property business debt (but not more than the amount of the exclusion limit, explained earlier) on line 2 of Form 982. You must also reduce your tax attributes in Part II of Form 982 as explained under *Reduction of Tax Attributes*, later.

If you timely filed your tax return without making this election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Enter "Filed pursuant to section 301.9100-2" on the amended return and file it at the same place you filed the original return.

Example. In 2009, Curt bought a retail store for use in a business he operated as a sole proprietorship. Curt made a $20,000 down payment and financed the remaining $200,000 of the purchase price with a bank loan. The bank loan was a recourse loan and was secured by the property. Curt used the property in his business continuously since he bought it. He had no other debt secured by that depreciable real property. In addition to the retail store, Curt owned depreciable equipment and furniture with an adjusted basis of $50,000.

Curt's business encountered financial difficulties in 2015. On September 25, 2015, the bank financing the retail store loan entered into a workout agreement with Curt under which it canceled $20,000 of the debt. Immediately before the cancellation, the outstanding principal balance on the retail store loan was $185,000, the FMV of the store was $165,000, and the adjusted basis was $210,000 ($220,000 cost minus $10,000 accumulated depreciation).

The bank sent him a 2015 Form 1099-C showing discharged debt of $20,000 in box 2. Curt had no tax attributes other than basis to reduce and didn't qualify for any exception or exclusion other than the qualified real property business debt exclusion.

Curt elects to apply the qualified real property business debt exclusion to the canceled debt. The amount of canceled qualified real property business debt that he can exclude from income is limited to $20,000 (the excess of the $185,000 outstanding principal amount of his qualified real property business debt immediately before the cancellation over the $165,000 FMV of the business real property securing the debt). Curt's exclusion is also subject

Insolvency Worksheet

Keep for Your Records

Date debt was canceled (mm/dd/yy)	

Part I. Total liabilities immediately before the cancellation (don't include the same liability in more than one category)

	Liabilities (debts)	Amount Owed Immediately Before the Cancellation
1.	Credit card debt	$
2.	Mortgage(s) on real property (including first and second mortgages and home equity loans) (mortgage(s) can be on personal residence, any additional residence, or property held for investment or used in a trade or business)	$
3.	Car and other vehicle loans	$
4.	Medical bills owed	$
5.	Student loans	$
6.	Accrued or past-due mortgage interest	$
7.	Accrued or past-due real estate taxes	$
8.	Accrued or past-due utilities (water, gas, electric)	$
9.	Accrued or past-due child care costs	$
10.	Federal or state income taxes remaining due (for prior tax years)	$
11.	Judgments	$
12.	Business debts (including those owed as a sole proprietor or partner)	$
13.	Margin debt on stocks and other debt to purchase or secured by investment assets other than real property	$
14.	Other liabilities (debts) not included above	$
15.	**Total liabilities immediately before the cancellation. Add lines 1 through 14.**	$

Part II. Fair market value (FMV) of assets owned immediately before the cancellation (don't include the FMV of the same asset in more than one category)

	Assets	FMV Immediately Before the Cancellation
16.	Cash and bank account balances	$
17.	Real property, including the value of land (can be main home, any additional home, or property held for investment or used in a trade or business)	$
18.	Cars and other vehicles	$
19.	Computers	$
20.	Household goods and furnishings (for example, appliances, electronics, furniture, etc.)	$
21.	Tools	$
22.	Jewelry	$
23.	Clothing	$
24.	Books	$
25.	Stocks and bonds	$
26.	Investments in coins, stamps, paintings, or other collectibles	$
27.	Firearms, sports, photographic, and other hobby equipment	$
28.	Interest in retirement accounts (IRA accounts, 401(k) accounts, and other retirement accounts)	$
29.	Interest in a pension plan	$
30.	Interest in education accounts	$
31.	Cash value of life insurance	$
32.	Security deposits with landlords, utilities, and others	$
33.	Interests in partnerships	$
34.	Value of investment in a business	$
35.	Other investments (for example, annuity contracts, guaranteed investment contracts, mutual funds, commodity accounts, interests in hedge funds, and options)	$
36.	Other assets not included above	$
37.	**FMV of total assets immediately before the cancellation. Add lines 16 through 36.**	$

Part III. Insolvency

38.	**Amount of insolvency.** Subtract line 37 from line 15. If zero or less, you aren't insolvent.	$

to an overall $210,000 limit equal to the adjusted basis of depreciable real property he held immediately before the cancellation.

Thus, Curt can exclude the entire $20,000 of canceled qualified real property business debt from income. Curt checks the box on line 1d of Form 982 and enters $20,000 on line 2. Curt must also use line 4 of Form 982 to reduce his basis in depreciable real property by the $20,000 of canceled qualified real property business debt excluded from his income as explained under *Reduction of Tax Attributes*, later.

Qualified Principal Residence Indebtedness

You can exclude canceled debt from income if it is qualified principal residence indebtedness. Qualified principal residence indebtedness is any mortgage you took out to buy, build, or substantially improve your main home. It also must be secured by your main home. Qualified principal residence indebtedness also includes any debt secured by your main home that you used to refinance a mortgage you took out to buy, build, or substantially improve your main home, but only up to the amount of the old mortgage principal just before the refinancing.

Example 1. In 2009, Becky bought a main home for $315,000. She took out a $300,000 mortgage loan to buy the home and made a down payment of $15,000. The loan was secured by the home. In 2010, Becky took out a second mortgage loan in the amount of $50,000 that she used to add a garage to her home

In 2015, when the outstanding principal of her first and second mortgage loans was $325,000, Becky refinanced the two loans into one loan in the amount of $400,000. The FMV of the home at the time of the refinancing was $430,000. She used the additional $75,000 debt proceeds ($400,000 new mortgage loan minus $325,000 outstanding principal balances of her first and second mortgage loans immediately before the refinancing) to pay off personal credit cards and to pay college tuition for her daughter.

After the refinancing, Becky's qualified principal residence indebtedness is $325,000 because the debt resulting from the refinancing is qualified principal residence indebtedness only to the extent it isn't more than the old mortgage principal just before the refinancing.

Example 2. In 2012, Steve acquired his main home for $200,000, subject to a mortgage of $175,000. In 2013, he took out a home equity loan for $10,000, secured by his main home, which he used to pay off personal credit cards.

In 2014, when the outstanding principal on his mortgage was $170,000 and the outstanding principal on his home equity loan was $9,000, he refinanced the two loans into one loan in the amount of $200,000. The FMV of the home at the time of refinancing was $210,000. He used the additional $21,000 ($200,000 new mortgage loan minus $179,000 outstanding principal balances on the mortgage and home equity loan) to cover medical expenses.

After refinancing, Steve's qualified principal residence indebtedness is $170,000 because the debt resulting from the refinancing is qualified principal residence indebtedness only to the extent it refinances debt that had been secured by the main home and was used to buy, build, or substantially improve the main home.

Main home. Your main home is the one in which you live most of the time. You can have only one main home at any one time.

Note. This exclusion doesn't apply to a cancellation of debt in a title 11 bankruptcy case. If qualified principal residence indebtedness is canceled in a title 11 bankruptcy case, you must apply the bankruptcy exclusion rather than the exclusion for qualified principal residence indebtedness. If you were insolvent immediately before the cancellation, you can elect to apply the insolvency exclusion (as explained under *Insolvency*, earlier) instead of applying the qualified principal residence indebtedness exclusion. To do this, check the box on line 1b of Form 982 instead of the box on line 1e.

Exclusion limit. The maximum amount you can treat as qualified principal residence indebtedness is $2 million ($1 million if married filing separately). You can't exclude canceled qualified principal residence indebtedness from income if the cancellation was for services performed for the lender or on account of any other factor not directly related to a decline in the value of your home or to your financial condition.

Ordering rule. If only a part of a loan is qualified principal residence indebtedness, the exclusion applies only to the extent the amount canceled is more than the amount of the loan (immediately before the cancellation) that is not qualified principal residence indebtedness. The remaining part of the loan may qualify for another exclusion.

Example. Ken incurred recourse debt of $800,000 when he bought his main home for $880,000. When the FMV of the property was $1,000,000, Ken refinanced the debt for $850,000. At the time of the refinancing, the principal balance of the original mortgage loan was $740,000. Ken used the $110,000 he obtained from the refinancing ($850,000 minus $740,000) to pay off his credit cards and to buy a new car.

About 2 years after the refinancing, Ken lost his job and was unable to get another job paying a comparable salary. Ken's home had declined in value to between $700,000 and $750,000. Based on Ken's circumstances, the lender agreed to allow a short sale of the property for $735,000 and to cancel the remaining $115,000 of the $850,000 debt. Under the ordering rule, Ken can exclude only $5,000 of the canceled debt from his income under the exclusion for canceled qualified principal residence indebtedness ($115,000 canceled debt minus the $110,000 amount of the debt that wasn't qualified principal residence indebtedness). Ken must include the remaining $110,000 of canceled debt in income on line 21 of his Form 1040 (unless another exclusion applies).

How to report the qualified principal residence indebtedness exclusion. To show that all or part of your canceled debt is excluded from income because it is qualified principal residence indebtedness, attach Form 982 to your federal income tax return and check the box on line 1e. On line 2 of Form 982, include the amount of canceled qualified principal residence indebtedness, but not more than the amount of the exclusion limit (explained earlier). If you continue to own your home after a cancellation of qualified principal residence indebtedness, you must reduce your basis in the home as explained under *Reduction of Tax Attributes*, next.

Reduction of Tax Attributes

If you exclude canceled debt from income, you must reduce certain tax attributes (but not below zero) by the amount excluded. Use Part II of Form 982 to reduce your tax attributes. The order in which the tax attributes are reduced depends on the reason the canceled debt was excluded from income. If the total amount of canceled debt excluded from income (line 2 of Form 982) was more than your total tax attributes, the total reduction of tax attributes in Part II of Form 982 will be less than the amount on line 2.

Qualified Principal Residence Indebtedness

If you exclude canceled qualified principal residence indebtedness from income and you continue to own the home after the cancellation, you must reduce the basis of the home (but not below zero) by the amount of the canceled qualified principal residence indebtedness excluded from income. Enter the amount of the basis reduction on line 10b of Form 982.

For more details on determining the basis of your main home, see Pub. 523, Selling Your Home.

Bankruptcy and Insolvency

No tax attributes other than basis of personal-use property. If the canceled debt you are excluding isn't qualified principal residence indebtedness and you have no tax attributes other than the adjusted basis of personal-use property (see the list of seven tax attributes, later), you must reduce the basis of the personal-use property you held at the beginning of 2016 (in proportion to adjusted basis). Personal-use property is any property that isn't used in your trade or business nor held for investment (such as your home, home furnishings, and car). Include on line 10a of Form 982 the smallest of:

- The bases of your personal-use property held at the beginning of 2016,
- The amount of canceled nonbusiness debt (other than qualified principal residence indebtedness) that you are excluding from income on line 2 of Form 982, or
- The excess of the total bases of the property and the amount of money you held immediately after the cancellation over your

total liabilities immediately after the cancellation.

For general information about the basis of property, see Pub. 551.

Example. In 2013, Mya bought a car for personal use. The cost of the car was $12,000. Mya put down $2,000 and took out a loan of $10,000 to buy the car. The loan was a recourse loan, meaning that Mya was personally liable for the full amount of the debt.

On December 7, 2015, when the balance of the loan was $8,500, the lender repossessed and sold the car because Mya had stopped making payments on the loan. The FMV of the car was $7,000 at the time the lender repossessed and sold it. The lender applied the $7,000 it received on the sale of the car against Mya's loan and forgave the remaining loan balance of $1,500 ($8,500 outstanding balance immediately before the repossession minus the $7,000 FMV of the car).

Mya's only other assets at the time of the cancellation are the furniture in her apartment which has a basis of $5,000 and an FMV of $3,000, jewelry with a basis of $500 and an FMV of $1,000, and a $600 balance in her savings account. Thus, the FMV of Mya's total assets immediately before the cancellation was $11,600 ($7,000 car plus $3,000 furniture plus $1,000 jewelry plus $600 savings). Mya also had an outstanding student loan balance of $6,000 immediately before the cancellation, bringing her total liabilities at that time to $14,500 ($8,500 balance on car loan plus $6,000 student loan balance). Other than the car, which was repossessed, Mya held all of these assets at the beginning of 2016. The FMV and bases of the assets remained the same at the beginning of 2016.

Mya received a 2015 Form 1099-C showing $1,500 in box 2 (amount of debt that was canceled) and $7,000 in box 7 (FMV of the property). Mya can exclude all $1,500 of canceled debt from income because at the time of the cancellation, she was insolvent to the extent of $2,900 ($14,500 of total liabilities immediately before the cancellation minus $11,600 FMV of total assets at that time).

Mya checks box 1b on Form 982 and enters $1,500 on line 2. She enters $100 on line 10a, the smallest of:

- The $5,500 bases of her personal-use property held at the beginning of 2016 ($5,000 furniture plus $500 jewelry),
- The $1,500 nonbusiness debt she is excluding from income on line 2 of Form 982, or
- The $100 excess of the total bases of the property and the amount of money Mya held immediately after the cancellation over her total liabilities at that time ($5,500 bases of property held immediately after the cancellation plus $600 savings minus $6,000 student loan).

Mya must reduce her bases in each item of property in proportion to her total adjusted bases in all her property. Thus, she reduces her basis in the furniture by $91 ($100 x $5,000/$5,500) and her basis in the jewelry by $9 ($100 x $500/$5,500).

All other tax attributes. If the canceled debt is excluded by reason of the bankruptcy or insolvency exclusions, you must use the excluded debt to reduce the following tax attributes (but not below zero) in the order listed unless you elect to reduce the basis of depreciable property first, as explained later. Reduce your tax attributes after you figure your income tax liability for 2015.

1. ***Net operating loss (NOL).*** First reduce any 2015 NOL and then reduce any NOL carryover to 2015 (after taking into account any amount used to reduce 2015 taxable income) in the order of the tax years from which the carryovers arose, starting with the earliest year. Reduce the NOL or carryover by one dollar for each dollar of excluded canceled debt.
2. ***General business credit carryover.*** Reduce the credit carryover to or from 2015. Reduce the credit carryovers to 2015 in the order in which they are taken into account for 2015. For more information on the credit ordering rules for 2015, see the Instructions for Form 3800, General Business Credit. Reduce the carryover by 33⅓ cents for each dollar of excluded canceled debt.
3. ***Minimum tax credit.*** Reduce the minimum tax credit available at the beginning of 2016. Reduce the credit by 33⅓ cents for each dollar of excluded canceled debt.
4. ***Net capital loss and capital loss carryovers.*** First reduce any 2015 net capital loss and then any capital loss carryover to 2015 (after taking into account any amount used to reduce 2015 taxable income) in the order of the tax years from which the carryovers arose, starting with the earliest year. Reduce the net capital loss or carryover by one dollar for each dollar of excluded canceled debt.
5. ***Basis.*** Reduce the bases of the property you hold at the beginning of 2016 in the following order (and, within each category, in proportion to adjusted basis).
   a. Real property used in your trade or business or held for investment (other than real property held for sale to customers in the ordinary course of business) if it secured the canceled debt.
   b. Personal property used in your trade or business or held for investment (other than inventory and accounts and notes receivable) if it secured the canceled debt.
   c. Any other property used in your trade or business or held for investment (other than inventory, accounts receivable, notes receivable, and real property held for sale to customers in the ordinary course of business).
   d. Inventory, accounts receivable, notes receivable, and real property held primarily for sale to customers in the ordinary course of business.
   e. Personal-use property (property not used in your trade or business nor held for investment).

   Reduce the basis by one dollar for each dollar of excluded canceled debt. However, the reduction can't be more than the excess of the total bases of the property and the amount of money you held immediately after the debt cancellation over your total liabilities immediately after the cancellation.

   For allocation rules that apply to basis reductions for multiple canceled debts, see Regulations section 1.1017-1(b)(2). Also see *Election to reduce the basis of depreciable property before reducing other tax attributes*, later.
6. ***Passive activity loss and credit carryovers.*** Reduce the passive activity loss and credit carryovers from 2015. Reduce the loss carryover by one dollar for each dollar of excluded canceled debt. Reduce the credit carryover by 33⅓ cents for each dollar of excluded canceled debt.
7. ***Foreign tax credit.*** Reduce the credit carryover to or from 2015. Reduce the credit carryovers to 2015 in the order in which they are taken into account for 2015. Reduce the carryover by 33⅓ cents for each dollar of excluded canceled debt.

Election to reduce the basis of depreciable property before reducing other tax attributes. You can elect to reduce the bases of depreciable property you held at the beginning of 2016 before reducing other tax attributes. You can reduce the basis of this property by all or part of the canceled debt. Basis of property is reduced in the following order.

1. Depreciable real property used in your trade or business or held for investment that secured the canceled debt.
2. Depreciable personal property used in your trade or business or held for investment that secured the canceled debt.
3. Other depreciable property used in your trade or business or held for investment.
4. Real property held primarily for sale to customers if you elect to treat it as if it were depreciable property on Form 982.

Basis reduction is limited to the total adjusted bases of all your depreciable property. Depreciable property for this purpose means any property subject to depreciation or amortization, but only if a reduction of basis will reduce the depreciation or amortization otherwise allowable for the period immediately following the basis reduction. If the amount of canceled debt excluded from income is more than the total bases in depreciable property, you must use the excess to reduce the other tax attributes in the order described earlier under *All other tax attributes*. In figuring the limit on the basis reduction in (5), *Basis*, use the remaining adjusted bases of your properties after making this election. See Form 982 for information on how to make this election. The election can be revoked only with IRS consent.

Recapture of basis reductions. If you reduce the basis of property under these provisions and later sell or otherwise dispose of the property at a gain, the part of the gain due to this

A.App.757

basis reduction is taxable as ordinary income under the depreciation recapture provisions. Treat any property that isn't section 1245 or section 1250 property as section 1245 property. For section 1250 property, determine the depreciation adjustments that would have resulted under the straight line method as if there were no basis reduction for debt cancellation. See Pub. 544 or Pub. 225, Farmer's Tax Guide, for more details on sections 1245 and 1250 property and the recapture of gain as ordinary income.

Qualified Farm Indebtedness

If you exclude canceled debt from income under both the insolvency exclusion and the exclusion for qualified farm indebtedness, you must first reduce your tax attributes by the amount excluded under the insolvency exclusion. Then reduce your remaining tax attributes (but not below zero) by the amount of canceled debt that qualifies for the farm debt exclusion.

In most cases, when reducing your tax attributes for canceled qualified farm indebtedness excluded from income, reduce them in the same order explained under *Bankruptcy and Insolvency*, earlier. However, don't follow the rules in item (5), *Basis*. Instead, reduce only the basis of qualified property. Qualified property is any property you use or hold for use in your trade or business or for the production of income. Reduce the basis of qualified property in the following order.

1. Depreciable qualified property. You can elect on Form 982 to treat real property held primarily for sale to customers as if it were depreciable property.
2. Land that is qualified property and is used or held for use in your farming business.
3. Other qualified property.

Qualified Real Property Business Indebtedness

If you make an election to exclude canceled qualified real property business debt from income, you must reduce the basis of your depreciable real property (but not below zero) by the amount of canceled qualified real property business debt excluded from income. The basis reduction is made at the beginning of 2016. However, if you dispose of your depreciable real property before the beginning of 2016, you must reduce its basis (but not below zero) immediately before the disposition. Enter the amount of the basis reduction on line 4 of Form 982.

Example 1. In 2010, Curt bought a retail store for use in a business he operated as a sole proprietorship. Curt made a $20,000 down payment and financed the remaining $200,000 of the purchase price with a bank loan. The bank loan was a recourse loan and was secured by the property. He used the property in his business continuously since he bought it and had no other debt secured by that depreciable real property. In addition to the retail store, Curt owned depreciable equipment and furniture with an adjusted basis of $50,000. His tax attributes included the basis of depreciable property, a net operating loss, and a capital loss carryover to 2015.

Curt's business encountered financial difficulties in 2015. On September 25, 2015, the bank financing the retail store loan entered into a workout agreement with him under which it canceled $20,000 of the principal amount of the debt. Immediately before the bank entered into the workout agreement, he was insolvent to the extent of $12,000. At that time, the outstanding principal balance on the retail store loan was $185,000, the FMV of the store was $165,000, and the adjusted basis was $210,000 ($220,000 cost minus $10,000 accumulated depreciation). The bank sent him a 2015 Form 1099-C showing canceled debt of $20,000 in box 2.

Curt must apply the insolvency exclusion before applying the exclusion for canceled qualified real property business indebtedness. Under the insolvency exclusion rules, he can exclude $12,000 of the canceled debt from income. Curt elects to reduce his basis of depreciable property before reducing other tax attributes. Under that election, he must first reduce his basis in the depreciable real property used in his trade or business that secured the canceled debt. After the basis reduction, his adjusted basis in that property is $198,000 ($210,000 adjusted basis before entering into the workout agreement minus $12,000 of canceled debt excluded from income under the insolvency exclusion).

Curt may be able to exclude the remaining $8,000 of canceled debt from income under the exclusion for qualified real property business indebtedness, if he elects to apply it. The amount he can exclude is subject to both the following limits.

- The excess, if any, of the outstanding principal amount of the qualified real property business indebtedness (immediately before the cancellation) over the FMV (immediately before the cancellation) of the real property securing the debt ($185,000 minus $165,000, which equals $20,000).
- The total adjusted basis (determined after reduction for the canceled debt excluded under the insolvency exclusion) of depreciable real property he held immediately before the cancellation ($198,000).

Since both limits are more than the $8,000 of remaining canceled debt ($20,000 minus $12,000), Curt can exclude $8,000 under the qualified real property business indebtedness exclusion.

Curt checks the boxes on lines 1b and 1d of Form 982. He completes Part II of Form 982 to reduce his basis in the depreciable real property by $20,000, the amount of the canceled debt excluded from income. He enters $8,000 on line 4 and $12,000 on line 5.

Example 2. Bob owns depreciable real property used in his retail business. His adjusted basis in the property is $145,000. The FMV of the property is $120,000. The property is subject to $134,000 of recourse debt which is secured by the property. Bob had no other debt secured by that depreciable real property. Bob also had a $15,000 NOL in 2015.

During 2015, Bob entered into a workout agreement with the lender under which the lender canceled $14,000 of the debt on the real property used in his business. Immediately before the cancellation, Bob was insolvent to the extent of $10,000. He excludes $10,000 of the canceled debt from income under the insolvency exclusion. As a result of that exclusion, he reduced his NOL by $10,000.

Bob may be able to exclude the remaining $4,000 of canceled debt from income under the qualified real property business indebtedness exclusion, if he elects to apply it. The amount he can exclude is subject to both of the following limits.

- The excess, if any, of the outstanding principal amount of the qualified real property business debt (immediately before the cancellation) over the FMV (immediately before the cancellation) of the business real property securing the debt (the excess of $134,000 over $120,000, which equals $14,000).
- The total adjusted bases of depreciable real property held immediately before the cancellation of debt ($145,000).

Since both limits ($14,000 and $145,000) are more than the remaining $4,000 of canceled debt, Bob can also exclude the remaining $4,000 of canceled debt.

Bob checks the boxes on lines 1b and 1d of Form 982 and enters $14,000 on line 2. Bob completes Part II of Form 982 to reduce his basis of depreciable real property and his 2015 NOL by entering $4,000 on line 4 and $10,000 on line 6. None of the canceled debt is included in his income.

2. Foreclosures and Repossessions

If you don't make payments you owe on a loan secured by property, the lender may foreclose on the loan or repossess the property. The foreclosure or repossession is treated as a sale from which you may realize gain or loss. This is true even if you voluntarily return the property to the lender. If the outstanding loan balance was more than the FMV of the property and the lender cancels all or part of the remaining loan balance, you also may realize ordinary income from the cancellation of debt. You must report this income on your return unless certain exceptions or exclusions apply. See chapter 1 for more details.

Table 1-1. **Worksheet for Foreclosures and Repossessions** *Keep for Your Records*

Part 1. Complete Part 1 only if you were personally liable for the debt (even if none of the debt was canceled). Otherwise, go to Part 2.	
1. Enter the amount of outstanding debt immediately before the transfer of property reduced by any amount for which you remain personally liable immediately after the transfer of property	
2. Enter the fair market value of the transferred property	
3. **Ordinary income from the cancellation of debt upon foreclosure or repossession.*** Subtract line 2 from line 1. If less than zero, enter zero. Next, go to Part 2	
Part 2. Gain or loss from foreclosure or repossession.	
4. Enter the **smaller** of line 1 or line 2. If you didn't complete Part 1 (because you weren't personally liable for the debt), enter the amount of outstanding debt immediately before the transfer of property	
5. Enter any proceeds you received from the foreclosure sale	
6. Add line 4 and line 5	
7. Enter the adjusted basis of the transferred property	
8. **Gain or loss from foreclosure or repossession.** Subtract line 7 from line 6	

* The income may not be taxable. See chapter 1 for more details.

Borrower's gain or loss. You figure and report gain or loss from a foreclosure or repossession in the same way as gain or loss from a sale. The gain is the difference between the amount realized and your adjusted basis in the transferred property (amount realized minus adjusted basis). The loss is the difference between your adjusted basis in the transferred property and the amount realized (adjusted basis minus amount realized). For more information on figuring gain or loss from the sale of property, see *Gain or Loss From Sales and Exchanges* in Pub. 544.

TIP *You can use Table 1-1 to figure your ordinary income from the cancellation of debt and your gain or loss from a foreclosure or repossession.*

Amount realized and ordinary income on a recourse debt. If you are personally liable for the debt, the amount realized on the foreclosure or repossession includes the smaller of:

- The outstanding debt immediately before the transfer reduced by any amount for which you remain personally liable immediately after the transfer, or
- The FMV of the transferred property.

The amount realized also includes any proceeds you received from the foreclosure sale. If the FMV of the transferred property is less than the total outstanding debt immediately before the transfer reduced by any amount for which you remain personally liable immediately after the transfer, the difference is ordinary income from the cancellation of debt. You must report this income on your return unless certain exceptions or exclusions apply. See chapter 1 for more details.

Example 1. Tara bought a new car for $15,000. She made a $2,000 downpayment and borrowed the remaining $13,000 from the dealer's credit company. Tara is personally liable for the loan (recourse debt) and the car is pledged as security for the loan. On August 1, 2015, the credit company repossessed the car because Tara had stopped making loan payments. The balance due after taking into account the payments Tara made was $10,000. The FMV of the car when it was repossessed was $9,000. On November 16, 2015, the credit company forgave the remaining $1,000 balance on the loan due to insufficient assets.

In this case, the amount Tara realizes is $9,000. This is the smaller of:

- The $10,000 outstanding debt immediately before the repossession reduced by the $1,000 for which she remains personally liable immediately after the repossession ($10,000 − $1,000 = $9,000), or
- The $9,000 FMV of the car.

Tara figures her gain or loss on the repossession by comparing the $9,000 amount realized with her $15,000 adjusted basis. She has a $6,000 nondeductible loss. After the cancellation of the remaining balance on the loan in November, Tara also has ordinary income from cancellation of debt in the amount of $1,000 (the remaining balance on the $10,000 loan after the $9,000 amount satisfied by the FMV of the repossessed car). Tara must report this $1,000 on her return unless one of the exceptions or exclusions described in chapter 1 applies.

Example 2. Lili paid $200,000 for her home. She made a $15,000 downpayment and borrowed the remaining $185,000 from a bank. Lili is personally liable for the mortgage loan and the house secures the loan. In 2015, the bank foreclosed on the mortgage because Lili stopped making payments. When the bank foreclosed the mortgage, the balance due was $180,000, the FMV of the house was $170,000, and Lili's adjusted basis was $175,000 due to a casualty loss she had deducted. At the time of the foreclosure, the bank forgave $2,000 of the $10,000 debt in excess of the FMV ($180,000 minus $170,000). She remained personally liable for the $8,000 balance.

In this case, Lili has ordinary income from the cancellation of debt in the amount of $2,000. The $2,000 income from the cancellation of debt is figured by subtracting the $170,000 FMV of the house from the $172,000 difference between her total outstanding debt immediately before the transfer of property and the amount for which she remains personally liable immediately after the transfer ($180,000 minus $8,000). She is able to exclude the $2,000 of canceled debt from her income under the qualified principal residence indebtedness rules discussed earlier.

Lili must also determine her gain or loss from the foreclosure. In this case, the amount that she realizes is $170,000. This is the smaller of: (a) the $180,000 outstanding debt immediately before the transfer reduced by the $8,000 for which she remains personally liable immediately after the transfer ($180,000 − $8,000 = $172,000) or (b) the $170,000 FMV of the house. Lili figures her gain or loss on the foreclosure by comparing the $170,000 amount realized with her $175,000 adjusted basis. She has a $5,000 nondeductible loss.

Amount realized on a nonrecourse debt. If you aren't personally liable for repaying the debt secured by the transferred property, the amount you realize includes the full amount of the outstanding debt immediately before the transfer. This is true even if the FMV of the property is less than the outstanding debt immediately before the transfer.

Example 1. Tara bought a new car for $15,000. She made a $2,000 downpayment and borrowed the remaining $13,000 from the dealer's credit company. Tara isn't personally liable for the loan (nonrecourse), but pledged the new car as security for the loan.

On August 1, 2015, the credit company repossessed the car because Tara had stopped making loan payments. The balance due after taking into account the payments Tara made was $10,000. The FMV of the car when it was repossessed was $9,000.

The amount Tara realized on the repossession is $10,000. That is the outstanding amount of debt immediately before the repossession, even though the FMV of the car is less than $10,000. Tara figures her gain or loss on the repossession by comparing the $10,000 amount realized with her $15,000 adjusted basis. Tara has a $5,000 nondeductible loss.

Example 2. Lili paid $200,000 for her home. She made a $15,000 downpayment and borrowed the remaining $185,000 from a bank. She isn't personally liable for the loan, but grants the bank a mortgage.

The bank foreclosed on the mortgage because Lili stopped making payments. When the bank foreclosed on the mortgage, the balance due was $180,000, the FMV of the house was $170,000, and Lili's adjusted basis was $175,000 due to a casualty loss she had deducted.

The amount Lili realized on the foreclosure is $180,000, the outstanding debt immediately before the foreclosure. She figures her gain or loss by comparing the $180,000 amount realized with her $175,000 adjusted basis. Lili has a $5,000 realized gain. See Pub. 523, Selling

A.App.759

Your Home, to figure and report any taxable amount.

Forms 1099-A and 1099-C. A lender who acquires an interest in your property in a foreclosure or repossession should send you Form 1099-A, Acquisition or Abandonment of Secured Property, showing information you need to figure your gain or loss. However, if the lender also cancels part of your debt and must file Form 1099-C, the lender can include the information about the foreclosure or repossession on that form instead of on Form 1099-A. The lender must file Form 1099-C and send you a copy if the amount of debt canceled is $600 or more and the lender is a financial institution, credit union, federal government agency, or other applicable entity as discussed earlier in chapter 1. For foreclosures or repossessions occurring in 2015, these forms should be sent to you by February 1, 2016.

3.

Abandonments

You abandon property when you voluntarily and permanently give up possession and use of the property with the intention of ending your ownership but without passing it on to anyone else. Whether an abandonment has occurred is determined in light of all the facts and circumstances. You must both show an intention to abandon the property and affirmatively act to abandon the property.

A voluntary conveyance of the property in lieu of foreclosure isn't an abandonment and is treated as the exchange of property to satisfy a debt. For more information, see *Sales and Exchanges* in Pub. 544.

The tax consequences of abandonment of property that secures a debt depend on whether you were personally liable for the debt (recourse debt) or weren't personally liable for the debt (nonrecourse debt).

TIP *See Pub. 544 if you abandoned property that didn't secure debt. This publication only discusses the tax consequences of abandoning property that secured a debt.*

Abandonment of property securing recourse debt. In most cases, if you abandon property that secures debt for which you are personally liable (recourse debt), you don't have gain or loss until the later foreclosure is completed. For details on figuring gain or loss on the foreclosure, see chapter 2.

Example 1—abandonment of personal-use property securing recourse debt. In 2011, Anne purchased a home for $200,000. She borrowed the entire purchase price, for which she was personally liable, and gave the bank a mortgage on the home. In 2015, Anne lost her job and was unable to continue making her mortgage loan payments. Because her mortgage loan balance was $185,000 and the FMV of her home was only $150,000, Anne decided to abandon her home by permanently moving out on August 1, 2015. Because Anne was personally liable for the debt and the bank didn't complete a foreclosure of the property in 2015, Anne has neither gain nor loss in tax year 2015 from abandoning the home. If the bank sells the house at a foreclosure sale in 2016, Anne will have to figure her gain or nondeductible loss for tax year 2016 as discussed earlier in chapter 2.

Example 2—abandonment of business or investment property securing recourse debt. In 2011, Sue purchased business property for $200,000. She borrowed the entire purchase price, for which she was personally liable, and gave the lender a security interest in the property. In 2015, Sue was unable to continue making her loan payments. Because her loan balance was $185,000 and the FMV of the property was only $150,000, Sue abandoned the property on August 1, 2015. Because Sue was personally liable for the debt and the lender didn't complete a foreclosure of the property in 2015, Sue has neither gain nor loss in tax year 2015 from abandoning the property. If the lender sells the property at a foreclosure sale in 2016, Sue will have to figure her gain or deductible loss for tax year 2016 as discussed earlier in chapter 2.

Abandonment of property securing nonrecourse debt. If you abandon property that secures debt for which you aren't personally liable (nonrecourse debt), the abandonment is treated as a sale or exchange.

The amount you realize on the abandonment of property that secured nonrecourse debt is the amount of the nonrecourse debt. If the amount you realize is more than your adjusted basis, then you have a gain. If your adjusted basis is more than the amount you realize, then you have a loss. For more information on how to figure gain and loss, see *Gain or Loss From Sales and Exchanges* in Pub. 544.

Loss from abandonment of business or investment property is deductible as a loss. The character of the loss depends on the character of the property. The amount of deductible capital loss may be limited. For more information, see *Treatment of Capital Losses* in Pub. 544. You can't deduct any loss from abandonment of your home or other property held for personal use.

Example 1—abandonment of personal-use property securing nonrecourse debt. In 2011, Timothy purchased a home for $200,000. He borrowed the entire purchase price, for which he wasn't personally liable, and gave the bank a mortgage on the home. In 2015, Timothy lost his job and was unable to continue making his mortgage loan payments. Because his mortgage loan balance was $185,000 and the FMV of his home was only $150,000, Timothy decided to abandon his home by permanently moving out on August 1, 2015. Because Timothy wasn't personally liable for the debt, the abandonment is treated as a sale or exchange of the home in tax year 2015. Timothy's amount realized is $185,000 and his adjusted basis in the home is $200,000. Timothy has a $15,000 nondeductible loss in tax year 2015. (Had Timothy's adjusted basis been less than the amount realized, Timothy would have had a gain that he would have to include in gross income.) The bank sells the house at a foreclosure sale in 2016. Timothy has neither gain nor loss from the foreclosure sale. Because he wasn't personally liable for the debt, he also has no cancellation of debt income.

Example 2—abandonment of business or investment property securing nonrecourse debt. In 2011, Robert purchased business property for $200,000. He borrowed the entire purchase price, for which he wasn't personally liable, and gave the lender a security interest in the property. In 2015, Robert was unable to continue making his loan payments. Because his loan balance was $185,000 and the FMV of the property was only $150,000, Robert decided to abandon the property on August 1, 2015. Because Robert wasn't personally liable for the debt, the abandonment is treated as a sale or exchange of the property in tax year 2015. Robert's amount realized is $185,000 and his adjusted basis in the property is $180,000 (as a result of $20,000 of depreciation deductions on the property). Robert has a $5,000 gain in tax year 2015. (Had Robert's adjusted basis been greater than the amount realized, he would have had a deductible loss.) The lender sells the property at a foreclosure sale in 2016. Robert has neither gain nor loss from the foreclosure sale. Because he wasn't personally liable for the debt, he also has no cancellation of debt income.

Canceled debt. If the abandoned property secures a debt for which you are personally liable and the debt is canceled, you will realize ordinary income equal to the canceled debt. This income is separate from any amount realized from abandonment of the property. You must report this income on your return unless one of the exceptions or exclusions described in chapter 1 applies.

Forms 1099-A and 1099-C. In most cases, if you abandon

- real property (such as a home),
- intangible property, or
- tangible personal property held (wholly or partly) for use in a trade or business or for investment,

that secures a loan and the lender knows the property has been abandoned, the lender should send you Form 1099-A showing information you need to figure your gain or loss from the abandonment. Also, if your debt is canceled and the lender must file Form 1099-C, the lender can include the information about the abandonment on that form instead of on Form 1099-A. The lender must file Form 1099-C and send you a copy if the amount of debt canceled is $600 or more and the lender is a financial institution, credit union, federal government agency, or other applicable entity as discussed earlier in chapter 1.

For abandonments of property and debt cancellations occurring in 2015, these forms should be sent to you by February 1, 2016.

4.

How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to IRS.gov and find resources that can help you right away.

Preparing and filing your tax return. Find free options to prepare and file your return on IRS.gov or in your local community if you qualify.

- Go to IRS.gov and click on the Filing tab to see your options.
- Enter "Free File" in the search box to see whether you can use brand-name software to prepare and *e-file* your federal tax return for free.
- Enter "VITA" in the search box, download the free IRS2Go app, or call 1-800-906-9887 to find the nearest Volunteer Income Tax Assistance or Tax Counseling for the Elderly (TCE) location for free tax preparation.
- Enter "TCE" in the search box, download the free IRS2Go app, or call 1-888-227-7669 to find the nearest Tax Counseling for the Elderly location for free tax preparation.

The Volunteer Income Tax Assistance (VITA) program offers free tax help to people who generally make $54,000 or less, persons with disabilities, the elderly, and limited-English-speaking taxpayers who need help preparing their own tax returns. The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors.

Getting answers to your tax law questions. On IRS.gov get answers to your tax questions anytime, anywhere.

- Go to *www.irs.gov/Help-&-Resources* for a variety of tools that will help you with your taxes.
- Enter "ITA" in the search box on IRS.gov for the Interactive Tax Assistant, a tool that will ask you questions on a number of tax law topics and provide answers. You can print the entire interview and the final response.
- Enter "Pub 17" in the search box on IRS.gov to get Pub. 17, Your Federal Income Tax for Individuals, which features details on tax-saving opportunities, 2015 tax changes, and thousands of interactive links to help you find answers to your questions.
- Additionally, you may be able to access tax law information in your electronic filing software.

Tax forms and publications. You can download or print all of the forms and publications you may need on *www.irs.gov/formspubs*. Otherwise, you can go to *www.irs.gov/orderforms* to place an order and have forms mailed to you. You should receive your order within 10 business days.

Direct deposit. The fastest way to receive a tax refund is by combining direct deposit and IRS *e-file*. Direct deposit securely and electronically transfers your refund directly into your financial account. Eight in 10 taxpayers use direct deposit to receive their refund. The majority of refunds are received within 21 days or less.

Getting a transcript or copy of a return.

- Go to IRS.gov and click on "Get Transcript of Your Tax Records" under "Tools."
- Call the transcript toll-free line at 1-800-908-9946.
- Mail Form 4506-T or Form 4506T-EZ (both available on IRS.gov).

Using online tools to help prepare your return. Go to IRS.gov and click on the Tools bar to use these and other self-service options.

- The *Earned Income Tax Credit Assistant* determines if you are eligible for the EIC.
- The *Online EIN Application* helps you get an employer identification number.
- The *IRS Withholding Calculator* estimates the amount you should have withheld from your paycheck for federal income tax purposes.
- The *Electronic Filing PIN Request* helps to verify your identity when you do not have your prior year AGI or prior year self-selected PIN available.
- The *First Time Homebuyer Credit Account Look-up* tool provides information on your repayments and account balance.

For help with the alternative minimum tax, go to IRS.gov/AMT.

Understanding identity theft issues.

- Go to *www.irs.gov/uac/Identity-Protection* for information and videos.
- If your SSN has been lost or stolen or you suspect you are a victim of tax-related identity theft, visit *www.irs.gov/identitytheft* to learn what steps you should take.

Checking on the status of a refund.

- Go to *www.irs.gov/refunds*.
- Download the free IRS2Go app to your smart phone and use it to check your refund status.
- Call the automated refund hotline at 1-800-829-1954.

Making a tax payment. The IRS uses the latest encryption technology so electronic payments are safe and secure. You can make electronic payments online, by phone, or from a mobile device. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to *www.irs.gov/payments* to make a payment using any of the following options.

- *IRS Direct Pay* (for individual taxpayers who have a checking or savings account).
- **Debit or credit card** (approved payment processors online or by phone).
- **Electronic Funds Withdrawal** (available during *e-file*).
- **Electronic Federal Tax Payment System** (best option for businesses; enrollment required).
- **Check or money order.**
- IRS2Go provides access to mobile-friendly payment options like IRS Direct Pay, offering you a free, secure way to pay directly from your bank account. You can also make debit or credit card payments through an approved payment processor. Simply download IRS2Go from Google Play, the Apple App Store, or the Amazon Appstore, and make your payments anytime, anywhere.

What if I can't pay now? Click on the "Pay Your Tax Bill" icon on IRS.gov for more information about these additional options.

- Apply for an *online payment agreement* to meet your tax obligation in monthly installments if you cannot pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- An offer in compromise allows you to settle your tax debt for less than the full amount you owe. Use the *Offer in Compromise Pre-Qualifier* to confirm your eligibility.

Checking the status of an amended return. Go to IRS.gov and click on the Tools tab and then *Where's My Amended Return?*

Understanding an IRS notice or letter. Enter "Understanding your notice" in the search box on IRS.gov to find additional information about your IRS notice or letter.

Visiting the IRS. Locate the nearest Taxpayer Assistance Center using the Office Locator tool on IRS.gov. Enter "office locator" in the search box. Or choose the "Contact Us" option on the IRS2Go app and search Local Offices. Before you visit, use the Locator tool to check hours and services available.

Watching IRS videos. The IRS Video portal *www.irsvideos.gov* contains video and audio presentations for individuals, small businesses, and tax professionals. You'll find video clips of tax topics, archived versions of panel discussions and Webinars, and audio archives of tax practitioner phone forums.

Getting tax information in other languages. For taxpayers whose native language is not English, we have the following resources available.

1. Taxpayers can find information on IRS.gov in the following languages.
   a. *Spanish*.
   b. *Chinese*.
   c. *Vietnamese*.
   d. *Korean*.
   e. *Russian*.

A.App.761

2. The IRS Taxpayer Assistance Centers provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

The Taxpayer Advocate Service Is Here To Help You

What is the Taxpayer Advocate Service?

The Taxpayer Advocate Service (TAS) is an ***independent*** organization within the Internal Revenue Service that helps taxpayers and protects taxpayer rights. Our job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

What Can the Taxpayer Advocate Service Do For You?

We can help you resolve problems that you can't resolve with the IRS. And our service is free. If you qualify for our assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business,
- You face (or your business is facing) an immediate threat of adverse action, or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach Us?

We have offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at *www.taxpayeradvocate.irs.gov*. You can also call us at 1-877-777-4778.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes ten basic rights that all taxpayers have when dealing with the IRS. Our Tax Toolkit at *www.taxpayeradvocate.irs.gov* can help you understand *what these rights mean to you* and how they apply. These are ***your*** rights. Know them. Use them.

How Else Does the Taxpayer Advocate Service Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to us at *www.irs.gov/sams*.

Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) serve individuals whose income is below a certain level and need to resolve tax problems such as audits, appeals, and tax collection disputes. Some clinics can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. To find a clinic near you, visit *www.irs.gov/litc* or see IRS Publication 4134, *Low Income Taxpayer Clinic List*.

Index

To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

1099-C 4
501(c)(3) organizations 5

A
Abandonments 13
  Canceled debt 13
Assistance (*See* Tax help)

B
Bankruptcy 5
  Reduction of tax attributes 9
Business:
  Real property indebtedness 7

C
Canceled debt 4
  Exceptions:
    Deductible debt 5
    Gifts 4
    Price reduced after purchase 5
    Student loans 4
  Exclusions:
    Bankruptcy 5
    Insolvency 5
    Qualified farm indebtedness 6
    Qualified principal residence indebtedness 9
    Qualified real property business indebtedness 7
  Income from 2
Co-owners 4

D
Debts:
  Stockholder's 4
Definitions:
  Adjusted tax attributes 6
  Qualified acquisition indebtedness 7
  Qualified farm indebtedness 6
  Qualified principal residence indebtedness 9
  Qualified real property business indebtedness 7

E
Educational loans 4
Exceptions:
  Home Affordable Modification Program 5

F
Farm indebtedness 6
  Reduction of tax attributes 11
Foreclosures 11
Form:
  1099-A 13
  1099-C 13

G
Gifts 4

H
Home Affordable Modification Program 5

I
Identity theft 14
Income from canceled debt 2
Insolvency 5
  Reduction of tax attributes 9

L
Limits:
  Excluded farm debt 6
  Qualified real property business indebtedness 7
Loans:
  Student 4

M
Missing children, photographs of 1
Mortgage Debt Relief Act (*See* Qualified Principal Residence Indebtedness)

P
Principal residence indebtedness 9
Publications (*See* Tax help)

Q
Qualified farm indebtedness 6
  Reduction of tax attributes 11
Qualified principal residence indebtedness 9
Qualified real property business indebtedness 7
  Reduction of tax attributes 11

R
Real property business indebtedness 7
Recapture:
  Basis reductions 10
Repossessions 11

S
Stockholder debts 4
Student loans 4

T
Tax attributes, reduction of:
  Bankruptcy 9
  Insolvency 9
  Qualified farm indebtedness 11
  Qualified Principal Residence Indebtedness 9
  Qualified real property business indebtedness 11
Tax help 14

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Clerk of the Court
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EXHIBIT 22

EXHIBIT 22

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Amendment") is dated as of May 15, 2014 by and between Edward C Wooley and Judith A. Woolly, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and Jacksons Food Stores, Inc., a Nevada corporation ("Lessee"), together ("Parties").

WHEREAS, Lessor and Lessee are parties to that certain Lease Agreement dated as of May__2006 for the property located at 1365 Baring Boulevard, Sparks, Nevada 89434 ("Premises"), and;

WHEREAS, that certain Lease Agreement was subsequently modified by that certain First Amendment to Lease Agreement dated March 12, 2007, and;

WHEREAS, that certain Lease Agreement was assumed by Jacksons Food Stores, Inc., a Nevada Corporation pursuant to that certain Assignment and Assumption of Lease Dated December 29, 2009.

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

Paragraph 3. **Lease Term; Extension.** Expiration of the Lease shall be changed from October, 31, 2023 to June 30, 2023, with Extension Option dates changed accordingly.

Paragraph 4. **Rental and other Monetary Obligations.** Parties acknowledge the Base Monthly Rental for the month of June, 2014 shall be $22,808.60 and the Base Monthly Rental for the period July 1, 2014 through June 30, 2015 shall be $23,264.77.

Paragraph 4B. **Adjustments.** Amended as follows: The second sentence ("The Adjustment Date shall be on the annual anniversary of the Effective Date") shall be changed to "The Adjustment Date shall be annually on July 1."

No Other Modification. Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the Parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

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

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR: Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

BY: Edward C. Wooley, Trustee

B Judith A. Wooley, Trustee

LESSEE: Jacksons Food Stores, Inc., a Nevada corporation.

BY: _____

PRINTED NAME: _____

I T S : _____

W I T N E S S : _____

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Transaction # 5636821 : csulezic

EXHIBIT 23

EXHIBIT 23

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

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

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

v.

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

Defendants.

AND RELATED COUNTERCLAIM

Case No. CV14-01712

Dept. No. 6

PLAINTIFFS EDWARD C. WOOLEY AND JUDITH A. WOOLEY'S RESPONSES TO DEFENDANTS' SECOND SET OF INTERROGATORIES

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Please identify the provision in the Highway 50 Lease which supports Your contention in paragraph 28 of the First Amended Complaint that the rental rate in the Highway 50 Lease increases by two percent per month.

RESPONSE TO INTERROGATORY NO. 1:

Respondent responds that paragraph 28 contains a typographical error and should have read that the rental rate of the Highway 50 Lease increases by two percent per *year*.

INTERROGATORY NO. 2:

Please explain the basis for Your contention in paragraph 31 of the First Amended Complaint that the Wooley Plaintiffs agreed to amend the Highway 50 Lease and the Baring Lease through shortening the lease term by 30 months in return for Herbst personally guaranteeing that BHI would make all lease payments through the term of the lease.

RESPONSE TO INTERROGATORY NO. 2:

The initial lease duration for the Highway 50 Property was from May 1, 2006 through April 30, 2026. On April 20, 2007, Respondent executed a Memorandum of Lease which states that the term of the Highway 50 Lease is from December 1, 2005 through November 30, 2025.

INTERROGATORY NO. 3:

Please identify and describe in detail any and all facts demonstrating that BHI knew at the time You and BHI entered into the Highway 50 Lease that the Highway 50 Property was "cross-collateralized" with the Baring Property.

RESPONSE TO INTERROGATORY NO. 3:

Respondent is presently unaware of facts responsive to this Request. Respondent reserves the right to amend this Response in light of future discovery.

INTERROGATORY NO. 4:

Please identify and describe in detail any and all facts demonstrating that Jerry Herbst knew at the time You and BHI entered into the Highway 50 Lease that the Highway 50 Property was "cross-collateralized" with the Baring Property.

RESPONSE TO INTERROGATORY NO. 4:

Respondent is presently unaware of facts responsive to this Request. Respondent reserves the right to amend this Response in light of future discovery.

INTERROGATORY NO. 5:

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

RESPONSE TO INTERROGATORY NO. 5:

Respondent bases this contention on the fact that Propounding Party breached the Highway 50 Lease.

INTERROGATORY NO. 6:

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

RESPONSE TO INTERROGATORY NO. 6:

The current balance due on the mortgage loan for the Highway 50 Property is $0.00.

INTERROGATORY NO. 7:

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?

RESPONSE TO INTERROGATORY NO. 7:

No.

INTERROGATORY NO. 8:

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

RESPONSE TO INTERROGATORY NO. 8:

With respect to Request for Admission No. 2, Respondent has never heard of nor entered into

any agreements with an entity named Jackson Oil.

A.App.771

VERIFICATION

I, Brian P. Moquin, am an attorney of record in the above-captioned matter for plaintiffs Edward C. Wooley and Judith A. Wooley. To the best of my knowledge, information, and belief formed after a reasonable inquiry, the Responses to Defendants' Second Set of Interrogatories above are complete and correct.

Executed this 18th day of August 2015 at San Jose, California.

LAW OFFICES OF BRIAN P. MOQUIN

DATED: August 18, 2015

By: _____

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

Attorneys for Plaintiffs

AFFIRMATION

(Pursuant to NRS 239B.030)

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

LAW OFFICES OF BRIAN P. MOQUIN

DATED: August 18, 2015

By: _____

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

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

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

DATED: August 18, 2015

BRIAN P. MOQUIN

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Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

EXHIBIT 24

EXHIBIT 24

Form **1120**

Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 2013 or tax year beginning 7/01 , 2013, ending 6/30 , 2014

► Information about Form 1120 and its separate instructions is at *www.irs.gov/form1120.*

OMB No. 1545-0123

2013

A Check if:
1 a Consolidated return (attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co. (attach Sch PH) ☐
3 Personal service corp (see instrs) ☐
4 Schedule M-3 attached ☐

TYPE OR PRINT

OVERLAND DEVELOPMENT, INC.
826 VANDERBILT PLACE
SAN DIEGO, CA 92103

B Employer identification number [redacted]

C Date incorporated 4/14/1971

D Total assets (see instructions) $ 25,474.

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

INCOME	1 a	Gross receipts or sales	1 a	
	b	Returns and allowances	1 b	
	c	Balance. Subtract line 1b from line 1a	1 c	
	2	Cost of goods sold (attach Form 1125-A)	2	
	3	Gross profit. Subtract line 2 from line 1c	3	
	4	Dividends (Schedule C, line 19)	4	
	5	Interest	5	
	6	Gross rents	6	
	7	Gross royalties	7	
	8	Capital gain net income (attach Schedule D (Form 1120))	8	
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	358,941.
	10	Other income (see instructions – attach schedule)	10	
	11	**Total income.** Add lines 3 through 10 ►	11	358,941.
DEDUCTIONS (SEE INSTRUCTIONS FOR LIMITATIONS ON DEDUCTIONS)	12	Compensation of officers (see instructions – attach Form 1125-E) ►	12	
	13	Salaries and wages (less employment credits)	13	
	14	Repairs and maintenance	14	
	15	Bad debts	15	
	16	Rents	16	
	17	Taxes and licenses	17	28,371.
	18	Interest	18	
	19	Charitable contributions	19	
	20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	20	93,074.
	21	Depletion	21	
	22	Advertising	22	
	23	Pension, profit-sharing, etc, plans	23	
	24	Employee benefit programs	24	
	25	Domestic production activities deduction (attach Form 8903)	25	
	26	Other deductions (attach statement) See Statement 1	26	31,465.
	27	**Total deductions.** Add lines 12 through 26 ►	27	152,910.
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	206,031.
	29 a	Net operating loss deduction (see instructions) See St 2	29 a	206,031.
	b	Special deductions (Schedule C, line 20)	29 b	
	c	Add lines 29a and 29b	29 c	206,031.
TX, CRS AND PMTS	30	**Taxable income.** Subtract line 29c from line 28 (see instructions)	30	0.
	31	Total tax (Schedule J, Part I, line 11)	31	0.
	32	Total payments and refundable credits (Schedule J, Part II, line 21)	32	0.
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐	33	
	34	**Amount owed.** If line 32 is smaller than the total of lines 31 and 33, enter amount owed	34	0.
	35	**Overpayment.** If line 32 is larger than the total of lines 31 and 33, enter amount overpaid	35	
REFUNDABLE	36	Enter amount from line 35 you want: **Credited to 2014 estimated tax** ► **Refunded** ►	36	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► _____ Date ► President & CEO
Signature of officer Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☒ if self-employed	PTIN
MITRA EHSANIPOUR CPA	MITRA EHSANIPOUR CPA			P00090914

Firm's name ► MITRA EHSANIPOUR CPA — Firm's EIN ► [redacted]
Firm's address ► 205 PARK RD STE 207, BURLINGAME, CA 94010-4220 — Phone no. 650-348-9444

BAA For Paperwork Reduction Act Notice, see separate instructions. CPCA0205L 07/30/13 Form **1120** (2013)

Form 1120 (2013) OVERLAND DEVELOPMENT, INC. [redacted] Page 2

Schedule C Dividends and Special Deductions (see instructions)

		(a) Dividends received	(b) Percentage	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	**Total.** Add lines 1 through 8. See instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members		100	
12	Dividends from certain FSCs		100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	**Total dividends.** Add lines 1 through 17. Enter here and on page 1, line 4 ►			
20	**Total special deductions.** Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ►			

Form **1120** (2013)

Schedule J Tax Computation and Payment (see instructions)

Part I — Tax Computation

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) ► ☐			
2	Income tax. Check if a qualified personal service corporation (see instructions) ► ☐		2	0.
3	Alternative minimum tax (attach Form 4626)		3	
4	Add lines 2 and 3		4	0.
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834 (see instructions)	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d	0.	
e	Bond credits from Form 8912	5e		
6	**Total credits.** Add lines 5a through 5e		6	
7	Subtract line 6 from line 4		7	
8	Personal holding company tax (attach Schedule PH (Form 1120))		8	
9a	Recapture of investment credit (attach Form 4255)	9a		
b	Recapture of low-income housing credit (attach Form 8611)	9b		
c	Interest due under the look-back method — completed long-term contracts (attach Form 8697)	9c		
d	Interest due under the look-back method — income forecast method (attach Form 8866)	9d		
e	Alternative tax on qualifying shipping activities (attach Form 8902)	9e		
f	Other (see instructions — attach statement)	9f		
10	**Total.** Add lines 9a through 9f		10	
11	**Total tax.** Add lines 7, 8, and 10. Enter here and on page 1, line 31		11	0.

Part II — Payments and Refundable Credits

12	2012 overpayment credited to 2013		12	
13	2013 estimated tax payments		13	
14	2013 refund applied for on Form 4466		14	
15	Combine lines 12, 13, and 14		15	0.
16	Tax deposited with Form 7004		16	
17	Withholding (see instructions)		17	
18	**Total payments.** Add lines 15, 16 and 17		18	0.
19	Refundable credits from:			
a	Form 2439	19a		
b	Form 4136	19b		
c	Form 8827, line 8c	19c		
d	Other (attach statement — see instructions)	19d		
20	**Total credits.** Add lines 19a through 19d		20	
21	**Total payments and credits.** Add lines 18 and 20. Enter here and on page 1, line 32		21	0.

Schedule K Other Information (see instructions)

		Yes	No
1	Check accounting method a ☐ Cash b ☒ Accrual c ☐ Other (specify) ►		
2	See the instructions and enter the:		
a	Business activity code no. ► 531390		
b	Business activity ► REAL ESTATE		
c	Product or service ► DEVELOPMENT		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?		X
	If 'Yes,' enter name and EIN of the parent corporation ►		
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If 'Yes,' complete Part I of Schedule G (Form 1120) (attach Schedule G)		X
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If 'Yes,' complete Part II of Schedule G (Form 1120) (att Schedule G)	X	

Schedule K Other Information *continued* (see instructions)

		Yes	No
5	At the end of the tax year, did the corporation:		
a	Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on **Form 851**, Affiliations Schedule? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below.		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

		Yes	No
b	Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below.		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

6	During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If 'Yes,' file **Form 5452**, Corporate Report of Nondividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary		X
7	At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of **(a)** the total voting power of all classes of the corporation's stock entitled to vote or **(b)** the total value of all classes of the corporation's stock? For rules of attribution, see section 318. If 'Yes,' enter: (i) Percentage owned ► _____ and (ii) Owner's country ► _____ **(c)** The corporation may have to file **Form 5472,** Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached ► _____		X
8	Check this box if the corporation issued publicly offered debt instruments with original issue discount ► ☐ If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
9	Enter the amount of tax-exempt interest received or accrued during the tax year ► $ None		
10	Enter the number of shareholders at the end of the tax year (if 100 or fewer) ► 1		
11	If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ► ☐ If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.		
12	Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) ► $ 3,877,831.		
13	Are the corporation's total receipts (page 1, line 1a, plus lines 4 through 10) for the tax year **and** its total assets at the end of the tax year less than $250,000? If 'Yes,' the corporation is not required to complete Schedules L, M-1, and M-2. Instead, enter the total amount of cash distributions and the book value property distributions (other than cash) made during the tax year. ► $ _____		X
14	Is the corporation required to file Schedule UTP (Form 1120), Uncertain Tax Position Statement (see instructions)? If 'Yes,' complete and attach Schedule UTP.		X
15a	Did the corporation make any payments in 2013 that would require it to file Form(s) 1099?		X
b	If 'Yes,' did or will the corporation file required Forms 1099?		
16	During this tax year, did the corporation have an 80% or more change in ownership, including a change due to redemption of its own stock?		X
17	During or subsequent to this tax year, but before the filing of this return, did the corporation dispose of more than 65% (by value) of its assets in a taxable, non-taxable, or tax deferred transaction?		X
18	Did the corporation receive assets in a section 351 transfer in which any of the transferred assets had a fair market basis or fair market value of more than $1 million		X

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash		31,367.		11,318.
2a Trade notes and accounts receivable	26,010.		14,010.	
b Less allowance for bad debts		26,010.		14,010.
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach statement)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement)				
10a Buildings and other depreciable assets	4,103,764.		609.	
b Less accumulated depreciation	1,921,896.	2,181,868.	463.	146.
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)		1,025,789.		
13a Intangible assets (amortizable only)	104,659.		104,659.	
b Less accumulated amortization	76,751.	27,908.	104,659.	
14 Other assets (attach statement) See St 3		4,100.		
15 Total assets		3,297,042.		25,474.
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt)				
19 Loans from shareholders		648,803.		621,648.
20 Mortgages, notes, bonds payable in 1 year or more		5,041,792.		
21 Other liabilities (attach statement) See St 4		1,872,024.		
22 Capital stock: a Preferred stock				
b Common stock	10,000.	10,000.	10,000.	10,000.
23 Additional paid-in capital		132,201.		132,201.
24 Retained earnings — Approp (att stmt)				
25 Retained earnings — Unappropriated		-4,407,778.		-738,375.
26 Adjmt to shareholders' equity (att stmt)				
27 Less cost of treasury stock				
28 Total liabilities and shareholders' equity		3,297,042.		25,474.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are $10 million or more — see instructions

1 Net income (loss) per books	3,669,403.	7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $ See Stmt 5 3,463,372.	3,463,372.
2 Federal income tax per books			
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):		8 Deductions on this return not charged against book income this year (itemize): a Depreciation $ b Charitable contribns $	
5 Expenses recorded on books this year not deducted on this return (itemize): a Depreciation $ b Charitable contributions $ c Travel & entertainment $		9 Add lines 7 and 8	3,463,372.
6 Add lines 1 through 5	3,669,403.	10 Income (page 1, line 28) — line 6 less line 9	206,031.

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	-4,407,778.	5 Distributions a Cash	
2 Net income (loss) per books	3,669,403.	b Stock c Property	
3 Other increases (itemize):		6 Other decreases (itemize):	
		7 Add lines 5 and 6	
4 Add lines 1, 2, and 3	-738,375.	8 Balance at end of year (line 4 less line 7)	-738,375.

SCHEDULE G (Form 1120)
(Rev December 2011)
Department of the Treasury
Internal Revenue Service

Information on Certain Persons Owning the Corporation's Voting Stock

► Attach to Form 1120.
► See instructions.

OMB No. 1545-0123

Name: OVERLAND DEVELOPMENT, INC.

Employer identification number (EIN): [redacted]

Part I Certain Entities Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4a).
Complete columns (i) through (v) below for any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Percentage Owned in Voting Stock

Part II Certain Individuals and Estates Owning the Corporation's Voting Stock. (Form 1120, Schedule K, Question 4b).
Complete columns (i) through (iv) below for any individual or estate that owns directly 20% or more, or owns, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote (see instructions).

(i) Name of Individual or Estate	(ii) Identifying Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Percentage Owned in Voting Stock
LARRY J. WILLARD	[redacted]	United States	100.00%

A.App.781

Form **4562**

Department of the Treasury
Internal Revenue Service (99)

Depreciation and Amortization
(Including Information on Listed Property)

► See separate instructions. ► Attach to your tax return.

OMB No. 1545-0172

2013

Attachment Sequence No. 179

Name(s) shown on return

OVERLAND DEVELOPMENT, INC.

Identifying number [redacted]

Business or activity to which this form relates

Form 1120

Part I Election To Expense Certain Property Under Section 179

Note: *If you have any listed property, complete Part V before you complete Part I.*

1	Maximum amount (see instructions)	1	
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7		
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7		8	
9	Tentative deduction. Enter the **smaller** of line 5 or line 8		9	
10	Carryover of disallowed deduction from line 13 of your 2012 Form 4562		10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)		11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11		12	
13	Carryover of disallowed deduction to 2014. Add lines 9 and 10, less line 12 ►	13		

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2013	17	97.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ► ☐		

Section B — Assets Placed in Service During 2013 Tax Year Using the General Depreciation System

	(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property						
b	5-year property						
c	7-year property						
d	10-year property						
e	15-year property						
f	20-year property						
g	25-year property			25 yrs		S/L	
h	Residential rental property			27.5 yrs	MM	S/L	
				27.5 yrs	MM	S/L	
i	Nonresidential real property			39 yrs	MM	S/L	
					MM	S/L	

Section C — Assets Placed in Service During 2013 Tax Year Using the Alternative Depreciation System

20a	Class life					S/L	
b	12-year			12 yrs		S/L	
c	40-year			40 yrs	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	97.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Form **4562**

Department of the Treasury
Internal Revenue Service (99)

Depreciation and Amortization
(Including Information on Listed Property)

► See separate instructions. ► Attach to your tax return.

OMB No. 1545-0172

2013

Attachment Sequence No. **179**

Name(s) shown on return

OVERLAND DEVELOPMENT, INC.

Identifying number [redacted]

Business or activity to which this form relates

Form 1120 - COMMERCIAL - RENO

Part I Election To Expense Certain Property Under Section 179

Note: *If you have any listed property, complete Part V before you complete Part I.*

1	Maximum amount (see instructions)	1	
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost

7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2012 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2014. Add lines 9 and 10, less line 12 ►	13	

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2013	17	92,977.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ► ☐		

Section B — Assets Placed in Service During 2013 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19 a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
			27.5 yrs	MM	S/L	
i Nonresidential real property			39 yrs	MM	S/L	
				MM	S/L	

Section C — Assets Placed in Service During 2013 Tax Year Using the Alternative Depreciation System

20 a Class life					S/L	
b 12-year			12 yrs		S/L	
c 40-year			40 yrs	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	92,977.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Form **4562** (2013) OVERLAND DEVELOPMENT, INC. [redacted] Page **2**

Part V Listed Property (Include automobiles, certain other vehicles, certain computers, and property used for entertainment, recreation, or amusement.)

Note: *For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete* **only** *24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.*

Section A – Depreciation and Other Information (Caution: *See the instructions for limits for passenger automobiles.*)

24a Do you have evidence to support the business/investment use claimed? ☐ Yes ☐ No | **24b** If 'Yes,' is the evidence written? ☐ Yes ☐ No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)						**25**		
26 Property used more than 50% in a qualified business use:								
27 Property used 50% or less in a qualified business use:								
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						**28**		
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							**29**	

Section B – Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other 'more than 5% owner,' or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
30 Total business/investment miles driven during the year (**do not** include commuting miles)												
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32												
	Yes	**No**	**Yes**	**No**	**Yes**	**No**	**Yes**	**No**	**Yes**	**No**	**Yes**	**No**
34 Was the vehicle available for personal use during off-duty hours?												
35 Was the vehicle used primarily by a more than 5% owner or related person?												
36 Is another vehicle available for personal use?												

Section C – Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who **are not** more than 5% owners or related persons (see instructions).

	Yes	**No**
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		

Note: *If your answer to 37, 38, 39, 40, or 41 is 'Yes,' do not complete Section B for the covered vehicles.*

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2013 tax year (see instructions):					
43 Amortization of costs that began before your 2013 tax year				**43**	27,908.
44 **Total.** Add amounts in column (f). See the instructions for where to report				**44**	27,908.

Form **4797**

Department of the Treasury
Internal Revenue Service

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

► Attach to your tax return.

► Information about Form 4797 and its separate instructions is at *www.irs.gov/form4797.*

OMB No. 1545-0184

2013

Attachment Sequence No. **27**

Name(s) shown on return

OVERLAND DEVELOPMENT, INC.

Identifying number [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2013 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) ..... 1 1,660,646.

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft – Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
FURNITURE & FIXTURES	3/04/06	3/03/14		5,462.	6,453.	-991.

3	Gain, if any, from Form 4684, line 39	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	286,508.
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	285,517.
	Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.		
	Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	508,294.
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	0.

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	285,517.
13	Gain, if any, from line 31	13	73,424.
14	Net gain or (loss) from Form 4684, lines 31 and 38a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	358,941.
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from 'Form 4797, line 18a.' See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

Form **4797** (2013) OVERLAND DEVELOPMENT, INC. [redacted] Page **2**

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo, day, yr)	(c) Date sold (mo, day, yr)
A BUILDING	3/04/06	3/03/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D		Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** *See line 1 before completing.*)	20	1,660,646.			
21 Cost or other basis plus expense of sale	21	3,309,759.			
22 Depreciation (or depletion) allowed or allowable	22	2,009,045.			
23 Adjusted basis. Subtract line 22 from line 21	23	1,300,714.			
24 Total gain. Subtract line 23 from line 20	24	359,932.			
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a				
b Enter the **smaller** of line 24 or 25a	25b				
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instrs)	26a	1,797.			
b Applicable percentage multiplied by the smaller of line 24 or line 26a (see instructions)	26b	1,797.			
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c	358,135.			
d Additional depreciation after 1969 & before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f	71,627.			
g Add lines 26b, 26e, and 26f	26g	73,424.			
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions)	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the smaller of line 24 or 29a (see instrs)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30	Total gains for all properties. Add property columns A through D, line 24	30	359,932.
31	Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	73,424.
32	Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	286,508.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

Form **8827**

Department of the Treasury
Internal Revenue Service

Credit for Prior Year Minimum Tax — Corporations

► **Attach to the corporation's tax return.**
► **Information about Form 8827 and its instructions is at *www.irs.gov/form8827.***

OMB No. 1545-1257

2013

Name

OVERLAND DEVELOPMENT, INC.

Employer identification number [redacted]

1	Alternative minimum tax (AMT) for 2012. Enter the amount from line 14 of the 2012 Form 4626	1	
2	Minimum tax credit carryforward from 2012. Enter the amount from line 9 of the 2012 Form 8827	2	5,908.
3	Enter any 2012 unallowed qualified electric vehicle credit (see instructions)	3	
4	Add lines 1, 2, and 3	4	5,908.
5	Enter the corporation's 2013 regular income tax liability minus allowable tax credits (see instructions)	5	
6	Is the corporation a 'small corporation' exempt from the AMT for 2013 (see instructions)? • **Yes.** Enter 25% of the excess of line 5 over $25,000. If line 5 is $25,000 or less, enter -0- • **No.** Complete Form 4626 for 2013 and enter the tentative minimum tax from line 12	6	
7a	Subtract line 6 from line 5. If zero or less, enter -0-	7a	0.
b	For a corporation electing to accelerate the minimum tax credit, enter the bonus depreciation amount attributable to the minimum tax credit (see instructions)	7b	0.
c	Add lines 7a and 7b	7c	
8a	Enter the **smaller** of line 4 or line 7c. If the corporation had a post-1986 ownership change or has pre-acquisition excess credits, see instructions	8a	
b	**Current year minimum tax credit.** Enter the smaller of line 4 or line 7a here and on Form 1120, Schedule J, Part I, line 5d (or the applicable line of your return). If the corporation had a post-1986 ownership change or has pre-acquisition excess credits, see instructions. If you made an entry on line 7b, go to line 8c. Otherwise, skip line 8c.	8b	0.
c	Subtract line 8b from line 8a. This is the refundable amount for a corporation electing to accelerate the minimum tax credit. Include this amount on Form 1120, Schedule J, Part II, line 19c (or the applicable line of your return)	8c	
9	**Minimum tax credit carryforward to 2014.** Subtract line 8a from line 4. Keep a record of this amount to carry forward and use in future years	9	5,908.

BAA

Form **8827** (2013)

CPCA2201L 06/27/13

Statement 1
Form 1120, Line 26
Other Deductions

Amortization	$ 27,908.
Bank Charges	178.
Insurance	1,087.
Legal and Professional	1,320.
Office Expense	295.
Postage	351.
Travel	326.
Total	$ 31,465.

Statement 2
Form 1120, Line 29a
Net Operating Loss Deduction

Carryover Generated From Year End	6/30/99		$ 76,672.	
Amount Utilized in 2012		54,518.		
Total Utilization			$ 54,518.	
Available for Carryover to 2013				22,154.
Carryover Generated From Year End	6/30/00		$ 281,264.	
Available for Carryover to 2013				281,264.
Carryover Generated From Year End	6/30/04		$ 55,381.	
Available for Carryover to 2013				55,381.
Carryover Generated From Year End	6/30/05		$ 1,468,972.	
Available for Carryover to 2013				1,468,972.
Carryover Generated From Year End	6/30/06		$ 950,365.	
Available for Carryover to 2013				950,365.
Carryover Generated From Year End	6/30/09		$ 46,245.	
Available for Carryover to 2013				46,245.
Carryover Generated From Year End	6/30/11		$ 594,046.	
Available for Carryover to 2013				594,046.
Carryover Generated From Year End	6/30/12		$ 459,404.	

OVERLAND DEVELOPMENT, INC. [redacted]

Statement 2 (continued)
Form 1120, Line 29a
Net Operating Loss Deduction

Available for Carryover to 2013	459,404.
Net Operating Losses Available in 2013	$ 3,877,831.
Taxable Income	206,031.
Total Net Operating Loss Deduction (Limited to Taxable Income)	206,031.

Statement 3
Form 1120, Schedule L, Line 14
Other Assets

	Beginning	Ending
DEPOSIT RENO	$ 4,100.	$ 0.
Total	$ 4,100.	$ 0.

Statement 4
Form 1120, Schedule L, Line 21
Other Liabilities

	Beginning	Ending
DEFERRED TAX ON 1031 TRADE	$ 1,872,024.	$ 0.
Total	$ 1,872,024.	$ 0.

Statement 5
Form 1120, Schedule M-1, Line 7
Book Income Not on Return

NONTAXABLE CANCELED DEBT	$ 3,463,372.
Total	$ 3,463,372.

F I L E D
Electronically
CV14-01712
2016-08-01 04:21:31 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5636821 : csulezic

Exhibit 25

Exhibit 25

1520
DICKINSON WRIGHT
JOHN P. DESMOND
Nevada Bar No. 5618
BRIAN R. IRVINE
Nevada Bar No. 7758
ANJALI D. WEBSTER
Nevada Bar No. 12515
100 West Liberty Street, Suite 940
Reno, NV 89501
Tel: (775) 343-7500
Fax: (775) 786-0131
Email: Jdesmond@dickinsonwright.com
Email: Birvine@dickinsonwright.com
Email: Awebster@dickinsonwright.com

Attorney for Defendants
Berry Hinckley Industries, and
Jerry Herbst

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO. CV14-01712
DEPT. 6

DECLARATION OF BRIAN R. IRVINE IN SUPPORT OF DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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

Counterclaimants,

vs

LARRY J. WILLARD, individually and as

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trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation;

Counter-defendants.

_____/

I, BRIAN R. IRVINE, do hereby declare as follows:

1. I am an attorney of record for Defendants Berry-Hinckley Industries ("BHI") and Jerry Herbst (collectively, "Defendants") in the above-captioned matter. I am an attorney duly licensed to practice law in the State of Nevada and before this Court, and I have personal knowledge of and am competent to testify concerning the facts stated herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true. I submit this Declaration in support of the Defendants/Counterclaimants' Motion for Partial Summary Judgment ("Motion").

2. Attached to the Motion as **Exhibit 1** is a true and correct copy of the Affidavit of Tim Herbst.

3. Attached to the Motion as **Exhibit 2** is a true and correct copy of the November 2005 Willard Lease.

4. Attached to the Motion as **Exhibit 3** is a true and correct copy of the March 2007 Willard Guaranty.

5. Attached to the Motion as **Exhibit 4** is a true and correct copy of the Docket Sheet for the action initiated by Plaintiffs in the Superior Court of Santa Clara, Case No. 2013-CV-245021.

6. Attached to the Motion as **Exhibit 5** is a true and correct copy of Defendants' Second Amended Motion to Dismiss filed in Case No 1-13-CV-245021, Superior Court of Santa Clara.

7. Attached to the Motion as **Exhibit 6** is a true and correct copy of selected excerpts from the August 21, 2015, Deposition of Larry Willard.

8. Attached to the Motion as **Exhibit 7** is a true and correct copy of the 2014 Federal Tax Return for Overland produced by Plaintiffs.

9. Attached to the Motion as **Exhibit 8** is a true and correct copy of the 2014 Federal Tax Return for Willard produced by Plaintiffs.

10. Attached to the Motion as **Exhibit 9** is a true and correct copy of the Seller's Final Closing Statement in the sale of the Willard Property produced by Plaintiffs.

11. Attached to the Motion as **Exhibit 11** is a true and correct copy of the 2007 Highway 50 Guaranty.

12. Attached to the Motion as **Exhibit 12** is a true and correct copy of Willard's Responses to Defendants' First Set of Interrogatories.

13. Attached to the Motion as **Exhibit 13** is a true and correct copy of the Baring Purchase and Sale Agreement produced by Plaintiffs.

14. Attached to the Motion as **Exhibit 14** is a true and correct copy of the 2006 Baring Lease.

15. Attached to the Motion as **Exhibit 15** is a true and correct copy of the Baring Property Loan produced by Plaintiffs.

16. Attached to the Motion as **Exhibit 16** is a true and correct copy of selected excerpts from the August 20, 2015, Deposition of Edward Wooley.

17. Attached to the Motion as **Exhibit 17** is a true and correct copy of the December 29, 2009, Assignment of Baring Lease to Jacksons Food Stores.

18. Attached to the Motion as **Exhibit 18** is a true and correct copy of the HUD Statement for the sale of the Baring Property produced by Plaintiffs.

19. Attached to the Motion as **Exhibit 19** is a true and correct copy of the November 26, 2014 email exchange between Brian Irvine and David O'Mara.

20. Attached to the Motion as **Exhibit 20** is a true and correct copy of the email exchange ranging from November 2014 to January 2015 between Brian Irvine, Brian Moquin, and David O'Mara.

21. Attached to the Motion as **Exhibit 21** is a true and correct copy of IRS Publication 4681.

22. Attached to the Motion as **Exhibit 22** is a true and correct copy of the Second Amendment to Baring Lease.

23. Attached to the Motion as **Exhibit 23** is a true and correct copy of Wooley's Responses to Defendants' Second Set of Interrogatories.

24. Attached to the Motion as **Exhibit 24** is a true and correct copy of the 2013 Federal Tax Return for Overland produced by Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 1st day of August, 2016.

/s/ Brian R. Irvine
BRIAN R. IRVINE

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Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

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

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Admitted *Pro Hac Vice*
CALIFORNIA BAR NO. 247583
3287 Ruffino Lane
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

LARRY J. WILLARD, individually and as trustee of the Larry James Willard Trust Fund; OVERLAND DEVELOPMENT CORPORATION, a California corporation; EDWARD C. WOOLEY AND JUDITH A. WOOLEY, individually and as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000, Plaintiffs, v. BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and JH, INC., a Nevada corporation, Defendants.	Case No. CV14-01712 Dept. 6

AFFIDAVIT OF BRIAN P. MOQUIN

I, Larry J. Willard, declare:

1. I am an attorney licensed to practice law in the State of California and admitted *pro hac vice* to this Court to represent the plaintiff in the above-captioned matter. I am over the age of eighteen years and am otherwise *sui juris*. I have personal knowledge of the following facts, and if called and sworn as a witness I could and would testify to the veracity thereof.

2. I was retained by plaintiffs Larry J. Willard, Overland Development Corporation, Edward C. Wooley and Judith A. Wooley (collectively, "Plaintiffs") in early March 2014 when Plaintiffs' prior counsel, L. Steven Goldblatt ("Goldblatt"), was incapacitated due to an automobile accident. Goldblatt had filed suit against defendants Berry-Hinckley Industries ("BHI"), Jerry Herbst ("Herbst") (collectively, "Defendants") and others in the Superior Court of Santa Clara County, California ("the California case") for breaches of Plaintiffs' commercial leases on properties they owned in Nevada as well as to foreclose the personal guaranties Herbst had signed regarding the leases.

3. When I took over the California case, there were two motions that had been brought by Defendants that were scheduled for hearing. One was a motion to dismiss the California case for lack of proper venue. The other was a motion to quash Goldblatt's discovery requests.

4. I promptly contacted opposing counsel for Defendants, John P. Desmond, Esq. ("Desmond"), and told him that if given leave to file an amended complaint I could probably simplify matters significantly. Desmond agreed, and consequently we executed and filed a joint stipulation under which I would withdraw Goldblatt's discovery requests, I would be given time to draft and file an amended complaint, and Defendants would take the upcoming hearings off-calendar. I filed this joint stipulation on March 13, 2014. A true and correct copy of the joint stipulation is attached hereto as Exhibit 18.

5. On March 14, 2014, I received written confirmation via e-mail from Desmond's legal secretary, Cindy Grinstead ("Grinstead"), that she had "called the Court

and took the hearings currently scheduled on March 18, 2014 @ 9:00 a.m. and April 4, 2014 at 9:00 a.m. off calendar." A true and correct copy of my correspondence with Grinstead is attached hereto as Exhibit 19.

6. On March 21, 2014, while reviewing the online docket I discovered that Defendants had not taken the hearing on their motion to dismiss off calendar, and, with no appearances being made, the Court granted the motion. I immediately called the clerk's office and had them fax a copy of the minute order to me, a true and correct copy of which is attached hereto as Exhibit 20.

7. I then contacted Desmond to ask why the hearing had not been taken off calendar as I had been told it had been. He had no explanation.

8. Subsequently, Desmond and I engaged in numerous discussions regarding the merits of the case, in particular the issue of venue. Because my clients had been financially devastated by Plaintiffs' breaches of their respective leases and were anxious to have the case to move along, my clients agreed to allow me to voluntarily dismiss the California case without prejudice and bring the instant matter in Nevada, an action with which Desmond concurred. A true and correct copy of the request for dismissal without prejudice filed May 19, 2014 is attached hereto as Exhibit 21.

9. Consequently, Defendants' claim that they won their motion to dismiss is a blatant misrepresentation of fact. Defendants' motion to dismiss was granted due to Defendants' failing to comply with the terms of the joint stipulation, which stipulation led to me not filing an opposition nor attending the hearing. This marks the second time in the instant matter that Defendants have made this fraudulent claim.

I swear under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 29th day of August 2016.

Brian P. Moquin

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Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

1030

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

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Admitted *Pro Hac Vice*
CALIFORNIA BAR NO. 247583
3287 Ruffino Lane
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

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

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AFFIDAVIT OF LARRY J. WILLARD

I, Larry J. Willard, declare:

1. I am a named plaintiff in the above-captioned matter. I am over the age of eighteen years and am otherwise *sui juris*. I have personal knowledge of the following facts, and if called and sworn as a witness I could and would testify to the veracity thereof.

2. I am the President and sole shareholder of named plaintiff Overland Development Corporation ("Overland").

3. On November 18, 2005, as part of a property exchange pursuant to 26 U.S.C. § 1031 (a "1031 Exchange"), I entered into a Purchase and Sale Agreement with P.A. Morabito & Co, Limited to purchase a commercial property located at 7695 and 7699 South Virginia Street, Reno, Nevada (the "Virginia Property") for a total purchase price of $17,750,000.00. A true and correct copy of the Purchase and Sale Agreement is attached hereto as Exhibit 27.

4. The Purchase and Sale Agreement contained a lease-back provision under which the seller would lease back the Virginia Property for a period of twenty years ("the Virginia Lease Term") from January 2006 through January 2026 at a base annual rental rate of $1,464,375.00 with the annual rental rate increasing by two percent per year compounded annually. [Ex. 27 at p. 1.]

5. On December 2, 2005, Defendant Berry-Hinckley Industries ("BHI"), Overland and I executed a Lease Agreement (the "Virginia Lease") containing the terms mentioned above, a true and correct copy of which is attached hereto as Exhibit 28.

6. As part of a 1031 Exchange, Overland and I paid a total of $4,668,738.49 in earnest money for the Virginia Property from the sale of a property that Overland and I owned in Las Vegas. Overland and I obtained financing for the balance of the purchase price by securing a loan in the amount of $13,250,000.00 from South Valley. Escrow on the purchase of the Virginia Property closed on February 24, 2006. A true and correct copy of the Seller's Final Settlement Statement and the Buyer's Final Settlement Statement are attached hereto as Exhibit 29. A true and correct copy of the Deed of Trust securing the

loan from South Valley is attached hereto as Exhibit 30. A true and correct copy of the Promissory Note securing the loan from South Valley is attached hereto as Exhibit 31.

7. On February 21, 2006, BHI, Overland, and I executed a "Lease Subordination, Non-Disturbance and Attornment Agreement" (the "Subordination Agreement"), which informed BHI of the fact that I was purchasing the Virginia Property with financing from South Valley National Bank ("South Valley"). A true and correct copy of the Subordination Agreement is attached hereto as Exhibit 32.

8. In the Subordination Agreement, BHI expressly acknowledged that South Valley would not make the loan to me without the Subordination Agreement being in place and BHI agreeing to relinquish and subordinate the Virginia Lease in favor of South Valley's rights under the loan. [Ex. 32 at § 2.4.] BHI also consented to and approved all provisions of the Note and the Deed of Trust regarding the loan. [Ex. 32 at § 2.2.]

9. In the Subordination Agreement, BHI certified that the Summary of Lease Terms attached thereto as Appendix 1 was true and correct. [Ex. 32 at p. 2.] This Summary of Lease Terms confirms that the original Virginia Lease Term was through January 2026. [Ex. 32 at Appx. 1, § 2.4.]

10. In the Subordination Agreement, BHI also expressly agreed not to terminate the Virginia Lease without first obtaining the consent of South Valley. [Ex. 32 at § 3.3.]

11. On March 16, 2006, I refinanced the South Valley loan with Telesis Community Credit Union ("Telesis") for a total loan amount of $13,312,500.00. Under this new loan (the "Telesis Loan"), Overland and I were required to pay $87,077.52 per month to Telesis's loan servicing agent, Business Partners, LLC ("Business Partners"). A true and correct copy of the Deed of Trust, Assignment of Rents and Security Agreement executed as part of this refinancing agreement with Telesis is attached hereto as Exhibit 33. A true and correct copy of the mortgage statement from March 2013 showing the monthly charge on the loan of $87,077.52 is attached hereto as Exhibit 34. A true and correct copy of the Substitution of Trustee and Full Reconveyance transferring the loan from South Valley to Telesis is attached hereto as Exhibit 35.

12. On February 17, 2007, BHI sent an offer letter to myself and other landlords indicating that Defendant Jerry Herbst ("Herbst") intended to acquire BHI's convenience store assets, which included the Virginia Property. A true and correct copy of the February 17, 2007 offer letter and the relevant attachments is attached hereto as Exhibit 5.

13. In the offer letter, Herbst offered to personally guarantee BHI's payments and performance under the Virginia Lease if I agreed to amend the Virginia Lease. [Ex. 5 at pp. 3-4.] Included with the offer letter was a statement from Johnson Jacobson Wilcox dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of $200 million. [Ex. 5 at p. 2.]

14. One of the requirements of Herbst's offer was that Overland and I agree to shorten the Virginia Lease Term by thirty months, thereby forgoing $5,250,045.20 in rent that we would otherwise have received under the Virginia Lease, in return for which Herbst would personally guarantee BHI's payment and performance under the Virginia Lease.

15. On March 9, 2007, based on the representations as to Herbst's net worth and the offer by Herbst to personally guarantee BHI's payments and performance under the Virginia Lease, I accepted Herbst's offer. A true and correct copy of the Amendment to Lease Agreement is attached hereto as Exhibit 36. A true and correct copy of the Herbst Guaranty is attached hereto as Exhibit 37.

16. On March 1, 2013, without any notice whatsoever, BHI defaulted on the Virginia Lease by not sending the monthly rental payment for March 2013.

17. On March 10, 2013, having not received the monthly rental payment from BHI, I called BHI's finance department and I was told that BHI was no longer going to pay rent. I immediately retained L. Steven Goldblatt, Esq. ("Goldblatt"), who sent a letter to Herbst on March 12, 2013 demanding payment of the March 2013 rent. A true and correct copy of that letter is attached hereto as Exhibit 38.

18. On March 18, 2013, counsel for BHI and Herbst responded to my counsel's letter with an unacceptable settlement offer that in no way indicated that BHI and Herbst

intended to cure the breach nor honor the Herbst Guaranty. A true and correct copy of that letter is attached hereto as Exhibit 39.

19. On April 12, 2013, counsel for BHI and Herbst sent a letter to my attorney indicating that BHI did not intend to cure the breach and planned to vacate the Virginia Property on April 30, 2013. A true and correct copy of that letter is attached hereto as Exhibit 40.

20. On April 17, 2013, Goldblatt filed a lawsuit against BHI, Herbst, and others in Santa Clara County, California (the "California case") for breach of the Virginia Lease and foreclosure of the Herbst Guaranty.

21. Shortly thereafter, my real estate agent appealed to BHI to remain on the Virginia Property until we were able to find a buyer or a new tenant so that the Virginia Property would retain its value. Consequently, I entered into an interim "Operation and Management Agreement" with BHI effective May 1, 2013 under which BHI agreed to continue active operations on the Virginia Property. I agreed to this Operation and Management Agreement because I knew that the amount of rent at issue, which, at that point was $140,175.55 per month, would be difficult to obtain from a new tenant if the Virginia Property was "dark." Herbst did not sign the Operation and Management Agreement nor is there any mention in it of the Herbst Guaranty. A true and correct copy of the Operation and Management Agreement is attached hereto as Exhibit 41.

22. I hired consultant Greg Breen ("Breen"), who had previously been the operations manager for BHI, to accompany me to the Virginia Property to assess its condition. Mr. Breen had formerly served as operations manager for BHI. Breen and I visited the Virginia Property on May 26, 2013 and May 27, 2013. We discovered that the Virginia Property was not fully operational. For example, all signage had been removed, there were severe maintenance issues, and several employees told me in person that they did not have enough supplies to conduct operations.

23. On June 1, 2013, BHI vacated the Virginia Property having paid no rent whatsoever since their breach on March 1, 2013. Under the terms of the Operation and

Management Agreement, BHI had until July 20, 2013 to provide me with a profit and loss statement and to remit net profits earned during May 2013 minus $10,000.00. [Ex. 41 at § 4.] However, BHI never provided me with the required profit and loss statement, nor did they ever tender any payment of net profits for the month of May 2013.

24. Because BHI had breached the Virginia Lease, thereby depriving me of more than $140,000.00 per month in income while I remained liable to make payments of $87,077.52 per month under the Telesis Loan, based on the strong advice from Goldblatt that I do so, I engaged bankruptcy attorney Stanley Zlotoff ("Zlotoff") to prepare and file a Chapter 11 bankruptcy petition. I paid Zlotoff $21,213.00 to handle my bankruptcy.

25. On the advice of counsel, I also retained accountant Mitra Ehsanipour ("Ehsanipour") to prepare the accounting required for my bankruptcy petition. I paid Ehsanipour $17,520 for this work.

26. On June 14, 2013, I received a Notice of Intent to Foreclose from Business Partners stating that a monetary default existed due to non-payment of the March 1, 2013, April 1, 2013, May 1, 2013, and June 1, 2013 monthly loan payments as well as non-payment of the 2012 Washoe County real estate property taxes. A true and correct copy of this Notice of Intent to Foreclose is attached hereto as Exhibit 42.

27. On June 17, 2013, I filed a Chapter 11 bankruptcy petition. A true and correct copy of the Notice of Bankruptcy Case Filing is attached hereto as Exhibit 43.

28. On July 24, 2013, Zlotoff filed a motion to dismiss my Chapter 11 bankruptcy case at my direction due to the fact that my having filed for bankruptcy had not facilitated fruitful negotiations with Telesis regarding the outstanding $13 million loan. A true and correct copy of my declaration submitted in support of that motion is attached hereto as Exhibit 44.

29. After nearly one year of motion practice and representing our interests in negotiations with BHI and Herbst for which I paid Goldblatt and his associates a total of $35,000.00, Goldblatt was seriously injured in an automobile accident and I obtained present counsel, Brian P. Moquin, Esq. ("Moquin") to handle the matter. Moquin

substituted into the California case on March 13, 2014. A true and correct copy of this substitution is attached hereto as Exhibit 45.

30. I expressed my frustration to Moquin regarding the fact that nearly a year had gone by and we still didn't seem close to resolving the matter. Moquin informed me that the defendants, including BHI and Herbst, had filed a Motion to Dismiss the matter for lack of proper venue which was to be heard on March 18, 2014. Moquin suggested that he amend the complaint to streamline the issues and potentially agree to transfer venue to Nevada in the interests of reaching resolution in a more timely fashion.

31. On March 13, 2014, Moquin and counsel for Herbst, BHI, and the other defendants entered into a Joint Stipulation to take the pending hearing on defendants' Motion to Dismiss off-calendar and give Moquin an opportunity to draft and file an amended complaint. A true and correct copy of this Joint Stipulation is attached hereto as Exhibit 18.

32. On March 14, 2014, Moquin contacted me and informed me that he had filed the Joint Stipulation and that he had received confirmation from the defendants' attorney that they had taken the hearing off-calendar.

33. On March 21, 2014, Moquin contacted me and informed me that despite having confirmed to Moquin that defendants had taken the hearing off-calendar, the Santa Clara Superior Court had held the hearing on defendants' Motion to Dismiss and had granted it without prejudice. I was very upset by this underhanded behavior by defendants, but Moquin told me that in the interests of expediting litigation he thought it best to refile the complaint in Nevada. I agreed.

34. Because my real estate agent had been unsuccessful in finding a tenant to lease the Virginia Property and had also not been able to find a buyer willing to offer enough for the Virginia Property to cover the outstanding principal balance owed on the Telesis Loan, on January 14, 2014, Overland and I entered into an agreement with Longley Partners, LLC ("Longley") for Longley to purchase the Virginia Property via a short sale. A true and correct copy of the Declaration of Arm's Length Transaction is attached hereto as

Exhibit 46.

35. On February 14, 2014, Longley, Overland, and I executed a Purchase and Sale Agreement under which Longley agreed to purchase the Virginia Property for $4 million. A true and correct copy of this Purchase and Sale Agreement is attached hereto as Exhibit 47.

36. On February 19, 2014, Overland and I entered into a Short Sale Agreement with National Credit Union Administration Board ("NCUAB") in its capacity as liquidating agent for Telesis for the sale of the Virginia Property. A true and correct copy of the Short Sale Agreement is attached hereto as Exhibit 48.

37. On February 25, 2014, I engaged my real estate agent to conduct the short sale of the Virginia Property. A true and correct copy of the Consent to Act is attached hereto as Exhibit 49.

38. On March 3, 2014, the Virginia Property was sold via a short sale for a total of $4,050,354.68. Of that amount, $65,936.98 went to pay the outstanding 2012/2013 Washoe County property taxes, $120,000.00 was paid in commissions to Colliers International, and $14,615.00 was paid in closing costs. A true and correct copy of the Final Closing Statement is attached hereto as Exhibit 50.

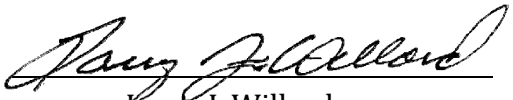
39. Following the short sale, NCUAB canceled the outstanding debt owed under the Telesis Loan. This debt cancellation totaled $8,597,250.20. Due to this debt cancelation, both Overland and I incurred a significant tax liability for Fiscal Year 2014. A true and correct copy of the IRS Form 1099-C issued by NCUAB showing the debt cancellation is attached hereto as Exhibit 51. Per IRS regulations, since both my and Overland's total debt were greater than our total assets immediately prior to the debt cancellation, these tax liabilities were not reported as income and consequently are no longer being claimed as damages flowing from Defendants' breach.

40. However, because I was forced to give up the Virginia Property via the short sale, I lost $1,018,200.00 in Capital Loss Carryovers that I had been carrying as an asset and Overland lost $3,671,800.00 in Capital Loss Carryovers that it had been carrying as an asset under the 1031 Exchange through which Overland and I had purchased the Virginia

Property. In addition, due to BHI's abandonment of the Virginia Property and subsequent breach of the Interim Operation and Management Agreement, the Virginia Property suffered a dramatic diminution in value, the amount of which is not relevant to the instant motion.

I swear under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 15th day of August 2016.



Larry J. Willard

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

LAW OFFICES OF BRIAN P. MOQUIN
BRIAN P. MOQUIN, ESQ.
Admitted *Pro Hac Vice*
CALIFORNIA BAR NO. 247583
3287 Ruffino Lane
San Jose, CA 95148
Telephone: 408.300.0022
Fax: 408.843.1678
bmoquin@lawprism.com

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

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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' OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 1

A. Properties Of The Wooley Plaintiffs 1

1. The purchase and renting out of the Highway 50 Property to BHI. 1
2. The purchase and renting out of the Baring Property to BHI. 2
3. Commencement in California of litigation for Defendants' breach. 3
4. Dismissal of the California case obtained via fraud. 4
5. Circumstances necessitating the sale of the Baring Property. 4

B. The Willard Plaintiffs' Property 5

1. The purchase and renting out of the Virginia Property to BHI. 5
2. Defendants' express acknowledgment of Willard's loan. 6
3. Plaintiffs sacrifice $5.25 million to obtain the Herbst Guaranty. 6
4. Commencement in California of litigation for Defendants' breach. 7
5. Defendants undermine Plaintiffs' attempt to mitigate damages. 8
6. Willard files for Chapter 11 bankruptcy protection. 8
7. Circumstances necessitating the short sale of the Virginia Property. 9

III. ARGUMENT 11

A. Legal Standard 11

1. Summary Judgment. 11
2. Interpretation of contract terms. 12
3. Interpretation of express indemnity provisions. 12

B. Relevant Terms And Provisions Of The Leases And Guaranties 13

1. Lease terms regarding breaches and recoverable damages. 13
   a. BHI's Monetary Obligations are unconditional. 14
   b. BHI is liable for all taxes flowing from their activities under the Lease. 14
   c. Liquidated damages. 15
   d. "Costs" defined. 15
   e. Express indemnification against "any and all Losses." 16
   f. "Losses" defined. 16
   g. Express attorneys' fees provision. 16
2. Relevant terms and provisions of the Herbst Guaranties. 17

C. Plaintiffs Are Entitled to Attorneys' Fees And Costs As Special Damages 18

1. Willard is entitled to attorneys' fees and costs incurred in bankruptcy. 20

D. Under The Leases, All Losses Flowing From The Breach Are Recoverable 20

IV. CONCLUSION 22

INDEX OF EXHIBITS 25

TABLE OF AUTHORITIES

Cases *Page(s)*

American Excess Inc. Co. v. MGM Grand Hotels, Inc.,
102 Nev. 601, 729 P.2d 1352 (1986) 12

Am. Fed. Of Musicians v. Reno's Riverside Hotel, Inc.,
86 Nev. 695, 475 P.2d 220, 222 (1970) 18

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) 11

Colo. Env'ts, Inc. v. Valley Grading Corp.,
105 Nev. 464, 779 P.2d 80 (1989) 20

Canfield v. Gill,
101 Nev. 170, 693 P.2d 1259 (1985) 12

Canfora v. Coast Hotels & Casinos, Inc.,
121 Nev. 771, 121 P.3d 599 (2005) 12, 13

Continental-Heller Corp. v. Amtech Mechanical Services, Inc.,
53 Cal.App.4th 500, 61 Cal.Rptr.2d 668 (1997) 12

Continental Casualty Co. v. Farnow,
79 Nev. 428, 386 P.2d 90 (1963) 12

Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.,
123 Nev. 598, 172 P.3d 131 (Nev. 2007) 11

George L. Brown Ins. Agency, Inc. v. Star Ins. Co.,
126 Nev. 316, 237 P.3d 92 (Nev. 2010) 12

Gilman v. Gilman,
114 Nev. 416, 956 P.2d 761 (1998) 21

Farmers Ins. Exchange v. Young,
108 Nev. 328, 832 P.2d 376 (1992) 12

Hoopes v. Hammargren,
102 Nev. 425, 725 P.2d 238 (1986) 11

Horgan v. Felton,
123 Nev. 577, 170 P.3d 982 (2007) 18

Margrave v. Dermody Props.,
110 Nev. 824, 878 P.2d 291 (1994) 12

National Union Fire Ins. v. Reno's Exec. Air,
100 Nev. 360, 682 P.2d 1380 (1984) 12

Pegasus v. Reno Newspapers, Inc.,
118 Nev. 706, 57 P.3d 82 (2002) 11

Reno Club, Inc. v. Young Investment Co.,
64 Nev. 312, 182 P.2d 1011 (1947) 12

Sandy Valley Assocs. V. Sky Ranch Estates owners Ass'n,
117 Nev. 948, 35 P.3d 964 (2001) 18

Torrealba v. Kesmetis,
124 Nev. 95, 178 P.3d 716 (Nev. 2008) 11

United Rentals Hwy. Techs. v. Wells Cargo,
289 P.3d 221, 128 Nev. Adv. Op. No. 59 (Nev. 2012) 14

Valley Bank v. Marble,
105 Nev. 366, 775 P.2d 1278 (1989) 11

Wood v. Safeway,
121 Nev. 724, 121 P.3d 1026 (2005) 11

Rules of Civil Procedure

Nev. R. Civ. P. 56 (West 2015) 11

I.

INTRODUCTION

Plaintiffs Larry J. Willard ("Willard"), Overland Development Corporation ("Overland") (collectively, "the Willard Plaintiffs"), and Edward C. Wooley and Judith A. Wooley (collectively, "The Wooley Plaintiffs") herein oppose the Motion for Partial Summary Judgment brought by defendants Berry-Hinckley Industries ("BHI") and Jerry Herbst ("Herbst") (collectively, "Defendants"). Through their Motion, Defendants seek to preemptively foreclose recovery by Plaintiffs of certain categories of damages they claim were a direct result of Defendants' breach of their respective long-term commercial lease agreements and personal guaranties. As illustrated herein, Defendants' contentions are eviscerated by the express terms of the leases and guaranties at issue here—which Defendants completely ignored in their Motion—and are contrary to well-established law.

Given the commonality of claims by the Willard Plaintiffs and the Wooley Plaintiffs and the fact that the leases and guaranties at issue are absolutely identical in pertinent part, Plaintiffs do not object to Defendants' request to have the issues regarding damages recoverable by the Willard Plaintiffs and those recoverable by the Wooley Plaintiffs heard in a single motion.

II.

STATEMENT OF FACTS

A. Properties Of The Wooley Plaintiffs

1. The purchase and renting out of the Highway 50 Property to BHI.

On July 1, 2005, as part of a 1031 Exchange, the Wooley Plaintiffs entered into a Purchase and Sale Agreement to purchase a commercial property located at 1820 East U.S. Highway 50, Carson City, Nevada (the "Highway 50 Property") from Tibarom, Inc. for $3,400,000.00. [Decl. Edward C. Wooley at ¶ 3; Ex. 1.]

On December 1, 2005, BHI entered into a 20-year lease for the Highway 50 Property (the "Highway 50 Lease") at a base annual rental rate of $272,000.00, increasing by 2% per annum. [*Id.* at ¶ 4; Ex. 2.]

On January 19, 2007, the Wooley Plaintiffs obtained a loan for $2,200,000.00 from

Pacific Capital Bank, N.A. d/b/a South Valley National Bank ("South Valley") which was secured by a Deed of Trust on the Highway 50 Property. [*Id.*at ¶ 5; Exs. 3, 4.]

On February 17, 2007, the Wooley Plaintiffs received a letter from counsel for Herbst informing them and other landlords of Herbst's intention to acquire BHI and requesting that the Wooley Plaintiffs agree to certain modifications to the Highway 50 Lease in return for Herbst signing a guaranty (the "Highway 50 Guaranty") to be personally responsible for BHI's performance under the Highway 50 Lease. Included in this letter was a statement from a financial services firm stating that Herbst had a net worth in excess of $200 million. [*Id.* at ¶ 6; Ex. 5.]

On March 12, 2007, in consideration for the security provided by the Highway 50 Guaranty, the Wooley Plaintiffs executed a First Amendment to the Highway 50 Lease, which included the modifications requested by Herbst. [*Id.* at ¶ 7; Ex. 6.] That same day, Herbst executed a guaranty agreement regarding the Highway 50 Property (the "Highway 50 Guaranty"). [*Id.* at ¶ 8; Ex. 7.]

On June 29, 2011, BHI and the Wooley Plaintiffs executed a Second Amendment to the Highway 50 Lease, which freed up moneys held in escrow for BHI to build out the property and which decreased the base monthly rental amount from $25,000.00 per month to $20,025.82 per month. This Second Amendment did not modify the terms of the Highway 50 Guaranty. [*Id.*; Ex. 8.]

2. The purchase and renting out of the Baring Property to BHI.

On May 8, 2006, the Wooley Plaintiffs entered into a Purchase and Sale Agreement to purchase a property located at 1365 Baring Boulevard, Sparks, Nevada (the "Baring Property") from Spirit SPE Portfolio 2005-5, LLC for a purchase price of $3,286,552.00. [*Id*. at ¶ 10; Ex. 9.]

On July 6, 2006, BHI signed a long-term lease for the Baring Property (the "Baring Lease") at a base monthly rental rate of $19,856.25, increasing by two percent per annum. [*Id.* at ¶ 11; Ex. 10.]

On July 18, 2006, the Wooley Plaintiffs obtained a loan from South Valley for

$2,100,000.00 which was secured by a Deed of Trust on the Baring Property. [*Id.* at ¶ 12; Exs. 11, 12.]

On March 12, 2007, the Wooley Plaintiffs agreed to the modifications to the Baring Lease requested by Herbst and executed a First Amendment to the Lease Agreement. [*Id.* at ¶ 13; Ex. 13.]

In consideration for the Wooley Plaintiffs having agreed to the modifications to the Baring Lease, on March 12, 2007, Herbst signed a personal guaranty of the Baring Lease (the "Baring Guaranty"). [*Id.* at ¶ 14; Ex. 14.]

On July 5, 2007, in direct violation of the capitalized prohibition in the Baring Lease, BHI entered into an Assignment of Entitlements, Contracts, Rents and Revenues with First National Bank of Nevada to secure a $74 million line of credit. [*Id.* at ¶ 15; Ex. 15.]

On December 29, 2009, without first seeking and obtaining permission from the Wooley Plaintiffs as required by the Baring Lease, BHI assigned the Baring Lease to Jacksons Food Stores, Inc. ("Jackson"). [*Id.* at ¶ 16; Ex. 16.]

3. Commencement in California of litigation for Defendants' breach.

On March 1, 2013, BHI failed to tender rent payments under both the Baring Lease and the Highway 50 Lease. As a result, the Wooley Plaintiffs engaged the services of attorney L. Steven Goldblatt, Esq. ("Goldblatt") to contact BHI and Herbst and demand payment. [*Id.* at ¶ 17.]

Defendants failed to cure the breach of the Highway 50 Lease. As a result, on April 17, 2013, Goldblatt filed a lawsuit against Defendants and others in Santa Clara County, California (the "California case") for breach of the leases and to foreclose on the Herbst guaranties. [*Id.* at ¶ 18.]

After nearly one year of motion practice and representing the Wooley Plaintiffs' interests in negotiations with BHI and Herbst for which the Wooley Plaintiffs paid Goldblatt and his associates a total of $45,088.00, Goldblatt was seriously injured in an automobile accident and the Wooley Plaintiffs were compelled to hire Brian P. Moquin, Esq. ("Moquin"), to take over the matter. Moquin substituted into the California case on March 13, 2014. [*Id.* at ¶ 19; Ex. 17.]

4. Dismissal of the California case obtained via fraud.

Prior to Moquin substituting into the California case, Defendants had filed a Motion to Dismiss the case for lack of proper venue, which was to be heard on March 18, 2014. [*Id.* at ¶ 20.] Moquin suggested to Defendants that he amend Plaintiffs' complaint to streamline the issues and potentially agree to transfer the matter to Nevada in the interests of expediting resolution. [*Id.*] To that end, Moquin and counsel for Defendants entered into a Joint Stipulation under which Plaintiffs would be given time to amend their complaint, Plaintiffs would withdraw the numerous discover requests that Defendants were seeking to quash, and Defendants would take the pending hearings off-calendar. [*Id.* at ¶ 21; Decl. Brian P. Moquin at ¶ 4; Ex. 18.]

On March 13, 2014, Moquin filed the Joint Stipulation. [*Id*.] Moquin also received written confirmation from Defendants that they had in fact taken the pending hearings off-calendar. [*Id.* at ¶ 5; Ex. 19.]

On March 21, 2014, Moquin learned that Defendants had not taking the hearing on their Motion to Dismiss off-calendar and as a result the court had granted Defendants' motion. [*Id.* at ¶ 6; Ex. 20.]

Subsequently, in the interests of expediting resolution of Plaintiffs' claims, Plaintiffs voluntarily dismissed the California matter without prejudice and brought the instant matter in this Court. [*Id.* at ¶ 8; Ex. 21.]

5. Circumstances necessitating the sale of the Baring Property.

On January 22, 2014, the Wooley Plaintiffs received a Notice of Default regarding payments to South Valley, which had since been taken over by Union Bank, N.A., on the Highway 50 Loan and the Baring Loan, both of which the Wooley Plaintiffs had not been able to pay due to the lack of rental income caused by Defendants' breach of the Highway 50 Lease. [Decl. Wooley at ¶ 24; Ex. 22

The Wooley Plaintiffs contacted Union Bank and engaged in negotiations with Terri Baron ("Baron"), Union Bank's Vice President and Senior Workout Specialist. Baron advised them that, per the terms of both the Highway 50 Loan and the Baring Loan, the two properties were cross-collateralized and hence the only way to save either of them was to cure both

defaults. [*Id.* at ¶ 25; Ex. 23.]

As a result of this cross-collateralization, and because BHI and Herbst's breaches of the Highway 50 Lease had left the Wooley Plaintiffs in a position where they could not cure both defaults, they were forced to sell one of the properties. On May 20, 2014, the Wooley Plaintiffs sold the Baring Property for a contract price of $3,100,000.00, incurring $147,847.30 in settlement charges, $156.49 in sewer use fees, and $1,225.34 in county property taxes as part sale. After the Baring Loan was paid off, the Wooley Plaintiffs were left with $870,844.39, which was less than the amount of earnest money they had invested in the Baring Property. In fact, the Baring Property had experienced a diminution in value of $186,552.00 compared to the price at which the Wooley Plaintiffs had purchased it. [*Id.* at ¶ 26; Ex. 24.]

As a direct result of BHI and Herbst breaching the Highway 50 Lease which forced the Wooley Plaintiffs to sell the Baring Property at a loss in order to save the Highway 50 Property, the Wooley Plaintiffs also incurred a Federal tax liability of $302,881.00 and a state tax liability of $114,502.00 due to the capital gains imposed on them from the loss of their 1031 Exchange benefits. The Wooley Plaintiffs have paid those taxes. [*Id.* at ¶ 27; Exs. 25, 26.]

B. The Willard Plaintiffs' Property

1. The purchase and renting out the Virginia Property to BHI.

On November 18, 2005, as part of a property exchange pursuant to 26 U.S.C. § 1031 (a "1031 Exchange"), the Willard Plaintiffs entered into a Purchase and Sale Agreement with P.A. Morabito & Co, Limited to purchase a commercial property located at 7695 and 7699 South Virginia Street, Reno, Nevada (the "Virginia Property") for a total purchase price of $17,750,000.00. [Decl. Larry J. Willard at ¶ 3; Ex. 27.]

The Purchase and Sale Agreement contained a lease-back provision under which the seller would lease back the Virginia Property for a period of twenty years ("the Virginia Lease Term") from January 2006 through January 2026 at a base annual rental rate of $1,464,375.00 with the annual rental rate increasing by two percent per year compounded annually. [*Id.* at ¶ 4; Ex. 27 at p. 1.]

On December 2, 2005, Defendant Berry-Hinckley Industries ("BHI") and the Willard

Plaintiffs executed a Lease Agreement (the "Virginia Lease"). [*Id.* at ¶ 5; Ex. 28.]

As part of a 1031 Exchange, the Willard Plaintiffs paid a total of $4,668,738.49 in earnest money for the Virginia Property from the sale of a property that they owned in Las Vegas. They obtained financing for the balance of the purchase price by securing a loan in the amount of $13,250,000.00 from South Valley. Escrow on the purchase of the Virginia Property closed on February 24, 2006. [*Id.* at ¶ 6; Exs. 29, 30, 31.]

2. Defendants' express acknowledgment of Willard's loan.

On February 21, 2006, BHI and the Willard Plaintiffs executed a "Lease Subordination, Non-Disturbance and Attornment Agreement" (the "Subordination Agreement"), which informed BHI of the fact that the Willard Plaintiffs were purchasing the Virginia Property with financing from South Valley National Bank ("South Valley"). [*Id.* at ¶ 7; Ex. 32.]

In the Subordination Agreement, BHI expressly acknowledged that South Valley would not make the loan to the Willard Plaintiffs without the Subordination Agreement being in place and BHI agreeing to relinquish and subordinate the Virginia Lease in favor of South Valley's rights under the loan. [Ex. 32 at § 2.4.] BHI also consented to and approved all provisions of the Note and the Deed of Trust regarding the loan. [Ex. 32 at § 2.2.] BHI also certified that the Summary of Lease Terms attached thereto as Appendix 1 was true and correct. [Ex. 32 at p. 2.] This Summary of Lease Terms confirms that the original Virginia Lease Term ran through January 2026. [Ex. 32 at Appx. 1, § 2.4.] BHI also expressly agreed not to terminate the Virginia Lease without first obtaining the consent of South Valley. [Ex. 32 at § 3.3.]

On March 16, 2006, the Willard Plaintiffs refinanced the South Valley loan with Telesis Community Credit Union ("Telesis") for a total loan amount of $13,312,500.00. Under this new loan (the "Telesis Loan"), the Willard Plaintiffs were required to pay $87,077.52 per month to Telesis's loan servicing agent, Business Partners, LLC ("Business Partners"). [*Id.* at ¶ 11; Exs. 33, 34, 35.]

3. Plaintiffs sacrifice $5.25 million to obtain the Herbst's Guaranty.

On February 17, 2007, BHI sent an offer letter to the Willard Plaintiffs and other landlords indicating that Herbst intended to acquire BHI's convenience store assets, which

included the Virginia Property. [*Id.* at ¶ 12; Ex. 5.] Therein, Herbst offered to personally guarantee BHI's payments and performance under the Virginia Lease if the Willard Plaintiffs agreed to amend the Virginia Lease. [*Id.* at ¶ 13; Ex. 5 at pp. 3-4.] Included with the offer letter was a statement from Johnson Jacobson Wilcox dated January 31, 2007 attesting to the fact that Herbst's net worth was in excess of $200 million. [*Id.*; Ex. 5 at p. 2.]

One of the requirements of Herbst's offer was that the Willard Plaintiffs agree to shorten the term of the Virginia Lease by thirty months, thereby forgoing $5,250,045.20 in rent that they would otherwise have received under the Virginia Lease, in return for which Herbst would personally guarantee BHI's payment and performance under the Virginia Lease. [*Id.* at ¶ 14.]

On March 9, 2007, based on the representations as to Herbst's net worth and the offer by Herbst to personally guarantee BHI's payments and performance under the Virginia Lease, the Willard Plaintiffs accepted Herbst's offer, executed an Amended Lease, and Herbst provided a personal guaranty (the "Virginia Guaranty"). [*Id.* at ¶ 15; Exs. 36, 37.]

4. Commencement in California of litigation for Defendants' breach.

On March 1, 2013, without any notice whatsoever, BHI defaulted on the Virginia Lease by not sending the monthly rental payment for March 2013. [*Id.* at ¶ 16.]

On March 10, 2013, having not received the monthly rental payment from BHI, the Willard Plaintiffs called BHI's finance department and were told that BHI was no longer going to pay rent. They immediately retained L. Steven Goldblatt, Esq. ("Goldblatt"), who sent a letter to Herbst on March 12, 2013 demanding payment of the March 2013 rent. [*Id.* at ¶ 17; Ex. 38.]

On March 18, 2013, counsel for Defendants responded to Goldblatt's letter with an unacceptable settlement offer that in no way indicated that BHI and Herbst intended to cure the breach nor honor the Virginia Guaranty. [*Id.* at ¶ 18; Ex. 39.]

On April 12, 2013, counsel for Defendants sent a letter to Goldblatt indicating that BHI did not intend to cure the breach and planned to vacate the Virginia Property on April 30, 2013. [*Id.* at ¶ 19; Ex. 40.]

On April 17, 2013, Goldblatt filed a lawsuit against BHI, Herbst, and others in Santa Clara County, California (the "California case") for breach of the Virginia Lease and foreclosure

of the Virginia Guaranty. [*Id.* at ¶ 20.]

5. Defendants undermine Plaintiffs' attempt to mitigate damages.

Shortly thereafter, the Willard Plaintiffs' real estate agent appealed to BHI to remain on the Virginia Property until a buyer or a new tenant could be obtained so that the Virginia Property would retain its value. Consequently, the Willard Plaintiffs entered into an interim "Operation and Management Agreement" with BHI effective May 1, 2013 under which BHI agreed to continue active operations on the Virginia Property. The Willard Plaintiffs agreed to this Operation and Management Agreement because they knew that the amount of rent at issue, which at that point was $140,175.55 per month, would be difficult to obtain from a new tenant if the Virginia Property was "dark." Herbst did not sign the Operation and Management Agreement nor is there any mention in it of the Virginia Guaranty within it. [*Id.* at ¶ 21; Ex. 41.]

The Willard Plaintiffs hired consultant Greg Breen ("Breen"), who had previously been the operations manager for BHI, to accompany them to the Virginia Property to assess its condition. Mr. Breen had formerly served as operations manager for BHI. They visited the Virginia Property on May 26, 2013 and May 27, 2013 and discovered that the Virginia Property was not fully operational. For example, all signage had been removed, there were severe maintenance issues, and several employees told me in person that they did not have enough supplies to conduct operations. [*Id.* at ¶ 22.]

On June 1, 2013, BHI vacated the Virginia Property having paid no rent whatsoever since their breach on March 1, 2013. Under the terms of the Operation and Management Agreement, BHI had until July 20, 2013 to provide the Willard Plaintiffs with a profit and loss statement and to remit net profits earned during May 2013 minus $10,000.00. [*Id.* at ¶ 23; Ex. 41 at § 4.] However, BHI never provided the Willard Plaintiffs with the required profit and loss statement, nor did they ever tender any payment of net profits for the month of May 2013. [*Id.*]

6. Willard files for Chapter 11 bankruptcy protection.

Because BHI had breached the Virginia Lease, thereby depriving the Willard Plaintiffs of more than $140,000.00 per month in income while they remained liable to make payments of $87,077.52 per month under the Telesis Loan, based on the strong advice from Goldblatt that he

do so, Larry Willard engaged bankruptcy attorney Stanley Zlotoff ("Zlotoff") to prepare and file a Chapter 11 bankruptcy petition. Willard paid Zlotoff $21,213.00 to handle his bankruptcy. [*Id.* at ¶ 24.]

On the advice of counsel, Willard also retained accountant Mitra Ehsanipour ("Ehsanipour") to prepare the accounting required for his bankruptcy petition. He paid Ehsanipour $17,520 for this work. [*Id.* at ¶ 25.]

On June 14, 2013, the Willard Plaintiffs received a Notice of Intent to Foreclose from Business Partners stating that a monetary default existed due to non-payment of the March 1, 2013, April 1, 2013, May 1, 2013, and June 1, 2013 monthly loan payments as well as non-payment of the 2012 Washoe County real estate property taxes. [*Id.* at ¶ 26; Ex. 42.]

On June 17, 2013, Willard filed a Chapter 11 bankruptcy petition. [*Id.* at ¶ 27; Ex. 43.]

On July 24, 2013, Zlotoff filed a motion to dismiss Willard's Chapter 11 bankruptcy case at Willard's direction due to the fact that his having filed for bankruptcy had not facilitated fruitful negotiations with Telesis regarding the outstanding $13 million loan. [*Id.* at ¶ 28; Ex. 44.]

As the Wooley Plaintiffs had done, in March 2014, the Willard Plaintiffs hired Moquin to substitute into the California case. [*Id.* at ¶ 29; Ex. 45.] All facts regarding the wrongful dismissal of the California case noted above also apply to the Willard Plaintiffs, who were co-plaintiffs in that case.

7. Circumstances necessitating the short sale of the Virginia Property.

Because the Willard Plaintiffs' real estate agent had been unsuccessful in finding a tenant to lease the Virginia Property and had also not been able to find a buyer willing to offer enough for the Virginia Property to cover the outstanding principal balance owed on the Telesis Loan, on January 14, 2014, the Willard Plaintiffs entered into an agreement with Longley Partners, LLC ("Longley") for Longley to purchase the Virginia Property via a short sale. [*Id.* at ¶ 34; Ex. 46.]

On February 14, 2014, Longley and the Willard Plaintiffs executed a Purchase and Sale Agreement under which Longley agreed to purchase the Virginia Property for $4 million. [*Id.* at

¶ 35; Ex. 47.]

On February 19, 2014, the Willard Plaintiffs entered into a Short Sale Agreement with National Credit Union Administration Board ("NCUAB") in its capacity as liquidating agent for Telesis for the sale of the Virginia Property. [*Id.* at ¶ 36; Ex. 48.]

On February 25, 2014, the Willard Plaintiffs engaged their real estate agent to conduct the short sale of the Virginia Property. [*Id.* at ¶ 37; Ex. 49.]

On March 3, 2014, the Virginia Property was sold via a short sale for a total of $4,050,354.68. Of that amount, $65,936.98 went to pay the outstanding 2012/2013 Washoe County property taxes, $120,000.00 was paid in commissions to Colliers International, and $14,615.00 was paid in closing costs. [*Id.* at ¶ 38; Ex. 50.]

Following the short sale, NCUAB canceled the outstanding debt owed under the Telesis Loan. This debt cancellation totaled $8,597,250.20. Due to this debt cancelation, the Willard Plaintiffs incurred a significant tax liability for Fiscal Year 2014. [*Id.* at ¶ 39; Ex. 51.] Per IRS regulations, since the Willard Plaintiffs' respective total debt was greater than their respective total assets immediately prior to the debt cancellation, these tax liabilities were not reported as income and consequently are no longer being claimed as damages flowing from Defendants' breach in the instant action.

However, because the Willard Plaintiffs were forced to give up the Virginia Property via the short sale, Willard lost $1,018,200.00 in Capital Loss Carryovers that he had been carrying as an asset and Overland lost $3,671,800.00 in Capital Loss Carryovers that it had been carrying as an asset under the 1031 Exchange through which the Willard Plaintiffs had purchased the Virginia Property. In addition, due to BHI's abandonment of the Virginia Property and subsequent breach of the Interim Operation and Management Agreement, the Virginia Property suffered a dramatic diminution in value, the amount of which is not relevant to the instant motion. [*Id.* at ¶ 40.]

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III.

ARGUMENT

A. Legal Standard

1. Summary Judgment.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exist, and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc*., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Substantive law controls whether factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

The Nevada Supreme Court has held that the non-moving party may not defeat a motion for summary judgment by relying "on gossamer threads of whimsy, speculation and conjecture." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). When a motion for summary judgment is made and supported as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon general allegations and conclusions, but must by affidavit or otherwise set forth specific facts demonstrating the existence of a genuine factual issue. *Id.*

The pleadings and proof offered in a Motion for Summary Judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still "bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered." *Wood*, *supra*, 121 Nev. at 732, 121 P.3d at 1031. "To successfully defend against a summary judgment motion, 'the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.'" *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (Nev. 2008) (*quoting Cuzze v. Univ. & Cmty. Coll. Sys. of Nev*., 123 Nev. 598, 72 P.3d 131, 134

(Nev. 2007)).

2. Interpretation of contract terms.

Under Nevada law, there is no right to interpret an agreement as meaning something different from what the parties intended as expressed by the language they saw fit to employ. *Reno Club, Inc. v. Young Investment Co*., 64 Nev. 312, 324, 182 P.2d 1011, 1017 (1947) (citations omitted). When the contract at issue is clear on its face, the Court should enforce the contract as it is written. *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). Where a contact is unambiguous, parole evidence may not be introduced to interpret the agreement of the parties. *See Margrave v. Dermody Props*., 110 Nev. 824, 829, 878 P.2d 291, 294 (1994), *citing Farmers Ins. Exchange v. Young*, 108 Nev. 328, 333 n.3, 832 P.2d 376 (1992); *Canfield v. Gill*, 101 Nev. 170, 171 n.1, 693 P.2d 1259 (1985).

3. Interpretation of express indemnity provisions.

An indemnity provision must be interpreted by the Court as a matter of law so long as extrinsic evidence is not required to interpret the indemnity language. *Continental-Heller Corp. v. Amtech Mechanical Services, Inc.,* 53 Cal.App.4th 500, 504, 61 Cal.Rptr.2d 668, 670 (1997). Contractual, or express, indemnity arises when two parties agree, pursuant to a contractual provision, that one party will reimburse the second party for liability from the first party's actions. *See George L. Brown Ins. Agency, Inc. v. Star Ins. Co*., 126 Nev. 316, 237 P.3d 92, 96 (Nev. 2010) (internal citations omitted); *Continental Casualty Co. v. Farnow*, 79 Nev. 428, 386 P.2d 90 (1963).

Where the parties have expressly contracted with respect to the duty to indemnify, the extent of that duty must be determined from the contract. *See George L. Brown, supra*, at 96 (internal citations omitted). Thus, the contract should be read as a whole and given a construction that will accomplish the object of providing indemnity for the losses covered by the contract. *American Excess Inc. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 604, 729 P.2d 1352 (1986); *National Union Fire Ins. v. Reno's Exec. Air*, 100 Nev. 360, 682 P.2d 1380 (1984).

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B. Relevant Terms And Provisions Of The Leases And Guaranties

In their Motion, Defendants seek to foreclose recovery by Plaintiffs of certain categories of damages. Specifically, Defendants contend that as a matter of law the Willard Plaintiffs cannot recover: 1) damages for attorneys' fees and costs incurred for legal representation in the California case against Defendants and in Bankruptcy Court; 2) the fees and costs associated with the short sale of the Virginia Property; and 3) damages due to the tax consequences of cancellation of the $8.6 million in debt for the Telesis Loan.

With respect to the Wooley Plaintiffs, Defendants argue that the following categories of damages are not recoverable: 1) attorneys' fees and costs incurred in the California case; 2) the costs associated with the sale of the Baring Property, which the Wooley Plaintiffs were forced to sell due to their two properties being cross-collateralized, as well as the loss incurred and the resulting tax liability due to the concomitant termination of 1031 Exchange benefits.

Defendants' contentions are based on three legal arguments: 1) attorney fees are only recoverable as an award to the prevailing party to litigation; 2) damages that were not foreseeable at the time of contract formation are not recoverable; 3) damages that were not actually incurred are not recoverable. With respect to the first two arguments, the express terms of the leases and personal guaranties at issue here render them wholly meritless. In terms of the third argument,

As shown below, based on Nevada law as well as the express language in the leases and personal guaranties at issue here, Defendants' contentions have no merit.

The terms and provisions related to damages for breach in the Virginia Lease and the Highway 50 Lease are absolutely identical, as are the Virginia Guaranty and the Highway 50 Guaranty. Consequently, the following analysis refers to these documents as "the Lease" and "the Guaranty" refers to one copy of each since the relevant terms are identical in versions for both the Willard and the Wooley Plaintiffs.

1. Lease terms regarding breaches and recoverable damages.

Generally, "when a contract is clear on its face, it will be construed from the written language and enforced as written." *Canfora*, *supra*, 121 Nev. at 776 (internal quotations

omitted). Likewise, when a duty to indemnify arises from contractual language, it is generally not subject to equitable considerations; rather, it is enforced in accordance with the terms of the contracting parties' agreement. *United Rentals Hwy. Techs. v. Wells Cargo*, 289 P.3d 221, 128 Nev. Adv. Op. No. 59 (Nev. 2012).

Below are the lease terms relating to remedies for breach by the Lessee and the damages that are recoverable, with references to the Virginia Lease.

a. BHI's Monetary Obligations are unconditional.

The Lease provides very strong protections for the Lessor in the event of a breach by the Lessee. In pertinent part, Section 4(D) of the Lease provides as follows:

> **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.

(Emphasis added.) [Ex. 28 at p. 2.]

The term "Monetary Obligations" is defined in the Lease as follows:

> [A]ll 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.

[*Id.* at p. 33.]

b. BHI is liable for all taxes flowing from their activities under the Lease.

Section 8 of the Lease requires Lessee to pay all taxes and assessments:

> *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.***

(Emphasis added.) [Ex. 28 at p. 4.]

c. Liquidated damages.

Section 20(B) of the Lease lays out the remedies available to the Lessor in the event of a breach by the Lessee. In pertinent part, it reads as follows:

> *Remedies.* **Upon the occurrence of an Event of Default**, with or without notice or demand, except as otherwise expressly provided herein [. . .], **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;
>
> [* * *]
>
> (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.***
>
> [* * *]
>
> (iii) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.
>
> [* * *]
>
> (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.***
>
> [* * *]

(Emphasis added.) [*Id.* at pp. 17-18.]

d. "Costs" defined.

The term "Costs" is defined in the Lease as follows:

> **[A]ll 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.

(Emphasis added.) [*Id.* at p. 30.]

e. Express indemnification against "any and all" Losses.

In addition, the Lease contains an extremely broad express indemnification provision in Section 15, which reads in pertinent part as follows:

> [. . .] 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** [. . .] **breach of, default under, or failure to perform, any term or provision of this Lease by Lessee** [. . .]

(Emphasis added.) [*Id.* at p. 14.]

The term "Indemnified Parties" is defined in the Lease as follows:

> **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.

[*Id.* at p. 32.]

f. "Losses" defined.

The term "Losses" is defined in the Lease as follows:

> ***[A]ny 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).

(Emphasis added.) [*Id.* at p. 33.]

g. Express attorneys' fees provision.

In addition to being recoverable as "Costs" (i.e., special damages) in several sections described above, an award of attorneys' fees is expressly provided for in Section 34 of the

Lease:

> *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** *[sic]* **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.***

(Emphasis added.) [Ex. 28 at p. 24.] It is important to note that under this section, the Lessor is entitled to both reasonable attorneys' fees and other Costs incurred as the prevailing party to litigation *and to all attorneys' fees and Costs incurred prior to the litigation in which they prevail.*

2. Relevant terms and provisions of the Herbst Guaranties.

In February and March of 2007, Herbst negotiated with Plaintiffs to modify some terms of their respective leases in return for which Herbst would provide Plaintiffs with a personal guarantee. Both the Wooley Plaintiffs and the Willard Plaintiffs accepted Herbst's offer. With respect to the Willard Plaintiffs, Herbst demanded that they shorten the lease term by thirty months in return for his personal guaranty; by doing so, the Willard Plaintiffs sacrified $5,250,045.20 in rent they would otherwise have received. [Dec. Willard at ¶ 14.

The terms in Highway 50 Guaranty and the Virginia Guaranty are absolutely identical. [Exs. 7, 37.] Within them, Herbst "unconditionally, absolutely, and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease." [Ex. 7 at p. 1; Ex. 37 at p. 1]

In the event of a breach of the Lease by BHI, Herbst "will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations," i.e., for "each of BHI's obligations arising out of and under the Lease." [*Id.* at § 1.]

In addition, Herbst waived "the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to" his obligations as guarantor." [*Id*. at § 2.]

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C. Plaintiffs Are Entitled To Attorneys' Fees And Costs As Special Damages

Defendants contend that Plaintiffs are not entitled to attorneys' fees and costs incurred prior to commencement of the instant litigation. They also contend that such fees are only ever awardable on motion by a prevailing party. Both of these contentions are incorrect.

Nevada Supreme Court has held:

> [W]hen a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages. They must be pleaded as special damages in the complaint pursuant to NRCP 9(g) and proved by competent evidence just as any other element of damages. . . . [W]hen attorney fees are considered as an element of damages, they must be the natural and proximate consequence of the injurious conduct.

Sandy Valley Assocs. V. Sky Ranch Estates owners Ass'n, 117 Nev. 948, 956-57, 35 P.3d 964, 969 (2001), receded from on other grounds, *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007); *see also Am. Fed. Of Musicians v. Reno's Riverside Hotel, Inc.*, 86 Nev. 695, 699, 475 P.2d 220, 222 (1970) ("It is appropriate in some cases to consider attorney's fees as an item of damage").

In their Verified Amended Complaint filed on January 21, 2015, Plaintiffs expressly sought compensation for the attorneys' fees and costs incurred prior to initiation of the instant matter as special damages.

Specifically, in Paragraphs 17 and 25 of Plaintiffs' Verified Amended Complaint, the Willard Plaintiffs alleged that, "As a further direct and proximate result of [BHI|Herbst] breaching the [Willard Lease|Herbst-Willard Guaranty], Willard filed for bankruptcy protection, incurring $22,623.00 in legal fees and $15,000.00 in accounting fees in the process." In Paragraphs 18 and 26, the Willard Plaintiffs alleged, "As a further direct and proximate result of BHI breaching the Willard Lease, the Willard Plaintiffs hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring $35,000.00 in attorney's fees."

Likewise, in Paragraphs 42 and 56 of Plaintiffs' Verified Amended Complaint, the Wooley Plaintiffs alleged that, "As a further direct and proximate result of [BHI|Herbst] breaching [Wooley Lease #1|the Herbst-Wooley Guaranty], the Wooley Plaintiffs hired an attorney to file suit against BHI and Herbst in Santa Clara County, California, thereby incurring

$45,088.00 in attorney's fees."

In addition, under Section 20(B)(v) of the Leases, Plaintiffs are entitled "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." [Ex. 28 at p. 18.] The term "Costs" is defined in Appendix "A" of the Leases and includes "all reasonable costs and expenses incurred by a Person, including without limitation, reasonable attorneys' fees and expenses." [*Id.* at p. 30.]

Furthermore, Section 15 of the Leases provides that Defendants shall indemnify Plaintiffs against "any and all Losses caused by, incurred or resulting from [BHI's] . . . breach of, default under, or failure to perform any term or provision of this Lease . . ." [*Id.* at p. 14.]

Also, under the express Attorneys' Fees provision of the Leases, which is found in Section 34, once they have prevailed in litigation, Plaintiffs are entitled not only to recover "all of its reasonable attorneys' fees and other Costs," but is also "entitled to all attorneys' fees and all other costs incurred in the preparation and service of any notice of demand hereunder, whether or not a legal action is subsequently commenced." [*Id.* at p. 24.]

On top of all this, Defendants have once again falsely claimed in a pleading before this Court that they won their Motion to Dismiss in the California case, submitting as evidence in support thereof a "docket sheet" printed off the Web while omitting the fact that the court granted their Motion because Defendants did not take the hearing thereon off-calendar as required under the Joint Stipulation they signed but told Plaintiffs that they had done so. Regardless of whether or not Defendants intended to mislead Plaintiffs at the time, there is no excuse for Defendants fraudulently claiming that the Motion was won on the merits. All claims within Defendant's instant Motion insinuating that Plaintiffs have put forth frivolous claims pale in comparison to that.

Consequently, it is beyond dispute that Plaintiffs are entitled to recover attorneys' fees incurred in dealing with Defendants' breach prior to commencement of the instant action. Contrary to Defendants' assertion, such fees and costs are recoverable as special damages.

///

///

1. Willard is entitled to attorneys' fees and costs incurred in bankruptcy.

Many of the provisions of the Lease discussed above also serve to authorize recovery by Willard of the attorney fees and costs incurred when he filed for bankruptcy. Any argument that it was "unforeseeable" that Willard would take such action if Defendants breached the Virginia Lease and Guaranty is thoroughly refuted by virtue of BHI having signed a *Subordination, Attornment and Nondisturbance Agreement* in which they "consent[ed] to and approve[d] (a) all provisions of the Note and the Deed of Trust in favor of Lender, and (b) all agreements, including but not limited to any loan or escrow agreements, between Borrower and Lender for the disbursement of the proceeds of such Loan" [Ex. 29 at § 2.2] and furthermore acknowledged that but for BHI agreeing to subordinate the Virginia Lease in favor of the Deed of Trust, the loan would not have been made. [*Id.* at § 2.4.]

Having acknowledged and approved of all provisions of the Note securing the Willard Plaintiff's loan in excess of $13 million for the purchase of the Virginia Property for $17.75 million, it was both eminently foreseeable and highly probable that Willard would have to file for bankruptcy in the event that Defendants' breached the Virginia Lease and he was no longer receiving the $140,000.00+/month in rent, $87,000.00 of which went directly to pay the loan.

Consequently, with respect to Plaintiffs' claims for attorneys' fees and costs incurred prior to the instant litigation, Defendant's Motion must be denied.

D. Under The Leases, All Losses Flowing From The Breach Recoverable

Under Nevada law, a plaintiff is not limited to recovery of direct damages for breach of contract but may also recover consequential damages that were contemplated or reasonably foreseeable to the contracting parties when the contract was formed. *See Colo. Env't's, Inc. v. Valley Grading Corp.*, 105 Nev. 464, 471, 779 P.2d 80, 84 (1989).

"Under well settled rules of contract construction, a court has no power to create a new contract for the parties which they have not created or intended themselves. Parties are presumed to contract with reference to existing statutes. Applicable statutes will generally be incorporated into the contract; however, other legal principles may govern the legal relationship where they are expressly set forth in the contract. Indeed, 'when parties to a contract foresee a condition

which may develop and provide in their contract a remedy for the happening of that condition, the presumption is that the parties intended the prescribed remedy as the sole remedy for that condition.'" *Gilman v. Gilman*, 114 Nev. 416, 426, 956 P.2d 761, 767 (1998) (internal citations omitted).

Here, the Leases contain numerous provisions authorizing Plaintiffs to recover "any and all" damages proximately flowing from a breach. To wit, the liquidated damages clause in Section 20(B)(i)(vi) allows Plaintiffs to recover "any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default. . . ." [Ex. 28 at p. 18.] Likewise, Section 15 expressly provides that "Lessee shall indemnify, protect, defend and hold harmless [Lessor] from and against any and all Losses caused by, incurred or resulting from Lessee's [. . .] breach of, default under, or failure to perform any term or provision of this Lease by Lessee." [*Id.* at p. 14.] The "Losses" covered include "any and all claims, suits, liabilities [. . .] actions, proceedings, obligations, debts, damages, losses, Costs, diminutions in value, fines, penalties, interest, charges, fees, [. . .] and damages of whatever kind or nature. . . ." [*Id.* at p. 30.]

Defendants do not dispute the fact that the Baring Property and the Highway 50 Property were cross-collateralized, nor have they countered the fact that as a result, due to Defendants' breach the Wooley Plaintiffs were forced to sell the Baring Property in order to not lose both properties. Consequently, under the provisions discussed above, the Wooley Plaintiffs are clearly entitled to compensation for the losses they incurred.

With respect to Defendant's admitted confusion regarding the Wooley Plaintiffs' claims, the Wooley Plaintiffs incurred a tax liability from the sale of the Baring Property due to the loss of shelter provided by the 1031 Exchange under which it had been purchased, triggering liability for carry-over capital gains. [Decl. Wooley at ¶ 27.]

In their Motion, Defendants claim that "Contrary to Wooley's claim that the Baring Property was sold at a loss, the closing statement for the sale of the Baring Property states that Wooley sold the Baring Property at a gain of $870,844.39, which Wooley admits that he deposited in his bank account." The Wooley Plaintiffs purchased the Baring Property for

$3,286,552.00 [Ex. 9] and sold it for $3,1000,000.000 [Ex. 24]—obviously incurring a net loss. The fact that Wooley received $870,844.39 at close of escrow ignores the fact that he tendered over $1 million in earnest money to purchase it.

Overall, every category of damages Defendants seek to exclude are recoverable under the express terms of the Lease, and, as evidenced by the Affidavits and Exhibits accompanying this Opposition, all of the claimed damages were the direct and proximate result of Defendants' breach.

Consequently, Defendants' Motion for Partial Summary Judgment should be denied.

IV.

CONCLUSION

Based on the foregoing argument, Plaintiffs respectfully request that the Court deny Defendants' Motion for Partial Summary Judgment.

Respectfully submitted,

LAW OFFICES OF BRIAN P. MOQUIN

DATED: August 29, 2016

By: _____

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

DAVID C. O'MARA
Nevada Bar No. 8599
311 East Liberty Street
Reno, Nevada 89501
(775) 323-1321
(775) 323-4082 (facsimile)

Attorneys for Plaintiffs

AFFIRMATION

(Pursuant to NRS 239B.030)

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

LAW OFFICES OF BRIAN P. MOQUIN

DATED: August 29, 2015

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

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

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

DATED: August 30, 2016

BRIAN P. MOQUIN

INDEX OF EXHIBITS

EXH. NO.	DESCRIPTION	PAGES
1	*Purchase and Sale Agreement* dated July 1, 2005 for purchase of the Highway 50 Property	13
2	*Lease Agreement* dated December 2, 2005 for the Highway 50 Property	43
3	*Three Year Adjustable Term Note* dated January 19, 2007 in the amount of $2,200,000.00 for the Highway 50 Property	4
4	*Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2007, Inst. No. 363893, for the Highway 50 Property	17
5	Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI	15
6	*First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property	7
7	*Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property	4
8	*Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property	2
9	*Purchase and Sale Agreement* dated July 14, 2006 for the Baring Property	22
10	*Lease Agreement* dated June 6, 2006 for the Baring Property	35
11	*Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,000.00 for the Baring Property	35
12	*Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property	17
13	*First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property	7
14	*Guaranty Agreement* dated March 12, 2007 for the Baring Property	4
15	*Assignment of Entitlements, Contracts, Rents and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property	11
16	*Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.	7
17	*Substitution of Attorney* forms for the Wooley Plaintiffs filed March 6 and March 13, 2014 in the California case	4
18	*Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California case	3

EXH. NO.	DESCRIPTION	PAGES
19	E-mail thread dated March 14, 2014 between Cindy Grinstead and Brian Moquin re Joint Stipulation in California case	3
20	Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court	6
21	*Request for Dismissal* without prejudice filed May 19, 2014 in the California case	2
22	*Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property	8
23	E-mail message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties	2
24	*Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property	2
25	2014 Federal Tax Return for Edward C. and Judith A. Wooley	35
26	2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley	2
27	*Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property	22
28	*Lease Agreement* dated November 18, 2005 for the Virginia Property	35
29	*Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property	2
30	*Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00	17
31	*Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs in favor of Telesis Community Credit Union	4
32	*Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property	14
33	*Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00	25
34	*Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage	1
35	*Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust	1

EXH. NO.	DESCRIPTION	PAGES
36	*Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property	5
37	*Guaranty Agreement* dated March 9, 2007 for the Virginia Property	4
38	Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease	4
39	Letter dated March 18, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease	2
40	Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease	2
41	*Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property	4
42	*Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property	2
43	*Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 3013	3
44	*Declaration In Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013, Northern District of California Bankruptcy Court Case No. 13-53293 CN	4
45	*Substitution of Attorney* forms for the Willard Plaintiffs filed March 6, 2014 in the California case	4
46	*Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property	10
47	*Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00	6
48	*Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property	19
49	*Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property	1
50	*Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property	1
51	IRS Form 1099-C issued by the National Credit Union Administration Board to Overland evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000.000.00	1

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Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

Exhibit 1

Exhibit 1

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** ("**Agreement**") is made and entered into effective as of July 1, 2005 ("**Effective Date**") between and among **TIBAROM INC.**, a Delaware corporation ("**Seller**") and **EDWARD C. WOOLEY** and **JUDITH A. WOOLEY**, or assignee ("**Buyer**").

RECITALS

A. Prior to the Closing as contemplated herein, Seller shall own a portion of the real property located in the City of Carson City, Nevada, Carson City County Assessor Parcel Number 02-368-22 consisting of a parcel of approximately 17,000 square feet ("**Property**"), as more particularly described in **Exhibit "A"**.

B. Seller shall develop the Property as follows. Seller shall cause the construction, at Seller's expense, of a mini full-service restaurant or similar use, a quick service restaurant or similar use, a convenience store, and subject to approval by the Nevada Gaming Control Board ("**NGCB**"), slot machines operated by a licensed slot route (collectively, "**Project**"), all conditional on governmental approvals. The Property and Project will be owned by Lessor except for the gaming machines which remain the property of the licensed operator.

C. The Seller will be the "**Lessee**", and Buyer shall be the "**Lessor**", at the Property.

D. Seller desires to lease-back the Property pursuant to the form of lease attached hereto as "**Exhibit B**" ("**Lease**"). The Lease shall be signed at Closing. The parties desire to lease with an initial rent term of twenty (20) years, with two (2) five (5) years options to extend the Lease. The initial annual rent shall be **TWO HUNDRED SEVENTY TWO THOUSAND DOLLARS ($272,000.00)** Lease payments shall commence upon Closing (as defined herein), and shall be prorated for a partial month, as necessary. Lease payments shall thereafter be made monthly on the first day of each month. The minimum rent shall be adjusted upward by two (2) percent compounded annually, on the anniversary date of the first lease payment date under the Lease during each year of the initial and extended terms of the Lease. Buyer and Seller acknowledge that the Lease is a NNN Lease, and Seller as Lessee shall be responsible for all liens and encumbrances. No security deposit from Seller as Lessee to Buyer as Lessor shall be required.

NOW, THEREFORE, in consideration of the mutual promises, and subject to the conditions set forth below, the parties now agree as follows:

1. **Purchase Price**. The total purchase price to be paid by Buyer to Seller for the purchase of the Property shall be the sum of **THREE MILLION FOUR HUNDRED THOUSAND DOLLARS ($3,400,000)** ("**Purchase Price**"). The provisions of this Agreement shall constitute joint instructions to the Title Company.

1.1 **Initial Deposit; Second Deposit**. Within three (3) business days of execution of this Agreement, Buyer shall deposit with the Escrow Holder (as defined below) **FIFTY THOUSAND DOLLARS ($50,000.00)** as an initial, refundable deposit until expiration of the

Due Diligence Period whereupon the deposit shall be nonrefundable, and applicable to the Purchase Price ("**Initial Deposit**"). On or before July 15, 2005, Buyer shall deposit no less than **ONE MILLION FOUR HUNDRED FIFTY THOUSAND DOLLARS ($1,450,000)** as a second deposit ("**Second Deposit**") with Escrow Holder. The Second Deposit and First Deposit are collectively known as "Total Deposit". The Total Deposit is non-refundable and applicable to the Purchase Price, and shall be released to Seller without further written instruction upon written demand by Seller to Escrow Holder. Buyer's signature herein is tacit agreement to this release of funds.

1.2 **Purchase Price Payment; Closing**. At Closing, Buyer shall pay in cash or certified funds payable in the form of certified check or wire transfer of funds to Escrow Holder the amount of **ONE MILLION NINE HUNDRED THOUSAND DOLLARS ($1,900,000)**, or the balance of the Purchase Price due, whichever is greater, including all costs and fees associated with the Closing ("**Balance Due**"), at which time Seller shall transfer title in Property to Buyer.

1.3 **Financing**. Buyer shall have one hundred and twenty (120) days from the day of Closing to obtain financing in the amount of the Balance Due. If Buyer has not obtained financing with the 120 day period, Buyer may request up to two (2) separate, thirty (30) day extensions which must be presented to Seller inn writing not less than ten (10) days prior to Closing. Each thirty (30) day extension shall be accompanied by a non-refundable payment of **FIVE THOUSAND DOLLARS ($5,000)**, payable to Seller, which payment is not applicable to the Purchase Price, and is not refundable under any circumstances.

2. CLOSING; ESCROW HOLDER.

2.1 **Escrow Holder; Deposit; Closing Date**. Escrow Holder shall cause, at Buyer's expense, a current commitment for title insurance ("**Title Commitment**") concerning the Property to be issued by First American Title Company. Terri Hovdestad, Escrow Officer, First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, 714-800-3167 shall serve as title agent and "**Escrow Holder**" for this transaction. Buyer and Seller shall share equally all reasonable and customary escrow fees and charges. The Closing shall occur no later than at the time Buyer obtains financing and funds for the full amount of the Purchase Price, which shall be no later than ninety (90) days after Closing, unless Buyer obtains an extension as described above.. Promptly after mutual execution of this Agreement, Buyer and Seller shall open an escrow with Escrow Holder, and shall execute such instructions, as Escrow Holder may request which are not inconsistent with the provisions of this Agreement. Escrow Holder is hereby authorized and instructed to conduct the escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code.

2.2 **Documents Required at or before Closing**. Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing, an original ink signed deed duly executed by the appropriate party and in recordable form, conveying fee title to the Property to Buyer. Buyer shall deliver to Escrow Holder in time for delivery to Seller at the Closing, an original ink signed

deed duly executed by the appropriate party and in recordable form, conveying fee title to the Apartment Building to Seller. The parties shall also execute a mutually acceptable Lease based on the Terms in Recital D.

2.3 **Other Obligations at Closing**. At Closing, the parties shall execute and deliver to one another all documents set forth in this Agreement, and, in addition, such other documents as may be necessary or appropriate to accomplish in a complete and proper manner the transaction contemplated by this Agreement.

2.4 **LIQUIDATED DAMAGES**. **IN THE EVENT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS CONTEMPLATED HEREIN AND SELLER IS READY, WILLING AND ABLE TO CONSUMMATE THE SALE CONTEMPLATED HEREIN, BUYER AND SELLER HEREBY AGREE THAT THE DEPOSIT MADE SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES, WHICH IS NOT INTENDED TO BE A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A MATERIAL DEFAULT HEREUNDER BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT AND KIND OF DEPOSIT MADE HAS BEEN AGREED UPON, AFTER NEGOTIATION AND TAKING INTO CONSIDERATION ALL CIRCUMSTANCES EXISTING AS OF THE AGREEMENT DATE AS WELL AS THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO SELLER THAT COULD BE ANTICIPATED, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES, AND SUCH SUM SHALL BE PAID TO AND RETAINED BY SELLER AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A MATERIAL DEFAULT BY BUYER UNDER THIS AGREEMENT. SELLER HEREBY WAIVES THE PROVISIONS OF ANY APPLICABLE LAW TO THE CONTRARY. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.**

SELLER'S INITIALS: JM **BUYER'S INITIALS:**_____

3. **TITLE REPORT; TITLE**.

3.1 **Title to Property**. Seller will provide Buyer with a preliminary title report on the Property ("**Property Title Report**"), together with full legible copies of all exceptions in the Report upon opening of escrow. Seller, at its expense, shall provide good, valid and marketable

deed duly executed by the appropriate party and in recordable form, conveying fee title to the Apartment Building to Seller. The parties shall also execute a mutually acceptable Lease based on the Terms in Recital D.

2.3 **Other Obligations at Closing**. At Closing, the parties shall execute and deliver to one another all documents set forth in this Agreement, and, in addition, such other documents as may be necessary or appropriate to accomplish in a complete and proper manner the transaction contemplated by this Agreement.

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SELLER'S INITIALS:_____ **BUYER'S INITIALS:** GW JH

3. **TITLE REPORT; TITLE**.

3.1 **Title to Property**. Seller will provide Buyer with a preliminary title report on the Property ("**Property Title Report**"), together with full legible copies of all exceptions in the Report upon opening of escrow. Seller, at its expense, shall provide good, valid and marketable

title to free and clear of all liens and in a form acceptable to Buyer, as evidenced by Escrow Holder's ALTA standard policy of title insurance in the amount of the Purchase Price, showing title in the Property vested in Buyer.

4. **CLOSING COSTS.** All State, County and City transfer taxes and/or documentary transfer taxes, premium for the policy of title insurance, and all other costs and expenses of escrow including escrow fees and recording fees shall be according to the County custom of the Property's jurisdiction.

5. **BUYER'S AND SELLER'S CONDITIONS TO CLOSING.**

5.1 **Buyer's Conditions to Closing**. Buyer's obligation to close shall be conditioned on the satisfaction of only the following conditions at Closing. Buyer's review and all inspections are at Buyer's sole cost and expense. All documentation, including but not limited to reports and records supplied by Seller and Buyer's review and inspection and copying shall be strictly confidential and distribution shall be limited to Buyer's agents and representatives, legal and financial advisors, and/or third parties with an economic interest in the transaction.

A. **Due Diligence Period**. The "**Due Diligence Period**" for review of all documents shall expire **five (5) days** after Buyer's receipt of the following documents: (i) preliminary title report; (ii) survey; and (iii) phase I environmental report. Buyer acknowledges receipt of the above documents at the time of the execution of this Agreement.

B. **Financial Ability.** Buyer shall provide, upon Seller's request, written evidence from Buyer's lender or another financial institution and/or Qualified Intermediary with knowledge of Buyer's ability to purchase this Property.

C. **Deeds and Title Insurance on Property**. Buyer's receipt of Title Insurance on the Property as specified in Section 3 above.

D. **Performance by Seller**. On or before the Closing Date, Seller will have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required of any of them by this Agreement.

E. **Accuracy of Seller's Warranties**. Except as otherwise permitted by this Agreement, all warranties by Seller in this Agreement, or in any written document that will be delivered to Buyer by any of them under this Agreement, must be true in all material respects on the Closing Date as though made at that time.

5.2 **Seller's Condition to Closing**. Seller's obligation to close shall be conditioned on the satisfaction of the following conditions precedent in favor of Seller at Closing:

A. **Performance by Buyer**. On or before the Closing Date, Buyer will have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER**. As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller makes the following representations and warranties to Buyer:

6.1 **Organization and Qualification**. Tibarom Inc., is a validly existing corporation and in good standing under the laws of the State of Delaware and is qualified to do business in the State of Nevada and has the power and authority to lease and operate its business at the Property.

6.2 **Authority Relative to this Agreement**. Seller has the power and authority to enter into this Agreement and this Agreement and all agreements, instruments of transfer, documents and deeds to be executed in connection with the Closing of this transaction, have been or will be, as applicable, duly executed and delivered by Seller and constitute valid and binding obligations of Seller, enforceable against Seller, in accordance with their terms. Seller has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement, and except as otherwise provided for or disclosed in this Agreement, no approvals or consents of any persons other than Seller are required. The execution and delivery of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller.

6.3 **Title to Assets and the Property**. Except as otherwise provided for or disclosed in this Agreement, Seller has, or will at the time of the Closing have, good and marketable title to the Property. The Property is free and clear of restrictions on or conditions to transfer or assignment, and are or will be as of the Closing Date free and clear of mortgages, liens, mechanics' or materialmen's lien rights, pledges, charges, monetary encumbrances (other than bonds or improvement assessments as provided elsewhere in this Agreement), equities and claims.

6.4 **Buyer's Acceptance of the Property.** Buyer represents to Seller that it has made a visual inspection of the Property. Buyer acknowledges that it has the obligation to conduct studies and investigations of the Property, at its sole cost and expense, for the purposes of becoming familiar with the condition of the Property to the extent it deems necessary.

6.5 **Due Diligence Data**. All due diligence documentation produced by Seller is true and accurate.

6.6 **Litigation**. There is no pending, or, to the best of Seller's knowledge, threatened, suit action, arbitration, or legal, administrative, or other proceeding, or governmental investigation against or affecting the Property.

6.7 **Compliance with Laws and Regulations**. To the best of Seller's present knowledge, the Property is in compliance with all material requirements of law, Federal, State and local, and all material requirements of all governmental bodies or agencies having jurisdiction over the Property. There are no present disputes about taxes of any nature concerning the Property. The Seller has not received any notice, not heretofore complied with,

from any Federal, State or municipal authority or any insurance or inspection body that the Property fails to comply with any applicable law, ordinance, regulation, building or zoning law, or requirement of any public body or authority.

6.8 **Valid and Binding Agreement**. The representations, warranties, and covenants made under this Agreement constitute valid and binding obligations of Seller and are enforceable against Seller.

6.9 **Permits**. Within a commercially reasonable period of time, Seller shall have made application for all necessary grading, building and other permits from all the appropriate governmental agencies for the Project.

6.10 **Construction Indemnities**. Seller shall hold harmless Buyer from and against any future claims whether direct or indirect arising out of or in any way related to the construction of the Project. All construction shall meet all governmental rules and regulations currently in effect on the date Seller obtains the certificate of occupancy for the Project. Seller shall specifically obtain Nevada State Certification for the modular building construction. Seller shall perform or cause Seller's contractor to perform all work in a good and workmanlike manner.

7. **REPRESENTATIONS AND WARRANTIES OF BUYER**. As a material inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer makes the following representations and warranties to Seller:

7.1 **Organization and Qualification**. The Buyer has the power and authority to own this real property.

7.2 **Authority Relative to this Agreement**. This Agreement and all agreements, instruments of transfer, documents and deeds to be executed in connection with the closing of this transaction, have been or will be, as applicable, duly executed and delivered by Buyer and constitute valid and binding obligations of Buyer, enforceable against Buyer, in accordance with their terms. Seller has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement, and except as otherwise provided for or disclosed in this Agreement, no approvals or consents of any persons other than Buyer are necessary in connection with it.

7.3 **Due Diligence Data**. All due diligence documentation produced by Buyer on the Apartment Building is true and accurate.

7.4 **Valid and Binding Agreement**. The representations, warranties, and covenants made under this Agreement constitute valid and binding obligations of Buyer and are enforceable against Buyer.

8. **CONFIDENTIALITY**. Buyer and Seller shall keep this Agreement and any and all information, materials and documentation, including but not limited to financial statements,

reports, records and asset lists, and information submitted by any party hereto to the other, whether submitted pursuant to the terms of this Agreement, or otherwise, or otherwise discovered in furtherance of this Agreement, confidential and make no public announcement of its content, nor shall either party divulge, communicate, disclose or use to the detriment of the other party, or for the benefit of any other person or persons, such information, documents or materials in any manner nor use such information or materials for any purposes other than as set forth in this Agreement. Disclosure to each party's respective agents, representatives, attorneys, accountants, lenders and/or third parties with an economic interest in the transaction is exempt.

9. **ADDITIONAL AGREEMENTS**.

9.1 **Fees and Expenses**. Buyer, on the one side, and Seller, on the other side, shall each bear their own expenses for legal and accounting fees, costs and expenses incurred in negotiating and preparing this Agreement, negotiating and preparing all of the other paperwork in connection with this Agreement, and carrying out the transactions contemplated by this Agreement.

9.2 **Broker's Fees**. The Buyer is represented by Sperry Van Ness ("**Sperry Van Ness**"). The commission amount shall not exceed three (3) percent of the Purchase Price and shall be paid to Sperry Van Ness at Closing. Seller shall pay all commissions associated with this transaction at the time the Purchase Price is fully funded.

9.3 **Further Acts**. The parties agree to execute and deliver all documents and perform all further acts that may be reasonably necessary to carry out the provisions of this Agreement and to cooperate with each other in connection with the foregoing.

9.4 **Controlling Law**. This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of State of Nevada.

9.5 **Attorneys' Fees and Costs**. If any party hereto institutes any legal action or proceeding arising out of or related to this Agreement the prevailing party shall be entitled to reasonable attorneys' fees and expenses, and all other recoverable costs and damages, including any and all such costs on appeal.

9.6 **Parties in Interest**. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person any right or remedies of any nature whatsoever under or by reason of this Agreement.

9.7 **Assignment**. This Agreement (including the other documents and instruments referred to herein) may not be assigned without the written consent of each other party hereto, which consent shall not be unreasonably withheld.

9.8 **Provisions Separable**. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

9.9 **Integration**. This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and except as herein contained supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. This Agreement may not be modified or amended other than by an agreement in writing signed by each of the parties named on the first page of this Agreement.

9.10 **Time is of Essence**. Time is of the essence of this Agreement, all documents and all transactions contemplated herein.

9.11 **Notices**. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when (1) delivered (personally, by courier service such as Federal Express, or by other messenger); (2) if transmitted by facsimile transmission, then on the date of transmission as confirmed by the facsimile equipment the recipient location; provided that if transmission is after 5:00 p.m. on any day, then notice shall not be deemed given until the following business day; or (3) or the date mailed, when deposited in the United States mails, certified mail, postage prepaid, return receipt requested, addressed as set forth below:

TO: **Seller:**

Paul Morabito
TIBAROM INC.
668 North Pacific Coast Highway, Suite 517
Laguna Beach, California 92651
P: (949) 464-9251
F: (949) 464-9261

with a copy to:

Jeffrey Eric Langan, Esq.
Sr. Vice President and General Counsel
555 West Fifth Street, 30th Floor
Los Angeles, California 90013
P: (213) 996-8340
F: (213) 996-8341

TO: Buyer:
Edward C. and Janet A. Wooley
41 Peralta Avenue
Los Gatos, California 95030
P: (408) 656-3291

Notice by mail shall be by airmail if posted outside of the continental United States. Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

9.12 **Execution in Counterparts and Via Facsimile**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all of the parties reflected hereon as the signatories. A signature on this Agreement sent via facsimile shall be deemed an original signature for the purposes of enforcement.

9.13 **Section Headings**. The section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect their interpretation.

9.14 **Number of Days**. In computing the number of days for purposes of this Agreement, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which federal banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

9.15 **Construction of Agreement**. This Agreement has been prepared, and negotiations in connection with it have been conducted, by the joint efforts of Seller and Buyer. This Agreement is to be construed simply and fairly, and not strictly for or against any of the parties.

9.16 **Further Acts**. The parties agree to execute and deliver all documents and perform all further acts that may be reasonably necessary to carry out the provisions of this Agreement.

9.17 **Tax Deferred Exchange**. Seller and Buyer are aware and acknowledge that Buyer may be purchasing the Property and Seller may be selling the Property as part of a transaction to qualify as a tax-deferred exchange pursuant to section 1031 of the Internal Revenue Code of 1986, as amended. Buyer and Seller agree to use their best efforts and cooperate in completing any such exchange, including executing and acknowledging all documents reasonably requested by the other party (subject to the reasonable approval of the parties' respective counsel), at no additional liability or cost to the other party. Buyer and Seller shall indemnify and hold one another harmless from any and all claims, liabilities, and costs resulting from each such party's exchange transaction. Seller makes no legal or tax representations regarding Buyer's exchange.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

SELLER:

TIBAROM INC.,
a Delaware corporation

By: _____
Jeffrey E. Langan
Sr. Vice President and General Counsel

BUYER:

_____
Edward C. Wooley

_____
Judith A. Wooley

Exhibit "A"

All that real property situated in Carson City, State of Nevada, described as follows:

Parcel 2 of Parcel Map No. 2566, filed in the office of the Recorder of Carson City, State of Nevada, on June 30, 2005, in Book 9, page 2566, as File Number 338929

Exhibit "B"
Lease

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 2

EXHIBIT 2

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of December ___, 2005 by and between [**EDWARD C. WOOLEY** and **JUDITH A. WOOLEY**], a _____ _____ ("Lessor"), whose address is _____, 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 untenantability 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 Projection, 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 it 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 withhold 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]

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

LESSOR:

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Tax Identification No. [redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

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

Notary Public

My Commission Expires: April 1, 2009

CHRIS GONZALES
Commission # 1566164
Notary Public - California
Santa Clara County
My Comm. Expires Apr 1, 2009

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____
Paul Morabito, its Chief Executive Officer
Tax Identification No. 88-0125101

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

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.

"*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

(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.

"*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).

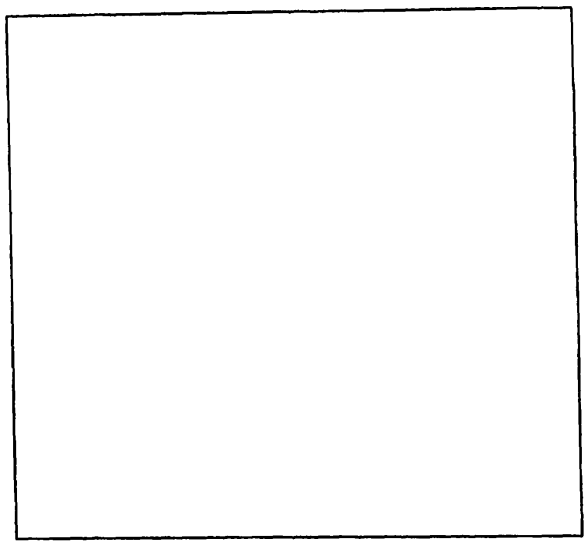
EXHIBIT B

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 _____, and/or its participants, successors or assigns.

W I T N E S S E T H:

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)

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 3

EXHIBIT 3

The Network of Preferred Community Banks℠

Loan No. 101112365

THREE YEAR ADJUSTABLE TERM NOTE

January 19, 2007

$2,200,000.00

For value received, the undersigned **Edward C Wooley and Judith A Wooley, as trustees of Edward C Wooley & Judith A Wooley Intervivos Revocable Trust Year 2000, a California trust, Edward C Wooley, an individual, and Judith A Wooley, an individual**, each with an address of **41 Peralta Avenue, Los Gatos, California 95030** (collectively, the "Borrower"), jointly and severally, promise to pay to the order of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (together with its successors and assigns, the "Bank"), the principal amount of **Two Million Two Hundred Thousand Dollars and Zero Cents ($2,200,000.00)** on or before ***January 15, 2017*** (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full. The Borrower shall pay consecutive monthly installments of principal and interest, as follows: **$15,323.85** on **February 15, 2007**, and the same amount (except the last installment which shall be the unpaid balance) on the **15th** day of each month thereafter. The aggregate principal balance outstanding shall initially bear interest thereon at a per annum rate equal to **6.75%**. The interest rate on the aggregate principal balance shall change on **January 15, 2010** and again on **January 15, 2013** (each a "Change Date") to a fixed rate equal to **Three Percent** (3.00%) above the Treasury Index (as hereinafter defined) on each such Change Date. On each Change Date each monthly installment due and payable until the next Change Date shall be recalculated (increased or reduced) to reflect the adjusted interest rate, the outstanding principal balance at such time and the remaining term of the **300**-month amortization period commencing on the date of this Note in accordance with the Bank's calculation in the Bank's sole discretion.

Notwithstanding anything to the contrary in this Note, the interest rate on this Note is limited by a floor as follows: the minimum interest rate (i.e. floor) is **5.25%**.

Treasury Index means the weekly average yield on United States Treasury securities, adjusted to a constant maturity equal to the Applicable Treasury Rate Period (as hereinafter defined), or, in the event the Treasury Index is no longer available, the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto. The Applicable Treasury Rate Period is 3 years.

Principal and interest shall be payable at the Bank's main office or at such other place as the Bank may designate in writing in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

At the option of the Bank, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower or any guarantor hereof to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor hereof under any other loan document delivered by the Borrower or any guarantor, or in connection with the loan evidenced by this Note or any other agreement by the Borrower or any guarantor with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default; (2) failure of

the Borrower or any guarantor hereof to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days; (3) default of any material liability, obligation or undertaking of the Borrower or any guarantor hereof to any other party continuing for 30 days; (4) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor hereof in connection with the loan evidenced by this Note or in any supporting financial statement of the Borrower or any guarantor hereof shall be determined by the Bank to have been false in any material respect when made; (5) if the Borrower or any guarantor hereof is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or any guarantor hereof and, if the Borrower or any guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor hereof; (9) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor hereof, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor hereof; (11) the termination or revocation of any guaranty hereof; or (12) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor hereof, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor hereof to the Bank has been or may be impaired.

Any payments received by the Bank on account of this Note shall, at the Bank's option, be applied first, to accrued and unpaid interest; second, to the unpaid principal balance hereof; third to any costs, expenses or charges then owed to the Bank by the Borrower; and the balance to escrows, if any. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Bank may determine. The Borrower hereby authorizes the Bank to charge any deposit account which the Borrower may maintain with the Bank for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. More specifically, if from any circumstances whatsoever, fulfillment of any provision of this Note or any other loan document excuted and delivered in connection with this Note, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Bank may, at its option (a) reduce the obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the obligations, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Bank had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note or any other loan document that is in excess of the applicable limit on interest. It is the intention of Borrower and Bank that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this paragraph shall control every other provision of this Note, and any provision of any other loan document in conflict with this paragraph.

The Borrower represents to the Bank that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock

or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each guarantor hereof grant to the Bank a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and each guarantor hereof and any cash, securities, instruments or other property of the Borrower and each guarantor hereof in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any guarantor hereof to the Bank or any Bank Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any guarantor hereof to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

No delay or omission on the part of the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Bank, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally, including any defense based on impairment of collateral.

The Borrower and each guarantor of this Note shall indemnify, defend and hold the Bank and the Bank Affiliates and their directors, officers, employees, agents and attorneys harmless against any claim brought or threatened against the Bank by the Borrower, by any guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower or any guarantor hereof (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's selection, but at the expense of the Borrower and any guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Bank.

The Borrower and each guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 3.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 15 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Bank's other remedies on account thereof), a late charge equal to the greater of $10.00 or 10.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Bank and its successors, endorsees and assigns.

The Borrower and each guarantor, if any, hereby waive presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of any kind, in each case that would otherwise be available in connection with this Note including, without limitation, any right (whether now or hereafter existing) to require the holder hereof to first proceed against the Borrower, or any guarantor, for any security.

Executed as of **January 19, 2007.**

Borrower:

Edward C. Wooley, Trustee of Edward C. Wooley & Judith A. Wooley Intervivos Revocable Trust Year 2000

Judith A. Wooley, Trustee of Edward C. Wooley & Judith A. Wooley Intervivos Revocable Trust Year 2000

41 Peralta Avenue
Los Gatos, California
95030

Borrower:

Edward C. Wooley, individually

41 Peralta Avenue
Los Gatos, California
95030

Borrower:

Judith A. Wooley, individually

41 Peralta Avenue
Los Gatos, California
95030

© 2007 PCI Corp. - Tel. (888) 391-7900

Exhibit 3-4

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 4

EXHIBIT 4

APN 002-368-27

APN _____

APN _____

RECORDED AT THE REQUEST OF

FIRST AMERICAN TITLE CO.

2007 JAN 30 AM 8:21

FILE NO. 363893

ALAN GLOVER
CARSON CITY RECORDER

FEE $ 5.50 DEP

FOR RECORDER'S USE ONLY

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT
TITLE OF DOCUMENT

☒ I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

☐ I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law. State specific law: _____

Signature

W.D. BERNARD - TITLE OFFICER
Print Name & Title

WHEN RECORDED MAIL TO:

PACIFIC CAPITAL BANK, N.A.
C/O LOAN SERVICES
P.O. BOX 60654

SANTA BARBARA, CA 93160-0654

363893

Exhibit 4-1

The Network of Preferred Community Banks℠

SANTA BARBARA BANK & TRUST | FIRST NATIONAL BANK | SOUTH VALLEY NATIONAL BANK | San Benito Bank | PACIFIC CAPITAL BANK | FIRST BANK OF SAN LUIS OBISPO

250609 RB

ASSESSOR'S PARCEL NUMBER:002-368-27

UPON RECORDATION RETURN TO:

Pacific Capital Bank, N.A.

c/o Loan Services, PO Box 60654

Santa Barbara, California 93160-0654

MAIL TAX STATEMENTS TO:

The Edward C Wooley and Judith A Wooley Intervivos Revocable Trust Year 2000

41 Peralta Avenue

Los Gatos, California 95030

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

This DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this "Deed of Trust") entered into as of **January 19, 2007**, among **Edward C Wooley** and **Judith A Wooley**, Trustees of **The Edward C Wooley and Judith A Wooley Intervivos Revocable Trust Year 2000**, a **California** trust, with an address of **41 Peralta Avenue, Los Gatos, California 95030** (the "Trustor"), PCB Service Corporation, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, CA 93160 (the "Trustee") for the use and benefit of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es): **1820 Highway 50 East, Carson City, Nevada 89704** (the "Address(es)").

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

1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the

363893

Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain **Three Year Adjustable Term Note**, dated **January 19, 2007**, by **Edward C Wooley & Judith A Wooley Intervivos Revocable Trust Year 2000, Edward C Wooley and Judith A Wooley** in favor of the Beneficiary in the original principal amount of **$2,200,000.00** (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

This Deed of Trust shall secure the principal amount of Obligations of up to **$2,200,000.00**. The maximum amount of principal secured hereby may be increased or decreased by amendment to this Deed of Trust. This Deed of Trust shall nevertheless secure payment and performance of all Obligations including, without limitation, any other liabilities and future advances, direct or indirect, absolute or contingent, now existing or hereafter arising from the Trustor to the Beneficiary. Future advances hereunder are governed by Nevada Revised Statutes Sections 106.300 to 106.400, inclusive.

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

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

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

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting

obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgements, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

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

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

2. REPRESENTATIONS, WARRANTIES, COVENANTS

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

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

(b) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Bank in connection with this Deed of Trust (the "Permitted Encumbrances");

(c) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor

has not executed any other assignment of Leases or any of the rights or rents arising thereunder;

(d) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and

(e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

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

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

(a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust;

(b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or

(c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

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

(a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;

(b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;

(c) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the

Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;

(d) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and

(e) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

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

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

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

2.8 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Trustor shall promptly give written notice to the Beneficiary, describing the nature and extent thereof. The Beneficiary may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Trustor shall promptly give to the Beneficiary copies of all notices, pleadings, determinations and other papers relating thereto. The Trustor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Trustor shall not settle any such claim without the Beneficiary's prior written consent. The Trustor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Beneficiary and promptly pay the same to the Beneficiary. The

Trustor authorizes any award or settlement due in connection with a Taking to be paid directly to the Beneficiary in amounts not exceeding the Obligations. The Beneficiary may apply such amounts to the Obligations in such order as the Beneficiary may determine.

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

3. CERTAIN RIGHTS OF THE BENEFICIARY

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

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

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

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

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

4. DEFAULTS AND REMEDIES

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

(a) default of any liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

363893

(b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents continuing for 30 days;

(c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;

(d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary continuing for 30 days;

(e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party continuing for 30 days;

(f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false in any material respect when made;

(g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;

(k) a judgement or judgements for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;

(m) the termination or revocation of any guaranty of the Obligations; or

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

363893

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

(a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;

(b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;

(c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;

(d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. In the event this Deed of Trust shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Beneficiary shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Beneficiary may in its discretion subordinate this Deed of Trust to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;

(e) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Substances or otherwise cure the Trustor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Trustor shall provide the Beneficiary or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Trustor from any responsibility therefor or given the Beneficiary "control" over the Property or cause the Beneficiary to be considered to be a mortgagee in possession, "owner"

or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and

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

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

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

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

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

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

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

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

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

5. MISCELLANEOUS

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

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

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

363893

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

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

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

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

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

5.9 Notices. Any notices under or pursuant to this Deed of Trust shall be deemed duly received and effective if delivered in hand to any officer of agent of the Trustor or the Beneficiary, or if mailed by registered or certified mail, return receipt requested, addressed to the Trustor or the Beneficiary at the

363893

address set forth in this Deed of Trust or as any party may from time to time designate by written notice to the other party.

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

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

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

5.13 Arbitration. THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION. THE FOREGOING AGREEMENT TO ARBITRATE DOES NOT LIMIT THE RIGHT OF ANY PARTY TO (I) FORECLOSE AGAINST REAL OR PERSONAL PROPERTY COLLATERAL; (II) EXERCISE SELF-HELP REMEDIES RELATING TO COLLATERAL OR PROCEEDS OF COLLATERAL SUCH AS SETOFF OR REPOSSESSION; OR (III) OBTAIN PROVISIONAL OR ANCILLARY REMEDIES SUCH AS REPLEVIN, INJUNCTIVE RELIEF, ATTACHMENT OR THE APPOINTMENT OF A RECEIVER, BEFORE DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING. THIS EXCLUSION DOES NOT CONSTITUTE A WAIVER OF THE RIGHT OR OBLIGATION OF ANY PARTY TO SUBMIT ANY DISPUTE TO ARBITRATION HEREUNDER, INCLUDING THOSE ARISING FROM THE EXERCISE OF THE ACTIONS DETAILED IN THE FOREGOING CLAUSES (I), (II) AND (III).

363893

EXECUTED under seal as of the date first above written.

Trustor:

Edward C Wooley, Trustee of The Edward C Wooley and Judith A Wooley Intervivos Revocable Trust Year 2000

Judith A Wooley, Trustee of The Edward C Wooley and Judith A Wooley Intervivos Revocable Trust Year 2000

363893

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On January 22, 2007 before me, Katie Caspary, Notary, personally appeared **Edward C Wooley**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KATIE CASPARY
Commission # 1510426
Notary Public - California
Santa Clara County
My Comm. Expires Aug 29, 2008

WITNESS my hand and offical seal.

SIGNATURE _____ (SEAL)

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On January 22, 2007 before me, Katie Caspary, Notary, personally appeared **Judith A Wooley**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KATIE CASPARY
Commission # 1510426
Notary Public - California
Santa Clara County
My Comm. Expires Aug 29, 2008

WITNESS my hand and offical seal.

SIGNATURE _____ (SEAL)

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EXHIBIT "A"

Property Description

(B) Title to said estate or interest at the date hereof is vested in:

Edward C. Wooley and Judith A Wooley, Trustees of The Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

4. The land referred to in this Commitment is situated in the County of Carson City, State of Nevada, and is described as follows:

PARCEL 2 OF PARCEL MAP NO. 2566, FILED IN THE OFFICE OF THE RECORDER OF CARSON CITY, STATE OF NEVADA, ON JUNE 30, 2005 IN BOOK 9, PAGE 2566 AS FILE NUMBER 338929.

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, Appellants, vs. BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and TIMOTHY P. HERBST, as Special Administrator of the ESTATE OF JERRY HERBST, deceased, Respondents.	**No. 83640** District Court Case No. CV14-01712

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 5 OF 18

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 0950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
RICHARD D. WILLIAMSON (SBN 9932)
JONATHAN JOEL TEW (SBN 11874)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS LARRY J. WILLARD, et al.

Docket 83640 Document 2022-06442

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 1)	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel – Brian P. Moquin, Esq.	10/28/14	1	202-206
	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brian P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340
	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547
	Exhibit 9: Seller's Final Closing Statement		3	548-549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 15)	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		4	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Larry J. Willard	08/30/16	4	798-806
18.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	807-837
	Exhibit 1: *Purchase and Sale Agreement* dated July 1, 2005 for Purchase of the Highway 50 Property		4	838-851

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 2: *Lease Agreement* dated December 2, 2005 for the Highway 50 Property		4	852-895
	Exhibit 3: *Three Year Adjustment Term Note* dated January 19, 2007 in the amount of $2,200,00.00 for the Highway 50 Property		4	896-900
	Exhibit 4: *Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	901-918
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		5	919-934
	Exhibit 6: *First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property		5	935-942
	Exhibit 7: *Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property		5	943-947
	Exhibit 8: *Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property		5	948-950
	Exhibit 9: *Purchase and Sale Agreement* Dated July 14, 2006 for the Baring Property		5	951-973
	Exhibit 10: *Lease Agreement* dated June 6, 2006 for the Baring Property		5	974-1009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 11: *Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,00.00 for the Baring Property		5	1010-1028
	Exhibit 12*: Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1029-1046
	Exhibit 13: *First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property		5	1047-1054
	Exhibit 14: *Guaranty Agreement* dated March 12, 2007 for the Baring Property		5	1055-1059
	Exhibit 15: *Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1060-1071
	Exhibit 16: *Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1072-1079
	Exhibit 17: *Substitution of Attorney* forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1080-1084
	Exhibit 18: *Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California Case		5	1085-1088
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and		5	1089-1093

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Brian Moquin re Joint Stipulation in California Case			
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court Property		5	1094-1100
	Exhibit 21: *Request for Dismissal* without prejudice filed May 19, 2014 in the California case		5	1101-1102
	Exhibit 22: *Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1103-1111
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1112-1113
	Exhibit 24: *Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property		5	1114-1116
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1117-1152
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1153-1155
	Exhibit 27: *Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property		6	1156-1168

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 28: *Lease Agreement* dated November 18, 2005 for the Virginia Property		6	1169-1204
	Exhibit 29: *Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property		6	1205-1207
	Exhibit 30: *Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1208-1225
	Exhibit 31: *Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1226-1230
	Exhibit 32: *Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1231-1245
	Exhibit 33: *Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1246-1271
	Exhibit 34: *Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1272-1273
	Exhibit 35: *Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1274-1275

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 36: *Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property		6	1276-1281
	Exhibit 37: *Guaranty Agreement* dated March 9, 2007 for the Virginia Property		6	1282-1286
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1287-1291
	Exhibit 39: Letter dated March 18,2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1292-1294
	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1295-1297
	Exhibit 41: *Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1298-1302
	Exhibit 42: *Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1303-1305
	Exhibit 43: *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 2013		6	1306-1309
	Exhibit 44: *Declaration in Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013,		6	1310-1314

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Northern District of California Bankruptcy Court Case No. 13-53293 CN			
	Exhibit 45: *Substitution of Attorney* forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1315-1319
	Exhibit 46: *Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1320-1327
	Exhibit 47: *Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00		6	1328-1334
	Exhibit 48: *Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1335-1354
	Exhibit 49: *Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1355-1356
	Exhibit 50: *Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property		6	1357-1358
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland		6	1359-1360

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000,000.00			
19.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1361-1380
	Exhibit 1: Declaration of John P. Desmond		6	1381-1384
20.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgement	12/20/16	7	1385-1390
	Exhibit 1: Expert Report of Michelle Salazar		7	1391-1424
21.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1425-1443
22.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgement in Favor of Defendants	02/02/17	7	1444-1451
	Exhibit 1: January 19-25, 2017, Email Exchange		7	1452-1454
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1455-1479
23.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1480-1488
24.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1489-1512

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
25.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1513-1516
	Exhibit 1: May 30, 2017 Order		7	1517-1541
26.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1542-1549
27.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1550-1557
28.	Affidavit of Larry Willard	10/18/17	7	1558-1574
29.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1575-1602
	Contents of DVD of Exhibits (filed manually)		7	1603-1615
30.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	8	1616-1659
	Exhibit 1: Declaration of Brian R. Irvine		8	1660-1666
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		8	1667-1674
	Exhibit 3: February 12, 2015 Letter		8	1675-1677
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		8	1678-1689
	Exhibit 5: August 28, 2015, Letter		8	1690-1701
	Exhibit 6: March 3, 2016, Letter		8	1702-1790
	Exhibit 7: March 15, 2016 Letter		9	1791-1882
	Exhibit 8: April 20, 2016, Letter		9	1883-1909

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		9	1910-1918
	Exhibit 10: December 5, 2016 Email		9	1919-1925
	Exhibit 11: December 9, 2016 Email		9	1926-1927
	Exhibit 12: December 23, 2016 Email		9	1928-1931
	Exhibit 13: December 27, 2016 Email		9	1932-1935
	Exhibit 14: February 3, 2017, Letter		9	1936-1963
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		9	1964-1973
	Exhibit 16: April 1, 2016 Email		9	1974-1976
	Exhibit 17: May 3, 2016 Email		9	1977-1978
	Exhibit 18: June 21, 2016 Email Exchange		9	1979-1985
	Exhibit 19: July 21, 2016 Email		9	1986-2002
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		9	2003-2012
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		9	2013-2023
	Exhibit 22: Defendants' First Requests for Production on Willard		9	2024-2031
	Exhibit 23: Defendants' Second Request for Production on Willard		9	2032-2039

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 24: Defendants' Third Request for Production on Willard		10	2040-2045
	Exhibit 25: Defendants Requests for Admission to Willard		10	2046-2051
	Exhibit 26: Willard Lease		10	2052-2087
	Exhibit 27: Willard Response to Second Set of Interrogatories		10	2088-2096
	Exhibit 28: Deposition of L. Willard Excerpt		10	2097-2102
	Exhibit 29: April 12, 2013 Letter		10	2103-2105
	Exhibit 30: Declaration of G. Gordon		10	2106-2108
	Exhibit 31: Declaration of C. Kemper		10	2109-2112
31.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	10	2113-2135
	Exhibit 1: Plaintiffs' Initial Disclosures		10	2136-2143
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		10	2144-2152
	Exhibit 3: December 5, 2016 Email		10	2153-2159
	Exhibit 4: December 9, 2016 Email		10	2160-2161
	Exhibit 5: December 23, 2016 Email		10	2162-2165
	Exhibit 6: December 27, 2016 Email		10	2166-2169
	Exhibit 7: February 3, 2017 Letter		10	2170-2197

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 31)	Exhibit 8: Deposition Excerpts of D. Gluhaich		10	2198-2207
	Exhibit 9: Declaration of Brian Irvine		10	2208-2211
32.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	10	2212-2228
	Exhibit 1: Highway 50 Lease		10	2229-2272
	Exhibit 2: Declaration of Chris Kemper		10	2273-2275
	Exhibit 3: Wooley Deposition at 41		10	2276-2281
	Exhibit 4: Virginia Lease		11	2282-2317
	Exhibit 5: Little Caesar's Sublease		11	2318-2337
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		11	2338-2346
	Exhibit 7: Willard Deposition at 89		11	2347-2352
33.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	11	2353-2390
	Exhibit 1: Plaintiffs' Initial Disclosures		11	2391-2398
	Exhibit 2: November 2014 Email Exchange		11	2399-2408
	Exhibit 3: January 2015 Email Exchange		11	2409-2414
	Exhibit 4: February 12, 2015 Letter		11	2415-2417
	Exhibit 5: Willard July 2015 Interrogatory Reponses		11	2418-2429

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 6: Wooley July 2015 Interrogatory Responses		11	2430-2439
	Exhibit 7: August 28, 2015 Letter		11	2440-2451
	Exhibit 8: March 3, 2016 Letter		12	2452-2540
	Exhibit 9: March 15, 2016 Letter		12	2541-2632
	Exhibit 10: April 20, 2016 Letter		12	2633-2659
	Exhibit 11: December 2, 2016 Expert Disclosure		12	2660-2668
	Exhibit 12: December 5, 2016 Email		12	2669-2675
	Exhibit 13: December 9, 2016 Email		12	2676-2677
	Exhibit 14: December 23, 2016 Email		12	2678-2681
	Exhibit 15: December 27, 2016 Email		12	2682-2685
	Exhibit 16: February 3, 2017 Letter		13	2686-2713
	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		13	2714-2723
	Exhibit 18: Wooley Deposition Excerpts		13	2724-2729
	Exhibit 19: Highway 50 Lease		13	2730-2773
	Exhibit 20: April 1, 2016 Email		13	2774-2776
	Exhibit 21: May 3, 2016 Email Exchange		13	2777-2778
	Exhibit 22: June 21, 2016 Email Exchange		13	2779-2785

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 23: July 21, 2016 Letter		13	2786-2802
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		13	2803-2812
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		13	2813-2822
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		13	2823-2830
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		13	2831-2838
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		13	2839-2844
	Exhibit 29: Defendants' Requests for Admission on Wooley		13	2845-2850
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		13	2851-2860
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		13	2861-2871
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		13	2872-2879
	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		13	2880-2887
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		13	2888-2893
	Exhibit 35: Defendants' Requests for Admission on Willard		13	2894-2899

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
34.	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	13	2900-2904
35.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	13	2905-2908
36.	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	13	2909-2912
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	13	2913-2916
38.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	13	2917-2921
39.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	13	2922-2926
40.	Order Granting Defendants' Motion for Partial Summary Judgment	01/04/18	14	2927-2931
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	14	2932-2935
42.	Notice of Entry of Order re Defendants' Motion to Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	14	2936-2939

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	14	2940-2943
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	14	2944-2977
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	14	2978-2981
46.	Order Denying Plaintiffs' Motion to Partially Dismiss Plaintiffs' Complaint as Moot	03/06/18	14	2982-2985
47.	Notice of Entry of Order re Order Denying Motion to Partially Dismiss Complaint	03/06/18	14	2986-2989
48.	Request for Entry of Judgment	03/09/18	14	2990-2998
49.	Notice of Withdrawal of Local Counsel	03/15/18	14	2999-3001
50.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	14	3002-3004
51.	Opposition to Request for Entry of Judgment	03/26/18	14	3005-3010
52.	Reply in Support of Request for Entry of Judgment	03/27/18	14	3011-3016
53.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	14	3017-3019
54.	Notice of Entry of Order re Order Granting Defendants' Motion to Dismiss Counterclaims	04/16/18	14	3020-3023
55.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	14	3024-3041

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 55)	Exhibit 1: Declaration of Larry J. Willard		14	3042-3051
	Exhibit 2: Lease Agreement dated 11/18/05		14	3052-3087
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		14	3088-3090
	Exhibit 4: Operation and Management Agreement dated 5/1/13		14	3091-3095
	Exhibit 5: 13 Symptoms of Bipolar Disorder		14	3096-3098
	Exhibit 6: Emergency Protective Order dated 1/23/18		14	3099-3101
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		14	3102-3104
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		14	3105-3118
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		14	3119-3147
56.	Opposition to Rule 60(b) Motion for Relief	05/18/18	15	3148-3168
	Exhibit 1: Declaration of Brian R. Irvine		15	3169-3172
	Exhibit 2: Transcript of Hearing, January 10, 2017		15	3173-3242

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 56)	Exhibit 3: Transcript of Hearing, December 12, 2017		15	3243-3271
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		15	3272-3280
	Exhibit 5: Attorney status according to the California Bar		15	3281-3282
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		15	3283-3290
57.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	15	3291-3299
	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		15	3300-3307
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		15	3308-3311
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		15	3312-3314
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		15	3315-3324
	Exhibit 5: Receipt		15	3325-3326
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018		15	3327-3331

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 57)	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		15	3332-3338
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		15	3339-3343
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		15	3344-3346
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		15	3347-3349
	Exhibit 11: Notice of Withdrawal of Local Counsel		15	3350-3353
58.	Order re Request for Entry of Judgment	06/04/18	15	3354-3358
59.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	15	3359-3367
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		15	3368-3385
60.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	16	3386-3402
61.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	16	3403-3409
62.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	16	3410-3441

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
63.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	16	3442-3478
64.	Judgment	12/11/18	16	3479-3481
65.	Notice of Entry of Order re Judgment	12/11/18	16	3482-3485
66.	Notice of Appeal	12/28/18	16	3486-3489
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		16	3490-3524
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		16	3525-3557
	Exhibit 3: Judgment, entered December 11, 2018		16	3558-3561
67.	Motion to Substitute Proper Party	02/22/19	16	3562-3576
68.	Addendum to Motion to Substitute Proper Party	02/26/19	16	3577-3588
69.	Opinion	08/06/20	16	3589-3597
70.	Notice of Related Action	08/19/20	16	3598-3601
	Exhibit 1: Conditional Guilty Plea in Exchange for a Stated Form of Discipline		16	3602-3612
	Exhibit 2: Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing		16	3613-3623

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 70)	Exhibit 3: Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney from Practicing Law in Nevada		17	3624-3632
71.	Order to Set Status Conference	09/18/20	17	3633-3634
72.	Order Denying Rehearing	11/03/20	17	3635
73.	Order Denying En Banc Reconsideration	02/23/21	17	3636-3637
74.	Notice of Association of Counsel	03/29/21	17	3638-3640
75.	Request for Status Conference	03/30/21	17	3641-3645
76.	Notice of Submission of Proposed Order	05/21/21	17	3646-3649
	Exhibit 1: [Plaintiffs' proposed] Order Granting in Part and Denying in Part the Willard Plaintiffs' Rule 60(b)(1) Motion for Relief		17	3650-3664
77.	Notice of Submission of Proposed Order	05/21/21	17	3665-3668
	Exhibit 1: [Defendants' proposed] Order Denying Plaintiffs' Rule 60(b) Motion for Relief on Remand		17	3669-3714
78.	Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/09/21	17	3715-3722
79.	Defendants' Opposition to Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/23/21	17	3723-3735
80.	Reply in Support of Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/29/21	17	3736-3742
81.	Order Denying Motion to Strike	09/10/21	17	3743-3749

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
82.	Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief	09/13/21	17	3750-3795
83.	Notice of Filing Cost Bond	10/11/21	17	3796-3798
84.	Notice of Appeal	10/11/21	17	3799-3802
	Exhibit 1: Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief		17	3803-3849
85.	Case Appeal Statement	10/11/21	17	3850-3855
	Transcripts			
86.	Transcript of Proceedings – Status Hearing	08/17/15	18	3856-3873
87.	Transcript of Proceedings – Hearing on Motion for Partial Summary Judgment	01/10/17	18	3874-3942
88.	Transcript of Proceedings – Pre-Trial Conference	12/12/17	18	3943-3970
89.	Transcript of Proceedings – Oral Arguments – Plaintiffs' Rule 60(b) Motion	09/04/18	18	3971-3991
90.	Transcript of Proceedings – Status Conference	04/21/21	18	3992-4010

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Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 5

EXHIBIT 5

BERRY-HINCKLEY INDUSTRIES

Memorandum

To	Berry-Hinckley Industries - convenience store landlords
Re	Jerry Herbs acquisition of Winners Corner & Chevron convenience stores
Date	Saturday, February 17h, 2007

Over the past several weeks, Jerry Herbst of Terrible Herbst, Inc., in Las Vegas, Nevada, has been in discussions with us to acquire the convenience store assets of Berry-Hinckley Industries.

The Herbst's business is the second largest petroleum provider in Nevada after Berry-Hinckley, they have a 50% retail marketshare in Clark County (Las Vegas), and through a separate company controlled by the Herbst's three sons, operate in excess of 7,000 slot machines on a route and four casinos in Southern Nevada.

As a landlord of one of our properties, Mr. Herbst has requested that you consider certain changes to the leases that you have with Berry-Hinckley as a condition of assignment. We have attached an Estoppel, as well as a Lease modification document. Mr. Herbst has also attached a letter, in which he offers to personally guaranty your lease, as well as a brief summary on his net worth and company description. With this transaction, Mr. Herbst is also acquiring Berry-Hinckley's option to own Winners Gaming, Inc. which operates the slot machines in all of our convenience stores.

Our goal is to have all Estoppels and other documents agreed to and executed by February 23, 2006, and they will then be held by Chicago Title Insurance Company in escrow until closing.

Please address any concerns to Philip Tripoli, Berry-Hinckley's Vice President of Development at (775) 223-3590 or by e-mail at Philip.tripoli@berry-hinckley.com. If you refer this on to your attorney to review, please have them communicate directly with Berry-Hinckley's counsel:

Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203
Telephone (716) 848-1657; fax 849-0349
syalaman@hodgsonruss.com

We are looking forward to working with Jerry Herbst and you, reaching a successful conclusion for all parties.

Thank you for your trust and confidence in Berry-Hinckley Industries.

Exhibit 5-1

Sujata Yalamanchili
Direct Dial: 716.848.1657
syalaman@hodgsonruss.com

Hodgson Russ LLP
ATTORNEYS

February 17, 2007

Larry Willard
133 Glenridge Avenue
Los Gatos, CA 95030

Dear Mr. Willard:

Re: Jerry Herbst - Acquisition of Winners Corner & Chevron Convenience Stores
#1 Highway 95A - #195

Enclosed please find the following documents:

1. Gary M. Johnson's Letter dated January 31, 2007;
2. Letter from Jerry Herbst regarding the acquisition of C-Stores dated December 14, 2006;
3. Memo dated December 18, 2006;
4. The Landlord's Estoppel Certificate; and
5. First Amendment to Lease Agreement.

Please feel free to contact me with any questions you may have.

Sincerely yours,

Sujata Yalamanchili

SY/tmr
Enclosures

Exhibit 5-2

JOHNSON JACOBSON WILCOX

January 31, 2007

To Whom It May Concern

RE: Jerry Herbst

Our firm has compiled, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, the personal financial statement of Jerry and Maryanna Herbst as of December 31 each year from the 1980's through 2005. A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We did not audit or review the personal financial statements of Mr. and Mrs. Herbst and, accordingly, did not express an opinion or any other form of assurance on them.

The net worth of Mr. and Mrs. Herbst, as reported on the statement compiled by us as of December 31, 2005, was in excess of $200 million.

Sincerely,

JOHNSON JACOBSON WILCOX

Gary M. Johnson

GMJ:jkj

7490 W. SAHARA AVE. LAS VEGAS, NV 89117-2737 – TEL 702 304-0404 – FAX 702 304-0414

Exhibit 5-3



"the best bad guy in the west"

December 14, 2006

Dear Sir,

It is with pleasure that I am writing to you to inform you of our proposed transaction with PAMCo, Inc. to acquire the C-Store assets of Berry Hinckley Industries ("BHI"). The BHI C-Stores are strategically important to my family of companies as we are in the process of entering the Northern Nevada market. These assets will create a significant platform for us to grow our business.

In our review of the existing leases we identified a few minor provisions which we feel need modification. We are forwarding to you a contract amendment and consent form that we are asking you to execute and return to us. In exchange for this amendment and consent I will be willing to personally guarantee the lease obligation.

I look forward to establishing a good tenant/landlord relationship with you and am very excited about closing the proposed transaction.

Regards,

Jerry Herbst
Chairman of the Board
Terrible Herbst, Inc.

5195 Las Vegas Boulevard South, Las Vegas, Nevada 89119 ● (702) 798-6400 ● Fax (702) 736-0819

Exhibit 5-4

TERRIBLE HERBST, INC.

BUSINESS OVERVIEW

Terrible Herbst, Inc. ("Terrible Herbst" or the "Company") is one of the most recognized brands in the Las Vegas metropolitan area. The Terrible Herbst legacy dates back to 1937 when Ed Herbst (Jerry Herbst father) opened his first service station. The Terrible Herbst brand and familiar "Bad Guy" cowboy logo, has been an icon in Nevada since 1959 and is currently used at five casinos, over 100 gasoline stations and convenience stores as well as over 850 slot route locations throughout the state of Nevada.





Terrible Herbst, Inc. is owned by Jerry and Maryanna Herbst who have a combined net worth in excess of approximately $240 million. Terrible Herbst, Inc. operates over 100 gas station and convenience stores, many of which include lube facilities and car washes, throughout Southern Nevada. Terrible Herbst has a leading position in the Southern Nevada and maintains a market share of approximately 50% of total fuel sales, which is equivalent to a statewide market share of approximately 30%.

The Herbst family uses cross-marketing efforts to capitalize on the strong recognition and high level of quality and value associated with the Terrible Herbst trade name and cowboy logo. The company has established strategic and/or marketing alliances with Chevron, ARCO, Pizza Hutt, Burger King, Port of Subs, Coke and McDonalds.

The Terrible Herbst name and logo are also used by Herbst Gaming, which is owned and operated by Ed, Tim and Troy Herbst. Herbst Gaming began operations in 1897 and is now one of the largest slot route operators in Nevada with an excess of 7,200 slot machines. Additionally, Herbst Gaming currently operates eight Terrible's casinos in locations spread throughout Nevada, Iowa and Missouri.



In recent transactions, Herbst Gaming has entered into a contract with MGM Mirage to purchase Buffalo Bill's, Primm Valley and Whiskey Pete's Hotel-Casino in Primm, Nevada. In addition, the Company recently entered the Reno market with is acquisition of the Sands Regent in Reno, Nevada.

Exhibit 5-5

LANDLORD'S ESTOPPEL CERTIFICATE

Landlord hereby certifies as follows:

1. A true, accurate, and complete copy of the Lease is attached hereto as **Exhibit A**. The Lease is in full force and effect and, has not been amended or modified, except as set forth above.

2. That Landlord is the fee owner of the Premises and has not assigned its interest in the Lease. There is no mortgage financing on the Premises, except for _____. The loan documents related to such deed of trust provide that the lender under such deed of trust will not disturb the Lease so long as the Tenant attorns to the Landlord's successor.

3. The original term of the Lease commenced on _____ ___, ____ and has been renewed _____ such that the current term of the Lease expires on _____ ___, _____. The Tenant has ____ additional renewal periods, such that the Lease might expire as late as _____ ____, _____.

4. That the Monthly Rent due under the Lease has been paid through _____ and all Additional Rent due under the Lease has been paid through _____. That there exist at this time no charges, liens, claims, or offsets against the rents or other charges due or to become due under the Lease. That there is no defense, offset, claim or counterclaim by or in favor of Landlord against Tenant under the Lease or against the obligations of Landlord under the Lease.

5. Landlord has no knowledge of any outstanding notice of default given by Tenant. To the best of Landlord's knowledge, Landlord and Tenant are not in default of any of the agreements, terms, amendments, covenants, or conditions of the Lease on the part of Landlord or the Tenant to be performed or complied with, and no condition or set of facts exist which, with the passage of time and/or the giving of notice would constitute a default by either party in the performance of any of the agreements, terms, amendments, covenants, or conditions of the Lease.

6. That the above certifications are made by Landlord knowing that they will be relied upon by _____.

In addition, Landlord hereby consents to the encumbrance of the Tenant's interest in the Lease with a leasehold deed of trust and collateral assignment of the Tenant's interest in favor of First National Bank of Nevada or another lender of the Tenant. Landlord hereby agrees to give such lender notice of any default under the Lease and that such lender has the right (but no obligation) to cure such default within the time period set forth in the Lease with respect to monetary defaults and with respect to non-monetary defaults so long as such lender promptly commences to cure such default and diligently pursues such cure.

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of December __, 2006 by and between **OVERLAND DEVELOPMENT CORPORATION INC. dba LJW ENTERPRISES INC. and LARRY J. WILLARD, TRUSTEE OF THE LARRY JAMES WILLARD TRUST** ("Lessor"), whose address is 133 Glenridge Avenue, Los Gatos, CA 95030 and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of March 1, 2006 (the "Lease") with respect to real property and improvements as described in the Lease;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **WGI Agreements**. The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

2. **Winner's Corner**. Section 12.H is deleted in its entirety.

3. **Default, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.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:"

and replaced with the following:

"*Remedies*. Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, 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:"

4. **Mortgages, Subordination and Attornment**. Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment/Subletting**. Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests

herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law**. Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification**. Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness**. This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

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

By: _____

Printed Name: _____

Title: _____

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

Exhibit 5-10

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

(SEAL)

STATE OF _____)
) SS:
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

(SEAL)

Exhibit 5-11

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of December, 2006 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Overland Development Corporation Inc. and Larry J. Willard, Trustee of the Larry James Willard Trust (collectively, the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for #1 Highway 95-A & Goldfield, Yerington, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 6 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or nonexercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) the date on which Guarantor no longer owns any interest, directly or indirectly, in BHI. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

Exhibit 5-13

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signatures on following page]

Exhibit 5-14

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

_____
JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

OVERLAND DEVELOPMENT CORPORATION INC.

By: _____
Name:
Title:

LARRY JAMES WILLARD TRUST

By: _____
Name: Larry J. Willard
Title: Trustee

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Clerk of the Court
Transaction # 5685608 : tbritton

Exhibit 6

Exhibit 6

US Hwy 50

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of ~~December __, 2006~~ March 12, 2007 by and between **EDWARD C. WOOLEY AND JUDITH A. WOOLEY**, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of November 10, 2005 (the "Lease") with respect to real property and improvements located at 1820 U.S. Highway 50, Carson City, Nevada and as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **Lessor's Change of Name**. The name of the Lessor is hereby changed, effective as of the date of the Lease listed above, to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreements**. The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

3. **Default, Conditional Limitations, Remedies and Measure of Damages**.

(a) The first paragraph of Section 20.B is hereby deleted in its entirety and replaced as follows:

"*Remedies*. Upon occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect

to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion."

(b) The following language is deleted in its entirety from the second paragraph:

"If WGI does not elect either such option, then, 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 entitle 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:"

and replaced with the following:

"If lender does not elect such option to cure, then, 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:"

4. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

5. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or

its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

6. **Governing Law**. Sections 37 and 38.H are hereby incorporated in full by this reference.

7. **No Other Modification**. Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

8. **Condition to Effectiveness**. This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD C. WOOLEY AND JUDITH A. WOOLEY

Judith A. Wooley
Judith A. Wooley
Trustee

By: Edward C. Wooley

Printed Name: Edward C. Wooley

Title: TRUSTEE

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

Exhibit 6-4

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 12, 2007 before me, Mary M. Edgar a Notary Public in and for said State, personally appeared Edward C. Wooley, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Wooley, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

Exhibit 6-5

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD C. WOOLEY AND JUDITH A. WOOLEY

Judith A. Wooley
Judith A. Wooley
Trustee

By: _____

Printed Name: Edward C. Wooley

Title: TRUSTEE

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: Trevor Lloyd

Title: Corporate Secretary

Exhibit 6-6

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

On June 19, 2007, before me Marguerite Benson-Braun, a Notary Public in an for said State, personally appeared [illegible], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Marguerite Benson-Braun

(SEAL)

MARGUERITE BENSON-BRAUN
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-55720-2 - Expires August 28, 2007

Exhibit 6-7

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Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 7

EXHIBIT 7

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this ____ day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for property located on U.S. Highway 50 in Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the

Exhibit 7-2

provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

Exhibit 7-3

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Herbst Lease Guaranty - US Hwy 50 (Wooley).DOC

Exhibit 7-4

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Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 8

EXHIBIT 8

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease ("Second Amendment") is dated as of the _____ day of May 2011 ("Effective Date"), by and between **EDWARD C. WOOLEY AND JUDITH A. WOOLEY**, as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (collectively "Lessor"), and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee").

RECITALS:

A. Lessor is the current landlord under and pursuant to that certain lease dated as of December, 2005, entered into between Edward C. Wooley and Judith A. Wooley, as "Lessor," and Lessee, as amended by that First Amendment to Lease Agreement dated December, 2006, between Lessor and Lessee (collectively, the "Lease"), for certain real property located in Carson City, Nevada.

B. Lessor and Lessee desire to amend the Lease all as below set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Lessor and Lessee hereby agree as follows:

1. Capitalized Terms. Capitalized terms not otherwise defined in this Second Amendment shall have the meanings ascribed to them in the Lease.

2. Conflicting Terms. To the extent the provisions of this Second Amendment conflict with any of the terms or conditions of the Lease, the provisions of this Second Amendment shall control. Lessor and Lessee acknowledge and agree that, as modified hereby, each of the terms and conditions of the Lease shall remain in full force and effect and are enforceable in accordance with their respective terms.

3. Allowance for Tenant Improvements. Concurrently with the execution of this Second Amendment, Lessor shall release to Lessee an improvement allowance of Two Hundred Thousand and No/100ths Dollars ($200,000.00) (the "Improvement Allowance"). The Improvement Allowance, or some portion thereof, shall be used, at Lessee's discretion, for the construction of certain improvements to the Premises as set forth on Exhibit "A", attached hereto (the "Improvements"). Upon the completion of the Improvements, Lessee shall have no obligation to repay any portion of the Improvement Allowance. Additionally, ~~Lessee agrees that the Improvements must be completed no later than 12 months following the date of execution of this Second Amendment.~~ Lessee shall be entitled to retain any unused portion of the Improvement Allowance following completion of the Improvements.

Lessee shall complete all Improvements within 6 months from the date of execution of this Amendment.

4. Rent. The Lease is hereby amended as necessary to reflect that commencing as of the Effective Date, the Base Monthly Rent due from Lessee to Lessor shall be reduced to Twenty Thousand Twenty-five and 82/100ths Dollars ($20,025.82). For the avoidance of any doubt, the Base Monthly Rent, as amended, shall continue to be subject to the Rent Adjustment provided in

Section 4(B) of the Lease.

5. Assignment/Subletting. Section 23 of the Lease is hereby amended to the extent necessary to provide that Lessee shall be permitted to sublease any portion of the Premises, to any third party, upon notice to Lessor but without the necessity of obtaining Lessor's approval or consent. No such sublease shall operate so as to release Lessee from any obligation or liability under the terms of the Lease. Lessee shall be permitted to assign the Lease, to any third party, upon notice to Lessor and approval of such assignee by Lessor, which approval shall not unreasonably be withheld. In the event of a sublease or assignment on the part of Lessee, any proceeds received by Lessee as a result of such sublease or assignment shall be and remain the property of Lessee, and Lessee shall have no obligation to remit to Lessor any portion of such proceeds.

6. Guarantee. Guarantor hereby consents to this Second Amendment and waives any defense on a claim that this Second Amendment alters the existing Guarantee.

7. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original hereof, but all of which shall constitute but one and the same document.

IN WITNESS WHEREOF, the parties have executed this Second Amendment effective as of the date first above written.

LESSOR:

6/29/11
Co-Trustee

EDWARD C. WOOLEY, Co-Trustee of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust Year 2000

6/29/11
Co-Trustee

JUDITH A. WOOLEY, Co-Trustee of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust Year 2000

LESSEE:

BERRY HINCKLEY INDUSTRIES, a Nevada ~~corporation~~

By: _____
Its: _____

GUARANTOR:

JERRY E. HERBST

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Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 9

EXHIBIT 9

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made by and between Spirit SPE Portfolio 2005-5, LLC a Delaware limited liability company ("Seller"), and Edward Wooley an individual ("Purchaser"). Except as otherwise expressly defined herein, capitalized terms will have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference.

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

ARTICLE I

PURCHASE OF PROPERTY

Section 1.01. Agreement To Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the "Transaction"), all of Seller's right, title and interest in and to (a) the real property as more particularly described on Exhibit B attached hereto, and any and all improvements thereon and appurtenances thereto (collectively, the "Real Property"); (b) the fixtures affixed thereto; (c) all leases and rental agreements relating to the Real Property or any portion thereof, including, without limitation, the Lease, and to the extent held by Seller, all rent, prepaid rent, security deposits and other tenant payments and deposits; and (d) all other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (d) above, now or hereafter existing, collectively, the "Property").

Section 1.02. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property is Three Million Two Hundred Eighty Six Thousand Five Hundred Fifty Two and 00/100 Dollars ($3,286,552) (the "Purchase Price"). The Purchase Price, as may be adjusted pursuant to requirements of this Agreement, shall be paid by Purchaser in immediately available federal funds at Closing.

Section 1.03. Earnest Money Deposit. Within three (3) Business Days after the Effective Date of this Agreement, Purchaser shall deposit with the Title Company the sum of Twenty Five Thousand and 00/100 Dollars ($25,000) (together with all interest accrued thereon, the "Initial Deposit"). Upon the expiration of the Inspection Period, as defined below, Purchaser shall deposit an additional sum of Twenty Five Thousand and 00/100 Dollars ($25,000) (together with the Initial Deposit and all interest accrued thereon, the "Earnest Money Deposit"). The Earnest Money Deposit shall be placed in an interest-bearing account by the Title Company, and shall be held by the Title Company and applied against the Purchase Price at Closing or disbursed as provided herein.

Section 1.04. Prorations. All taxes, insurance, utilities and maintenance expenses relating to the Property for the year of the Closing to be paid by the tenant pursuant to the Lease shall not be prorated; all other amounts, if any, shall be prorated as of the Closing Date. Rents

actually paid to and received by Seller with respect to the Property for the month in which the Closing occurs shall be prorated as of the Closing Date.

Section 1.05. Purchaser's Financial Contingency. Within twenty one (21) Business Days after execution of this Agreement (the "Loan Commitment Deadline"), Purchaser shall have obtained a loan commitment for market rate financing (the "Loan"). Purchaser shall diligently and timely pursue obtaining the Loan in good faith and shall execute all documents and furnish all information and documents required by the lender and shall timely pay the costs and fees of obtaining the Loan. Purchaser agrees to satisfy reasonable requirements of lender and shall not withdraw Purchaser's loan application nor intentionally cause any change in circumstances that would prejudice lender's approval of the loan application or funding of the Loan. Purchaser must provide written notice to Seller by the Loan Commitment Deadline of Purchaser's inability to obtain a loan commitment for the Loan. If Purchaser so notifies Seller, this Agreement shall terminate, in which event the Initial Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein. If Seller does not receive timely written notice to terminate and Purchaser does not close, Purchaser shall be in default under this Agreement.

Section 1.06. Condition of Property. Seller and Purchaser understand and agree that Purchaser's purchase of the Property and other rights to be conveyed, sold, transferred and/or assigned pursuant to this Agreement shall be on an "AS IS" "WHERE IS" physical basis, "WITH ALL FAULTS," without representation or warranty, express or implied, with regard to physical condition, including without limitation, any latent or patent defects, conditions of soils or groundwater, existence or nonexistence of hazardous materials, quality of construction, workmanship, merchantability or fitness for any particular purpose as to the physical measurements or useable space thereof. Purchaser hereby acknowledges that Purchaser has inspected or will inspect the Property to Purchaser's satisfaction and that Seller does not plan to conduct its own inspection and shall not be liable for any latent or patent defects in the Property. Purchaser acknowledges that neither Seller nor any representative or agent of Seller has made any representation or warranty as to any of the following: (a) the physical or environmental condition (including surface and subsurface conditions), state of repair, income, expenses, operations of the Property and surrounding property; (b) the assignability, assumability, transferability or validity of any licenses, permits, government approvals, warranties or guaranties relating to the Property or the use and operation thereof; (c) the accuracy or completeness of any information provided by Seller with respect to environmental matters; (d) compliance or noncompliance with local, state or federal statutes, ordinances, orders or regulations concerning the Property or the use thereof; (e) prior or current operations conducted on the Property; or (f) any matter or thing affecting or relating to the Property or this Agreement not expressly stated in this Section 1.06. Purchaser has not been induced by and has not relied upon any statement, representation or agreement, whether express or implied, not specifically set forth in this Agreement. Seller shall not be liable or bound in any manner by any oral or written statement, agreement or information pertaining to the Property or this Agreement furnished by any agent, employee or other Person.

ARTICLE II

DUE DILIGENCE

Section 2.01. Title Insurance.

(a) ***Title Commitment and Title Policy.*** Within five (5) days of execution of this Agreement, Seller shall order an owner's title insurance commitment ("Title Commitment") with respect to the Property issued by the Title Company, for an owner's title insurance policy (the "Title Policy"). Seller shall cause a copy of the Title Commitment and copies of the Schedule B-2 exceptions to be delivered to Purchaser. The premium related to the Title Policy shall be paid by Purchaser and costs for endorsements, if any, shall be the responsibility of Purchaser.

(b) ***Title Company.*** The Title Company is hereby employed by the parties to act as escrow agent in connection with this Transaction. This Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however,* that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail. The Title Company's receipt of this Agreement and the opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of the Title Company's agreement to be bound by the terms and conditions of this Agreement pertaining to the Title Company.

(c) ***Title Company Actions.*** The Title Company is authorized to pay, from any funds held by it for each party's respective credit and in accordance with the closing statements executed by both parties, all amounts set forth on the closing statements as necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them, respectively. Seller and Purchaser will pay all charges payable by them to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Seller and Purchaser to do so. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any such court. Deposit by the Title Company of such documents and funds, after deducting therefrom its reasonable expenses and attorneys' fees incurred in connection with any such court action, shall relieve the Title Company of all further liability and responsibility for such documents and funds.

(d) ***Title Objections.***

(i) Within three (3) days after the Purchaser's receipt of both the Title Commitment and the Survey, Purchaser shall notify Seller in writing of Purchaser's objection, if any, to any exceptions or other title matters shown on the

Title Commitment or the Survey (each, a "Title Objection"). If any Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(ii) If any supplement to the Title Commitment or the Survey discloses any additional title defects which were not created by or with the consent of Purchaser, and which are not acceptable to Purchaser, Purchaser shall notify Seller in writing of its objection thereto (each, an "Additional Title Objection") within three (3) days following receipt of such supplement or revision. If any Additional Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(iii) Purchaser's failure to timely deliver a Title Objection or an Additional Title Objection shall be deemed Purchaser's acceptance of the matters disclosed by the Title Commitment and the Survey. If Purchaser does not terminate this Agreement by reason of any Title Objection or Additional Title Objection as provided in this Section, then such Title Objection or Additional Title Objection shall be deemed waived and approved by Purchaser and shall thereafter be deemed a Permitted Encumbrance.

Section 2.02. Seller Documents. With reasonable promptness, but in no event later than five (5) days from the Effective Date, Seller shall deliver to Purchaser the following items which are in Seller's possession or under its control (collectively, the "Seller Documents"):

(a) survey related to the Property (the "Survey");

(b) environmental report related to the Property (the "Environmental Report"); and

(c) a full and complete copy of the Lease, together with all amendments, modifications and guaranties relating thereto, and to the extent that the same is not proprietary or confidential, all financial information related to the tenant under the Lease.

Section 2.03. Survey. Purchaser may, at its expense, order an update to the Survey if required by the Title Company or otherwise required by Purchaser.

Section 2.04. Environmental. Purchaser may, at its expense, order an update to the Environmental Report, if deemed necessary by Purchaser in its sole discretion.

Section 2.05. Tenant Estoppel. Seller shall use commercially reasonable efforts to obtain and deliver to Purchaser, at least three (3) days prior to Closing, a tenant estoppel certificate from the tenant under the Lease certifying (a) that the Lease is in full force and effect and that, except as otherwise stated therein, the Lease has not been amended or modified; (b) the commencement and expiration dates of the Lease; (c) the rent due and payable under the Lease; (d) the security deposits, if any, held by Seller, as landlord under the Lease; (e) except as otherwise stated therein, that no party is in default under the Lease.

Section 2.06. Inspections. From the Effective Date and for a period of ten (10) Business Days after Purchaser's receipt of the Seller Documents (the "Inspection Period"), Purchaser may perform whatever investigations, tests and inspections upon the Property during normal business hours or as otherwise requested by Seller; that Purchaser deems reasonably appropriate (collectively, the "Inspections"); *provided, however,* that prior thereto, (a) Purchaser shall give Seller at least three (3) days' prior notice thereof; and (b) Seller and any representative of Seller shall have the right to be present during any Inspection. Purchaser shall have the right to terminate this Agreement by written notice to Seller on or before the expiration of the Inspection Period if, based upon the Inspections, Purchaser determines, in its sole discretion, that the Property is not satisfactory, in which event, this Agreement shall terminate without further liability to the parties except as expressly set forth herein and the Initial Deposit shall be returned to Purchaser. In the event that Purchaser fails to provide such written notice to Seller on or before expiration of the Inspection Period, Purchaser shall be deemed to have waived any objections based upon the Inspections and subject to Sections 2.01(d), 6.02(a) and 7.01, the Initial Deposit shall be non-refundable.

ARTICLE III

CLOSING

Section 3.01. Closing Date. Subject to the provisions of Article V of this Agreement, the closing date of the Transaction contemplated by this Agreement (the "Closing") shall be set by mutual agreement within ten (10) days after the expiration of the Inspection Period, but in no event later than sixty (60) days after the Effective Date (the "Closing Date"). Pre-closing, which includes the parties' deposit with Seller's counsel (or, if directed by Seller's counsel, with the Title Company) of all documents (including without limitation, the executed Transaction Documents), all as necessary to comply with the parties' respective obligations hereunder, shall occur three (3) Business Days prior to the Closing Date or as otherwise mutually agreed upon by the parties. The parties shall deposit all funds required hereunder with the Title Company on or before the Closing Date.

Section 3.02. Possession. Possession of the Property, free and clear of all tenants or other parties in possession, except for the tenant under the Lease, shall be delivered to Purchaser upon Closing.

Section 3.03. Transaction Costs. Except as otherwise expressly provided in this Agreement, Purchaser shall pay for all costs associated with the updates of the Survey and Environmental Report, procurement of the Loan, endorsements to the Title Policy, recording

fees, transfer taxes and closing costs. Each party shall pay its own legal fees. Costs for the closing and escrow shall be split between Purchaser and Seller as usual and customary in the jurisdiction in which the Property is located. In no event shall Seller's costs for this Transaction exceed Twenty Thousand and 00/100 Dollars ($20,000).

Section 3.04. Tenant's Letter. Upon Closing, Purchaser shall deliver the Tenant Letter to the tenant under the Lease in the manner described in the Lease for the giving of notice, or if not so described, by certified or registered U.S. mail, return receipt requested, postage prepaid. The obligation of Purchaser in this Section 3.04 shall survive Closing.

ARTICLE IV

REPRESENTATIONS WARRANTIES AND COVENANTS

Section 4.01. Seller. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) ***Organization and Authority.*** Seller is duly organized or formed, validly existing and in good standing under the laws of its state of formation. Seller has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents, and to carry out the Transaction. The Person who has executed this Agreement on behalf of Seller has been duly authorized to do so.

(b) ***Enforceability of Documents.*** Upon execution by Seller, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

All representations and warranties of Seller made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Seller herein, shall survive for six (6) months following Closing.

Section 4.02. Purchaser. Purchaser represents and warrants to, and covenants with, Seller as follows:

(a) ***Organization and Authority.*** Purchaser is duly organized and formed, validly existing and in good standing under the laws of its state of formation. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents and to carry out the Transaction. The Person who has executed this Agreement on behalf of Purchaser has been duly authorized to do so.

(b) ***Enforceability of Documents.*** Upon execution by Purchaser, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) ***Litigation.*** There are no actions or proceedings pending against or involving Purchaser before any Governmental Authority which in any way adversely affect or may adversely affect Purchaser or Purchaser's ability to perform under this Agreement and the other Transaction Documents.

(d) ***OFAC List.*** Purchaser is not currently identified on the OFAC List, and is not a person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

All representations and warranties of Purchaser made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Purchaser herein, except as otherwise expressly set forth herein, shall survive Closing.

ARTICLE V

CONDITIONS PRECEDENT TO CLOSING

Section 5.01. Purchaser's Conditions to Closing. Purchaser shall not be obligated to close and fund the Transaction until Seller shall have delivered to Purchaser or the Title Company, as applicable, the following items:

(a) the Deed;

(b) documents that may be required by the Title Company for issuance of the Title Policy;

(c) fully executed originals of (i) the Assignment and Assumption of Leases and Rents substantially in the form attached as Exhibit C to this Agreement with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property; and (ii) all of the other Transaction Documents;

(d) a duly executed letter addressed to the tenant under the Lease, in form and substance satisfactory to the parties (the "Tenant Letter"), notifying the tenant of the change in ownership and providing an address for future rent payments;

(e) a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(f) all documents required to be delivered by this Agreement and the other Transaction Documents; and

(g) such further documents as reasonably may be required in order to fully and legally close this Transaction, including any required assignments and assumptions of operating agreements related to the Property.

Upon the fulfillment or Purchaser's written waiver of all of the above conditions, Purchaser shall deposit immediately available federal funds necessary to close this Transaction with the Title Company and this Transaction shall close in accordance with the terms and conditions of this Agreement. Unless otherwise dated, all of the documents to be delivered at Closing shall be dated as of the Closing Date.

Section 5.02. Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the fulfillment (or written waiver by Seller) of all of the following conditions:

(a) Purchaser shall have delivered to the Title Company the Purchase Price, as adjusted pursuant to the requirements of this Agreement in immediately available federal funds;

(b) Purchaser shall have caused to be executed and delivered to the appropriate Persons fully executed originals of (i) the Assignment and Assumption of Leases and Rents, with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property, and (ii) all of the other Transaction Documents;

(c) Purchaser shall have delivered to the Title Company a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(d) The parties shall have executed the Tenant Letter for delivery to the tenant under the Lease as described in Section 3.04; and

(e) Purchaser shall have delivered to Seller and/or the Title Company such further documents as may reasonably be required in order to fully and legally close this Transaction.

ARTICLE VI

DEFAULTS; REMEDIES

Section 6.01. Default. Each of the following shall be deemed an event of default (each, an "Event of Default"):

(a) if any representation or warranty of a party set forth in this Agreement or any other Transaction Document is false in any material respect or if a party renders any false statement; or

(b) if a party fails to keep or perform any of the terms or provisions of this Agreement or if any condition precedent is not satisfied by the other party at or prior to the Closing Date.

Section 6.02. Purchaser Remedies. In the event of any Event of Default by Seller, Purchaser shall be entitled to exercise, at its option, any one of the following:

(a) Purchaser may terminate this Agreement by giving written notice to Seller in which case the Earnest Money Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement; or

(b) Purchaser may proceed to Closing.

Section 6.03. Seller Remedies. In the event of any Event of Default by Purchaser, Seller shall be entitled to receive the Earnest Money Deposit as liquidated damages and terminate this Agreement such that neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Risk of Loss.

(a) ***Condemnation.*** If, prior to Closing, action is initiated to take the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, or (ii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority, to the extent that the amount of such award does not exceed the Purchase Price, shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.

(b) ***Casualty***. Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If the Property, or any part thereof, suffers any damage prior to the Closing from fire or other casualty, which Seller, at its sole option, does not elect to repair, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or (ii) consummate the Closing, in which event all of Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expense and costs incurred by Seller to repair or restore the Property and any portion paid or to be paid on account of the loss of rents or other income from the Property for the period prior to the Closing Date, all of which shall be payable to Seller), to the extent that the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at Closing.

Section 7.02. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") shall be in writing and given by (a) hand delivery; (b) express overnight delivery service; (c) certified or registered mail, return receipt requested; or (d) electronic mail message, provided that a copy of such electronic mail message is also sent via certified or registered mail, return receipt requested, within one Business Day of the transmission of such electronic mail message, 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 electronic mail pursuant to the requirements of Section 7.03(d) above. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Purchaser:	Esward Wooley _____ _____ Telephone: _____ Facsimile: _____ E-Mail: _____
If to Seller:	Spirit SPE Portfolio 2005-5, LLC Suite 200 14631 North Scottsdale Road Scottsdale, AZ 85254-2711 Attention: Mr. Gregg Seibert Mr. Barry VanNorman Telephone: (480) 606-0820 Facsimile: (480) 606-0826 E-Mail: gseibert@spiritfinance.com E-Mail: bvannorman@spiritfinance.com

With a copy to:

Kutak Rock LLP
Suite 3100
1801 California Street
Denver, CO 80202
Attention: Michael C. Bullock, Esq.
Telephone: (303) 297-2400
Facsimile: (303) 292-7799
E-Mail: michael.bullock@kutakrock.com

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. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

Section 7.03. Assignment. Purchaser may not assign its rights under this Agreement in whole or in part without the prior written consent of Seller. No assignment of Purchaser's right and interest hereunder shall relieve Purchaser of any liability for the performance of any obligation of Purchaser contained herein.

Section 7.04. Indemnity. Purchaser shall indemnify, defend and hold harmless Seller and its directors, officers, shareholders, managers, members, officers, employees, representatives, successors, assigns, agents, lenders, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees and invitees, as applicable (collectively, the "Indemnified Parties"), from and against any and all Losses of any nature arising from or connected with (a) breach of any of the representations, warranties, covenants, agreements or obligations of Purchaser set forth in this Agreement; and (b) the ownership and operation of the Property on and after the Closing Date. Without limiting the generality of the foregoing, such indemnity shall include, without limitation, any Losses incurred by Seller with respect to any Inspections performed pursuant to Section 2.06. Purchaser's obligations under this Section 7.04 shall survive Closing or termination of this Agreement.

Section 7.05. Brokerage Commission. Each of the parties represents and warrants to the other that neither party has dealt with, negotiated through or communicated with any broker in connection with this Transaction except for Sperry Van Ness on behalf of Purchaser. Upon the Closing and funding of this Transaction, Seller agrees to pay Sperry Van Ness a commission equal to 2% of the Purchase Price paid by Purchaser under this Agreement. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against such party by any broker claiming a commission or fee by, through or under the other party. The parties' respective obligations under this Section 7.05 shall survive Closing or termination of this Agreement.

Section 7.06. Reporting Requirements. The parties agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

Section 7.07. Disclosure. Except as expressly provided in Section 7.06, in this Section 7.07 and by law or judicial action, neither Seller nor Purchaser will make any public disclosure of this Agreement or the other Transaction Documents, the Transaction or the provisions of the Transaction Documents without the prior written consent of the other party hereto. The parties also agree that, notwithstanding any provision contained in this Agreement, any party (and each employee, representative or other agent of any party) may disclose to *any and all Persons, without limitation of any kind,* any matter required under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 7.08. Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Agreement.

Section 7.09. Non-Business Days. If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which any Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 7.10. Waiver and Amendment. No provision of this Agreement 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.

Section 7.11. Personal Liability. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Seller, that (i) there shall be absolutely no personal liability on the part of any shareholder, director, officer, manager, member, officer or employee of Seller with respect to any of the terms, covenants and conditions of this Agreement; and (ii) Purchaser waives all claims, demands and causes of action against Seller's officers, directors, managers, members, employees and agents in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by the other party.

Section 7.12. Headings; Internal References. The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement. Unless stated to the contrary, any references to any section, subsection, exhibit and the like contained herein are to the respective section, subsection, exhibit and the like of this Agreement.

Section 7.13. Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction and the other Transaction Documents, is entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and 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. Seller and Purchaser were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

Section 7.14. Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

Section 7.15. Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, 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.

Section 7.16. Entire Agreement. This Agreement and all other Transaction Documents, and all other certificates, instruments or agreements to be delivered hereunder and thereunder constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of this Agreement by Seller and Purchaser, (a) this Agreement shall supersede any previous discussions, agreements and/or term or commitment letters relating to the Transaction, any and all agreements related to confidentiality, exclusivity, non-competition, non-solicitation of employees, non-solicitation or pursuit of any business opportunity represented by the Transaction, or any other term or condition which restricts any business activity of Seller or its affiliates, (b) the terms and conditions of this Agreement shall control notwithstanding that such terms are inconsistent with or vary from those set forth in any of the foregoing agreements, and (c) this Agreement may only be amended by a written agreement executed by Seller and Purchaser. The provisions of this Section shall survive the Closing.

Section 7.17. Recording. This Agreement shall not be recorded in any governmental office.

Section 7.18. Forum Selection; Jurisdiction; Venue; Choice of Law. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona, and consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Nothing contained in this section shall limit or restrict the right of Seller to commence any proceeding in the federal or state courts located in the state or states in which the Property is located to the extent Seller deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

Section 7.19. Separability; Binding Effect; Governing Law. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or

unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 7.03, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the applicable state or states in which the Property are located, without giving effect to any state's conflict of laws principles.

Section 7.20. Survival. Except for the conditions of Closing set forth in Article V, which shall be satisfied or waived in writing as of the Closing Date, and except as otherwise expressly set forth herein, all representations, warranties, agreements, obligations and indemnities of Seller and Purchaser set forth in this Agreement shall survive the Closing.

Section 7.21. Waiver of Jury Trial and Certain Damages. THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

Section 7.22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same instrument.

Section 7.23. IRC Section 1031 Exchange of Property. The parties agree that a party may elect to complete an Internal Revenue Code 1031 tax-deferred exchange that will not affect the terms and conditions of this Agreement; *provided, however,* that (a) the non-requesting party will cooperate with the requesting party to complete such exchange in a timely manner on the conditions that the non-requesting party shall not be obligated to pay, suffer or incur any additional expenses or liabilities as a result of cooperating in the requesting party's exchange and the non-requesting party shall not be obligated to acquire any other real property in connection with such exchange; (b) the non-requesting party shall not have any liability to the requesting party for failure of the exchange to qualify under the Internal Revenue Code and Treasury Regulations; (c) any assignment(s) made by the requesting party in connection with such exchange shall not relieve the requesting party of its obligations under this Agreement; (d) the requesting party shall cause all documentation necessary or appropriate in connection with such exchange to be prepared and available for execution no later than the Closing; and (e) the completion of one or more tax-deferred exchanges is not a condition to the performance by the requesting party of its obligations set forth in this Agreement.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a Delaware limited liability company

By _____
Name Gregg A. Seibert
Title Senior Vice President
Date: 5/8/06

PURCHASER:

_____
Edward Wooley

Date: 5/4/06

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

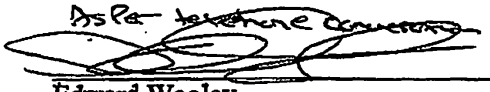
SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a Delaware limited liability company

By _____
Name _____
Title _____

Date: _____

PURCHASER:



Edward Wooley

Date: 5/4/06

EXHIBIT A

DEFINED TERMS

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

"*Additional Title Objection*" has the meaning set forth in Section 2.01(d)(ii).

"*Agreement*" means this Purchase and Sale Agreement.

"*Assignment and Assumption of Leases and Rents*" means the Assignment and Assumption of Leases and Rents substantially in the form attached hereto as Exhibit C.

"*Business Day*" means a day on which banks located in Scottsdale, Arizona are not required or authorized to remain closed.

"*Closing*" shall have the meaning set forth in Section 3.01.

"*Closing Date*" means the date specified as the closing date in Section 3.01.

"*Deed*" means that special warranty deed (or its equivalent under the law of the state in which the Property is located) whereby Seller conveys to Purchaser all of Seller's right, title and interest in and to the Property.

"*Earnest Money Deposit*" has the meaning set forth in Section 1.03.

"*Effective Date*" shall be the last date that any party executes this Agreement.

"*Environmental Report*" has the meaning set forth in Section 2.02(b).

"*Event of Default*" has the meaning set forth in Section 6.01.

"*Governmental Authority*" means the United States of America, any state, local or other political subdivision thereof, any other entity exercising executive, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"*Indemnified Parties*" has the meaning set forth in Section 7.04.

"*Inspection Period*" has the meaning set forth in Section 2.06.

"*Inspections*" has the meaning set forth in Section 2.06.

"*Lease*" means that certain Lease Agreement dated _____ and between _____, as landlord, and _____, as tenant, together with all other amendments, modifications and

Assessor's Parcel Number: 01-071-02

Recording requested by and
when recorded return to:

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

MEMORANDUM OF LEASE

On July 14, 2006, the undersigned Lessor and Lessee entered into a certain Lease, wherein Lessor leased to Lessee the real property located in the County of Washoe, State of Nevada, which is described on Exhibit "A" attached hereto and incorporated herein by reference for a term commencing on July ___, 2006 and continuing until December 31, 2023. Lessee has the option, pursuant to the Lease, to extend the initial term for four (4) additional successive periods of five (5) years each.

DATED: July 14, 2006

[SIGNATURES ARE CONTAINED ON THE NEXT PAGE]

1365 BARING BLVD
[redacted]
045651/00021 GBDOCS 578491v1

ECW000019

Exhibit 9-19

LESSOR:

EDWARD & JUDITH WOOLEY

By: Edward C. Wooley, Trustee / Judith A. Wooley, Trustee
Name: Judith A. Wooley / Edward C. Wooley
Title: Trustees

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: [signature]
Name: PAUL MORABITO
Title: CHAIRMAN

STATE OF California)
) :SS
COUNTY OF Orange)

This instrument was acknowledged before me on July 14, 2006 by _____ as _____.

_____
NOTARY PUBLIC

My Commission expires: _____

STATE OF California)
) :SS
COUNTY OF Orange)

This instrument was acknowledged before me on July 14, 2006 by Paul Morabito as Chairman of BERRY-HINCKLEY INDUSTRIES.

_____
NOTARY PUBLIC

JEANETTE TEDER
Commission # 1606087
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2009

My Commission expires: Sept 20, 2009

045651/00021 GBDOCS 578491v1

ECW000020

Exhibit 9-20

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Santa Clara } ss.

On July 17, 2006 (Date) before me, Brenda Baker Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Edward & Judith Wesley (Name(s) of Signer(s))

☐ personally known to me
☑ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Lease

Document Date: July 17, 2006 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer

Signer's Name: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

© 1999 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.nationalnotary.org Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

ECW000021

Exhibit 9-21

EXHIBIT A

Property Address: 1365 Baring Blvd, Sparks, NV

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 10

EXHIBIT 10

06-45646

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of _____, 2006 by and between **EDWARD WOOLEY AND JUDITH WOOLEY**, individuals (collectively "Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 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) and commonly known as 1365 Baring Boulevard, Sparks, Nevada, 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 for the operation of a Permitted Facility, and lawful or related purposes such as ingress, egress and parking.

3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May __, 2006 ("Effective Date") and shall expire at midnight on October 31, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this 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 (2) percent 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 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 untenantability 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 Winner's Gaming Inc. ("WGI") or its successor in making application to the Nevada Gaming Control Board if such application or approval is 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.

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

(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 due to any act or omission of Lessee.

(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 Projection, 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.

(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.

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,

(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.

B. *Remedies.* Upon the occurrence of an Event of Default, Lessor shall provide notice thereof to WGI and shall provide WGI with a thirty day period in which to elect, by notice to Lessor, to cure such Event of Default, in which case, Lessor will provide WGI reasonable access to the Premises to cure such Event of Default, and will accept such cure as if performed by Lessee. WGI may also elect within such thirty day period, to take an assignment of tenant's interests under this Lease, in which case, WGI will have a period of one hundred twenty (120) days following such assignment in which to further assign such tenant's rights, or to sublet the Premises, to a entity or person which will operate the Premises as a Permitted Facility, without the need for Lessor's consent or approval.

If WGI does not elect either such option then, 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 it 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.** Except as provided in Section 20, above, 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 withhold 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

Exhibit 10-20

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

And with a copy to: Winners Gaming Inc.
Attn: Paul A. Morabito
425 Maestro Drive
Reno, NV 89511
Telephone: (775) 689-1222
Facsimile: (775) 689-1232

If to Lessor:

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]

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

LESSOR:

Ed C Wooley, Trustee
EDWARD WOOLEY

Judith Wooley Trustee
JUDITH WOOLEY

Tax Identification or Social Security No.
[redacted]

STATE OF California)
) ss
COUNTY OF Santa Clara)

The foregoing instrument was acknowledged before me on June 12, 2006 by Edward Wooley and Judith Wooley - 41 Pescadita Ave Los Gatos, CA. 95030.

Tina T. Seda
Notary Public

My Commission Expires: 10-15-07

TINA T. SEDA
Commission # 1441079
Notary Public - California
Santa Clara County
My Comm. Expires Oct 15, 2007

wooley Sista/BH1
, Carson City
5/31/2006
000160/00959 GBOOCS 576954v1

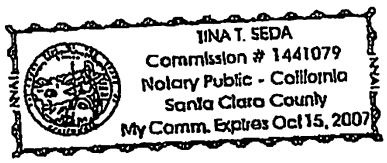
STATE OF CALIFORNIA) S.S
COUNTY OF Santa Clara

On June 6, 2006 before me,

Tina T. Seda
a Notary Public, personally appeared

Edward Wooley
Judith Wooley

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.



WITNESS my hand and official seal.

Signature Tina T. Seda

(This area for official notorial seal)

notryack rev. (12/28/05)

Exhibit 10-27

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada corporation

By: _____

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

The foregoing instrument was acknowledged before me on July 14, 2006 by Paul Mahaffy as Chairman of **BERRY- HINCKLEY INDUSTRIES**, a Nevada corporation.

_____
Notary Public

My Commission Expires: Sept 20, 2009

JEANETTE TEDER
Commission # 1608087
Notary Public - California
ORANGE COUNTY
My Comm. Expires Sept. 20, 2009

Wesley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160/09959 GBDOCS 576954v2

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 the first anniversary of the Effective Date, 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 $238,275.

"*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.

"*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 (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.

"*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

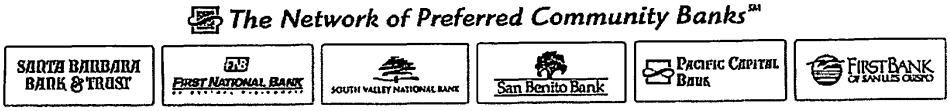
PROPERTY ADDRESS:

PROPERTY LEGAL DESCRIPTION:

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

Exhibit 11

Exhibit 11



Loan No. 100798974

FIVE YEAR ADJUSTABLE TERM NOTE

July 18, 2006

$2,100,000.00

For value received, the undersigned **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, a California** trust, with an address of **41 Peralta Avenue, Los Gatos, California 95030** (collectively, the "Borrower"), jointly and severally, promise to pay to the order of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (together with its successors and assigns, the "Bank"), the principal amount of **Two Million One Hundred Thousand Dollars and Zero Cents ($2,100,000.00)** on or before **July 18, 2016** (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full. The Borrower shall pay consecutive monthly installments of principal and interest, as follows: **$13,971.35** on **August 18, 2006**, and the same amount (except the last installment which shall be the unpaid balance) on the 18th day of each month thereafter. The aggregate principal balance outstanding shall initially bear interest thereon at a per annum rate equal to **7.00%**. The interest rate on the aggregate principal balance shall change on **July 18, 2011** and on that day every sixtieth month thereafter (each a "Change Date") to a fixed rate equal to **Two and One-Half Percent (2.50%)** above the Treasury Index (as hereinafter defined) on each such Change Date. On each Change Date each monthly installment due and payable until the next Change Date shall be recalculated (increased or reduced) to reflect the adjusted interest rate, the outstanding principal balance at such time and the remaining term of the **360**-month amortization period commencing on the date of this Note in accordance with the Bank's calculation in the Bank's sole discretion.

Notwithstanding anything to the contrary in this Note, the interest rate on this Note is limited by a floor as follows: the minimum interest rate (i.e. floor) is **5.25%**.

Treasury Index means the weekly average yield on United States Treasury securities, adjusted to a constant maturity equal to the Applicable Treasury Rate Period (as hereinafter defined), or, in the event the Treasury Index is no longer available, the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto. The Applicable Treasury Rate Period is 5 years.

Principal and interest shall be payable at the Bank's main office or at such other place as the Bank may designate in writing in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

At the option of the Bank, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower or any guarantor hereof to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor hereof under any other loan document delivered by the Borrower or any guarantor, or in connection with the loan evidenced by this Note or any other agreement by the Borrower or any guarantor with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default; (2) failure of the Borrower or any guarantor hereof to maintain aggregate collateral security value satisfactory to the

Bank continuing for 30 days; (3) default of any material liability, obligation or undertaking of the Borrower or any guarantor hereof to any other party continuing for 30 days; (4) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor hereof in connection with the loan evidenced by this Note or in any supporting financial statement of the Borrower or any guarantor hereof shall be determined by the Bank to have been false in any material respect when made; (5) if the Borrower or any guarantor hereof is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or any guarantor hereof and, if the Borrower or any guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor hereof; (9) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor hereof, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor hereof; (11) the termination or revocation of any guaranty hereof; or (12) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor hereof, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor hereof to the Bank has been or may be impaired.

Any payments received by the Bank on account of this Note shall, at the Bank's option, be applied first, to accrued and unpaid interest; second, to the unpaid principal balance hereof; third to any costs, expenses or charges then owed to the Bank by the Borrower; and the balance to escrows, if any. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Bank may determine. The Borrower hereby authorizes the Bank to charge any deposit account which the Borrower may maintain with the Bank for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. More specifically, if from any circumstances whatsoever, fulfillment of any provision of this Note or any other loan document excuted and delivered in connection with this Note, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Bank may, at its option (a) reduce the obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the obligations, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Bank had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note or any other loan document that is in excess of the applicable limit on interest. It is the intention of Borrower and Bank that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this paragraph shall control every other provision of this Note, and any provision of any other loan document in conflict with this paragraph.

The Borrower represents to the Bank that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the

Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each guarantor hereof grant to the Bank a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and each guarantor hereof and any cash, securities, instruments or other property of the Borrower and each guarantor hereof in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any guarantor hereof to the Bank or any Bank Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any guarantor hereof to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

No delay or omission on the part of the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Bank, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally, including any defense based on impairment of collateral.

The Borrower and each guarantor of this Note shall indemnify, defend and hold the Bank and the Bank Affiliates and their directors, officers, employees, agents and attorneys harmless against any claim brought or threatened against the Bank by the Borrower, by any guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower or any guarantor hereof (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's selection, but at the expense of the Borrower and any guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Bank.

The Borrower and each guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 3.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 15 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Bank's other remedies on account thereof), a late charge equal to the greater of $10.00 or 10.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Bank and its successors, endorsees and assigns.

The Borrower and each guarantor, if any, hereby waive presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of any kind, in each case that would otherwise be available in connection with this Note including, without limitation, any right (whether now or hereafter existing) to require the holder hereof to first proceed against the Borrower, or any guarantor, for any security.

The Borrower and each guarantor, if any, further waive to the extent permited by law any and all rights and defenses that each may have because the debt evidenced by this Note is secured by real property: this means, among other things, that: (1) the Bank may collect from the Borrower and any guarantor, without first foreclosing on any real or personal property, collateral pledged by the Borrower and any guarantor; and (2) if the Bank forecloses on any real property collateral pledged by the Borrower or any guarantor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Bank may collect from the Borrower even if the Bank, by foreclosing on the real property collateral, has destroyed any right the Borrower may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Borrower may have because the underlying debt is secured by real property. These rights and defenses being waived by the Borrower include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Borrower further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to the Borrower under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

In the event that at any time, a surety is liable upon only a portion of the Borrower's or any guarantor's obligations under this Note and the Borrower provides partial satisfaction of any such obligation(s), each of the Borrower and each guarantor hereof, if any, hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of this Note, be made by the Bank rather than Borrower.

The liabilities of the Borrower and any guarantor of this Note are joint and several; provided, however, the release by the Bank of the Borrower or any one or more guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Bank. Each reference in this Note to the Borrower, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Bank of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Bank of any collateral shall not release any person obligated on account of this Note.

The Borrower and each guarantor hereof each authorizes the Bank to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Bank, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

The Borrower will from time to time execute and deliver to the Bank such documents, and take or cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Note or any other loan documents related thereto (including, without limitation, to correct clerical errors) or to vest more fully in or assure to the Bank the security interest in any collateral securing this Note or to comply with applicable statute or law.

This Note is delivered to the Bank at one of its offices in California and shall be governed by the laws of the State of California.

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

The Borrower and each guarantor of this Note acknowledges that the Bank is entitled to a minimum interest charge of $75.00.

The Borrower and each guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower and each guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's or guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Borrower(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such guarantor.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND EACH GUARANTOR AND THE BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER AND EACH GUARANTOR TO THE BANK, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH GUARANTOR AND THE BANK EACH CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

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

Due on Sale or Transfer. Bank may, at it option, declare immediately due and payable all sums secured by one or more deed of trusts provided by Borrower to secure this Note upon the sale or transfer, without Bank's prior written consent, of all or any part of the real property covered by any such deed of trust, or any interest in such real property. A "sale or transfer" means the conveyance of the such real property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, option contract, or by sale, assignment or transfer of any beneficial interest in or to any land trust holding title to such real property, or by any other method of conveyance of a real property interest. If Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more that 20% of the voting stock, partnership interests or limited liability company interest, as the case may be, of Borrower. This option shall not be exercised by Bank if such exercise is prohibited by applicable law.

Executed as of **July 18, 2006.**

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

41 Peralta Avenue
Los Gatos, California
95030

ECW000063
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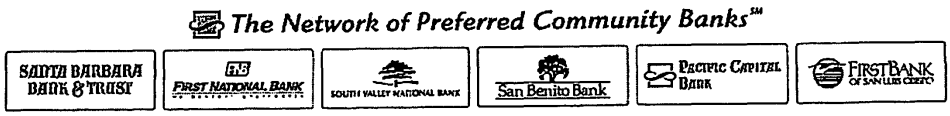
Exhibit 11-6



Loan No. 100798974

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") entered into as of **July 18, 2006**, between **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a **California** trust, with an address of **41 Pertalta Avenue, Los Gatos, California 95030** (the "Borrower") and Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

FOR VALUE RECEIVED, and in consideration of the granting by the Bank of financial accommodations to or for the benefit of the Borrower, including without limitation respecting the Obligations (as hereinafter defined), the Borrower represents and agrees with the Bank, as of the date hereof and as of the date of each loan, credit and/or other financial accommodation, as follows:

1. THE LOAN

1.1 Loan. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to make a loan to the Borrower in the original principal amount of **$2,100,000.00** (the "Loan"). The Loan shall be evidenced by that certain Five Year Adjustable Term Note, of even date herewith (the "Note") by Borrower in favor of the Bank in the original principal amount of **$2,100,000.00**. This Agreement, the Note, and any and all other documents, amendments or renewals executed and delivered in connection with any of the foregoing are collectively hereinafter referred to as the "Loan Documents".

1.2 Definitions. The following definitions shall apply:

(a) "Code" shall mean the Uniform Commercial Code of California as amended from time to time.

(b) "Obligation(s)" shall mean, without limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Borrower to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Bank; or are due indirectly by the Borrower to the Bank as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Bank from time to time and all costs and expenses referred to in this Agreement.

(c) "Person" or "party" shall mean individuals, partnerships, corporations, limited liability companies and all other entities.

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

2. REPRESENTATIONS AND WARRANTIES

2.1 Records. All books and records of the Borrower's business, including but not limited to its books of account, are accurate and up to date and will be so maintained.

2.2 Title to Properties; Absence of Liens. Borrower has good and clear record and marketable title to all of its properties and assets, and all of its properties and assets are free and clear of all mortgages, liens, pledges, charges, encumbrances and setoffs, except those mortgages, deeds of trust, leases of personal property and security interests previously specifically consented to in writing by the Bank.

2.3 Places of Business. Borrower shall, during the term of this Agreement, keep the Bank currently and accurately informed in writing of each of Borrower's place of residence and Borrower's places of business, and shall not open or close, move or change any existing or new place of business without giving the Bank at least thirty (30) days prior written notice thereof.

2.4 Valid Obligations. The Loan Documents represent legal, valid and binding obligations of Borrower and are fully enforceable according to their terms, except as limited by laws relating to the enforcement of creditors' rights.

2.5 Conflicts. There is no provision in any indenture, contract or agreement to which Borrower is a party which prohibits, limits or restricts the execution, delivery or performance of the Loan Documents.

2.6 Governmental Approvals. The execution, delivery and performance of the Loan Documents does not require any approval of or filing with any governmental agency or authority.

2.7 Litigation. There are no actions, suits or proceedings pending or to the knowledge of Borrower threatened against Borrower which might materially adversely affect the ability of Borrower to conduct its business or to pay or perform the Obligations.

2.8 Taxes. Borrower has filed all Federal, state and other tax returns required to be filed (except for such returns for which current and valid extensions have been filed), and all taxes, assessments and other governmental charges due from the Borrower have been fully paid. The Borrower has established on its books reserves adequate for the payment of all Federal, state and other tax liabilities (if any).

2.9 Use of Proceeds. No portion of any loan is to be used for (i) the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224 or (ii) primarily personal, family or household purposes.

2.10 Environmental. Except as heretofore disclosed to Bank in writing, as of the date hereof neither the Borrower nor any of Borrower's agents, employees or independent contractors (1) have caused or are aware of a release or threat of release of Hazardous Materials (as defined herein) on any of the premises or personal property owned or controlled by Borrower, or any abutting property, which could give rise to liability under any Environmental Law (as defined herein) or any other Federal, state or local law, rule or regulation; (2) have arranged for the transport of or transported any Hazardous Materials in a manner as to violate, or result in potential liabilities under, any Environmental Law; (3) have received any notice, order or demand from the Environmental Protection Agency or any other Federal, state or local agency under any Environmental Law; (4) have incurred any liability under any Environmental Law in connection with the mismanagement, improper disposal or release of Hazardous Materials; or (5) are aware of any inspection or investigation of any of the premises or personal property owned or controlled

by Borrower or abutting property by any Federal, state or local agency for possible violations of any Environmental Law.

To the best of Borrower's knowledge, no prior owner or tenant of any premises or property presently controlled or owned by Borrower committed or omitted any act which caused the release of Hazardous Materials on such premises or property which could give rise to a lien thereon by any Federal, state or local government. No notice or statement of claim or lien affecting any property or premises owned or controlled by Borrower has been recorded or filed in any public records by any Federal, state or local government for costs, penalties, fines or other charges as to such property.

Borrower agrees to indemnify and hold Bank harmless from all liability, loss, cost, damage and expense, including attorney fees and costs of litigation, arising from any and all of its violations of any Environmental Law (including those arising from any lien by any Federal, state or local government arising from the presence of Hazardous Materials) or from the presence of Hazardous Materials located on or emanating from any of the premises owned or controlled by the Borrower. Borrower further agrees to reimburse Bank upon demand for any costs incurred by Bank in connection with the foregoing. Borrower agrees that its obligations hereunder shall be continuous and shall survive the repayment of all debts to Bank.

The term "Hazardous Materials" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

The term "Environmental Law" means any present and future Federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to liability for or costs of remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

3. AFFIRMATIVE COVENANTS

3.1 Payments and Performance. Borrower will duly and punctually pay all Obligations becoming due to the Bank and will duly and punctually perform all Obligations on its part to be done or performed under this Agreement.

3.2 Books and Records; Inspection. Borrower will at all times keep proper books of account in which full, true and correct entries will be made of its transactions in accordance with generally accepted accounting principles, consistently applied and which are, in the opinion of a Certified Public Accountant acceptable to Bank, adequate to determine fairly the financial condition and the results of operations of Borrower. Borrower will at all reasonable times make its books and records available in its offices for inspection, examination and duplication by the Bank and the Bank's representatives and will permit inspection of all of its properties by the Bank and the Bank's representatives. Borrower will from time to

time furnish the Bank with such information and statements as the Bank may request in its sole discretion with respect to the Obligations.

3.3 Financial Statements. Borrower will furnish to Bank:

(a) as soon as available to Borrower, but in any event within **30** days after the end of the prior calendar year in any year and upon request therefor, with personal financial statements addressed to the Bank in form satisfactory to the Bank;

(b) Borrower's filed Federal tax returns, including all schedules thereto and K-1's or copy of extension, for the prior year within **30** days after the date that Borrower's tax returns are actually filed each such year or by such other date approved by the Bank;

(c) from time to time, such financial data and information about Borrower as Bank may reasonably request; and

(d) any financial data and information about any guarantors of the Obligations as Bank may reasonably request.

3.4 Conduct of Business. The Borrower will comply with all laws and regulations of the United States and of any state or states thereof and of any political subdivision thereof, and of any governmental authority which may be applicable to it or to its business; provided that this covenant shall not apply to any tax, assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.5 Taxes. Borrower will promptly pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, old age benefits, withholding, sales and other taxes assessed against it or payable by it before delinquent; provided that this covenant shall not apply to any tax assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.6 Maintenance. Borrower will keep and maintain its properties, if any, in good repair, working order and condition. The Borrower will immediately notify the Bank of any loss or damage to or any occurrence which would adversely affect the value of any such property.

3.7 Insurance. Borrower will maintain in force property and casualty insurance on any property of the Borrower, if any, against risks customarily insured against by companies engaged in businesses similar to that of the Borrower containing such terms and written by such companies as may be satisfactory to the Bank, such insurance to be payable to the Bank as its interest may appear in the event of loss and to name the Bank as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Bank's approval; and all such policies shall provide that they may not be canceled without first giving at least Thirty (30) days written notice of cancellation to the Bank. In the event that the Borrower fails to provide evidence of such insurance, the Bank may, at its option, secure such insurance and charge the cost thereof to the Borrower. At the option of the Bank, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair thereof or as a payment on account of the Obligations. From and after the occurrence of an Event of Default, the Bank is authorized to cancel any insurance maintained hereunder and apply any returned or unearned premiums, all of which are hereby assigned to the Bank, as a payment on account of the Obligations.

3.8 Notification of Default. Upon becoming aware of the existence of any condition or event which constitutes an Event of Default, or any condition or event which would upon notice or lapse of time, or both, constitute an Event of Default, Borrower shall promptly give Bank written notice thereof specifying the nature and duration thereof and the action being or proposed to be taken with respect thereto.

3.9 Notification of Material Litigation. Borrower will promptly notify the Bank in writing of any litigation or of any investigative proceedings of a governmental agency or authority commenced or threatened against it which would or might be materially adverse to the financial condition of Borrower or any guarantor of the Obligations.

3.10 Pension Plans. With respect to any pension or benefit plan maintained by Borrower, or to which Borrower contributes ("Plan"), the benefits under which are guarantied, in whole or in part, by the Pension Benefit Guaranty Corporation created by the Employee Retirement Income Security Act of 1974, P.L. 93-406, as amended ("ERISA") or any governmental authority succeeding to any or all of the functions of the Pension Benefit Guaranty Corporation ("Pension Benefit Guaranty Corporation"), Borrower will (a) fund each Plan as required by the provisions of Section 412 of the Internal Revenue Code of 1986, as amended; (b) cause each Plan to pay all benefits when due; (c) furnish Bank (i) promptly with a copy of any notice of each Plan's termination sent to the Pension Benefit Guaranty Corporation (ii) no later than the date of submission to the Department of Labor or to the Internal Revenue Service, as the case may be, a copy of any request for waiver from the funding standards or extension of the amortization periods required by Section 412 of the Internal Revenue Code of 1986, as amended and (iii) notice of any Reportable Event as such term is defined in ERISA; and (d) subscribe to any contingent liability insurance provided by the Pension Benefit Guaranty Corporation to protect against employer liability upon termination of a guarantied pension plan, if available to Borrower.

4. NEGATIVE COVENANTS

4.1 Limitations on Indebtedness. Borrower shall not issue any evidence of indebtedness or create, assume, guarantee, become contingently liable for, or suffer to exist indebtedness in addition to indebtedness to the Bank, except indebtedness or liabilities of Borrower, other than for money borrowed, incurred or arising in the ordinary course of business.

4.2 Loans or Advances. Borrower shall not make any loans or advances to any individual, firm or corporation, including without limitation its employees; provided, however, that Borrower may make advances to its employees, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.

4.3 Capital Expenditures. The Borrower shall not, directly or indirectly, make or commit to make capital expenditures by lease, purchase, or otherwise, except in the ordinary and usual course of business for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business.

4.4 Sale of Assets. Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary and usual course of business and except for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business, provided that fair consideration is received therefor; provided, however, in no event shall the Borrower sell, lease or otherwise dispose of any equipment purchased with the proceeds of any loans made by the Bank.

4.5 Restriction on Liens. Borrower shall not grant any security interest in, or mortgage of, any of its properties or assets. Borrower shall not agree with any person other than the Bank to not grant any security interest in, or mortgage of, any of its properties or assets.

4.6 Other Business. Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably allied thereto.

4.7 Change of Name. Borrower shall not change its legal name or his or her primary residence,

without giving the Bank at least 30 days prior written notice thereof.

5. DEFAULT

5.1 Default. "Event of Default" shall mean the occurrence of one or more of any of the following events:

(a) default of any liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

(b) failure of the Borrower or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;

(c) default of any material liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to any other party continuing for 30 days;

(d) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Borrower or any guarantor of the Obligations shall be determined by the Bank to have been false in any material respect when made;

(e) if the Borrower or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(f) the death of the Borrower or any guarantor of the Obligations and, if the Borrower or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(g) the institution by or against the Borrower or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(h) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor of the Obligations;

(i) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(j) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor of the Obligations;

(k) Borrower shall fail or neglect to perform, keep or observe any financial covenant set forth in this Agreement;

(l) Borrower shall fail or neglect to perform, keep or observe any financial reporting requirement set forth in this Agreement and the breach is not cured to Bank's satisfaction within 30 days;

(m) the termination or revocation of any guaranty of the Obligations; or

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

5.2 Acceleration. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations payable on DEMAND, which shall be due and payable on DEMAND, whether or not an Event of Default has occurred.

5.3 Nonexclusive Remedies. All of the Bank's rights and remedies not only under the provisions of this Agreement but also under any other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

6. MISCELLANEOUS

6.1 Waivers. The Borrower waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof.

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

6.3 Deposit Collateral. The Borrower hereby grants to the Bank a continuing lien and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and any cash, securities, instruments or other property of the Borrower in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower to the Bank or any Bank Affiliate and such deposits and other sums may be applied against such liabilities and obligations of the Borrower to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

6.4 Indemnification. The Borrower shall indemnify, defend and hold the Bank harmless of and from any claim brought or threatened against the Bank by the Borrower, any guarantor or endorser of the Obligations, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Borrower), except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Borrower.

6.5 Costs and Expenses. The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to any collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of any Obligation.

6.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

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

6.8 Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until terminated as to future transactions by written notice from either party to the other party of the termination hereof; provided that any such termination shall not release or affect any Obligations incurred or rights accrued hereunder prior to the effective date of such notice (as hereinafter defined) of such termination. The Bank may transfer and assign this Agreement and deliver it to the assignee, who shall thereupon have all of the rights of the Bank; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

6.9 Further Assurances. Borrower will from time to time execute and deliver to Bank such documents, and take or cause to be taken, all such other or further action, as Bank may request in order to effect and confirm or vest more securely in Bank all rights contemplated by this Agreement and the other Loan Documents (including, without limitation, to correct clerical errors) or to comply with applicable statute or law.

6.10 Amendments and Waivers. This Agreement may be amended and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if Borrower shall obtain the Bank's prior written consent to each such amendment, action or omission to act. No course of dealing and no delay or omission on the part of Bank in exercising any right hereunder shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Bank on any future occasion.

6.11 Terms of Agreement. This Agreement shall continue in full force and effect so long as any Obligations or obligation of Borrower to Bank shall be outstanding, or the Bank shall have any obligation to extend any financial accommodation hereunder, and is supplementary to each and every other agreement between Borrower and Bank and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and the Bank be construed to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower hereunder, unless such other agreement specifically refers to this Agreement and expressly so provides.

6.12 Notices. Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9 of the Code). Any such notice shall be deemed duly

received and effective (i) if delivered in hand to, or received by, any officer or agent of the Borrower or the Bank, upon such delivery or receipt, or (ii) if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the Borrower or the Bank, two (2) business days after being so mailed. A party's proper address is that set forth for such party in this Agreement or such address as that party may from time to time hereafter designate by notice to the other party.

6.13 Governing Law. This Agreement has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

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

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

6.16 Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of Borrower's obligations under the Loan Documents and Borrower provides partial satisfaction of any such obligation(s), Borrower hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than Borrower.

6.17 **JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.**

6.18 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF

SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

Executed as of **July 18, 2006**.

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____, Trustee
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

Accepted: Pacific Capital Bank, N.A.

By: Melinda Cabral by _____
Name: Melinda Cabral
Title: Vice President/Relationship Manager

ECW000073
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The Network of Preferred Community Banks℠

SANTA BARBARA BANK & TRUST | FIRST NATIONAL BANK | SOUTH VALLEY NATIONAL BANK | San Benito Bank | PACIFIC CAPITAL BANK | FIRSTBANK OF SAN LUIS OBISPO

Loan No. 100798974

DISBURSEMENT AUTHORIZATION

DATE: July 18, 2006

BORROWER: Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000
41 Pertalta Avenue
Los Gatos, California
95030

BANK: Pacific Capital Bank, N.A.
c/o Loan Services, PO Box 60654
Santa Barbara, California
93160-0654

LOAN: $2,100,000.00 Term Loan (the "Loan")

The undersigned hereby authorizes and directs the Bank, in its discretion pursuant to the terms of the loan documents (the "Loan Documents") between the Bank and the undersigned respecting the Loan, to disburse $2,100,000.00 of the loan proceeds available respecting the Loan as set forth below.

Disbursement	Amounts Paid by Customer at Closing	Amount Paid from Loan Proceeds
1. Facility Fee	$	$21,000.00
2. Appraisal Fee	$	$7,000.00
3. Appraisal Review	$	$500.00
4. Environmental Fee	$	$300.00
5. Title Policy	$	$250.00
6. Flood Fee	$	$10.00
7. Tax Service Fee	$	$279.00
8. Payable to LandAmerica Lawyers Title	$	$2,070,661.00
Total	**$ 0.00**	**$ 2,100,000.00**

The undersigned represents and warrants to the Bank that there has been no material adverse change in the undersigned's financial condition since the date of the latest financial statements delivered by the undersigned to the Bank. In addition, the undersigned affirms that the representations and warranties contained in the Loan Documents are true and correct as of the date hereof.

The balance of the loan proceeds of $ 0.00 shall be held by the Bank pending further instruction from the undersigned pursuant to the terms of the Loan Documents.

By your signature below, you agree to the terms and acknowledge receipt of a copy of this Disbursement Authorization.

ECW000074

Exhibit 11-17

Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

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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, Appellants, vs. BERRY-HINCKLEY INDUSTRIES, a Nevada corporation; JERRY HERBST, an individual; and TIMOTHY P. HERBST, as Special Administrator of the ESTATE OF JERRY HERBST, deceased, Respondents.	**No. 83640** District Court Case No. CV14-01712

APPENDIX TO APPELLANTS' OPENING BRIEF

VOLUME 5 OF 18

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 0950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
RICHARD D. WILLIAMSON (SBN 9932)
JONATHAN JOEL TEW (SBN 11874)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS LARRY J. WILLARD, et al.

Docket 83640 Document 2022-06442

CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
1.	Complaint	08/08/14	1	1-20
	Exhibit 1: Lease Agreement (November 18, 2005)		1	21-56
	Exhibit 2: Herbst Offer Letter		1	57-72
	Exhibit 3: Herbst Guaranty		1	73-78
	Exhibit 4: Lease Agreement (Dec. 2005)		1	79-84
	Exhibit 5: Interim Operating Agreement (March 2007)		1	85-87
	Exhibit 6: Lease Agreement (Dec. 2, 2005)		1	88-116
	Exhibit 7: Lease Agreement (June 6, 2006)		1	117-152
	Exhibit 8: Herbst Guaranty (March 2007) Hwy 50		1	153-158
	Exhibit 9: Herbst Guaranty (March 12, 2007)		1	159-164
	Exhibit 10: First Amendment to Lease Agreement (Mar. 12, 2007) (Hwy 50)		1	165-172
	Exhibit 11: First Amendment to Lease Agreement (Mar. 12, 2007)		1	173-180
	Exhibit 12: Gordon Silver Letter dated March 18, 2013		1	181-184

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 1)	Exhibit 13: Gordon Silver Letter dated March 28, 2013		1	185-187
2.	Acceptance of Service	09/05/14	1	188-189
3.	Answer to Complaint	10/06/14	1	190-201
4.	Motion to Associate Counsel – Brian P. Moquin, Esq.	10/28/14	1	202-206
	Exhibit 1: Verified Application for Association of Counsel Under Nevada Supreme Court Rule 42		1	207-214
	Exhibit 2: The State Bar of California's Certificate of Standing		1	215-216
	Exhibit 3: State Bar of Nevada Statement Pursuant to Supreme Court Rule 42(3)(b)		1	217-219
5.	Pretrial Order	11/10/14	1	220-229
6.	Order Admitting Brian P. Moquin Esq. to Practice	11/13/14	1	230-231
7.	Verified First Amended Complaint	01/21/15	2	232-249
8.	Answer to Amended Complaint	02/02/15	2	250-259
9.	Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	260-273
10.	Errata to Amended Answer to Amended Complaint and Counterclaim	04/21/15	2	274-277
	Exhibit 1: Defendants' Amended Answer to Plaintiffs' Amended Complaint and Counterclaim		2	278-293
	Exhibit 1: Operation Agreement		2	294-298

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
11.	Plaintiffs Larry J. Willard and Overland Development Corporation's Answer to Defendants' Counterclaim	05/27/15	2	299-307
12.	Motion for Contempt Pursuant to NRCP 45(e) and Motion for Sanctions Against Plaintiffs' Counsel Pursuant to NRCP 37	07/24/15	2	308-316
	Exhibit 1: Declaration of Brian R. Irvine		2	317-320
	Exhibit 2: Subpoena Duces Tecum to Dan Gluhaich		2	321-337
	Exhibit 3: June 11, 2015, Email Exchange		2	338-340
	Exhibit 4: June 29, 2015, Email Attaching the Subpoena, a form for acceptance of service, and a cover letter listing the deadlines to respond		2	341-364
	Exhibit 5: June 29, 2015, Email Exchange		2	365-370
	Exhibit 6: July 17, 2015, Email Exchange		2	371-375
	Exhibit 7: July 20 and July 21, 2015 Email		2	376-378
	Exhibit 8: July 23, 2015, Email		2	379-380
	Exhibit 9: June 23, 2015, Email		2	381-382
13.	Stipulation and Order to Continue Trial (First Request)	09/03/15	2	383-388
14.	Stipulation and Order to Continue Trial (Second Request)	05/02/16	2	389-395

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
15.	Defendants/Counterclaimants' Motion for Partial Summary Judgment	08/01/16	2	396-422
	Exhibit 1: Affidavit of Tim Herbst		2	423-427
	Exhibit 2: Willard Lease		2	428-463
	Exhibit 3: Willard Guaranty		2	464-468
	Exhibit 4: Docket Sheet, Superior Court of Santa Clara, Case No. 2013-CV-245021		3	469-480
	Exhibit 5: Second Amended Motion to Dismiss		3	481-498
	Exhibit 6: Deposition Excerpts of Larry Willard		3	499-509
	Exhibit 7: 2014 Federal Tax Return for Overland		3	510-521
	Exhibit 8: 2014 Willard Federal Tax Return – Redacted		3	522-547
	Exhibit 9: Seller's Final Closing Statement		3	548-549
	Exhibit 10: Highway 50 Lease		3	550-593
	Exhibit 11: Highway 50 Guaranty		3	594-598
	Exhibit 12: Willard Responses to Defendants' First Set of Interrogatories		3	599-610
	Exhibit 13: Baring Purchase and Sale Agreement		3	611-633
	Exhibit 14: Baring Lease		3	634-669

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 15)	Exhibit 15: Baring Property Loan		3	670-705
	Exhibit 16: Deposition Excerpts of Edward Wooley		4	706-719
	Exhibit 17: Assignment of Baring Lease		4	720-727
	Exhibit 18: HUD Statement		4	728-730
	Exhibit 19: November 2014 Email Exchange		4	731-740
	Exhibit 20: January 2015 Email Exchange		4	741-746
	Exhibit 21: IRS Publication 4681		4	747-763
	Exhibit 22: Second Amendment to Baring Lease		4	764-766
	Exhibit 23: Wooley Responses to Second Set of Interrogatories		4	767-774
	Exhibit 24: 2013 Overland Federal Income Tax Return		4	775-789
	Exhibit 25: Declaration of Brian Irvine		4	790-794
16.	Affidavit of Brian P. Moquin	08/30/16	4	795-797
17.	Affidavit of Larry J. Willard	08/30/16	4	798-806
18.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	08/30/16	4	807-837
	Exhibit 1: *Purchase and Sale Agreement* dated July 1, 2005 for Purchase of the Highway 50 Property		4	838-851

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 2: *Lease Agreement* dated December 2, 2005 for the Highway 50 Property		4	852-895
	Exhibit 3: *Three Year Adjustment Term Note* dated January 19, 2007 in the amount of $2,200,00.00 for the Highway 50 Property		4	896-900
	Exhibit 4: *Deed of Trust, Fixture Filing and Security Agreement* dated January 30, 2017, Inst. No. 363893, For the Highway 50 Property		4	901-918
	Exhibit 5: Letter and Attachments from Sujata Yalamanchili, Esq. to Landlords dated February 17, 2007 re Herbst Acquisition of BHI		5	919-934
	Exhibit 6: *First Amendment to Lease Agreement* dated March 12, 2007 for the Highway 50 Property		5	935-942
	Exhibit 7: *Guaranty Agreement* dated March 12, 2007 for the Highway 50 Property		5	943-947
	Exhibit 8: *Second Amendment to Lease* dated June 29, 2011 for the Highway 50 Property		5	948-950
	Exhibit 9: *Purchase and Sale Agreement* Dated July 14, 2006 for the Baring Property		5	951-973
	Exhibit 10: *Lease Agreement* dated June 6, 2006 for the Baring Property		5	974-1009

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 11: *Five Year Adjustable Term Note* dated July 18, 2006 in the amount of $2,100,00.00 for the Baring Property		5	1010-1028
	Exhibit 12*: Deed of Trust, Fixture Filing and Security Agreement* dated July 21, 2006, Doc. No. 3415811, for the Highway 50 Property		5	1029-1046
	Exhibit 13: *First Amendment to Lease Agreement* dated March 12, 2007 for the Baring Property		5	1047-1054
	Exhibit 14: *Guaranty Agreement* dated March 12, 2007 for the Baring Property		5	1055-1059
	Exhibit 15: *Assignment of Entitlements, Contracts, Rent and Revenues (1365 Baring)* dated July 5, 2007, Inst. No. 3551275, for the Baring Property		5	1060-1071
	Exhibit 16: *Assignment and Assumption of Lease* dated December 29, 2009 between BHI and Jacksons Food Stores, Inc.		5	1072-1079
	Exhibit 17: *Substitution of Attorney* forms for the Wooley Plaintiffs' file March 6 and March 13, 2014 in the California Case		5	1080-1084
	Exhibit 18: *Joint Stipulation to Take Pending Hearings Off Calendar and to Withdraw Written Discovery Requests Propounded by Plaintiffs* filed March 13, 2014 in the California Case		5	1085-1088
	Exhibit 19: Email thread dated March 14, 2014 between Cindy Grinstead and		5	1089-1093

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Brian Moquin re Joint Stipulation in California Case			
	Exhibit 20: Civil Minute Order on Motion to Dismiss in the California case dated March 18, 2014 faxed to Brian Moquin by the Superior Court Property		5	1094-1100
	Exhibit 21: *Request for Dismissal* without prejudice filed May 19, 2014 in the California case		5	1101-1102
	Exhibit 22: *Notice of Breach and Default and Election to Cause Sale of Real Property Under Deed of Trust* dated March 21, 2014, Inst. No. 443186, regarding the Highway 50 Property		5	1103-1111
	Exhibit 23: Email message dated February 5, 2014 from Terrilyn Baron of Union Bank to Edward Wooley regarding cross-collateralization of the Baring and Highway 50 Properties		5	1112-1113
	Exhibit 24: *Settlement Statement (HUD-1)* dated May 20, 2014 for sale of the Baring Property		5	1114-1116
	Exhibit 25: 2014 Federal Tax Return for Edward C. and Judith A. Wooley		5	1117-1152
	Exhibit 26: 2014 State Tax Balance Due Notice for Edward C. and Judith A. Wooley		5	1153-1155
	Exhibit 27: *Purchase and Sale Agreement* dated November 18, 2005 for the Virginia Property		6	1156-1168

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 28: *Lease Agreement* dated November 18, 2005 for the Virginia Property		6	1169-1204
	Exhibit 29: *Buyer's and Seller's Final Settlement Statements* dated February 24, 2006 for the Virginia Property		6	1205-1207
	Exhibit 30: *Deed of Trust, Fixture Filing and Security Agreement* dated February 21, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1208-1225
	Exhibit 31: *Promissory Note* dated February 28, 2006 for $13,312,500.00 by Willard Plaintiffs' in favor of Telesis Community Credit Union		6	1226-1230
	Exhibit 32: *Subordination, Attornment and Nondisturbance Agreement* dated February 21, 2006 between Willard Plaintiffs, BHI, and South Valley National Bank, Inst. No. 3353293, re the Virginia Property		6	1231-1245
	Exhibit 33: *Deed of Trust, Assignment of Rents, and Security Agreement* dated March 16, 2006 re the Virginia Property securing loan for $13,312,500.00		6	1246-1271
	Exhibit 34: *Payment Coupon* dated March 1, 2013 from Business Partners to Overland re Virginia Property mortgage		6	1272-1273
	Exhibit 35: *Substitution of Trustee and Full Reconveyance* dated April 18, 2006 naming Pacific Capital Bank, N.A. as trustee on the Virginia Property Deed of Trust		6	1274-1275

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Exhibit 36: *Amendment to Lease Agreement* dated March 9, 2007 for the Virginia Property		6	1276-1281
	Exhibit 37: *Guaranty Agreement* dated March 9, 2007 for the Virginia Property		6	1282-1286
	Exhibit 38: Letter dated March 12, 2013 from L. Steven Goldblatt, Esq. to Jerry Herbst re breach of the Virginia Property lease		6	1287-1291
	Exhibit 39: Letter dated March 18,2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1292-1294
	Exhibit 40: Letter dated April 12, 2013 from Gerald M. Gordon, Esq. to L. Steven Goldblatt, Esq. re breach of the Virginia Property lease		6	1295-1297
	Exhibit 41: *Operation and Management Agreement* dated May 1, 2013 between BHI and the Willard Plaintiffs re the Virginia Property		6	1298-1302
	Exhibit 42: *Notice of Intent to Foreclose* dated June 14, 2013 from Business Partners to Overland re default on loan for the Virginia Property		6	1303-1305
	Exhibit 43: *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* dated June 18, 2013		6	1306-1309
	Exhibit 44: *Declaration in Support of Motion to Dismiss Case* filed by Larry James Willard on August 9, 2013,		6	1310-1314

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	Northern District of California Bankruptcy Court Case No. 13-53293 CN			
	Exhibit 45: *Substitution of Attorney* forms from the Willard Plaintiffs filed March 6, 2014 in the California case		6	1315-1319
	Exhibit 46: *Declaration of Arm's Length Transaction* dated January 14, 2014 between Larry James Willard and Longley Partners, LLC re sale of the Virginia Property		6	1320-1327
	Exhibit 47: *Purchase and Sale Agreement* dated February 14, 2014 between Longley Partners, LLC and Larry James Willard re purchase of the Virginia Property for $4,000,000.00		6	1328-1334
	Exhibit 48: *Short Sale Agreement* dated February 19, 2014 between the National Credit Union Administration Board and the Willard Plaintiffs re short sale of the Virginia Property		6	1335-1354
	Exhibit 49: *Consent to Act* dated February 25, 2014 between the Willard Plaintiffs and Daniel Gluhaich re representation for short sale of the Virginia Property		6	1355-1356
	Exhibit 50: *Seller's Final Closing Statement* dated March 3, 2014 re the Virginia Property		6	1357-1358
	Exhibit 51: IRS Form 1099-C issued by the National Credit Union Administration Board to Overland		6	1359-1360

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 18)	evidencing discharge of $8,597,250.20 in debt and assessing the fair market value of the Virginia Property at $3,000,000.00			
19.	Defendants' Reply Brief in Support of Motion for Partial Summary Judgment	09/16/16	6	1361-1380
	Exhibit 1: Declaration of John P. Desmond		6	1381-1384
20.	Supplement to Defendants / Counterclaimants' Motion for Partial Summary Judgement	12/20/16	7	1385-1390
	Exhibit 1: Expert Report of Michelle Salazar		7	1391-1424
21.	Plaintiffs' Objections to Defendants' Proposed Order Granting Partial Summary Judgment in Favor of Defendants	01/30/17	7	1425-1443
22.	Defendants/Counterclaimants' Response to Plaintiffs' Proposed Order Granting Partial Summary Judgement in Favor of Defendants	02/02/17	7	1444-1451
	Exhibit 1: January 19-25, 2017, Email Exchange		7	1452-1454
	Exhibit 2: January 25, 2017, Email from M. Reel		7	1455-1479
23.	Stipulation and Order to Continue Trial (Third Request)	02/09/17	7	1480-1488
24.	Order Granting Partial Summary Judgment in Favor of Defendants	05/30/17	7	1489-1512

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
25.	Notice of Entry of Order re Order Granting Partial Summary Judgment	05/31/17	7	1513-1516
	Exhibit 1: May 30, 2017 Order		7	1517-1541
26.	Affidavit of Brian P. Moquin re Willard	10/18/17	7	1542-1549
27.	Affidavit of Daniel Gluhaich re Willard	10/18/17	7	1550-1557
28.	Affidavit of Larry Willard	10/18/17	7	1558-1574
29.	Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation	10/18/17	7	1575-1602
	Contents of DVD of Exhibits (filed manually)		7	1603-1615
30.	Defendants'/Counterclaimants' Opposition to Larry Willard and Overland Development Corporation's Motion for Summary Judgment – Oral Arguments Requested	11/13/17	8	1616-1659
	Exhibit 1: Declaration of Brian R. Irvine		8	1660-1666
	Exhibit 2: December 12, 2014, Plaintiffs Initial Disclosures		8	1667-1674
	Exhibit 3: February 12, 2015 Letter		8	1675-1677
	Exhibit 4: Willard July 2015 Interrogatory Responses, First Set		8	1678-1689
	Exhibit 5: August 28, 2015, Letter		8	1690-1701
	Exhibit 6: March 3, 2016, Letter		8	1702-1790
	Exhibit 7: March 15, 2016 Letter		9	1791-1882
	Exhibit 8: April 20, 2016, Letter		9	1883-1909

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 9: December 2, 2016, Expert Disclosure of Gluhaich		9	1910-1918
	Exhibit 10: December 5, 2016 Email		9	1919-1925
	Exhibit 11: December 9, 2016 Email		9	1926-1927
	Exhibit 12: December 23, 2016 Email		9	1928-1931
	Exhibit 13: December 27, 2016 Email		9	1932-1935
	Exhibit 14: February 3, 2017, Letter		9	1936-1963
	Exhibit 15: Willard Responses to Defendants' First Set of Requests for Production of Documents		9	1964-1973
	Exhibit 16: April 1, 2016 Email		9	1974-1976
	Exhibit 17: May 3, 2016 Email		9	1977-1978
	Exhibit 18: June 21, 2016 Email Exchange		9	1979-1985
	Exhibit 19: July 21, 2016 Email		9	1986-2002
	Exhibit 20: Defendants' First Set of Interrogatories on Willard		9	2003-2012
	Exhibit 21: Defendants' Second Set of Interrogatories on Willard		9	2013-2023
	Exhibit 22: Defendants' First Requests for Production on Willard		9	2024-2031
	Exhibit 23: Defendants' Second Request for Production on Willard		9	2032-2039

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 30)	Exhibit 24: Defendants' Third Request for Production on Willard		10	2040-2045
	Exhibit 25: Defendants Requests for Admission to Willard		10	2046-2051
	Exhibit 26: Willard Lease		10	2052-2087
	Exhibit 27: Willard Response to Second Set of Interrogatories		10	2088-2096
	Exhibit 28: Deposition of L. Willard Excerpt		10	2097-2102
	Exhibit 29: April 12, 2013 Letter		10	2103-2105
	Exhibit 30: Declaration of G. Gordon		10	2106-2108
	Exhibit 31: Declaration of C. Kemper		10	2109-2112
31.	Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	11/14/17	10	2113-2135
	Exhibit 1: Plaintiffs' Initial Disclosures		10	2136-2143
	Exhibit 2: Plaintiffs' Initial Disclosures of Expert Witnesses		10	2144-2152
	Exhibit 3: December 5, 2016 Email		10	2153-2159
	Exhibit 4: December 9, 2016 Email		10	2160-2161
	Exhibit 5: December 23, 2016 Email		10	2162-2165
	Exhibit 6: December 27, 2016 Email		10	2166-2169
	Exhibit 7: February 3, 2017 Letter		10	2170-2197

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 31)	Exhibit 8: Deposition Excerpts of D. Gluhaich		10	2198-2207
	Exhibit 9: Declaration of Brian Irvine		10	2208-2211
32.	Defendants' Motion for Partial Summary Judgment – Oral Argument Requested	11/15/17	10	2212-2228
	Exhibit 1: Highway 50 Lease		10	2229-2272
	Exhibit 2: Declaration of Chris Kemper		10	2273-2275
	Exhibit 3: Wooley Deposition at 41		10	2276-2281
	Exhibit 4: Virginia Lease		11	2282-2317
	Exhibit 5: Little Caesar's Sublease		11	2318-2337
	Exhibit 6: Willard Response to Defendants' Second Set of Interrogatories		11	2338-2346
	Exhibit 7: Willard Deposition at 89		11	2347-2352
33.	Defendants'/Counterclaimants' Motion for Sanctions – Oral Argument Requested	11/15/17	11	2353-2390
	Exhibit 1: Plaintiffs' Initial Disclosures		11	2391-2398
	Exhibit 2: November 2014 Email Exchange		11	2399-2408
	Exhibit 3: January 2015 Email Exchange		11	2409-2414
	Exhibit 4: February 12, 2015 Letter		11	2415-2417
	Exhibit 5: Willard July 2015 Interrogatory Reponses		11	2418-2429

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 6: Wooley July 2015 Interrogatory Responses		11	2430-2439
	Exhibit 7: August 28, 2015 Letter		11	2440-2451
	Exhibit 8: March 3, 2016 Letter		12	2452-2540
	Exhibit 9: March 15, 2016 Letter		12	2541-2632
	Exhibit 10: April 20, 2016 Letter		12	2633-2659
	Exhibit 11: December 2, 2016 Expert Disclosure		12	2660-2668
	Exhibit 12: December 5, 2016 Email		12	2669-2675
	Exhibit 13: December 9, 2016 Email		12	2676-2677
	Exhibit 14: December 23, 2016 Email		12	2678-2681
	Exhibit 15: December 27, 2016 Email		12	2682-2685
	Exhibit 16: February 3, 2017 Letter		13	2686-2713
	Exhibit 17: Willard Responses to Defendants' First Set of Requests for Production of Documents 17		13	2714-2723
	Exhibit 18: Wooley Deposition Excerpts		13	2724-2729
	Exhibit 19: Highway 50 Lease		13	2730-2773
	Exhibit 20: April 1, 2016 Email		13	2774-2776
	Exhibit 21: May 3, 2016 Email Exchange		13	2777-2778
	Exhibit 22: June 21, 2016 Email Exchange		13	2779-2785

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 33)	Exhibit 23: July 21, 2016 Letter		13	2786-2802
	Exhibit 24: Defendants' First Set of Interrogatories on Wooley		13	2803-2812
	Exhibit 25: Defendants' Second Set of Interrogatories on Wooley		13	2813-2822
	Exhibit 26: Defendants' First Request for Production of Documents on Wooley		13	2823-2830
	Exhibit 27: Defendants' Second Request for Production of Documents on Wooley		13	2831-2838
	Exhibit 28: Defendants' Third Request for Production of Documents on Wooley		13	2839-2844
	Exhibit 29: Defendants' Requests for Admission on Wooley		13	2845-2850
	Exhibit 30: Defendants' First Set of Interrogatories on Willard		13	2851-2860
	Exhibit 31: Defendants' Second Set of Interrogatories on Willard		13	2861-2871
	Exhibit 32: Defendants' First Request for Production of Documents on Willard		13	2872-2879
	Exhibit 33: Defendants' Second Request for Production of Documents on Willard		13	2880-2887
	Exhibit 34: Defendants' Third Request for Production of Documents on Willard		13	2888-2893
	Exhibit 35: Defendants' Requests for Admission on Willard		13	2894-2899

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
34.	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	13	2900-2904
35.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Sanctions	12/07/17	13	2905-2908
36.	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	13	2909-2912
37.	Notice of Non-Opposition to Defendants/Counterclaimants' Motion for Partial Summary Judgment	12/07/17	13	2913-2916
38.	Order Granting Defendants/Counterclaimants' Motion for Sanctions [Oral Argument Requested]	01/04/18	13	2917-2921
39.	Order Granting Defendants/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich	01/04/18	13	2922-2926
40.	Order Granting Defendants' Motion for Partial Summary Judgment	01/04/18	14	2927-2931
41.	Notice of Entry of Order re Defendants' Motion for Partial Summary Judgment	01/05/18	14	2932-2935
42.	Notice of Entry of Order re Defendants' Motion to Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	14	2936-2939

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	14	2940-2943
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	14	2944-2977
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	14	2978-2981
46.	Order Denying Plaintiffs' Motion to Partially Dismiss Plaintiffs' Complaint as Moot	03/06/18	14	2982-2985
47.	Notice of Entry of Order re Order Denying Motion to Partially Dismiss Complaint	03/06/18	14	2986-2989
48.	Request for Entry of Judgment	03/09/18	14	2990-2998
49.	Notice of Withdrawal of Local Counsel	03/15/18	14	2999-3001
50.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	14	3002-3004
51.	Opposition to Request for Entry of Judgment	03/26/18	14	3005-3010
52.	Reply in Support of Request for Entry of Judgment	03/27/18	14	3011-3016
53.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	14	3017-3019
54.	Notice of Entry of Order re Order Granting Defendants' Motion to Dismiss Counterclaims	04/16/18	14	3020-3023
55.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	14	3024-3041

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 55)	Exhibit 1: Declaration of Larry J. Willard		14	3042-3051
	Exhibit 2: Lease Agreement dated 11/18/05		14	3052-3087
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		14	3088-3090
	Exhibit 4: Operation and Management Agreement dated 5/1/13		14	3091-3095
	Exhibit 5: 13 Symptoms of Bipolar Disorder		14	3096-3098
	Exhibit 6: Emergency Protective Order dated 1/23/18		14	3099-3101
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		14	3102-3104
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		14	3105-3118
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		14	3119-3147
56.	Opposition to Rule 60(b) Motion for Relief	05/18/18	15	3148-3168
	Exhibit 1: Declaration of Brian R. Irvine		15	3169-3172
	Exhibit 2: Transcript of Hearing, January 10, 2017		15	3173-3242

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 56)	Exhibit 3: Transcript of Hearing, December 12, 2017		15	3243-3271
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		15	3272-3280
	Exhibit 5: Attorney status according to the California Bar		15	3281-3282
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		15	3283-3290
57.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	15	3291-3299
	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		15	3300-3307
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		15	3308-3311
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		15	3312-3314
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		15	3315-3324
	Exhibit 5: Receipt		15	3325-3326
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018		15	3327-3331

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 57)	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		15	3332-3338
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		15	3339-3343
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		15	3344-3346
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		15	3347-3349
	Exhibit 11: Notice of Withdrawal of Local Counsel		15	3350-3353
58.	Order re Request for Entry of Judgment	06/04/18	15	3354-3358
59.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	15	3359-3367
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		15	3368-3385
60.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	16	3386-3402
61.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	16	3403-3409
62.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	16	3410-3441

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
63.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	16	3442-3478
64.	Judgment	12/11/18	16	3479-3481
65.	Notice of Entry of Order re Judgment	12/11/18	16	3482-3485
66.	Notice of Appeal	12/28/18	16	3486-3489
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		16	3490-3524
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		16	3525-3557
	Exhibit 3: Judgment, entered December 11, 2018		16	3558-3561
67.	Motion to Substitute Proper Party	02/22/19	16	3562-3576
68.	Addendum to Motion to Substitute Proper Party	02/26/19	16	3577-3588
69.	Opinion	08/06/20	16	3589-3597
70.	Notice of Related Action	08/19/20	16	3598-3601
	Exhibit 1: Conditional Guilty Plea in Exchange for a Stated Form of Discipline		16	3602-3612
	Exhibit 2: Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing		16	3613-3623

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
(cont 70)	Exhibit 3: Order Approving Conditional Guilty Plea Agreement and Enjoining Attorney from Practicing Law in Nevada		17	3624-3632
71.	Order to Set Status Conference	09/18/20	17	3633-3634
72.	Order Denying Rehearing	11/03/20	17	3635
73.	Order Denying En Banc Reconsideration	02/23/21	17	3636-3637
74.	Notice of Association of Counsel	03/29/21	17	3638-3640
75.	Request for Status Conference	03/30/21	17	3641-3645
76.	Notice of Submission of Proposed Order	05/21/21	17	3646-3649
	Exhibit 1: [Plaintiffs' proposed] Order Granting in Part and Denying in Part the Willard Plaintiffs' Rule 60(b)(1) Motion for Relief		17	3650-3664
77.	Notice of Submission of Proposed Order	05/21/21	17	3665-3668
	Exhibit 1: [Defendants' proposed] Order Denying Plaintiffs' Rule 60(b) Motion for Relief on Remand		17	3669-3714
78.	Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/09/21	17	3715-3722
79.	Defendants' Opposition to Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/23/21	17	3723-3735
80.	Reply in Support of Motion to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order	06/29/21	17	3736-3742
81.	Order Denying Motion to Strike	09/10/21	17	3743-3749

NO.	DOCUMENT	DATE	VOL.	PAGE NO.
82.	Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief	09/13/21	17	3750-3795
83.	Notice of Filing Cost Bond	10/11/21	17	3796-3798
84.	Notice of Appeal	10/11/21	17	3799-3802
	Exhibit 1: Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief		17	3803-3849
85.	Case Appeal Statement	10/11/21	17	3850-3855
	Transcripts			
86.	Transcript of Proceedings – Status Hearing	08/17/15	18	3856-3873
87.	Transcript of Proceedings – Hearing on Motion for Partial Summary Judgment	01/10/17	18	3874-3942
88.	Transcript of Proceedings – Pre-Trial Conference	12/12/17	18	3943-3970
89.	Transcript of Proceedings – Oral Arguments – Plaintiffs' Rule 60(b) Motion	09/04/18	18	3971-3991
90.	Transcript of Proceedings – Status Conference	04/21/21	18	3992-4010

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Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 12

EXHIBIT 12

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Conformed Copy
07/21/2006 10:49A Fee:55.00
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Requested By
LANDAMERICA FINANCIAL GROUP INC
Washoe County Recorder
Kathryn L. Burke - Recorder

COPY - has not been compared with the Original Document - WCR

ASSESSOR'S PARCEL NUMBER: 030-041-08

UPON RECORDATION RETURN TO:

Pacific Capital Bank, N.A.

c/o Loan Services, PO Box 60654

Santa Barbara, California 93160-0654

MAIL TAX STATEMENTS TO:
Edward C. Wooley
Judith A. Wooley
41 Pertalta Avenue
Los Gatos, CA 95030

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

06-48646

This DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this "Deed of Trust") entered into as of **July 18, 2006**, among **Edward C. Wooley and Judith A. Wooley, Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000** (collectively and jointly and severally, the "Trustor"), LandAmerica Lawyers Title, with an address of **1850 North Central Avenue, Suite 300 Phoenix, AZ 85004**(the "Trustee") for the use and benefit of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es): **1365 Baring Blvd., Sparks, Nevada 89434** (the "Address(es)").

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

1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain **Five Year Adjustable Term Note**, dated **July 18,**

2006, by **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000** in favor of the Beneficiary in the original principal amount of **$2,100,000.00** (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

This Deed of Trust shall secure the principal amount of Obligations of up to $2,100,000.00. The maximum amount of principal secured hereby may be increased or decreased by amendment to this Deed of Trust. This Deed of Trust shall nevertheless secure payment and performance of all Obligations including, without limitation, any other liabilities and future advances, direct or indirect, absolute or contingent, now existing or hereafter arising from the Trustor to the Beneficiary. Future advances hereunder are governed by Nevada Revised Statutes Sections 106.300 to 106.400, inclusive.

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

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

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

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or

business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgements, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

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

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

2. REPRESENTATIONS, WARRANTIES, COVENANTS

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

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

(b) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Bank in connection with this Deed of Trust (the "Permitted Encumbrances");

(c) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;

(d) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and

(e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

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

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

(a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust;

(b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or

(c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the

Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

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

(a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;

(b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;

(c) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;

(d) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and

(e) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

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

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

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

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

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

3. CERTAIN RIGHTS OF THE BENEFICIARY

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

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

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

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

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

4. DEFAULTS AND REMEDIES

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

(a) default of any liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;

(b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents continuing for 30 days;

(c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;

(d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary continuing for 30 days;

(e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party continuing for 30 days;

(f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false in any material respect when made;

(g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;

(h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;

(i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;

(j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;

(k) a judgement or judgements for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;

(l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;

(m) the termination or revocation of any guaranty of the Obligations; or

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

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

(a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;

(b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;

(c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;

(d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. In the event this Deed of Trust shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Beneficiary shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Beneficiary may in its discretion subordinate this Deed of Trust to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;

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

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

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

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

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

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

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

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

4.7 Effect of Sale. Any sale or sales made by virtue of or under this Deed of Trust, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the property so sold, or any part thereof from, through or under Trustor, its successors and

assigns. The receipt by Trustee shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Deed of Trust, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

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

5. MISCELLANEOUS

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

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

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

5.4 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Deed of Trust or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Trustor or other person or entity, then the Trustor shall indemnify, defend and hold

each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgement. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Beneficiary in favor of the Trustor.

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

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

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

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

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

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

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

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

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

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

EXECUTED under seal as of the date first above written.

Trustor:

Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

By: _____
Edward C. Wooley, Trustee

By: _____
Judith A. Wooley, Trustee

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On July 17, 2009 before me, Brenda Baker Notary Public, personally appeared **Edward C. Wooley**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and offical seal.

Signature Brenda Baker (Seal)

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

STATE OF CALIFORNIA :
SS.
COUNTY OF Santa Clara :

On July 17, 2009 before me, Brenda Baker Notary Public, personally appeared **Judith A. Wooley**, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and offical seal.

Signature Brenda Baker (Seal)

BRENDA BAKER
Commission # 1609768
Notary Public - California
Santa Clara County
My Comm. Expires Sep 29, 2009

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EXHIBIT "A

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

PARCEL I:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

BEGINNING at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "PARCEL MAP FOR FOOTHILL INVESTMENT CO. AND LEWIS BUILDING CO, INC." recorded January 26, 1983 in the Office of the County Recorder of Washoe County, Nevada, as Parcel Map NO. 1418, File No. 835532 and proceeding;
Thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing South 44°11'14" East 42.43 feet;
Thence South 0°48'46" West 15.00 feet;
Thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet;
Thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet;
Thence leaving Sorensen Way North 89°11'14" West 150.00 feet;
Thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard;
Thence along Baring Boulevard South 89°11'14" East 169.67 feet to the Point of Beginning.

NOTE: The above metes and bounds description appeared previously in that certain Document recorded March 3, 1997 in Book 4801, Page 0141, as Instrument No. 2076862, Washoe County Official Records.

PARCEL II:

EXHIBIT "A" - Continued

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 32, under Document No. 1248846, Official Records.

NOTE: (The above metes and bounds Legall Description was previously shown on Grant, Bargain, Sale Deed recorded October 13, 2005 Doc/Inst. No. 3291758 of Official Records.

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Transaction # 5685608 : tbritton

EXHIBIT 13

EXHIBIT 13

1365 Baring Blvd.

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of March 12, 2007 by and between Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of May __ 2006, (the "Lease") with respect to real property and improvements as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

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

1. **Lessor's Change of Name.** The name of the Lessor is hereby changed to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

3. **Winner's Corner.** Section 12.H is deleted in its entirety.

4. **Default, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.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:"

and replaced with the following:

"*Remedies*. Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, 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:"

5. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default 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 from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

6. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

7. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

8. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

9. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("Herbst") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD WOOLEY AND JUDITH WOOLEY

By: _____

Printed Name: _____

Title: _____

Judith A. Wooley
Judith A. Wooley
Trustee

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: _____

Title: _____

AGREED AND ACKNOWLEDGED:

WINNER'S GAMING, INC.

By: _____

Printed Name: Robert C. King

Title: Pres

SHERILL GRAYSON
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 03-84260-2
My Appt. Expires July 10, 2007

Sherill Grayson

ECW000096

Exhibit 13-4

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Edward C. Wooley, ~~personally known to me,~~ or proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

STATE OF California)
) SS:
COUNTY OF Santa Clara)

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Wooley, ~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)

MARY M. EDGAR
COMM. #1655108
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
Comm. Exp. MARCH 28, 2010

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD WOOLEY AND JUDITH WOOLEY

By: Edward C. Wooley

Printed Name: Edward C. Wooley

Title: Trustee

Judith A. Wooley
Judith A. Wooley
Trustee

LESSEE:

BERRY-HINCKLEY INDUSTRIES

By: _____

Printed Name: Trevor Lloyd

Title: Secretary

AGREED AND ACKNOWLEDGED:

WINNER'S GAMING, INC.

By: Robert G. King

Printed Name: Robert G. King

Title: Pres

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

On June 28, 2007, before me, Sandra Shinault, a Notary Public in an for said State, personally appeared Trevor Lloyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sandra Shinault

(SEAL)

OFFICIAL SEAL
SANDRA SHINAULT
NOTARY PUBLIC - STATE OF NEVADA
Date Appointment Exp: 2-5-2009
Certificate No: 97-0081-2

ECW000099

Exhibit 13-7

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Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 14

EXHIBIT 14

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 12 day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 1365 Baring Boulevard, Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the

provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.

7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.

JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.

EDWARD C. WOOLEY

JUDITH A. WOOLEY

Herbst Lease Guaranty - 1365 Baring.DOC

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Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 15

EXHIBIT 15

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Requested By
CHICAGO TITLE AGENCY OF NEVADA
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: $24.00 RPTT: $0.00
Page 1 of 11

A P No. 030-041-08

Prepared by and when
recorded mail to:

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

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

ASSIGNMENT OF ENTITLEMENTS, CONTRACTS, RENTS AND REVENUES
(1365 BARING)

THIS ASSIGNMENT OF ENTITLEMENTS, CONTRACTS, RENTS AND REVENUES (1365 BARING) ("Assignment") is made and entered into as of June 29, 2007 by and between BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, hereinafter referred to as "Assignor", party of the first part, and FIRST NATIONAL BANK OF NEVADA, hereinafter referred to, together with its successors and assigns, as "Lender ", party of the second part.

R_E_C_I_T_A_L_S:

WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By _____
Jerry E. Herbst,
President

LENDER:

FIRST NATIONAL BANK OF NEVADA

By _____
E. Philip Potamitis,
Senior Vice President

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

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

_____
Notary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
M. KNOWLES
Appt. No. 02-78995-1
My Appt. Expires Aug. 21, 2010

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

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

_____
Nofary Public

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
M. KNOWLES
Appt. No. 02-78995-1
My Appt. Expires Aug. 21, 2010

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062607

LEGAL DESCRIPTION

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

Parcel One (1):

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

Beginning at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "Parcel Map for Foothill Investment Co. and Lewis Building Co., Inc." recorded January 26, 1983 in the Office of the County Recorder of Washoe County, Nevada, as Parcel Map No. 1418, File No. 835532 and proceeding thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing South 44°11'14" East, 42.45 feet; thence South 0°48'46" West, 15.00 feet; thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West, 87.83 feet; thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West, 29.32 feet; thence leaving Sorenson Way North 89°11'14" West, 150.00 feet; thence North 0°48'46" East, 150.00 feet to the Southerly line of Bearing Boulevard; thence along Baring Boulevard South 89°11'14" East, 169.67 feet to the Point of Beginning.

Parcel One-A (1A):

An easement for ingress and egress for pedestrian and vehicles as described and conveyed in the Access Easement Agreement recorded May 26, 1988 in Book 2742, Page 321, under Document No. 128846, Official Records.

Document No. 3291758 provided pursuant to the requirements of Section 1.NRS 111.312.

(APN 030-041-08)

S:\jlm\miscbnk\fnb\herbst\ent asn 1365 baring.doc
062607

EXHIBIT "A"

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

Exhibit 16

Exhibit 16

APN: 030-041-08
Recording Requested By and
When Recorded Return to:
Brian L. Ballard
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, Idaho 83701

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

ASSIGNMENT AND ASSUMPTION OF LEASE

This ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of this 29 day of DECEMBER 2009, by **BERRY-HINCKLEY INDUSTRIES, INC., a Nevada corporation** ("Assignor"), and **JACKSONS FOOD STORES, INC., a Nevada corporation** ("Assignee").

RECITALS:

A. Assignor is presently the "tenant" under that certain Lease Agreement dated May of 2006, by and between Assignor and Edward Wooley and Judith Wooley as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (collectively, the "Landlord"), as amended by that certain First Amendment to Lease Agreement dated March 12, 2007 (collectively, the "Lease"), which Lease affects the real property located in the County of Washoe, State of Nevada more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

B. Pursuant to that certain Asset Transfer Agreement, dated as of August 31, 2009 (the "Agreement"), by and between Assignor and Assignee, Assignor has agreed to assign, and Assignee has agreed to accept, all of Assignor's rights, title, estate, interest, duties and obligations under the Lease.

NOW, THEREFORE, in order to carry out the terms of the Agreement, and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby grants, transfers, conveys and assigns to Assignee all of Assignor's right, title, estate and interest in, to and under the Lease, together with any right, title, and interest of Assignor in and to any subleases, if any, relating to any portion of the Property.

2. Assumption. Assignee hereby accepts such assignment of Assignor's right, title, estate and interest in, to and under the Lease, and, in addition, (i) assumes and agrees to be bound by all of the terms of the Lease, and (ii) agrees to keep, perform, fulfill, and observe all of the terms, covenants, obligations, agreements, and conditions required to be kept, performed,

fulfilled, and observed by the Assignor or tenant under the Lease or any sublease thereof from and after the execution and delivery of this Assignment.

3. Indemnification of Assignor. Assignee hereby agrees to indemnify, defend, and hold Assignor harmless from and against any and all liability, losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and costs including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignee's failure to keep, perform, fulfill and observe any of the terms, covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease from and after the execution and delivery of this Assignment.

4. Indemnification of Assignee. Assignor hereby agrees to indemnify, defend, and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignor's failure to keep, perform, fulfill, and observe any of the terms covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease prior to the execution and delivery of this Assignment by Assignor and Assignee.

5. Rentals. All rents payable under or pursuant to the Lease shall be prorated as between Assignor and Assignee pursuant to, and in accordance with, the terms of the Agreement.

6. Further Assurances. Assignor hereby covenants that it will, at any time and from time to time following a written request therefor, execute and deliver to Assignee and its successors and assigns, any additional or confirmatory instruments and take such further acts as Assignee may reasonably request to evidence fully the assignment contained herein.

7. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. Survival of Certain Provisions. The provisions of Sections 2, 3, 4, 5 and 6 hereof shall survive the execution and delivery of this Assignment by Assignor and Assignee and the assignment of the Lease pursuant hereto.

9. Governing Law. This Assignment shall be construed in accordance with and governed by the laws of the State of Nevada.

10. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[Signatures Appear on Following Page]

ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By: _____
Name: Jerry Herbst
Title: President

STATE OF NEVADA)
) ss.
County of Clark)

On this 17 day of December, 2009, before me, Jenifer E Cannon, a Notary Public in and for said State, personally appeared Jerry Herbst, known or identified to me to be the President [title] of Berry-Hinckley Industries, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of Nevada
Residing at Las Vegas, NV
My commission expires _____

JENIFER E. CANNON
NOTARY PUBLIC
STATE OF NEVADA
APPT. NO. 03-80018-1
MY APPT. EXPIRES FEB. 12, 2011

ASSIGNEE:

JACKSONS FOOD STORES, INC.,
a Nevada corporation

By: _____
John D. Jackson, CEO

STATE OF IDAHO)
) ss.
County of Ada)

On this 23 day of December, 2009, before me TIMOTHY W. TYREE, a Notary Public in and for said State, personally appeared John D. Jackson, known or identified to me to be the CEO of Jacksons Food Stores, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

TIMOTHY W. TYREE NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for the State of Idaho
Residing at BOISE ID
My commission expires 12-14-2010

1762306_1.DOC

06289.0088.1762306.1

ECW000107

Exhibit 16-4

CONSENT AND AGREEMENT

OF

EDWARD C. WOOLEY AND JUDITH A. WOOLEY,
AS TRUSTEES OF THE EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTERVIVOS REVOCABLE TRUST YEAR 2000

The undersigned, being the current Landlord under the above referenced Lease which is being assigned from BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, to and for the benefit of JACKSONS FOOD STORES, INC., a Nevada corporation, hereby acknowledge the above and agree and consent to the assignment of the Lease on the terms of the foregoing Assignment.

Date:_____

_____
Edward C. Wooley, Trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

Date:_____

_____
Judith A. Wooley, Trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared Edward C. Wooley, known or identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, and acknowledged to me that he executed the instrument in his capacity as trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of_____
Residing at_____
My commission expires_____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 20__, before me, _____, a Notary Public in and for said State, personally appeared Judith A. Wooley, known or identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000, and acknowledged to me that she executed the instrument in her capacity as trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for the State of_____
Residing at_____
My commission expires_____

Exhibit A

LEGAL DESCRIPTION
1365 Baring Blvd., Sparks, NV

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

PARCEL 1:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

Beginning at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "Parcel Map for Foothill Investment Co. and Lewis Building Co., Inc.", recorded January 26, 1983 in the office of the County Recorder of Washoe County, Nevada, as Parcel Map No. 1418, File No. 835532 and proceeding thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing south 44°11'14" East 42.45 feet; thence South 0°48;46: West 15.00 feet; thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet; thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet; thence leaving Sorenson Way North 89°11'14" West 150.00 feet; thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard; thence along Baring Boulevard South 89°11'14" East 169.67 feet to the point of beginning.

PARCEL 2:

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 321, under Document No. 128846, Official Records.

APN: 030-041-08

Document Number 3291758 provided pursuant to the requirements of Section 1.NRS 111.312

F I L E D
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2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 17

EXHIBIT 17

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Brian P. Moquin, Esq. (SBN 257583) LAW OFFICES OF BRIAN P. MOQUIN 3506 La Castellet Court San Jose, CA 95148 TELEPHONE NO.: 408.300.0022 FAX NO. (Optional): 408.843.1678 E-MAIL ADDRESS (Optional): bmoquin@lawprism.com ATTORNEY FOR (Name): PLAINTIFF EDWARD C. WOOLEY	FILED 2014 MAR -6 P 4:00 J. CAO-NGUYEN
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. FIRST STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN JOSE, CA 95148 BRANCH NAME:	
CASE NAME: WILLARD ET AL. v. HERBST ET AL.	
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)	CASE NUMBER: 1-13-CV-245021

THE COURT AND ALL PARTIES ARE NOTIFIED THAT *(name)*: EDWARD C. WOOLEY makes the following substitution:

1. **Former legal representative** ☐ Party represented self ☑ Attorney *(name)*: L. STEVEN GOLDBLATT
2. **New legal representative** ☐ Party is representing self* ☑ Attorney
   a. Name: BRIAN P. MOQUIN b. State Bar No. *(if applicable)*: 257583
   c. Address *(number, street, city, ZIP, and law firm name, if applicable)*:
   3506 La Castellet Court
   San Jose, CA 95148
   d. Telephone No. *(include area code)*: 408.300.0022
3. The party making this substitution is a ☑ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other *(specify)*:

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Conservator
- Trustee
- Personal Representative
- Probate fiduciary
- Corporation
- Guardian ad litem
- Unincorporated association

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution. **VIA FAX**
   Date: March 5, 2013
   EDWARD C. WOOLEY ▶ _____
   (TYPE OR PRINT NAME) (SIGNATURE OF PARTY)

5. ☑ I consent to this substitution. **VIA FAX**
   Date: March 6, 2014
   L. STEVEN GOLDBLATT ▶ _____ 3-6-14
   (TYPE OR PRINT NAME) (SIGNATURE OF FORMER ATTORNEY)

6. ☑ I consent to this substitution. **VIA FAX**
   Date: March 5, 2013
   BRIAN P. MOQUIN ▶ _____
   (TYPE OR PRINT NAME) (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Form Adopted For Mandatory Use
Judicial Council of California
MC-050 [Rev. January 1, 2009]

SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)

Code of Civil Procedure, §§ 284(1), 285;
Cal. Rules of Court, rule 3.1362
www.courtinfo.ca.gov

Exhibit 17-1

MC–050

CASE NAME:	CASE NUMBER:
WILLARD ET AL. v. HERBST ET AL.	1-13-CV-245021

PROOF OF SERVICE BY MAIL
Substitution of Attorney—Civil

ENDORSED

Instructions: *After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.*

J. CAO-NGUYE

1. I am over the age of 18 and **not a party to this cause.** I am a resident of or employed in the county where the mailing occurred. My residence or business address is *(specify)*:
   3506 La Castellet Court, San Jose, CA 95148
2. I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.
   (1) Date of mailing: March 6, 2014 (2) Place of mailing *(city and state)*: San Jose, CA
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 6, 2014

BRIAN P. MOQUIN
(TYPE OR PRINT NAME)

(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served: JOHN P. DESMOND, ESQ.
   b. Address *(number, street, city, and ZIP)*: GORDON SILVER
   100 W. Liberty Street, Suite 940
   Reno, Nevada 89501
   c. Name of person served:
   d. Address *(number, street, city, and ZIP)*:
   e. Name of person served:
   f. Address *(number, street, city, and ZIP)*:
   g. Name of person served:
   h. Address *(number, street, city, and ZIP)*:
   i. Name of person served:
   j. Address *(number, street, city, and ZIP)*:

☐ List of names and addresses continued in attachment.

Exhibit 17-2

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Brian P. Moquin, Esq. (SBN 257583)
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, CA 95148
TELEPHONE NO.: 408.300.0022 FAX NO. (Optional): 408.843.1678
E-MAIL ADDRESS (Optional): bmoquin@lawprism.com
ATTORNEY FOR (Name): PLAINTIFF JUDITH A. WOOLEY

FOR COURT USE ONLY

ENDORSED
2014 MAR 13 P 1:46
J. CAO-NGUYEN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS: 191 N. FIRST STREET
MAILING ADDRESS:
CITY AND ZIP CODE: SAN JOSE, CA 95148
BRANCH NAME:

CASE NAME:
WILLARD ET AL. v. HERBST ET AL.

SUBSTITUTION OF ATTORNEY—CIVIL
(Without Court Order)

CASE NUMBER:
1-13-CV-245021

THE COURT AND ALL PARTIES ARE NOTIFIED THAT *(name)*: JUDITH A. WOOLEY makes the following substitution:

1. **Former legal representative** ☐ Party represented self ☑ Attorney *(name)*: L. STEVEN GOLDBLATT
2. **New legal representative** ☐ Party is representing self* ☑ Attorney
   a. Name: BRIAN P. MOQUIN b. State Bar No. *(if applicable)*: 257583
   c. Address *(number, street, city, ZIP, and law firm name, if applicable)*:
   3506 La Castellet Court
   San Jose, CA 95148
   d. Telephone No. *(include area code)*: 408.300.0022
3. The party making this substitution is a ☑ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other *(specify)*:

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Conservator
- Trustee
- Personal Representative
- Probate fiduciary
- Corporation
- Guardian ad litem
- Unincorporated association

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS
A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution. VIA FAX
   Date: March 6, 2014
   JUDITH A. WOOLEY (TYPE OR PRINT NAME)
   ▶ Judith A. Wooley (SIGNATURE OF PARTY)

5. ☑ I consent to this substitution. VIA FAX
   Date: March 6, 2014
   L. STEVEN GOLDBLATT (TYPE OR PRINT NAME)
   ▶ 3-6-14 (SIGNATURE OF FORMER ATTORNEY)

6. ☑ I consent to this substitution. VIA FAX
   Date: March 5, 2013
   BRIAN P. MOQUIN (TYPE OR PRINT NAME)
   ▶ (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

Form Adopted For Mandatory Use
Judicial Council of California
MC-050 [Rev. January 1, 2009]

SUBSTITUTION OF ATTORNEY—CIVIL
(Without Court Order)

Code of Civil Procedure, §§ 284(1), 285;
Cal. Rules of Court, rule 3.1362
www.courtinfo.ca.gov

Exhibit 17-3

MC–050

CASE NAME:	CASE NUMBER:
WILLARD ET AL. v. HERBST ET AL.	1-13-CV-245021

ENDORSED
2014 MAR 13 P 1:46
J. CAO-NGUYEN

PROOF OF SERVICE BY MAIL
Substitution of Attorney—Civil

Instructions: *After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.*

1. I am over the age of 18 and **not a party to this cause.** I am a resident of or employed in the county where the mailing occurred. My residence or business address is *(specify)*:
   3506 La Castellet Court, San Jose, CA 95148
2. I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.
   (1) Date of mailing: March 6, 2014 (2) Place of mailing *(city and state)*: San Jose, CA
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 6, 2014

BRIAN P. MOQUIN
(TYPE OR PRINT NAME)

(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served: JOHN P. DESMOND, ESQ.
   b. Address *(number, street, city, and ZIP)*: GORDON SILVER
   100 W. Liberty Street, Suite 940
   Reno, Nevada 89501
   c. Name of person served:
   d. Address *(number, street, city, and ZIP)*:
   e. Name of person served:
   f. Address *(number, street, city, and ZIP)*:
   g. Name of person served:
   h. Address *(number, street, city, and ZIP)*:
   i. Name of person served:
   j. Address *(number, street, city, and ZIP)*:

☐ List of names and addresses continued in attachment.

Exhibit 17-4

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 18

EXHIBIT 18

ENDORSED
2014 MAR 13 P 1:46
By J. CAO-NGUYEN

John P. Desmond, ESQ.
California Bar No. 176430
GORDON SILVER
100 W. Liberty Street
Suite 940
Reno, Nevada 89501
Telephone: (775) 343-7500
Facsimile: (775) 786-0131
E-Mail: jdesmond@gordonsilver.com

Attorneys for Defendants

BRIAN P. MOQUIN, SBN 257583
408.300.0022 / 408.843.1678 fax
bmoquin@lawprism.com
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, CA 95148

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

LARRY J. WILLARD, Trustee of the LARRY JAMES WILLARD TRUST FUND; OVERLAND DEVELOPMENT CORPORATION; and EDWARD C. WOOLEY and JUDITH A. WOOLEY, Trustees of the EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTER VIVOS REVOCABLE TRUST 2000,

Plaintiffs,

v.

JERRY HERBST; MARYANNE HERBST; TIMOTHY HERBST; JH, INC. and its wholly owned subsidiary BHI (BERRY-HINKLEY, INC.); TERRIBLE HERBST, INC.; MARC BERGER; X-ROADS SOLUTIONS GROUP, LLC; and BUSINESS PARTNERS, LLC,

Defendants.

Case No. 1-13-CV-245021

(Unlimited Jurisdiction)

JOINT STIPULATION TO TAKE PENDING HEARINGS OFF CALENDAR AND TO WITHDRAW WRITTEN DISCOVERY REQUESTS PROPOUNDED BY PLAINTIFFS

Date: March 18, 2014
Time: 9:00 a.m.
Dept.: 8
Judge: Hon. Patricia M. Lucas

Action Filed: April 19, 2013
Trial Date: None Set

Exhibit 18-1

WHEREAS, Plaintiffs in the above-captioned matter ("Plaintiffs") substituted Brian P. Moquin, Esq. as their counsel of record on March 6, 2014 as a result of Plaintiffs' former counsel being seriously injured in an automobile accident;

WHEREAS, on February 11, 2014, certain Defendants in the above-captioned matter ("Defendants") filed Second Amended Motions to Quash Service of Summons and Complaint and a Second Amended Motion to Dismiss (the "Motions to Quash/Dismiss");

WHEREAS, Defendants' Motions to Quash/Dismiss are currently set for hearing before this Court on March 18, 2014 at 9:00 a.m.;

WHEREAS, on February 24, 2014, Defendants filed a Motion to Stay Discovery or, Alternatively, Motions for Protective Order and Sanctions (the "Discovery Motion");

WHEREAS, Defendants' Discovery Motion is currently set for hearing on April 4, 2014 at 9:00 a.m.;

WHEREAS, Plaintiffs have agreed to withdraw the discovery requests propounded on Defendants on or about February 10, 2014, said requests having been the subject of Defendants' Discovery Motion; and

WHEREAS, Plaintiffs wish to file a First Amended Complaint and have agreed to do so on or before April 11, 2014;

NOW, THEREFORE, Plaintiffs and Defendants hereby stipulate as follows:

1. In light of Plaintiffs' agreement to withdraw the discovery requests propounded on Defendants on or about February 10, 2014, Defendants agree to withdraw their Discovery Motion without prejudice upon the execution and filing of this joint stipulation.

2. Prior to filing a First Amended Complaint, Plaintiffs shall provide a copy thereof to Defendants for review and reasonable approval, upon which approval Plaintiffs and Defendants agree to jointly request leave of court to allow Plaintiffs to file said First Amended Complaint.

3. In light of Plaintiffs' represented intention to file a First Amended Complaint on or before April 11, 2014, upon execution and filing of this joint stipulation, Defendants shall withdraw their Motions to Quash/Dismiss without prejudice.

4. In the event that Plaintiffs file a First Amended Complaint on or before April 11, 2014, Defendants shall have twenty (20) days from the date on which Plaintiffs' First Amended Complaint is filed to answer or otherwise respond to the First Amended Complaint.

5. In the event that Plaintiffs fail to file a First Amended Complaint on or before April 11, 2014, Defendants shall be allowed to re-file their Motions to Quash/Dismiss on or before May 1, 2014 with the hearings being scheduled per standard notice requirements.

IT IS SO STIPULATED.

FOR DEFENDANTS:

GORDON SILVER

DATED: March 13, 2014

By: _____

JOHN P. DESMOND, ESQ.

Attorneys for Defendants

VIA FAX

FOR PLAINTIFFS:

LAW OFFICES OF BRIAN P. MOQUIN

DATED: March 13, 2014

By: _____

Brian P. Moquin, Esq.

Attorneys for Plaintiffs

Exhibit 18-3

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 19

EXHIBIT 19

From: Cindy S. Grinstead cgrinstead@GORDONSILVER.com
Subject: RE: Joint Stipulation
Date: March 14, 2014 at 10:19 AM
To: Brian Moquin bmoquin@lawprism.com
Cc: John P. Desmond jdesmond@GORDONSILVER.com, Benjamin W. Kennedy BKennedy@GORDONSILVER.com

CS

[illegible]

From: Brian Moquin [mailto:bmoquin@lawprism.com]
Sent: Friday, March 14, 2014 10:18 AM
To: Cindy S. Grinstead
Cc: John P. Desmond; Benjamin W. Kennedy
Subject: Re: Joint Stipulation

Thank you for confirming that the hearings are off-calendar. I have attached a copy of the file-stamped Joint Stipulation that I filed yesterday.

Best,
Brian

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

skype: brianmoquin
408.300.0022
408.460.7787 cell
408.843.1678 fax

On 3/14/14, 9:33 AM, Cindy S. Grinstead wrote:

[illegible]

Cindy Grinstead
Legal Assistant / Office Manager
Gordon Silver
100 W. Liberty Street Ste. 940
Reno, NV 89501

Tel: 775.343.7500
Fax: 775.786.0131
E-mail: cgrinstead@gordonsilver.com

Exhibit 19-1

ENDORSED
2014 MAR 13 P 1:46
By J. CAO-NGUYEN

John P. Desmond, ESQ.
California Bar No. 176430
GORDON SILVER
100 W. Liberty Street
Suite 940
Reno, Nevada 89501
Telephone: (775) 343-7500
Facsimile: (775) 786-0131
E-Mail: jdesmond@gordonsilver.com

Attorneys for Defendants

BRIAN P. MOQUIN, SBN 257583
408.300.0022 / 408.843.1678 fax
bmoquin@lawprism.com
LAW OFFICES OF BRIAN P. MOQUIN
3506 La Castellet Court
San Jose, CA 95148

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

LARRY J. WILLARD, Trustee of the LARRY JAMES WILLARD TRUST FUND; OVERLAND DEVELOPMENT CORPORATION; and EDWARD C. WOOLEY and JUDITH A. WOOLEY, Trustees of the EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTER VIVOS REVOCABLE TRUST 2000, Plaintiffs, v. JERRY HERBST; MARYANNE HERBST; TIMOTHY HERBST; JH, INC. and its wholly owned subsidiary BHI (BERRY-HINKLEY, INC.); TERRIBLE HERBST, INC.; MARC BERGER; X-ROADS SOLUTIONS GROUP, LLC; and BUSINESS PARTNERS, LLC, Defendants.	Case No. 1-13-CV-245021 (Unlimited Jurisdiction) **JOINT STIPULATION TO TAKE PENDING HEARINGS OFF CALENDAR AND TO WITHDRAW WRITTEN DISCOVERY REQUESTS PROPOUNDED BY PLAINTIFFS** Date: March 18, 2014 Time: 9:00 a.m. Dept.: 8 Judge: Hon. Patricia M. Lucas Action Filed: April 19, 2013 Trial Date: None Set

Exhibit 19-2

WHEREAS, Plaintiffs in the above-captioned matter ("Plaintiffs") substituted Brian P. Moquin, Esq. as their counsel of record on March 6, 2014 as a result of Plaintiffs' former counsel being seriously injured in an automobile accident;

WHEREAS, on February 11, 2014, certain Defendants in the above-captioned matter ("Defendants") filed Second Amended Motions to Quash Service of Summons and Complaint and a Second Amended Motion to Dismiss (the "Motions to Quash/Dismiss");

WHEREAS, Defendants' Motions to Quash/Dismiss are currently set for hearing before this Court on March 18, 2014 at 9:00 a.m.;

WHEREAS, on February 24, 2014, Defendants filed a Motion to Stay Discovery or, Alternatively, Motions for Protective Order and Sanctions (the "Discovery Motion");

WHEREAS, Defendants' Discovery Motion is currently set for hearing on April 4, 2014 at 9:00 a.m.;

WHEREAS, Plaintiffs have agreed to withdraw the discovery requests propounded on Defendants on or about February 10, 2014, said requests having been the subject of Defendants' Discovery Motion; and

WHEREAS, Plaintiffs wish to file a First Amended Complaint and have agreed to do so on or before April 11, 2014;

NOW, THEREFORE, Plaintiffs and Defendants hereby stipulate as follows:

1. In light of Plaintiffs' agreement to withdraw the discovery requests propounded on Defendants on or about February 10, 2014, Defendants agree to withdraw their Discovery Motion without prejudice upon the execution and filing of this joint stipulation.

2. Prior to filing a First Amended Complaint, Plaintiffs shall provide a copy thereof to Defendants for review and reasonable approval, upon which approval Plaintiffs and Defendants agree to jointly request leave of court to allow Plaintiffs to file said First Amended Complaint.

3. In light of Plaintiffs' represented intention to file a First Amended Complaint on or before April 11, 2014, upon execution and filing of this joint stipulation, Defendants shall withdraw their Motions to Quash/Dismiss without prejudice.

4. In the event that Plaintiffs file a First Amended Complaint on or before April 11, 2014, Defendants shall have twenty (20) days from the date on which Plaintiffs' First Amended Complaint is filed to answer or otherwise respond to the First Amended Complaint.

5. In the event that Plaintiffs fail to file a First Amended Complaint on or before April 11, 2014, Defendants shall be allowed to re-file their Motions to Quash/Dismiss on or before May 1, 2014 with the hearings being scheduled per standard notice requirements.

IT IS SO STIPULATED.

FOR DEFENDANTS:

GORDON SILVER

DATED: March 13, 2014

By: _____
JOHN P. DESMOND, ESQ.
Attorneys for Defendants

VIA FAX

FOR PLAINTIFFS:

LAW OFFICES OF BRIAN P. MOQUIN

DATED: March 13, 2014

By: _____
Brian P. Moquin, Esq.
Attorneys for Plaintiffs

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 20

EXHIBIT 20

Superior Court
County of Santa Clara

Today's Date: MAR 21 2014

To: BRIAN MOQUIN

From: ART 408-882-2422

Santa Clara County Superior Court
191North First Street
San Jose, CA 95113

Voice: (408) 882-2100
Fax: (408) 882-2490

Number of Pages Including Cover Sheet: 6

MEMO: Re: 113CV245021
Minute order from 3-18-14

If You Do Not Receive All pages, Please Call Back Immediately.

Exhibit 20-1

Superior Court Of California
Minute Order - CIVIL LAW AND MOTION
HONORABLE PATRICIA M. LUCAS

Calendar For: 03/18/14 Page: 1

WANDA WALDERA MARTIN

Reporter: Lisa Brown Clerk: ~~Naomi Matautia~~ Bailiff: ~~Bailiff~~

Dept: Dept 2

---

5. 09:00AM Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al
Type: Breach Of Contract/Warranty - Unlimited Date Filed: 04/19/13
SubType:
SV: 05/10/13
Event: CV Mtn: Quash Result Code:
Text: Service of Summons and Complaint by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond)

PLT-0002	Overland Development Corporation, Inc. Atty: Stanley A. Zlotoff
PLT-0001	Larry J. Willard TRF: The Larry James Willard Trust Fund Atty: L. Steven Goldblatt
PLT-0003	Edward C. Wooley TRF: The Wooley Intervivos Revocable Trust 2000 Atty: L. Steven Goldblatt
PLT-0004	Judith A. Wooley TRF: The Wooley Intervivos Revocable Trust 2000 Atty: L. Steven Goldblatt
DEF-0007	Marc Berger Atty: John P. Desmond
DEF-0005	BHI (Berry-Hinkley, Inc.) Atty: John P. Desmond
DEF-0009	Business Partners, LLC SCO: In Interest To Santa Barbara Bank & Trust, AKA SBB
DEF-0001	Jerry Herbst Atty: John P. Desmond
DEF-0002	Maryanne Herbst Atty: John P. Desmond
DEF-0003	Timothy Herbst Atty: John P. Desmond
DEF-0004	JH, Inc. Atty: John P. Desmond
DEF-0006	Terrible Herbst, Inc. Atty: John P. Desmond
DEF-0010	Union Bank SCO: By Merger To Santa Barbara Bank & Trust Aka SBB&T Atty: Stephen W. Pearson
DEF-0008	X-Roads Solutions Group, LLC Atty: John P. Desmond

Exhibit 20-2

Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al Date: 03/18/14 Page: 2

( )NO APPEARANCE (✓)OFF CALENDAR ( ) VIA Stipulation filed 3/13/14
TENTATIVE RULING: ( )CONTESTED ( )NOT CONTESTED
( )ADOPTED ( )AS AMENDED ( )SEE BELOW ( )SEE ATTACHED

THE COURT ORDERS THIS CASE:
( )SET FOR _____ ON _____ AT _____ DEPT _____
( )CONTINUED TO _____ AT _____ DEPT _____
( )DISMISSED ( )WITH PREJUDICE ( )WITHOUT PREJUDICE ( )RE: _____
( )NO SERVICE; REISSUED TO _____ AT _____ DEPT _____
( )TEMPORARY RESTRAINING ORDER TO REMAIN IN EFFECT
(X)MOTION/~~PETITION~~ ( )ARGUED ( )GRANTED ( )DENIED (X)OTHER (MOOT IN LIGHT OF RULING ON MOTION TO DISMISS)
( )DEMURRER ( )SUSTAINED ( )WITH____DAYS LEAVE TO AMEND ( )WITH LEAVE TO AMEND BY_____
( )WITHOUT LEAVE TO AMEND ( )AS TO_____CAUSE(S) OF ACTION
( )OVERRULED ____DAYS TO ANSWER OR PLEAD FURTHER ( )AS TO_____CAUSE(S) OF ACTION
( )TAKEN UNDER SUBMISSION; WRITTEN DECISION TO BE MAILED
( )ORDER SIGNED ( )SERVED ON COUNSEL IN COURT( )_____TO PREPARE ORDER
( )EXEMPTION: ( )ALLOWED ( )DISALLOWED ( )OTHER_____
( )PAYMENT GRANTED $_____PER_____FROM_____ ( )CERTIFIED COPY OF MINUTES TO SHERIFF
( )SWORN, EXAMINED AND DISCHARGED ( )PURGED OF CONTEMPT ( )ORDERED RELEASED
( )BAIL: ( )APPLIED $_____( )EXONERATED $_____( )FORFEITED ( )OTHER_____
( )BENCH WARRANT ORDERED FOR_____ BAIL $_____
( )SET FOR ( )COURT TRIAL ( )JURY TRIAL ON_____AT 8:45 AM. TIME ESTIMATE_____
( )JURY DEMANDED BY_____ ( )JURY WAIVED BY_____
( )TRIAL COUNSEL PLAINTIFF_____ DEFENDANT_____
( )SETTLEMENT CONFERENCE ON ( )WEDNESDAY PRIOR TO TRIAL ( )ON_____
( )OTHER ORDERS:_____

Exhibit 20-3

Superior Court Of California
Minute Order - CIVIL LAW AND MOTION
HONORABLE PATRICIA M. LUCAS

Calendar For: 03/18/14 Page: 1

WANDA WALDERA MARTIN

Reporter: Lisa Brown Clerk: Naomi Matautia Bailiff: ~~Bailiff~~

Dept: Dept 2

---

5. 09:00AM Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al
Type: Breach Of Contract/Warranty - Unlimited Date Filed: 04/19/13
SubType:
SV: 05/10/13
Event: CV Mtn: Dismiss Result Code:
Text: Pursuant to CCP 418.10 by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond)

PLT-0002	Overland Development Corporation, Inc. Atty: Stanley A. Zlotoff
PLT-0001	Larry J. Willard TRF: The Larry James Willard Trust Fund Atty: L. Steven Goldblatt
PLT-0003	Edward C. Wooley TRF: The Wooley Intervivos Revocable Trust 2000 Atty: L. Steven Goldblatt
PLT-0004	Judith A. Wooley TRF: The Wooley Intervivos Revocable Trust 2000 Atty: L. Steven Goldblatt
DEF-0007	Marc Berger Atty: John P. Desmond
DEF-0005	BHI (Berry-Hinkley, Inc.) Atty: John P. Desmond
DEF-0009	Business Partners, LLC SCO: In Interest To Santa Barbara Bank & Trust, AKA SBB
DEF-0001	Jerry Herbst Atty: John P. Desmond
DEF-0002	Maryanne Herbst Atty: John P. Desmond
DEF-0003	Timothy Herbst Atty: John P. Desmond
DEF-0004	JH, Inc. Atty: John P. Desmond
DEF-0006	Terrible Herbst, Inc. Atty: John P. Desmond
DEF-0010	Union Bank SCO: By Merger To Santa Barbara Bank & Trust Aka SBB&T Atty: Stephen W. Pearson
DEF-0008	X-Roads Solutions Group, LLC Atty: John P. Desmond

Exhibit 20-4

Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al Date: 03/18/14 Page: 2

(X) NO APPEARANCE ( ) OFF CALENDAR ( ) _____
TENTATIVE RULING: ( ) CONTESTED (X) NOT CONTESTED
(X) ADOPTED ( ) AS AMENDED ( ) SEE BELOW (X) SEE ATTACHED

THE COURT ORDERS THIS CASE:
( ) SET FOR _____ ON _____ AT _____ DEPT _____
( ) CONTINUED TO _____ AT _____ DEPT _____
( ) DISMISSED ( ) WITH PREJUDICE ( ) WITHOUT PREJUDICE ( ) RE: _____
( ) NO SERVICE; REISSUED TO _____ AT _____ DEPT _____
( ) TEMPORARY RESTRAINING ORDER TO REMAIN IN EFFECT
( ) MOTION/PETITION ( ) ARGUED ( ) GRANTED ( ) DENIED ( ) OTHER _____

( ) DEMURRER ( ) SUSTAINED ( ) WITH ____ DAYS LEAVE TO AMEND ( ) WITH LEAVE TO AMEND BY _____
( ) WITHOUT LEAVE TO AMEND ( ) AS TO _____ CAUSE(S) OF ACTION
( ) OVERRULED ____ DAYS TO ANSWER OR PLEAD FURTHER ( ) AS TO _____ CAUSE(S) OF ACTION
( ) TAKEN UNDER SUBMISSION; WRITTEN DECISION TO BE MAILED
( ) ORDER SIGNED ( ) SERVED ON COUNSEL IN COURT (X) COUNSEL FOR PREVAILING PARTY TO PREPARE ORDER
( ) EXEMPTION: ( ) ALLOWED ( ) DISALLOWED ( ) OTHER _____
( ) PAYMENT GRANTED $_____ PER _____ FROM _____ ( ) CERTIFIED COPY OF MINUTES TO SHERIFF
( ) SWORN, EXAMINED AND DISCHARGED ( ) PURGED OF CONTEMPT ( ) ORDERED RELEASED
( ) BAIL: ( ) APPLIED $_____ ( ) EXONERATED $_____ ( ) FORFEITED ( ) OTHER _____
( ) BENCH WARRANT ORDERED FOR _____ BAIL $ _____
( ) SET FOR ( ) COURT TRIAL ( ) JURY TRIAL ON _____ AT 8:45 AM. TIME ESTIMATE _____
( ) JURY DEMANDED BY _____ ( ) JURY WAIVED BY _____
( ) TRIAL COUNSEL PLAINTIFF _____ DEFENDANT _____
( ) SETTLEMENT CONFERENCE ON ( ) WEDNESDAY PRIOR TO TRIAL ( ) ON _____
( ) OTHER ORDERS: _____

Exhibit 20-5

Calendar line 5

Case Name: *Willard v. Herbst, et al.*

Case No.: 1-13-CV-245021

Defendants Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH, Inc., Berry-Hinckley Industries, Terrible Herbst, Inc., Marc Berger and X-Roads Solutions Group have filed two motions: (1) to quash service of summons and complaint, and (2) to dismiss or stay pursuant to the doctrine of forum non conveniens. Plaintiffs have not opposed either motion.

The case is dismissed without prejudice as to the moving parties.

- oo0oo -

Exhibit 20-6

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Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 21

EXHIBIT 21

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
BRIAN P. MOQUIN, SBN 257583
LAW OFFICES OF BRIAN P. MOQUIN
3506 LA CASTELLET COURT
SAN JOSE, CA 95148
TELEPHONE NO.: 408.300.0022 FAX NO.: 408.843.1678
E-MAIL ADDRESS: BMOQUIN@LAWPRISM.COM
ATTORNEY FOR: Larry J. Willard, Overland Development Corp., Edward C. Wooley, and Judith A. Wooley

FOR COURT USE ONLY

ENDORSED
2014 MAY 19 P 1:46
Clerk of the Superior Court
By J. CAO-NGUYEN
Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS: 191 N. FIRST STREET
MAILING ADDRESS:
CITY AND ZIP CODE: SAN JOSE, CA 95113
BRANCH NAME:

PLAINTIFF/PETITIONER: LARRY J. WILLARD *et al.*

DEFENDANT/RESPONDENT: JERRY HERBST *et al.*

REQUEST FOR DISMISSAL

CASE NUMBER: 1-13-CV-245021

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☑ Without prejudice
   b. (1) ☑ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☐ Other *(specify)*:*

2. *(Complete in all cases except family law cases.)*
   The court ☐ did ☑ did not waive court fees and costs for a party in this case. *(This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).*

Date: May 19, 2014
Brian P. Moquin, Esq.
(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☑ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

3. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

4. ☑ Dismissal entered as requested on *(date)*: MAY 19 2014
5. ☐ Dismissal entered on *(date)*: as to only *(name)*:
6. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

7. a. ☑ Attorney or party without attorney notified on *(date)*: MAY 19 2014
   b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to be conformed ☐ means to return conformed copy

Date: MAY 19 2014

Clerk, by J. CAO-NGUYEN, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. Jan. 1, 2013]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Gov. Code, § 68837(c); Cal. Rules of Court, rule 3.1390
www.courts.ca.gov

Exhibit 21-1

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 22

EXHIBIT 22

AP #1: 002-368-27

RECORDING REQUESTED BY

T.D. SERVICE COMPANY

and when recorded mail to

T.D. SERVICE COMPANY
4000 W. METROPOLITAN DRIVE
SUITE 400
ORANGE, CA 92868

RECORDED AT THE REQUEST OF
SERVICELINK IRVINE
03/21/2014 03:22PM
FILE NO.443196
ALAN GLOVER
CARSON CITY RECORDER
FEE $246.00 DEP LRD

1590970 Space above this line for recorder's use

NOTICE OF BREACH AND DEFAULT AND ELECTION TO CAUSE SALE OF REAL PROPERTY UNDER DEED OF TRUST

T.S. No: B544533 NV Unit Code: B Loan No: 24377125601/WOOLEY/EDWARD C.

Property Address: 1820 HIGHWAY 50 EAST, CARSON CITY, NV 89704

NOTICE IS HEREBY GIVEN THAT T.D. SERVICE COMPANY is either the original Trustee, the duly appointed substituted Trustee, or acting as agent for the Trustee or Beneficiary under the following described Deed of Trust:

Trustor: EDWARD C. WOOLEY, JUDITH A. WOOLEY

Recorded January 30, 2007 as Instr. No. 363893 in Book --- Page --- of Official Records in the office of the Recorder of CARSON CITY County, NEVADA

Said Deed of Trust secures certain obligations including one Note for the sum of $2,200,000.00.

AND MODIFICATION AGREEMENT(S) DATED 05/25/12, AND SAID DEED OF TRUST CONTAINS A SECURITY AGREEMENT OF EVEN DATE, AMENDED & RESTATED THREE YEAR ADJUSTABLE TERM NOTE

That the Beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of: THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE APRIL 25, 2013 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST. PLUS LATE CHARGE(S). PLUS ACCRUED LATE CHARGE(S) IN THE AMOUNT OF $916.97. DELINQUENT REAL ESTATE TAXES. DEFAULT INTEREST AT 3% EFFECTIVE 9-8-13.

That by reason thereof, the present Beneficiary under such Deed of Trust has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect

to cause the trust property to be sold to satisfy the obligations secured thereby.

You may have the right to cure the default hereon and reinstate the obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within the statutory period set forth in Section NRS 107.080 the right of reinstatement will terminate and the property may thereafter be sold. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

Direct Foreclosure status inquiries to:
T.D. Service Company
4000 W. Metropolitan Drive
Suite 400
Orange, CA 92868-1988
(800) 843-0260

If you would like to discuss your loan or set up a meeting for us to assess your financial situation and explore options that may be available to avoid foreclosure please contact us at:

Union Bank, N.A.
9885 Towne Centre Drive 2-69-220
San Diego, CA 92121
Toni Scandlyn

You may wish to consult a credit-counseling agency to assist you. The following is a local counseling agency approved by the Department of Housing and Urban Development (HUD). Nevada Legal Services (Statewide) 877-693-2163, www.nevadalegalservices.org. HUD can provide you with the names and addresses of additional local counseling agencies if you call HUD's toll-free telephone number: 800-569-4287. Additional information may also be found on HUD's website: http://portal.hud.gov/portal/page/portal/HUD/localoffices.

DATED: 03/21/14

T.D. SERVICE COMPANY, AS TRUSTEE

BY _____ BY _____
MICHELLE PINO
VICE PRESIDENT OPERATIONS

The Beneficiary may be attempting to collect a debt and any information obtained may be used for that purpose.

STATE OF CALIFORNIA)
COUNTY OF ORANGE)SS

On 03/21/14 before me, JAMIE VAN KEIRSBELK, a Notary Public, personally appeared MICHELLE PINO, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ ~~(s)~~are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity~~(ies)~~, and that by his/her/their signature~~(s)~~ on the instrument the person~~(s)~~ or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under penalty of perjury under the Laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

JAMIE VAN KEIRSBELK
COMM. # 2013677
NOTARY PUBLIC CALIFORNIA
ORANGE COUNTY
My comm. expires March 21, 2017

WMD2 WMD2

Borrower(s): EDWARD & JUDITH WOOLEY
Property Addres 1820 HIGHWAY 50 EAST, CARSON CITY, NV. 89704
T.S. Number: B544533

DECLARATION OF COMPLIANCE

NV SB 321 (2013) Sec. 11

The undersigned, as an authorized agent or employee of the mortgage servicer named below, hereby declares that:

☐ The mortgage servicer has contacted the borrower pursuant to SB321 Section 11(2) in order to assess the borrower's financial situation and explore options for the borrower to avoid a foreclosure sale and to provide the toll free number to enable the borrower to find a housing counselor certified by HUD. Thirty (30) calendar days or more have passed since "initial contact" was made.

☐ The mortgage servicer has tried with due diligence to contact the borrower pursuant to SB321 Section 11(5) in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure sale. Despite the exercise of due diligence, the mortgage servicer has been unable to contact the borrower. Thirty (30) calendar days or more have passed since the due diligence requirements were satisfied.

☐ The requirements set forth in SB321 Section 11 do not apply because the individual did not meet the definition of "Borrower" pursuant to SB 321 Section 3.

☒ The requirements set forth in SB321 Section 11 do not apply because the subject loan is not a "residential mortgage loan" as defined by SB321 Section 7. A residential mortgage loan as defined by SB321 Section 7 is a loan primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing as defined in N.R.S. §107.086.

☐ The requirements of SB321 Section 11 do not apply because the default event which precipitated this foreclosure was not a monetary default as defined in SB321 Section 11.

☐ Pursuant to SB 321 (2013) Sec. 7 because the property is not "owner-occupied" real property (as defined in N.R.S. § 107.086).

☐ No contact is required because the mortgage servicer is a financial institution as defined in N.R.S. § 660.45 that, during its immediately preceding annual reporting period, as established with its primary regulator, has foreclosed on 100 or fewer real properties located in this state which constitute owner-occupied housing as defined N.R.S. §107.86

Dated: 2/18/14 UNION BANK, N.A SUCCESSOR BY MERGER TO PACIFIC CAPITAL BANK DBA SOUTH VALLEY NATIONAL BANK, Mortgage Servicer

BY: _____
Name typed or printed: Jerrilyn S. Baran, Vice President

SB 321 Rev. 9-20-13

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Record Title Holder: **Edward C. Wooley and Judith A. Wooley, Trustees of The Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**		Trustee Name and Address: **T.D. Service Company** **4000 West Metropolitan Drive** **Suite 400** **Orange, CA 92868** TS# B-544533
Property Address: **1820 Highway 50 East** **Carson City, NV 89704**		Deed of Trust Document Recorded **January 30, 2007** as Instrument No. **363893**

STATE OF California)
ss:
COUNTY OF Ventura)

The affiant, Terrilyn S. Baron, being first duly sworn upon oath and under penalty of perjury, attests as follows:

1. I am an employee of Union Bank, N.A. Succesor by merger to Pacific Capital Bank, N.A. dba South Valley National Bank. I am duly authorized to make this Affidavit for Union Bank, N.A. Succesor by merger to Pacific Capital Bank, N.A. dba South Valley National Bank in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit, as set forth in NRS 107.080(2)(c) and can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is Union Bank, N.A. Succesor by merger to Pacific Capital Bank, N.A. dba South Valley National Bank's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

T.D. Service Company		4000 West Metropolitan Drive Suite 400 Orange, CA 92868
Full Name		Street, City, State, Zip

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

Union Bank, N.A		3151 East Imperial Highway Brea, CA. 92821
Full Name		Street, City, State, Zip

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

Union Bank, N.A		3151 East Imperial Highway Brea, CA. 92821
Full Name		Street, City, State, Zip

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

Union Bank, N.A.		3151 East Imperial Highway Brea, CA. 92821
Full Name		Street, City, State, Zip

8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has: (I) actual or constructive possession of the note secured by the Deed of Trust; and/or (II) is entitled to enforce the obligation or debt secured by the Deed of Trust. If the latter is applicable and the obligation or debt is an "instrument," as defined in NRS § 104.3103(2), the beneficiary, successor in interest to the beneficiary, or trustee entitled to enforce the obligation or debt is either: (1) the holder of the instrument constituting the obligation or debt; (2) a non-holder in possession of the instrument who has the rights of the holder; or (3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued NRS § 104.3309.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) The amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or

borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, receive a recitation of the information contained in this Affidavit, and/or explore loss mitigation alternatives: 800-999-4406 or 818-865-3236.

11. Pursuant to my personal review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and/or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

Recorded Date *or* *Dated Date*	**Recording number.**	**Name of Assignee (From/To)**
N/A	N/A	N/A

Signed By: _____ Dated: 3/11/14

Print Name: Terrilyn S. Baron

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 2014, personally appeared before me, a Notary Public, in and for said County and State, _____, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

_____
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

Attached please find California All-purpose Acknowledgment.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California
County of Ventura

On 03-11-2014 (Date) before me, Martha P Ortiz, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Terrilyn Sue Baron (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MARTHA P. ORTIZ
Commission # 1984746
Notary Public - California
Ventura County
My Comm. Expires Jul 12, 2016

Place Notary Seal Above

Signature: _____
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of authority to exercise the power of sale. Document Date: 3-11-2014

Number of Pages: 3 Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

Signer's Name:	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:

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F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 23

EXHIBIT 23

From: Terrilyn Baron <Terrilyn.Baron@unionbank.com>
To: Edward Wooley <edwooley@me.com>
Date: February 5, 2014 at 8:56:54 AM HST
Subject: RE: Final PA ?

Ed.,

I need a complete copy of the signed version of the document not just the signature pages and a draft not signed.

We still need to talk about the Cross Collateral clause in the Sparks and Carson City docs and how to resolve this since the Demand & Default is out on Sparks also and the potential sale does not resolve it.

You may want to have your attorney involved in that conversation with me and my attorney.

Let me know if we can schedule a time to talk tomorrow or Friday with counsel.

Sincerely,

Terri Baron
Vice President, Senior Workout Specialist
Real Estate Special Assets Division

Direct 818-865-3236 | Fax 818-865-3261
Union Bank | 30343 Canwood Street, Suite 100
Mail Code 4-41C-7934| Agoura Hills, CA 91301
terrilyn.baron@unionbank.com | unionbank.com





From: Edward Wooley [mailto:edwooley@me.com]
Sent: Wednesday, February 05, 2014 10:50 AM
To: Terrilyn Baron
Subject: Fwd: Final PA ?

Begin forwarded message:

From: Dan Gluhaich <dgluhaich@interorealestate.com>
Subject: Fwd: Final PA ?
Date: February 5, 2014 at 8:20:52 AM HST
To: "edwooley@me.com" <edwooley@me.com>
Reply-To: Dan Gluhaich <dgluhaich@interorealestate.com>

Sent from Samsung tablet

-------- Original message --------
From: "Gluhaich, Dan (LAS)" <Dan.Gluhaich@colliers.com>
Date: 02/05/2014 10:18 AM (GMT-08:00)
To: Dan Gluhaich <dgluhaich@interorealestate.com>
Subject: Fwd: Final PA ?

Psa

Exhibit 23-1

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 24

EXHIBIT 24

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv Unins 4. ☐ VA 5. ☐ Conv Ins. 6. ☐ Seller Finance	6. File Number 062749-PAH	7. Loan Number	8. Mortgage Ins Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower	E. Name & Address of Seller	F. Name & Address of Lender
Asset Exchange Company As QI for The Richard Wray 1981 Family Trust	The Edward C. Wooley and Judith A. Wooley Intervivos Revocable Living Trust	

G. Property Location	H. Settlement Agent Name	
1365 Baring Blvd Sparks , NV 89436	Western Title Company, LLC 5390 Kietzke Ln, Suite 101 Reno, NV 89511 Tax ID: 80-0263542 Underwritten By: First American Title Company	
	Place of Settlement Western Title Company Kietzke Office 5390 Kietzke Ln Suite 101 Reno, NV 89511	I. Settlement Date 5/20/2014 Fund:

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due from Borrower		**400. Gross Amount Due to Seller**	
101. Contract Sales Price	$3,100,000.00	401. Contract Sales Price	$3,100,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to borrower	$8,695.00	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. County Property Taxes 05/20/14 to 06/30/14	$1,225.34	406. County Property Taxes 05/20/14 to 06/30/14	$1,225.34
107. Sewer Use Fee 05/20/14 to 05/31/14	$156.49	407. Sewer Use Fee 05/20/14 to 05/31/14	$156.49
108. HOA Dues		408. HOA Dues	
109. Assessements		409. Assessements	
110. RENTS		410. RENTS	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower	$3,110,076.83	**420. Gross Amount Due to Seller**	$3,101,381.83
200. Amounts Paid By Or In Behalf Of Borrower		**500. Reductions in Amount Due to Seller**	
201. Deposit or earnest money	$100,000.00	501. Excess Deposit	
202. Principal amount of new loan(s)		502. Settlement Charges to Seller (line 1400)	$147,847.30
203. Existing loan(s) taken subject to		503. Existing Loan(s) Taken Subject to	
204. Loan Amount 2nd Lien		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. EXCHANGE FUNDS -		506. PAYOFF UNION BANK	$2,075,236.35
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. County Property Taxes		510. County Property Taxes	
211. Sewer Use Fee		511. Sewer Use Fee	
212. HOA Dues		512. HOA Dues	
213. Assessements		513. Assessements	
214. RENTS 05/20/14 to 05/31/14	$7,453.79	514. RENTS 05/20/14 to 05/31/14	$7,453.79
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	$107,453.79	**520. Total Reduction Amount Due Seller**	$2,230,537.44
300. Cash At Settlement From/To Borrower		**600. Cash At Settlement To/From Seller**	
301. Gross Amount due from borrower (line 120)	$3,110,076.83	601. Gross Amount due to seller (line 420)	$3,101,381.83
302. Less amounts paid by/for borrower (line 220)	$107,453.79	602. Less reductions in amt. due seller (line 520)	$2,230,537.44
303. Cash From Borrower	$3,002,623.04	**603. Cash To Seller**	$870,844.39

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; • Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; • Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.

Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper.

The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

The information requested does not lend itself to confidentiality.

File No. 062749-PAH

L. Settlement Charges			
700. Total Sales/Broker's Commission based on price $3,100,000.00 @4.25 % = $131,750.00		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of Commission (line 700) as follows:			
701. $65,875.00	to Colliers International		
702. $65,875.00	to Perkins Company of Nevada		
703. Commission Paid at Settlement		$0.00	$131,750.00
800. Items Payable in Connection with Loan			
801. Loan Origination Fee %	to		
802. Loan Discount %	to		
803. Appraisal Fee	to		
804. Credit Report	to		
805. Lender's Inspection Fee	to		
806. Mortgage Insurance Application	to		
807. Assumption Fee	to		
900. Items Required by Lender To Be Paid in Advance			
901. Interest from 5/20/2014 to 6/1/2014 @ $0/day			
902. Mortgage Insurance Premium for months	to		
903. Hazard Insurance Premium for years	to		
1000. Reserves Deposited With Lender			
1001. Hazard insurance	months @ per month		
1002. Homeowner's insurance	months @ per month		
1003. County Property Taxes	months @ per month		
1004. Sewer Use Fee	months @ per month		
1005. HOA Dues	months @ per month		
1006. Assessements	months @ per month		
1007.	months @ per month		
1008.	months @ per month		
1011. Aggregate Adjustment			
1100. Title Charges			
1101. Escrow Fee	to Western Title Company FEES	$2,000.00	$2,000.00
1102. Abstract or title search	to		
1103. Title examination	to Western Title Company FEES		
1104. Title insurance binder	to Western Title Company FEES		
1105. Document preparation	to Western Title Company FEES		
1106. Notary fees	to		
1107. Attorney's fees	to		
(includes above items numbers:)			
1108. Title insurance	to Western Title Company FEES		$6,617.00
(includes above items numbers:)			
1109. Lender's coverage	$0.00/$0.00		
1110. Owner's coverage	$3,100,000.00/$6,617.00		
1111. Wire Fees	to Western Title Company FEES	$20.00	$20.00
1112. Courier/Messenger Fee	to Western Title Company FEES	$20.00	$40.00
1113. E-mail Documents	to Western Title Company FEES		
1200. Government Recording and Transfer Charges			
1201. Recording Fees Deed $30.00 , Mortgage , Rel $20.00	to Western Title Company FEES	$30.00	$20.00
1202. City/county tax/stamps Deed $12,710.00 , Mortgage	to Western Title Company FEES	$6,355.00	$6,355.00
1203. State tax/stamps Deed , Mortgage	to		
1204. Tax certificates	to		
1205. Misc. Recordings- IF ANY- ESTIMATE	to Western Title Company FEES	$50.00	$50.00
1206. Recording Submission Fee-ESTIMATE	to Western Title Company FEES	$20.00	$20.00
1300. Additional Settlement Charges			
1301. Survey	to		
1302. Pest Inspection	to		
1303. PAY SEWER CURRENT	to City of Sparks		$723.58
1304. PAY WASTE MANAGEMENT to 5-16-14	to Waste Management of Nevada		$251.72
1305. EXCHANGE FEE	to ASSET EXCHANGE COMPANY POC (B) $200.00		
1306. PAD IF NEEDED	to Western Title Company	$200.00	
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		$8,695.00	$147,847.30

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

Exhibit 24-2

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 25

EXHIBIT 25

Form **1040** Department of the Treasury — Internal Revenue Service (99) **U.S. Individual Income Tax Return** **2014**

OMB No. 1545-0074 IRS Use Only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2014, or other tax year beginning ____, 2014, ending ____, 20__

See separate instructions.

Your first name and initial: Edward C
Last name: Mooley
Your social security number: [redacted]

If a joint return, spouse's first name and initial: Judith A
Last name: Mooley
Spouse's social security number: [redacted]

Home address (number and street). If you have a P.O. box, see instructions.
68-1025 N Kaniku Drive #516

Apartment no.

Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).
Kamuela, HI 96743-8783

Foreign country name | Foreign province/county | Foreign postal code

Presidential Election Campaign
Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☒ You ☒ Spouse

Filing Status Check only one box.
1 ☐ Single
2 ☒ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above & full name here. ▸
4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▸
5 ☐ Qualifying widow(er) with dependent child

Exemptions
6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a. — Boxes checked on 6a and 6b: 2
b ☒ Spouse — No. of children on 6c who:
c Dependents: (1) First name / Last name | (2) Dependent's social security number | (3) Dependent's relationship to you | (4) ✓ if child qualifying for child tax credit (see instructions)
• lived with you
• did not live with you due to divorce or separation (see instructions)
Dependents on 6c not entered above
Add numbers on lines above ▸ 2
If more than four dependents, see instructions and check here ▸ ☐
d Total number of exemptions claimed

Income Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.
If you did not get a W-2, see instructions.

7	Wages, salaries, tips, etc. Attach Form(s) W-2		7	
8a	Taxable interest. Attach Schedule B if required		8a	57.
b	Tax-exempt interest. Do not include on line 8a	8b		
9a	Ordinary dividends. Attach Schedule B if required		9a	3,611.
b	Qualified dividends	9b 3,611.		
10	Taxable refunds, credits, or offsets of state and local income taxes		10	
11	Alimony received		11	
12	Business income or (loss). Attach Schedule C or C-EZ		12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▸ ☐		13	1,834,021.
14	Other gains or (losses). Attach Form 4797		14	
15a	IRA distributions	15a	b Taxable amount	15b	
16a	Pensions and annuities	16a	b Taxable amount	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17	-173,024.
18	Farm income or (loss). Attach Schedule F		18	
19	Unemployment compensation		19	
20a	Social security benefits	20a 45,479.	b Taxable amount	20b	38,657.
21	Other income. See Statement 1		21	1,768.
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income ▸		22	1,705,090.

Adjusted Gross Income

23	Educator expenses	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	Health savings account deduction. Attach Form 8889	25	
26	Moving expenses. Attach Form 3903	26	
27	Deductible part of self-employment tax. Attach Schedule SE	27	83.
28	Self-employed SEP, SIMPLE, and qualified plans	28	
29	Self-employed health insurance deduction	29	1,085.
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ▸	31a	
32	IRA deduction	32	
33	Student loan interest deduction	33	
34	Tuition and fees. Attach Form 8917	34	
35	Domestic production activities deduction. Attach Form 8903	35	
36	Add lines 23 through 35	36	1,168.
37	Subtract line 36 from line 22. This is your adjusted gross income ▸	37	1,703,922.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form 1040 (2014)

Exhibit 25-1

ECW-TT-000570

Form 1040 (2014) Edward C and Judith A Woolery [redacted] Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	1,703,922.
	39a	Check [X] You were born before January 2, 1950. [ ] Blind. [ ] Spouse was born before January 2, 1950. [ ] Blind. Total boxes checked ▸ 39a 1		
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▸ 39b [ ]		
Standard Deduction for — • People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, $6,200 Married filing jointly or Qualifying widow(er), $12,400 Head of household, $9,100	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	19,766.
	41	Subtract line 40 from line 38	41	1,684,156.
	42	Exemptions. If line 38 is $152,525 or less, multiply $3,950 by the number on line 6d. Otherwise, see instructions	42	0.
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	1,684,156.
	44	Tax (see instrs). Check if any from: a [ ] Form(s) 8814 b [ ] Form 4972 c [ ]	44	302,881.
	45	Alternative minimum tax (see instructions). Attach Form 6251	45	0.
	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45 and 46	47	302,881.
	48	Foreign tax credit. Attach Form 1116 if required	48	
	49	Credit for child and dependent care expenses. Attach Form 2441	49	
	50	Education credits from Form 8863, line 19	50	
	51	Retirement savings contributions credit. Attach Form 8880	51	
	52	Child tax credit. Attach Schedule 8812, if required	52	
	53	Residential energy credits. Attach Form 5695	53	10,575.
	54	Other credits from form: a [ ] 3800 b [ ] 8801 c [ ]	54	
	55	Add lines 48 through 54. These are your total credits	55	10,575.
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-	56	292,306.
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	165.
	58	Unreported social security and Medicare tax from Form: a [ ] 4137 b [ ] 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage [X]	61	
	62	Taxes from: a [ ] Form 8959 b [ ] Form 8960 c [ ] Instructions; enter code(s)	62	
	63	Add lines 56-62. This is your total tax	63	292,471.
Payments If you have a qualifying child, attach Schedule EIC.	64	Federal income tax withheld from Forms W-2 and 1099	64	
	65	2014 estimated tax payments and amount applied from 2013 return	65	350,000.
	66a	Earned income credit (EIC)	66a	
	b	Nontaxable combat pay election ▸ 66b		
	67	Additional child tax credit. Attach Schedule 8812	67	
	68	American opportunity credit from Form 8863, line 8	68	
	69	Net premium tax credit. Attach Form 8962	69	
	70	Amount paid with request for extension to file	70	
	71	Excess social security and tier 1 RRTA tax withheld	71	
	72	Credit for federal tax on fuels. Attach Form 4136	72	
	73	Credits from form: a [ ] 2439 b [X] Reserved c [ ] Reserved d [ ]	73	
	74	Add lines 64, 65, 66a, & 67-73. These are your total payments	74	350,000.
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid	75	57,529.
Direct deposit? See instructions.	76a	Amount of line 75 you want refunded to you. If Form 8888 is attached, check here [ ]	76a	57,273.
	b	Routing number [redacted] ▸ c Type: [X] Checking [ ] Savings		
	d	Account number [redacted]		
	77	Amount of line 75 you want applied to your 2015 estimated tax ▸ 77		
Amount You Owe	78	Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions ▸	78	
	79	Estimated tax penalty (see instructions) 79 256.		
Third Party Designee	Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete below [ ] No			
	Designee's name ▸ Robert W. Bianchi	Phone no. ▸ 831-373-1697	Personal identification number (PIN) ▸ 93940	
Sign Here Joint return? See instructions. Keep a copy for your records.	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			
	Your signature [signature] Date 3/31/15	Your occupation Retired	Daytime phone number	
	Spouse's signature. If a joint return, both must sign. [signature] Date 3/31/15	Spouse's occupation Retired	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)	
Paid Preparer Use Only	Print/type preparer's name Robert W. Bianchi	Preparer's signature Robert W. Bianchi	Date 3/31/15	Check [X] if self-employed PTIN P00067313
	Firm's name ▸ Bianchi, Kasavan & Page, LLP		Firm's EIN ▸ 94-1541507	
	Firm's address ▸ 1000 Munras Ave Ste 200 Monterey, CA 93940		Phone no. (831) 373-1697	

Form 1040 (2014)

Exhibit 25-2

SCHEDULE A (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Itemized Deductions

► Information about Schedule A and its separate instructions is at www.irs.gov/schedulea.
► Attach to Form 1040.

OMB No. 1545-0074

2014

Attachment Sequence No. 07

Name(s) shown on Form 1040

Edward C and Judith A Wooley

Your social security number: [redacted]

Medical and Dental Expenses	1	Caution. Do not include expenses reimbursed or paid by others. Medical and dental expenses (see instructions) Statement 2	1	16,598.	
	2	Enter amount from Form 1040, line 38	2	1,703,922.	
	3	Multiply line 2 by 10% (.10). But if either you or your spouse was born before January 2, 1950, multiply line 2 by 7.5% (.075) instead	3	127,794.	
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4 0.
Taxes You Paid	5	State and local (check only one box): a [X] Income taxes, or b [ ] General sales taxes	5	35,591.	
	6	Real estate taxes (see instructions)	6	2,915.	
	7	Personal property taxes	7		
	8	Other taxes. List type and amount ►	8		
	9	Add lines 5 through 8			9 38,506.
Interest You Paid	10	Home mortgage interest and points reported to you on Form 1098. See St 5	10	21,845.	
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ►	11		
Note. Your mortgage interest deduction may be limited (see instructions).	12	Points not reported to you on Form 1098. See instructions for special rules	12		
	13	Mortgage insurance premiums (see instructions)	13		
	14	Investment interest. Attach Form 4952 if required. (See instructions.) Stmt 4	14	1,381.	
	15	Add lines 10 through 14			15 23,226.
Gifts to Charity If you made a gift and got a benefit for it, see instructions.	16	Gifts by cash or check. If you made any gift of $250 or more, see instructions	16		
	17	Other than by cash or check. If any gift of $250 or more, see instructions. You must attach Form 8283 if over $500	17		
	18	Carryover from prior year	18		
	19	Add lines 16 through 18			19 0.
Casualty and Theft Losses	20	Casualty or theft loss(es). Attach Form 4684. (See instructions.)			20 0.
Job Expenses and Certain Miscellaneous Deductions	21	Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ►	21		
	22	Tax preparation fees	22	1,500.	
	23	Other expenses — investment, safe deposit box, etc. List type and amount ► Safe Deposit Box Rental 141.	23	141.	
	24	Add lines 21 through 23	24	1,641.	
	25	Enter amount from Form 1040, line 38	25	1,703,922.	
	26	Multiply line 25 by 2% (.02)	26	34,078.	
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-			27 0.
Other Miscellaneous Deductions	28	Other — from list in instructions. List type and amount ►			28 0.
Total Itemized Deductions	29	Is Form 1040, line 38, over $152,525? [ ] No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. [X] Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.		Reduction -41,966.	29 19,766.
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here ► [ ]			

BAA For Paperwork Reduction Act Notice, see Form 1040 instructions.

Exhibit 25-3

Schedule A (Form 1040) 2014

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SCHEDULE B
(Form 1040A or 1040)
Department of the Treasury
Internal Revenue Service (99)

Interest and Ordinary Dividends

► Attach to Form 1040A or 1040.
► Information about Schedule B and its instructions is at www.irs.gov/scheduleb.

Omb No. 1545-0074
2014
Attachment Sequence No. 08

Name(s) shown on return: Edward C and Judith A Wooley

Your social security number: [redacted]

Part I Interest

(See instructions for Form 1040A, or Form 1040, line 8a.)

Note. If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

			Amount
1	List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address ►		
	Bank of America	1	57.
2	Add the amounts on line 1	2	57.
3	Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815.	3	
4	Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a ►	4	57.

Note. If line 4 is over $1,500, you must complete Part III.

Part II Ordinary Dividends

(See instructions for Form 1040A, or Form 1040, line 9a.)

Note. If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

			Amount
5	List name of payer ►		
	Merrill Lynch		1,488.
	Merrill Lynch		2,123.
		5	
6	Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a ►	6	3,611.

Note. If line 6 is over $1,500, you must complete Part III.

Part III Foreign Accounts and Trusts

(See instructions.)

You must complete this part if you **(a)** had over $1,500 of taxable interest or ordinary dividends; **(b)** had a foreign account; or **(c)** received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

		Yes	No
7a	At any time during 2014, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions		X
	If 'Yes,' are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements		
b	If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ►		
8	During 2014, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If 'Yes,' you may have to file Form 3520. See instructions		X

BAA For Paperwork Reduction Act Notice, see your tax return instructions. F0A0801 11/20/14 Schedule B (Form 1040A or 1040) 2014

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Exhibit 25-4

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Capital Gains and Losses

► Attach to Form 1040 or Form 1040NR.
► Information about Schedule D and its separate instructions is at www.irs.gov/scheduled
► Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

Date of Signature

2014

Attachment Sequence No. 12

Name(s) shown on return: Edward C and Judith A Wooley

Your social security number: [redacted]

Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with **Box A** checked	892,498.	922,818.	2,718.	-27,602.
2 Totals for all transactions reported on Form(s) 8949 with **Box B** checked				
3 Totals for all transactions reported on Form(s) 8949 with **Box C** checked				

4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4	
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5	
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** in the instructions	6	
7 **Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). If you have any long-term capital gain or losses, go to Part II below. Otherwise, go to Part III on page 2	7	-27,602.

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with **Box D** checked				
9 Totals for all transactions reported on Form(s) 8949 with **Box E** checked				
10 Totals for all transactions reported on Form(s) 8949 with **Box F** checked				

11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11	1,888,916.
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12	
13 Capital gain distributions. See instrs	13	
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** in the instructions	14	-27,293.
15 **Net long-term capital gain or (loss).** Combine lines 8a through 14 in column (h). Then go to Part III on page 2	15	1,861,623.

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule D (Form 1040) 2014

FDA0613L 12/2014

Exhibit 25-5

COPY

Schedule D (Form 1040) 2014 Edward C and Judith A Wooley [redacted] Page 2

Part III Summary

16 Combine lines 7 and 15 and enter the result • If line 16 is a **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • If line 16 is a **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • If line 16 is **zero**, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.	16	1,834,021.
17 Are lines 15 and 16 **both** gains? [X] **Yes.** Go to line 18. [ ] **No.** Skip lines 18 through 21, and go to line 22.		
18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions	18	0.
19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions	19	70,048.
20 Are lines 18 and 19 **both** zero or blank? [ ] **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below. [X] **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.		
21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of: • The loss on line 16 or • ($3,000), or if married filing separately, ($1,500) **Note.** When figuring which amount is smaller, treat both amounts as positive numbers.	21	
22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? [ ] **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). [ ] **No.** Complete the rest of Form 1040 or Form 1040NR.		

COPY

Schedule D (Form 1040) 2014

SCHEDULE D (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Alternative Minimum Tax
Capital Gains and Losses
• Attach to Form 1040 or Form 1040NR.
• Information about Schedule D and its separate instructions is at www.irs.gov/scheduled.
• Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

OMB No. 1545-0074

2014

Attachment Sequence No. 12

Name(s) shown on return: Edward C and Judith A Wooley

Your social security number: [redacted]

Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with **Box A** checked	892,498.	922,818.	2,718.	-27,602.
2 Totals for all transactions reported on Form(s) 8949 with **Box B** checked				
3 Totals for all transactions reported on Form(s) 8949 with **Box C** checked				

4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4	
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5	
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** in the instructions	6	
7 **Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). If you have any long-term capital gain or losses, go to Part II below. Otherwise, go to Part III on page 2	7	-27,602.

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with **Box D** checked				
9 Totals for all transactions reported on Form(s) 8949 with **Box E** checked				
10 Totals for all transactions reported on Form(s) 8949 with **Box F** checked				

11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11	1,801,850.
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12	
13 Capital gain distributions. See instrs	13	
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** in the instructions	14	-27,400.
15 **Net long-term capital gain or (loss).** Combine lines 8a through 14 in column (h). Then go to Part III on page 2	15	1,774,450.

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule D (Form 1040) 2014

FOIA0503L 12/09/14

Exhibit 25-7

COPY

Part III Summary Alternative Minimum Tax

16 Combine lines 7 and 15 and enter the result	16	1,746,848.
• If line 16 is a **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • If line 16 is a **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • If line 16 is **zero**, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then to go line 22.		
17 Are lines 15 and 16 **both** gains? [X] **Yes.** Go to line 18. [ ] **No.** Skip lines 18 through 21, and go to line 22.		
18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions ►	18	0.
19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions ►	19	
20 Are lines 18 and 19 **both** zero or blank? [X] **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below. [ ] **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.		
21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of: • The loss on line 16 or • ($3,000), or if married filing separately, ($1,500)	21	
Note. When figuring which amount is smaller, treat both amounts as positive numbers.		
22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? [ ] **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). [ ] **No.** Complete the rest of Form 1040 or Form 1040NR.		

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Exhibit 25-8

Form **8949**

Department of the Treasury
Internal Revenue Service

Sales and Other Dispositions of Capital Assets

▸ Information about Form 8949 and its separate instructions is at www.irs.gov/form8949.
▸ File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D.

OMB No. 1545-0074

2014

Attachment Sequence No. **12A**

Name(s) shown on return: Edward C and Judith A Wooley

SSN or taxpayer identification no.: [redacted]

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either may show your basis (usually your cost) even if your broker did not report it to the IRS. Brokers must report basis to the IRS for most stock you bought in 2011 or later (and for certain debt instruments you bought in 2014 or later).

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are short term. For long-term transactions, see page 2.

Note. You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the total directly on Schedule D, line 1a; you are not required to report these transactions on Form 8949 (see instructions).

You must check Box A, B, or C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

[X] **(A)** Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)

[ ] **(B)** Short-term transactions reported on Form(s) 1099-B showing basis was **not** reported to the IRS

[ ] **(C)** Short-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 shares 7 Cy)	(b) Date acquired (Mo., day, yr)	(c) Date sold or disposed (Mo., day, yr)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis (see the **Note** below and see Column (e) in the separate instructions)	Adjustment, if any, to gain or loss. If you have an amount in column (g), enter a code in column (f). See the separate instructions. (f) Code(s) from instructions	(g) Amount of adjustment	(h) Gain or (loss). Subtract column (e) from column (d) and combine the result with column (g).
Merrill Lynch (see attached) - See Attached Statement			462,150.	479,746.	MW	1,435.	-16,161.
Merrill Lynch (see attached) - See Attached Statement			430,348.	443,072.	MW	1,283.	-11,441.
2 **Totals.** Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 1b** (if **Box A** above is checked), **line 2** (if **Box B** above is checked), or **line 3** (if **Box C** above is checked) ▸			892,498.	922,818.		2,718.	-27,602.

Note. If you checked Box A above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See Column (g) in the separate instructions for how to figure the amount of the adjustment.

BAA For Paperwork Reduction Act Notice, see your tax return instructions. FDA0712L 12/10/14 Form **8949** (2014)

Exhibit 25-9

Form **8949**

Department of the Treasury
Internal Revenue Service

Alternative Minimum Tax

Sales and Other Dispositions of Capital Assets

► Information about Form 8949 and its separate instructions is at www.irs.gov/form8949.
► File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D.

OMB No. 1545-0074

2014

Attachment Sequence No. **12A**

Name(s) shown on return: Edward C and Judith A Wooley

SSN or taxpayer identification no.: [redacted]

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either may show your basis (usually your cost) even if your broker did not report it to the IRS. Brokers must report basis to the IRS for most stock you bought in 2011 or later (and for certain debt instruments you bought in 2014 or later).

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are short term. For long-term transactions, see page 2.

Note. You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the total directly on Schedule D, line 1a; you are not required to report these transactions on Form 8949 (see instructions).

You must check Box A, B, or C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

[X] **(A)** Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)

[ ] **(B)** Short-term transactions reported on Form(s) 1099-B showing basis was **not** reported to the IRS

[ ] **(C)** Short-term transactions not reported to you on Form 1099-B

1 (a) Description of property (Example: 100 shares 7XZ Co)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed (Mo., day, yr.)	(d) Proceeds (Sales price) (see instructions)	(e) Cost or other basis (see the **Note** below and see Column (e) in the separate instructions)	Adjustment, if any, to gain or loss. If you enter an amount in column (g), enter a code in column (f). See the separate instructions. (f) Code(s) from instructions	(g) Amount of adjustment	(h) Gain or (loss). Subtract column (e) from column (d) and combine the result with column (g)
Merrill Lynch (see attached)		- See Attached Statement	462,150.	478,746.	MW	1,435.	-16,161.
Merrill Lynch (see attached)		- See Attached Statement	430,348.	443,072.	MW	1,283.	-11,441.
2 **Totals.** Add the amounts in columns (d), (e), (g), and (h) (subtract negative amounts). Enter each total here and include on your Schedule D, **line 1b** (if **Box A** above is checked), **line 2** (if **Box B** above is checked), or **line 3** (if **Box C** above is checked) ►			892,498.	922,818.		2,718.	-27,602.

Note. If you checked Box A above but the basis reported to the IRS was incorrect, enter in column (e) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See *Column (g)* in the separate instructions for how to figure the amount of the adjustment.

BAA For Paperwork Reduction Act Notice, see your tax return instructions. Form **8949** (2014)

Exhibit 25-10

SCHEDULE E (Form 1040)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)
► Attach to Form 1040, 1040NR, or Form 1041.
► Information about Schedule E and its separate instructions is at www.irs.gov/schedulee.

OMB No. 1545-0074

2014

Attachment Sequence No. 13

Department of the Treasury Internal Revenue Service (99)

Name(s) shown on return

Edward C and Judith A Wooley

Your social security number [redacted]

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2014 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No

B If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

1a Physical address of each property (street, city, state, ZIP code)

A 1820 Highway 50, Carson City, NV 89706

B 1365 Baring Blvd, Sparks, NV 89434

C

1b Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	Fair Rental Days	Personal Use Days	QJV
A 4	A	365		
B 4	B	136		
C	C			

Type of Property:
1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Income: / Expenses:	Properties:	A	B	C
3 Rents received	3	39,418.	111,807.	
4 Royalties received	4			
5 Advertising	5			
6 Auto and travel (see instructions)	6			
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9	1,538.		
10 Legal and other professional fees	10	31,489.	10,065.	
11 Management fees	11	8,000.		
12 Mortgage interest paid to banks, etc (see instructions)	12	109,616.	41,467.	
13 Other interest	13	24,976.		
14 Repairs	14	165.		
15 Supplies	15			
16 Taxes	16	3,536.	3,956.	
17 Utilities	17	5,416.		
18 Depreciation expense or depletion	18	41,374.	5,981.	
19 Other (list) ► See Stm 5 See Stm 6	19	26,235.	10,435.	
20 Total expenses. Add lines 5 through 19	20	252,345.	71,904.	
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	-212,927.	39,903.	
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	-212,927.		

23a Total of all amounts reported on line 3 for all rental properties	23a	151,225.
b Total of all amounts reported on line 4 for all royalty properties	23b	
c Total of all amounts reported on line 12 for all properties	23c	151,083.
d Total of all amounts reported on line 18 for all properties	23d	47,355.
e Total of all amounts reported on line 20 for all properties	23e	324,249.

24 **Income.** Add positive amounts shown on line 21. **Do not** include any losses	24	39,903.
25 **Losses.** Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25	-212,927.
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26	-173,024.

BAA For Paperwork Reduction Act Notice, see the separate instructions. Schedule E (Form 1040) 2014

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Schedule E (Form 1040) 2014 — Attachment Sequence No. 13 — Page 2

Name(s) shown on return. Do not enter name and social security number if shown on Page 1. — Your social security number

Edward C and Judith A Wooley — [redacted]

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which **any** amount is **not** at risk, you **must** check the box in column (e) on line 28 and attach **Form 6198.** See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section . . . ☐ Yes ☒ No

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	See Statement 7				
B					
C					
D					

	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
29a Totals					
b Totals					
30 Add columns (g) and (j) of line 29a					30
31 Add columns (f), (h), and (i) of line 29b					31
32 **Total partnership and S corporation income or (loss).** Combine lines 30 and 31. Enter the result here and include in the total on line 41 below					32

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
34a Totals				
b Totals				
35 Add columns (d) and (f) of line 34a				35
36 Add columns (c) and (e) of line 34b				36
37 **Total estate and trust income or (loss).** Combine lines 35 and 36. Enter the result here and include in the total on line 41 below				37

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) – Residual Holder

38 (a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39 Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below . . . 39

Part V Summary

40	Net farm rental income or (loss) from **Form 4835.** Also, complete line 42 below		40	
41	**Total income or (loss).** Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18 ►		41	-173,024.
42	**Reconciliation of farming and fishing income.** Enter your **gross** farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code V; and Schedule K-1 (Form 1041), box 14, code F (see instructions)	42		
43	**Reconciliation for real estate professionals.** If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	1,715,892.	

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Exhibit 25-12

SCHEDULE SE
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Self-Employment Tax

► Information about Schedule SE and its separate instructions is at www.irs.gov/schedulese.
► Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0074

2014

Attachment Sequence No. 17

Name of person with **self-employment** income (as shown on Form 1040 or Form 1040NR)

Edward C Wooley

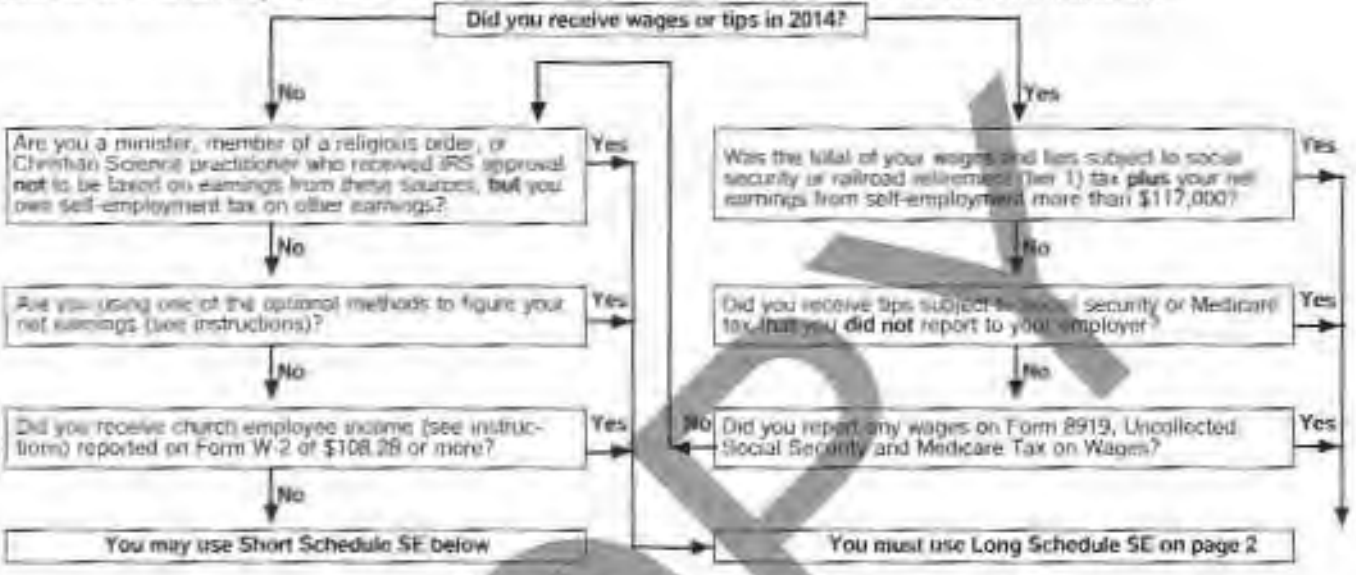
Social security number of person with **self-employment** income ►

[redacted]

Before you begin: To determine if you must file Schedule SE, see the instructions.

May I Use Short Schedule SE or Must I Use Long Schedule SE?

Note. Use this flowchart **only** if you must file Schedule SE. If unsure, see *Who Must File Schedule SE*, in the instructions.



Section A – Short Schedule SE. Caution. Read above to see if you can use Short Schedule SE.

1a Net farm profit or (loss) from Schedule F, line 34, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A	1a	
b If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included on Schedule F, line 4b, or listed on Schedule K-1 (Form 1065), box 20, code Z	1b	
2 Net profit or (loss) from Schedule C, line 31; Schedule C-EZ, line 3; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B), box 9, code J1. Ministers and members of religious orders, see instructions for types of income to report on this line. See instructions for other income to report	2	1,168.
3 Combine lines 1a, 1b, and 2	3	1,168.
4 Multiply line 3 by 92.35% (.9235). If less than $400, you do not owe self-employment tax; **do not** file this schedule unless you have an amount on line 1b ►	4	1,079.
Note. If line 4 is less than $400 due to Conservation Reserve Program payments on line 1b, see instructions.		
5 **Self-employment tax.** If the amount on line 4 is: • $117,000 or less, multiply line 4 by 15.3% (.153). Enter the result here and on **Form 1040, line 57, or Form 1040NR, line 55** • More than $117,000, multiply line 4 by 2.9% (.029). Then, add $14,508 to the result. Enter the total here and on **Form 1040, line 57, or Form 1040NR, line 55**	5	165.
6 **Deduction for one-half of self-employment tax.** Multiply line 5 by 50% (.50). Enter the result here and on **Form 1040, line 27, or Form 1040NR, line 27**	6	83.

BAA For Paperwork Reduction Act Notice, see your tax return instructions. Schedule SE (Form 1040) 2014

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Form **4797**

Department of the Treasury
Internal Revenue Service

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

► Attach to your tax return.

► Information about Form 4797 and its separate instructions is at www.irs.gov/form4797.

OMB No. 1545-0184

2014

Attachment Sequence No. **27**

Name(s) shown on return: Edward C and Judith A Wooley

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2014 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) | 1 | 3,100,000.

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft — Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

3 Gain, if any, from Form 4684, line 39	3	
4 Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6 Gain, if any, from line 32, from other than casualty or theft	6	1,888,916.
7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	1,888,916.

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8 Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11 Loss, if any, from line 7	11	
12 Gain, if any, from line 7 or amount from line 8, if applicable	12	
13 Gain, if any, from line 31	13	
14 Net gain or (loss) from Form 4684, lines 31 and 38a	14	
15 Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16 Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17 Combine lines 10 through 16	17	

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions | 18a |

b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14 | 18b |

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form **4797** (2014)

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Exhibit 25-14

Alternative Minimum Tax

Form **4797**

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return.

▶ Information about Form 4797 and its separate instructions is at www.irs.gov/form4797.

OMB No. 1545-0184

2014

Attachment Sequence No. 27

Name(s) shown on return

Edward C and Judith A Wooley

Identifying number [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2014 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) . . . . . 1 3,100,000.

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft – Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

3	Gain, if any, from Form 4684, line 39	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	1,801,850.
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	1,801,850.
	Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.		
	Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	
14	Net gain or (loss) from Form 4684, lines 31 and 38a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

BAA For Paperwork Reduction Act Notice, see separate instructions. Form **4797** (2014)

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Exhibit 25-15

Form 4797 (2014) Edward C and Judith A Mooley [redacted] Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A EDPA building baring - audited	7/01/06	5/16/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D		Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** *See line 1 before completing.*)	20	3,100,000.			
21 Cost or other basis plus expense of sale	21	1,336,027.			
22 Depreciation (or depletion) allowed or allowable	22	124,943.			
23 Adjusted basis. Subtract line 22 from line 21	23	1,211,084.			
24 Total gain. Subtract line 23 from line 20	24	1,888,916.			
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a				
b Enter the **smaller** of line 24 or 25a	25b				
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instr.)	26a				
b Applicable percentage multiplied by the **smaller** of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 & before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions)	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the **smaller** of line 24 or 29a (see instr.)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	1,888,916.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	0.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	1,888,916.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

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Exhibit 25-16

Form 4797 (2014) Edward C and Judith A Wooley [redacted] Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions) Alt. Minimum Tax

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo, day, yr)	(c) Date sold (mo, day, yr)
A EDPA building baring - audited	7/01/06	5/16/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D		Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** *See line 1 before completing.*)	20	3,100,000.			
21 Cost or other basis plus expense of sale	21	1,336,027.			
22 Depreciation (or depletion) allowed or allowable	22	37,877.			
23 Adjusted basis. Subtract line 22 from line 21	23	1,298,150.			
24 Total gain. Subtract line 23 from line 20	24	1,801,850.			
25 **If section 1245 property:**					
a Depreciation allowed or allowable from line 22	25a				
b Enter the **smaller** of line 24 or 25a	25b				
26 **If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instrs)	26a				
b Applicable percentage multiplied by the **smaller** of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 & before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g	0.			
27 **If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 **If section 1254 property:**					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions)	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 **If section 1255 property:**					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the **smaller** of line 24 or 29a (see instrs)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	1,801,850.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	0.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	1,801,850.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

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Exhibit 25-17

Form **6251**

Alternative Minimum Tax — Individuals

▶ Information about Form 6251 and its separate instructions is at www.irs.gov/form6251.
▶ Attach to Form 1040 or Form 1040NR.

2014

Attachment Sequence No. **32**

Edward C and Judith A Wooley

Your social security number: [redacted]

Part I Alternative Minimum Taxable Income (See instructions for how to complete each line.)

1	If you filed Schedule A (Form 1040), enter the amount from Form 1040, line 41, and go to line 2. Otherwise, enter the amount from Form 1040, line 38, and go to line 7. (If less than zero, enter as a negative amount.)	1	1,684,156.
2	Medical and dental. If you or your spouse was 65 or older, enter the **smaller** of Schedule A (Form 1040), line 4, or 2.5% (.025) of Form 1040, line 38. If zero or less, enter -0-	2	
3	Taxes from Schedule A (Form 1040), line 9	3	38,506.
4	Enter the home mortgage interest adjustment, if any, from line 6 of the worksheet in the instructions for this line	4	
5	Miscellaneous deductions from Schedule A (Form 1040), line 27	5	
6	If Form 1040, line 38, is $152,525 or less, enter -0-. Otherwise, see instructions	6	-41,966.
7	Tax refund from Form 1040, line 10 or line 21	7	
8	Investment interest expense (difference between regular tax and AMT)	8	
9	Depletion (difference between regular tax and AMT)	9	
10	Net operating loss deduction from Form 1040, line 21. Enter as a positive amount	10	
11	Alternative tax net operating loss deduction	11	
12	Interest from specified private activity bonds exempt from the regular tax	12	
13	Qualified small business stock (7% of gain excluded under section 1202)	13	
14	Exercise of incentive stock options (excess of AMT income over regular tax income)	14	
15	Estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	15	
16	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	16	
17	Disposition of property (difference between AMT and regular tax gain or loss)	17	-87,173.
18	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	18	
19	Passive activities (difference between AMT and regular tax income or loss)	19	
20	Loss limitations (difference between AMT and regular tax income or loss)	20	
21	Circulation costs (difference between regular tax and AMT)	21	
22	Long-term contracts (difference between AMT and regular tax income)	22	
23	Mining costs (difference between regular tax and AMT)	23	
24	Research and experimental costs (difference between regular tax and AMT)	24	
25	Income from certain installment sales before January 1, 1987	25	
26	Intangible drilling costs preference	26	
27	Other adjustments, including income-based related adjustments	27	
28	**Alternative minimum taxable income.** Combine lines 1 through 27. (If married filing separately and line 28 is more than $242,450, see instructions.)	28	1,593,523.

Part II Alternative Minimum Tax (AMT)

29 Exemption. (If you were under age 24 at the end of 2014, see instructions.)

IF your filing status is:	AND line 28 is not over	THEN enter on line 29
Single or head of household	$117,300	$52,800
Married filing jointly or qualifying widow(er)	156,500	82,100
Married filing separately	78,250	41,050

If line 28 is over the amount shown above for your filing status, see instructions.

29			
30	Subtract line 29 from line 28. If more than zero, go to line 31. If zero or less, enter -0- here and on lines 31, 33, and 35, and go to line 34	30	1,593,523.
31	• If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter. • If you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b; or you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (as refigured for the AMT, if necessary), complete Part III on page 2 and enter the amount from line 56 here. • **All others:** If line 30 is $182,500 or less ($91,250 or less if married filing separately), multiply line 30 by 26% (.26). Otherwise, multiply line 30 by 28% (.28) and subtract $3,650 ($1,825 if married filing separately) from the result.	31	284,755.
32	Alternative minimum tax foreign tax credit (see instructions)	32	
33	Tentative minimum tax. Subtract line 32 from line 31	33	284,755.
34	Add Form 1040, line 44 (minus any tax from Form 4972), and Form 1040, line 46. Subtract from the result any foreign tax credit from Form 1040, line 48. If you used Schedule J to figure your tax on Form 1040, line 44, refigure that tax without using Schedule J before completing this line (see instructions)	34	302,881.
35	**AMT.** Subtract line 34 from line 33. If zero or less, enter -0-. Enter here and on Form 1040, line 45	35	0.

LHA **For Paperwork Reduction Act Notice, see your tax return instructions.** Form **6251** (2014)

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Exhibit 25-18

Form 6251 (2014) Edward C and Judith A Wooley [redacted] Page 2

Part III Tax Computation Using Maximum Capital Gains Rates
Complete Part III only if you are required to do so by line 31 or by the Foreign Earned Income Tax Worksheet in the instructions.

36	Enter the amount from Form 6251, line 30. If you are filing Form 2555 or 2555-EZ, enter the amount from line 3 of the worksheet in the instructions for line 31	36	1,593,523.
37	Enter the amount from line 6 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 13 of the Schedule D Tax Worksheet in the instructions for Schedule D (Form 1040), whichever applies (as refigured for the AMT, if necessary) (see instructions). If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	37	1,789,135.
38	Enter the amount from Schedule D (Form 1040), line 19 (as refigured for the AMT, if necessary) (see instructions). If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	38	
39	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 37. Otherwise, add lines 37 and 38, and enter the **smaller** of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary). If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	39	1,789,135.
40	Enter the **smaller** of line 36 or line 39	40	1,593,523.
41	Subtract line 40 from line 36	41	
42	If line 41 is $182,500 or less ($91,250 or less if married filing separately), multiply line 41 by 26% (.26). Otherwise, multiply line 41 by 28% (.28) and subtract $3,650 ($1,825 if married filing separately) from the result	42	
43	Enter: • $72,800 if married filing jointly or qualifying widow(er), • $36,900 if single or married filing separately, or • $48,400 if head of household.	43	73,800.
44	Enter the amount from line 7 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 14 of the Schedule D Tax Worksheet in the instructions for Schedule D (Form 1040), whichever applies (as figured for the regular tax). If you did not complete either worksheet for the regular tax, enter the amount from Form 1040, line 43. If zero or less, enter -0-. If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	44	0.
45	Subtract line 44 from line 43. If zero or less, enter -0-	45	73,800.
46	Enter the **smaller** of line 36 or line 37	46	1,593,523.
47	Enter the **smaller** of line 45 or line 46. This amount is taxed at 0%	47	73,800.
48	Subtract line 47 from line 46	48	1,519,723.
49	Enter: • $406,750 if single • $228,800 if married filing separately • $457,600 if married filing jointly or qualifying widow(er) • $432,200 if head of household.	49	457,600.
50	Enter the amount from line 45	50	73,800.
51	Enter the amount from line 7 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 19 of the Schedule D Tax Worksheet, whichever applies (as figured for the regular tax). If you did not complete either worksheet for the regular tax, enter the amount from Form 1040, line 43. If zero or less, enter -0-. If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	51	0.
52	Add line 50 and line 51	52	73,800.
53	Subtract line 52 from line 49. If zero or less, enter -0-	53	383,800.
54	Enter the smaller of line 48 or line 53	54	383,800.
55	Multiply line 54 by 15% (.15)	55	57,570.
56	Add lines 47 and 54	56	457,600.
	If lines 56 and 36 are the same, skip lines 57 through 61 and go to line 62. Otherwise, go to line 57.		
57	Subtract line 56 from line 46	57	1,135,923.
58	Multiply line 57 by 20% (.20)	58	227,185.
	If line 38 is zero or blank, skip lines 59 through 61 and go to line 62. Otherwise, go to line 59.		
59	Add lines 41, 56, and 57	59	
60	Subtract line 59 from line 36	60	
61	Multiply line 60 by 25% (.25)	61	
62	Add lines 42, 55, 58, and 61	62	284,755.
63	If line 36 is $182,500 or less ($91,250 or less if married filing separately), multiply line 36 by 26% (.26). Otherwise, multiply line 36 by 28% (.28) and subtract $3,650 ($1,825 if married filing separately) from the result	63	442,536.
64	Enter the **smaller** of line 62 or line 63 here and on line 31. If you are filing Form 2555 or 2555-EZ, do not enter this amount on line 31. Instead, enter it on line 4 of the worksheet in the instructions for line 31	64	284,755.

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Exhibit 25-19

Form **4952**

Department of the Treasury
Internal Revenue Service (99)

Investment Interest Expense Deduction

▶ Information about Form 4952 and its instructions is at www.irs.gov/form4952
▶ Attach to your tax return.

OMB No. 1545-0191

2014

Attachment Sequence No. **51**

Name(s) shown on return

Edward C and Judith A Wooley

Identifying number [redacted]

Part I Total Investment Interest Expense

1	Investment interest expense paid or accrued in 2014 (see instructions)	1	1,381.
2	Disallowed investment interest expense from 2013 Form 4952, line 7	2	
3	**Total investment interest expense.** Add lines 1 and 2	3	1,381.

Part II Net Investment Income

4a	Gross income from property held for investment (excluding any net gain from the disposition of property held for investment)	4a	3,668.		
b	Qualified dividends included on line 4a	4b	611.		
c	Subtract line 4b from line 4a			4c	57.
d	Net gain from the disposition of property held for investment	4d			
e	Enter the **smaller** of line 4d or your net capital gain from the disposition of property held for investment (see instructions)	4e			
f	Subtract line 4e from line 4d			4f	
g	Enter the amount from lines 4b and 4e that you elect to include as investment income (see instructions)			4g	1,324.
h	Investment income. Add lines 4c, 4f, and 4g			4h	1,381.
5	Investment expenses (see instructions)			5	
6	**Net investment income.** Subtract line 5 from line 4h. If zero or less, enter -0-			6	1,381.

Part III Investment Interest Expense Deduction

7	Disallowed investment interest expense to be carried forward to 2015. Subtract line 6 from line 3. If zero or less, enter -0-	7	0.
8	**Investment interest expense deduction.** Enter the **smaller** of line 3 or 6. See instructions	8	1,381.

BAA **For Paperwork Reduction Act Notice, see separate instructions.** Form **4952** (2014)

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Form **8582**

Passive Activity Loss Limitations

► See separate instructions.
► Attach to Form 1040 or Form 1041.
► Information about Form 8582 and its instructions is available at www.irs.gov/form8582.

2014

Attachment Sequence No. 88

Name(s) shown on return

Edward C and Judith A Wooley

Identifying number

[redacted]

Part I 2014 Passive Activity Loss

Caution: *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d	Combine lines 1a, 1b, and 1c			1d

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c	Add lines 2a and 2b			2c

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a		
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b		
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c	-70,312.	
d	Combine lines 3a, 3b, and 3c			3d -70,312.

4 Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used. **4** -70,312.

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss and line 1d is zero or more, skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: *If your filing status is married filing separately and you lived with your spouse at any time during the year,* ***do not*** *complete Part II or Part III. Instead, go to line 15.*

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: *Enter all numbers in Part II as positive amounts. See instructions for an example.*

5	Enter the **smaller** of the loss on line 1d or the loss on line 4			5
6	Enter $150,000. If married filing separately, see instructions	6		
7	Enter modified adjusted gross income, but not less than zero (see instrs)	7	1,838,172.	
	Note: *If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.*			
8	Subtract line 7 from line 6	8		
9	Multiply line 8 by 50% (.5). **Do not** enter more than $25,000. If married filing separately, see instructions			9
10	Enter the **smaller** of line 5 or line 9			10 0.

If line 3c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: *Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.*

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the **smallest** of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2014.** Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	

BAA For Paperwork Reduction Act Notice, see instructions. Form **8582** (2014)

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Exhibit 25-21

Form 8582 (2014) Edward C and Judith A Wooley [redacted] Page 2

Caution: *The worksheets must be filed with your tax return. Keep a copy for your records.*

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year (a) Net income (line 1a)	Current year (b) Net loss (line 1b)	Prior years (c) Unallowed loss (line 1c)	Overall gain or loss (d) Gain	Overall gain or loss (e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c ▸					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ▸			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year (a) Net income (line 3a)	Current year (b) Net loss (line 3b)	Prior years (c) Unallowed loss (line 3c)	Overall gain or loss (d) Gain	Overall gain or loss (e) Loss
Coast Capital Income Fund LLC			29,902.		29,902.
Coast Capital Income Fund LLC			33,781.		33,781.
Atlantis Aquariums LLC			6,629.		6,629.
Total. Enter on Form 8582, lines 3a, 3b, and 3c ▸			70,312.		

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ▸			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Coast Capital Income Fund LLC 50	Sch E Ln 28	29,902.	0.425276	29,902.
Coast Capital Income Fund LLC	Sch E Ln 28	33,781.	0.480444	33,781.
Atlantis Aquariums LLC	Sch E Ln 28	6,629.	0.094280	6,629.
Total ▸		70,312.	1.00	70,312.

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Form 8582 (2014) Edward C and Judith A Wooley [redacted] Page 3

Worksheet 6 — Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
Total	►			0.

Worksheet 7 — Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

See Statement 8	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►			1.00		
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter 0 ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions):					
1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►			1.00		

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Exhibit 25-23

Form **8582**

Department of the Treasury Internal Revenue Service (99)

Alternative Minimum Tax
Passive Activity Loss Limitations

► See separate instructions.
► Attach to Form 1040 or Form 1041.
► Information about Form 8582 and its instructions is available at www.irs.gov/form8582.

OMB No. 1545-1008

2014

Attachment Sequence No. 88

Name(s) shown on return

Edward C and Judith A Wooley

Identifying number [redacted]

Part I 2014 Passive Activity Loss

Caution: *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c		
d	Combine lines 1a, 1b, and 1c			1d

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b		
c	Add lines 2a and 2b			2c

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a		
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b		
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c	-79,915.	
d	Combine lines 3a, 3b, and 3c			3d -79,915.

4 Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used . . . . . 4 -79,915.

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: *If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II or Part III. Instead, go to line 15.*

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: *Enter all numbers in Part II as positive amounts. See instructions for an example.*

5	Enter the **smaller** of the loss on line 1d or the loss on line 4			5
6	Enter $150,000. If married filing separately, see instructions	6		
7	Enter modified adjusted gross income, but not less than zero (see instrs.)	7		
	Note: *If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.*			
8	Subtract line 7 from line 6	8		
9	Multiply line 8 by 50% (.5). **Do not** enter more than $25,000. If married filing separately, see instructions			9
10	Enter the **smaller** of line 5 or line 9			10 0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: *Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.*

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the **smallest** of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2014.** Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	

BAA For Paperwork Reduction Act Notice, see instructions. Form **8582** (2014)

COPY

Exhibit 25-24

Alternative Minimum Tax

Form 8582 (2014) Edward C and Judith A Wooley [redacted] Page 2

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year (a) Net income (line 1a)	Current year (b) Net loss (line 1b)	Prior years (c) Unallowed loss (line 1c)	Overall gain or loss (d) Gain	Overall gain or loss (e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c ►					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ►			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year (a) Net income (line 3a)	Current year (b) Net loss (line 3b)	Prior years (c) Unallowed loss (line 3c)	Overall gain or loss (d) Gain	Overall gain or loss (e) Loss
Coast Capital Income Fund LLC			30,157.		30,157.
Coast Capital Income Fund LLC			34,048.		34,048.
Atlantis Aquariums LLC			15,710.		15,710.
Total. Enter on Form 8582, lines 3a, 3b, and 3c ►			79,915.		

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ►			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Coast Capital Income Fund LLC 50	Sch E Ln 28	30,157.	0.377363	30,157.
Coast Capital Income Fund LLC	Sch E Ln 28	34,048.	0.426053	34,048.
Atlantis Aquariums LLC	Sch E Ln 28	15,710.	0.196584	15,710.
Total ►		79,915.	1.00	79,915.

COPY

Form 8582 (2014) Edward C and Judith A Wooley — Alternative Minimum Tax — [redacted] — Page 3

Worksheet 6 — Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
Total	►			0.

Worksheet 7 — Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

See Statement 9

	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►			1.00		
Name of activity					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Form or schedule and line number to be reported on (see instructions): 1a Net loss plus prior year unallowed loss from form or schedule ►					
b Net income from form or schedule ►					
c Subtract line 1b from line 1a. If zero or less, enter -0- ►					
Total ►			1.00		

COPY

Exhibit 25-26

Form **5695**

Department of the Treasury
Internal Revenue Service

Residential Energy Credits

- Information about Form 5695 and its separate instructions is at www.irs.gov/form5695.
- Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0074

2014

Attachment Sequence No. 158

Name(s) shown on return

Edward C and Judith A Wooley

Your social security number

[redacted]

Part I Residential Energy Efficient Property Credit (See instructions before completing this part.)

Note. *Skip lines 1 through 11 if you only have a* ***credit carryforward from 2013.***

1	Qualified solar electric property costs	1	35,251.
2	Qualified solar water heating property costs	2	
3	Qualified small wind energy property costs	3	
4	Qualified geothermal heat pump property costs	4	
5	Add lines 1 through 4	5	35,251.
6	Multiply line 5 by 30% (.30)	6	10,575.
7a	Qualified fuel cell property. Was qualified fuel cell property installed on or in connection with your main home located in the United States? (See instructions)	7a	☐ Yes ☒ No
	Caution: *If you checked the 'No' box, you cannot take a credit for qualified fuel cell property. Skip lines 7b through 11.*		
b	Print the complete address of the main home where you installed the fuel cell property.		
	Number and street — Unit No.		
	City, State, and ZIP code		
8	Qualified fuel cell property costs	8	
9	Multiply line 8 by 30% (.30)	9	
10	Kilowatt capacity of property on line 8 above ▶ _____ X $1,000	10	
11	Enter the smaller of line 9 or line 10	11	
12	Credit carryforward from 2013. Enter the amount, if any, from your 2013 Form 5695, line 16	12	
13	Add lines 6, 11, and 12	13	10,575.
14	Limitation based on tax liability. Enter the amount from the Residential Energy Efficient Property Credit Limit Worksheet (see instructions)	14	302,881.
15	**Residential energy efficient property credit.** Enter the smaller of line 13 or line 14. Also include this amount on Form 1040, line 53, or Form 1040NR, line 50	15	10,575.
16	Credit carryforward to 2015. If line 15 is less than line 13, subtract line 15 from line 13	16	

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Statement 1
Form 1040, Line 21
Other Income

Merrill Lynch	$	600.
Silicon Valley Real Estate Group II, Inc		1,168.
Total	$	1,768.

Statement 2
Schedule A, Line 1
Medical and Dental Expenses

Doctors, Dentists, and Nurses	$	755.
Insurance Premiums		14,056.
Lab Fees		278.
Prescription Medicines and Drugs		1,509.
Total	$	16,598.

Statement 3
Schedule A, Line 10
Home Mortgage Interest Reported on Form 1098

Wells Fargo Bank	$	21,845.
Total	$	21,845.

Statement 4
Schedule A, Line 14
Investment Interest

Merrill Lynch	$	689.
Merrill Lynch		692.
Total	$	1,381.

Statement 5
Schedule E, Line 19 - 1820 Highway 50
Other Rental and Royalty Expenses

Amortization	$	2,552.
Bank Charges		12,186.
Foreclosure fees		6,878.
Gardening		1,525.
Loan fees		1,750.
Plumbing and Electrical		990.
Snow Removal		354.
Total	$	26,235.

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Statement 6
Schedule E, Line 19 - 1365 Baring Blvd
Other Rental and Royalty Expenses

Rent allocated to buyer	$ 10,435.
Total	$ 10,435.

COPY

Statement 7
Schedule E, Page 2
Part II - Income or Loss From Partnerships and S Corporations

Name	Type	X if Foreign	Employer ID No.	Any Invst. Not At Risk	PTP	Passive Loss From Sch. K-1	Passive Income From Sch. K-1	Nonpassive Loss From Sch. K-1	Section 179 Deduction	Nonpassive Income From K-1
Coast Capital Income Fund LLC 50%	P		20-4636647							
	P		20-4636647							
Coast Capital Income Fund LLC	P		20-4636647							
	P		20-4636647							
Atlantis Aquariums LLC	P		34-2345801							
	P		34-2345801							
					Total	$ 0.	$ 0.	$ 0.	$ 0.	$ 0.

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Statement 8
8582
Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC 50%

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,463.		16,463.	0.550565	16,463.	
Form 4797	4,463.		4,463.	0.149254	4,463.	
Sh E Ln 28	8,976.		8,976.	0.300181	8,976.	
	29,902.	0.	29,902.	1.000000	29,902.	0.

Statement 8
8582
Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,716.		16,716.	0.494834	16,716.	
Form 4797	4,170.		4,170.	0.123442	4,170.	
Sh E Ln 28	12,895.		12,895.	0.381723	12,895.	
	33,781.	0.	33,781.	1.000000	33,781.	0.

Statement 8
8582
Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Atlantis Aquariums LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	6,629.		6,629.	1.000000	6,629.	
	6,629.	0.	6,629.	1.000000	6,629.	0.

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Statement 9
8582
Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC 50%

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,582.		16,582.	0.549856	16,582.	
Form 4797	4,478.		4,478.	0.148480	4,478.	
Sh E Ln 28	9,097.		9,097.	0.301664	9,097.	
	30,157.	0.	30,157.	1.000000	30,157.	0.

Statement 9
8582
Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,799.		16,799.	0.493392	16,799.	
Form 4797	4,181.		4,181.	0.122797	4,181.	
Sh E Ln 28	13,068.		13,068.	0.383811	13,068.	
	34,048.	0.	34,048.	1.000000	34,048.	0.

Statement 9
8582
Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Atlantis Aquariums LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	15,710.		15,710.	1.000000	15,710.	
	15,710.	0.	15,710.	1.000000	15,710.	0.

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A.App.1150

No.	Description	Date Acquired	Date Sold	Cost/ Basis	Bus Pct	Cur 179 Basis	Special Depr. Allow.	Prior 179/ Bonus/ Sec. Depr.	Prior Dec. Bal. Depr.	Salvage /Basis Reduction	Depr. Basis	Prior Depr.	Method	Life	Rate	Current Depr.
Schedule E - 1800 Highway-Commercial Building																
Amortization																
5	LOAN COSTS - SCH E	10/19/00		68,801							68,801	22,793	S/L	30		2,277
6	Appraisal fees	1/01/07		8,550							8,550	1,925	S/L	30		275
	Total Amortization			76,351	0	0	0	0	0		76,351	24,718				2,552
Buildings																
1	Appraisal	6/30/06		4,800							4,800	1	S/L	9		0
2	Edison Exch	10/19/00		961,742							961,742	303,695	S/L MM	39	.02564	24,638
3	Refi Exch	5/18/03		3,933							3,933	776	S/L	39		99
4	Highway 50	4/14/05		648,415							648,415	95,071	S/L MM	39	.02564	16,625
	Total Buildings			1,618,470	0	0	0	0	0	0	1,618,470	401,543				41,374
	Total Depreciation			1,618,470	0	0	0	0	0	0	1,618,470	401,543				41,374
Schedule E - 1961 Banning-Station C store Banning																
Amortization																
9	loan fees	7/01/05	5/15/14	21,819							21,819	21,819	S/L	5		0
	Total Amortization			21,819	0	0	0	0	0	0	21,819	21,819				0
Buildings																

COPY

Client 0814 | Edward C and Judith A Wooley | [redacted]

3/31/15 04:53PM

No.	Description	Date Acquired	Date Sold	Cost/ Basis	Bus. Pct.	Cur 179 Bonus	Special Depr Allow.	Prior 179/ Bonus/ No Depr	Prior Dec. Bal. Depr	Salvage /Basis Reduction	Depr. Basis	Prior Depr.	Method	Life	Conv.	Current Depr.
8	building baring - audited	7/01/06	5/16/14	621,997							621,997	118,962	S/L	MM	39	/2054A	5,981
	Total Buildings			621,997	0	0	0	0	0		621,997	118,962					5,981
Land																	
7	land baring - audited amo	7/01/06	5/16/14	574,152							574,152						0
	Total Land			574,152	0	0	0	0	0		574,152	0					0
	Total Depreciation			1,196,149	0	0	0	0	0		1,196,149	118,962					5,981
	Grand Total Amortization			99,370	0	0	0	0	0		99,370	46,537					2,552
	Amortization Assets Sold			21,819	0	0	0	0	0		21,819	21,819					0
	Amort Remaining Assets			77,551	0	0	0	0	0		77,551	24,718					2,552
	Grand Total Depreciation			2,814,519	0	0	0	0	0		2,814,519	520,595					47,555
	Depreciation Assets Sold			1,196,149	0	0	0	0	0		1,196,149	118,962					5,981
	Depr Remaining Assets			1,618,370	0	0	0	0	0		1,618,370	401,633					41,574

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Exhibit 25-34

A.App.1152

12/31/14 **2014 Federal Alternative Minimum Tax Depreciation Schedule** Page 1

Client 0814 **Edward C and Judith A Wooley** [redacted]

3/31/15 04:53PM

No.	Description	Date Acquired	Date Sold	AMT Basis	AMT Prior Depr	AMT Method	AMT Life	AMT Rate	AMT Depr	Reg Depr	Qualif. Pct	Post-86 Depr Adj	Real Prop Post	Leas Pers Prop Post	59 (e)(2) Amort
Schedule E - 1920 Highway Commercial Building															
Buildings															
1	Appraisal	6/30/05		4,809					0	0					0
2	Edison Exch	10/15/00		961,747	49,514	S/L	MM	39	02564	24,659	24,659				0
3	Refi Exch	6/18/03		3,513					90	90					0
4	Highway 50	4/14/05		648,413	33,250	S/L	MM	39	02564	16,625	16,625				0
	Total Buildings			1,618,470	82,764				41,374	41,374	0	0	0	0	
	Total Depreciation			1,618,470	82,764				41,374	41,374	0	0	0		
Schedule E - 1365 Bearing Station C store Bearing															
Buildings															
6	building bearing - audited	7/01/06	5/16/14	621,097	31,896	S/L	MM	39	02564	5,981	5,981				0
	Total Buildings			621,097	31,896				5,981	5,981	0	0	0	0	
Land															
7	land bearing - audited amo	7/01/06	5/16/14	574,152					0	0					0
	Total Land			574,152	0				0	0	0	0	0	0	
	Total Depreciation			1,195,249	31,896				5,981	5,981	0	0	0	0	
	Grand Total Depreciation			2,814,419	114,660				47,355	47,355	0	0	0	0	

COPY

Exhibit 25-35

F I L E D
Electronically
CV14-01712
2016-08-30 11:18:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5685608 : tbritton

EXHIBIT 26

EXHIBIT 26

KEEP THIS PORTION FOR YOUR RECORDS

Taxpayer Name: WOOLEY, JUDITH A WOOLEY, EDWARD C
Case Number: 639329

DETAIL OF ACCOUNT

DATE	TAX PERIOD	TAX LIABILITY	PENALTY	INTEREST	FEES	TOTAL	CREDITS & PAYMENTS	AMOUNT DUE	INTEREST TO
10/20/15	2014	114,502.00	22,569.50	5,668.46	50.00	142,789.96	28,000.00	114,789.96	12/20/15
Total		**$114,502.00**	**$22,569.50**	**$5,668.46**	**$ 50.00**	**$142,789.96**	**$28,000.00**	**$114,789.96**	

Form D-101C
(Rev. 2010)

DETACH HERE

Form (Rev. 2008)
ICS-202V

STATE OF HAWAII – DEPARTMENT OF TAXATION
TAX PAYMENT VOUCHER (CBV)

DO NOT WRITE OR STAPLE IN THIS SPACE

BVS081

DATE OF NOTICE: 12/03/15
PAYMENT DUE DATE: 12/15/15
TOTAL AMOUNT DUE: $ 114,789.96

[redacted]
WOOLEY, JUDITH A
WOOLEY, EDWARD C

CASE NO: 639329
LOCATION CODE: 000002
BILLING CODE: 999991

AMOUNT ENCLOSED: $

ECW-TT-000605

Exhibit 26-1

STATE OF HAWAII – DEPARTMENT OF TAXATION

BALANCE DUE NOTICE

Payment Due By:	**12/15/15**

WOOLEY, JUDITH A
WOOLEY, EDWARD C

68-1025 N KANIKU DR APT 516
KAMUELA HI 96743-8782

Date:	12/03/15
Billing Code:	999991
Case Number:	639329
SSN/FEIN:	[redacted]

Dear Taxpayer,

Please disregard this notice if you have paid your outstanding balance in full.

Our records indicate that your account has an outstanding balance. The amount due includes penalty and interest projected to the payment due date. To avoid additional penalties and interest, please pay the total amount due by the payment due date. If you pay in full before the payment due date, your account may result in a credit balance, which will then be subject to our refunding process.

If you have any questions, please contact Oahu District Office.

Department of Taxation
Oahu District Office
Attn: Taxpayer Services Branch
P.O. Box 259
Honolulu, HI 96809-0259

Telephone: 808-587-4242
Fax: 808-587-1488

For Neighbor Islands and Continental U.S:
Toll Free: 1-800-222-3229

SUMMARY OF TAXES DUE (Refer to Detail of Accounts)

TAX TYPE	AMOUNT DUE
Individual Income Tax	$ 114,789.96
TOTAL AMOUNT DUE (See Payment Voucher)	**$114,789.96**

TO MAKE A PAYMENT

1. **Do not send cash.** Make your check or money order in U. S. dollars payable to ***HAWAII STATE TAX COLLECTOR***
2. Write your Case Number as shown above, and SSN/FEIN, on your check or money order
3. Enter the check or money order amount in the Amount Enclosed box on the Tax Payment Voucher (CBV)
4. Detach and mail the Tax Payment Voucher, and the check or money order using the enclosed envelope, or to the mailing address shown above.
5. **You may also pay this bill using an electronic check or credit card through our Internet website at www.ehawaii.gov/efile.**

Tax forms are available on the Department's website at **tax.hawaii.gov** or by calling the Taxpayer Services' Call Center at 808-587-4242 or toll free from the neighbor islands or Continental U.S. at 1-800-222-3229.

Form D-101C

ECW-TT-000606

Exhibit 26-2