

Exhibit No.: _____
Issue: Well No. 2 Project
Witness: Michael J. Brown
Type of Exhibit: Surrebuttal
Sponsoring Party: Silverleaf Resorts, Inc.
Case No.: WO-2005-0206
Date Testimony Prepared: July 11, 2005

MISSOURI PUBLIC SERVICE COMMISSION

SILVERLEAF RESORTS, INC.

CASE NO. WO-2005-0206

SURREBUTTAL TESTIMONY OF

MICHAEL J. BROWN

Jefferson City, Missouri

July 11, 2005

1 WITNESS INTRODUCTION

2 **Q. WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS**
3 **ADDRESS?**

4 A. My name is Michael J. Brown and my business address is 1221 River Bend Drive,
5 Suite 120, Dallas, Texas 75247.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by Silverleaf Resorts, Inc. as Director of Pre-Development.

8 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND THE**
9 **NATURE OF YOUR DUTIES.**

10 A. Marked as Schedule MJB-1 and attached hereto is a description of my education,
11 professional experience and training.

12 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN**
13 **THIS PROCEEDING?**

14 A. The purpose of my testimony is to respond to the Rebuttal Testimony of Staff
15 witness Graham A. Vesely, in which he alleged that there were construction cost
16 overruns associated with Well No. 2 at the Holiday Hills Resort.

17 WELL NO. 2

18 **Q. BEGINNING ON PAGE 7 OF HIS REBUTTAL TESTIMONY, STAFF**
19 **WITNESS VESELY SILVERLEAF'S EXPENDITURES CONCERNING A**
20 **WELL CONSTRUCTION PROJECT AT HOLIDAY HILLS RESORT**
21 **"WERE NOT A FAIR REFLECTION OF THE NECESSARY AND**
22 **PRUDENT COST OF THE WORK RECEIVED." WOULD PLEASE**

1 **RESPOND GENERALLY TO THE ALLEGATIONS MADE BY MR.**

2 **VESELY?**

3 A. I do not agree with Mr. Vesely's characterization of the Well #2 project and how
4 it was or was not implemented and maintain that his testimony misses or
5 misrepresents the underlying considerations, factors and outcome associated with
6 this project.

7 **Q. ON WHAT SPECIFIC POINTS DO YOU DISAGREE WITH MR.**

8 **VESELY'S ASSESSMENT OF THIS PROJECT?**

9 - I would maintain that the change in location of the project was a minor to
10 insignificant issue and more importantly it did not significantly increase the cost.
11 Even in hindsight, the change in location still represents and resulted in the most
12 economical and efficient solution to all the requirements;

13 - I believe that change orders, stop/start orders, delays or accelerations of
14 project implementation, are not in and of themselves an indication of anything
15 specific, let alone inefficiency or waste from which ratepayers need or should be
16 protected. Silverleaf managed this well project efficiently and correctly given the
17 circumstances and delivered the most cost effective solution possible;

18 - I do not believe that the delays resulted in any material additional costs for
19 the project for which no corresponding additional value was received;

20 - I do not agree with the methodology used by Mr. Vesely in the calculation
21 of additional contract management costs incurred on the project as a result of
22 delays, if any;

1 - I do not agree with the statement that delays, if any, of putting the project
2 in service resulted in any additional costs to the ratepayers and disagree that this
3 resulted in costs for which no additional value was received;

4 - I do not agree with the statement that changing contractors resulted in
5 excessive costs in “re-work, duplicated effort and the inability to proceed with the
6 lowest bidder” (p. 9). Contractors were changed because the first contractor
7 would not and could not complete the project to the requirements as originally
8 bid;

9 - I do not agree with the assertion that the delays, if any, which may have
10 been occasioned by the need to harmonize the capital installation with the overall
11 development of the resort, were for the benefit of Silverleaf and were of no
12 additional benefit to the property owners/customer. In fact, I would state just the
13 opposite -- that the development of the resort in a manner that is most desirable to
14 the majority of current and future customers (i.e. unit owners) is entirely in the
15 owners customers best interests.

16 **Q. HOW WOULD YOU DESCRIBE THE WELL NO. 2 PROJECT AT THE**
17 **HOLIDAY HILLS RESORT?**

18 A. The Well No. 2 project consisted of the construction of water plant infrastructure
19 around an existing bore hole (being a well that had not previously been used for
20 potable water supply, but met most of the required specifications for such). The
21 project consisted of well head refurbishment, piping, storage and pump station
22 and all ancillary supporting infrastructure one would expect to find at a potable
23 water supply location. The location at which the plant was constructed was not

1 ideal in some respects given that it was in the general vicinity of existing
2 accommodation units and where more such units might be constructed depending
3 on market demand.

4 **Q. WERE OTHER SITES EXAMINED?**

5 A. Yes. Several other clean site alternatives were considered. They would have been
6 suitable sites if one was starting completely from scratch as they would have been
7 located away from intended construction in the foreseeable future. However, any
8 site other than the one ultimately chosen would have required the drilling and
9 development of the well bore hole, installation of the actual well casings etc,
10 much more piping to connect it into the existing water supply system and
11 construction in a less accessible, but protected site.

12 **Q. HOW DID SILVERLEAF REACH THE DECISION TO GO FORWARD**
13 **WITH THE ULTIMATE SITE?**

14 A. The issue came down to a tradeoff between the costs to be saved by utilizing an
15 existing well, albeit in a non-optimal location (because of potential surrounding
16 construction) or constructing an entirely new well and supporting installations in a
17 more ideal location at an obviously higher cost. Careful consideration suggested
18 that the project should proceed at the site of the existing well because of the cost
19 saving associated with the existing well.

20 **Q. WAS THE PLANT LOCATION ULTIMATELY MOVED FROM THE**
21 **ORIGINAL LOCATION?**

22 A. Yes. The plant location had to be moved approximately 100ft from the originally
23 intended site primarily to accommodate reconfiguration of the development plans

1 for the immediate area to fit in with some additional accommodation units that
2 were to be constructed.

3 **Q. WERE THE COSTS ASOCIATED WITH THIS MOVE SIGNIFICANT?**

4 A. No. The cost of this relocation was insignificant in relation to the overall project.
5 Even if the development plans for the area had been known earlier in the process
6 and the water plant designed to fit in (hence with an additional 100ft of piping) or
7 even with the costs required for the redesign and relocation factored in, the
8 location permitting Silverleaf to rely on the existing well still was the preferred
9 site and most cost effective configuration for the project. The bottom line is that
10 the chosen site, with the ability to rely on the existing well, would require more
11 flexibility and perhaps some additional costs in response to the need for
12 flexibility. However, the cost savings associated with the ability to rely on the
13 existing well made it the obvious choice. In retrospect, knowing all that we know
14 now, it was still the right choice.

15 **Q. WHO WAS THE ORIGINAL CONTRACTOR FOR THIS PROJECT?**

16 A. Larry Snyder and Company (Snyder) was the selected low bidder for this project.

17 **Q. DID SNYDER HAVE A RELATIONSHIP WITH SILVERLEAF?**

18 A. Yes. At that time Snyder had been a long time supplier of construction services to
19 Silverleaf at the Holiday Hills Resort such that it would have had multiple
20 projects ongoing at the time the contract for Well No. 2 was awarded. Typically,
21 these contracts had been awarded to Snyder on a competitive bid basis.

22 **Q. WAS THERE ANY SIMILAR CHARACTERISTICS THAT SILVERLEAF**
23 **DISCOVERED IN SNYDER'S PERFORMANCE?**

1 A. Yes. Silverleaf began to sense a problem with Snyder's construction
2 management. This realization had been developing slowly for some time, but was
3 coming to a head during the period that corresponded to the Well No. 2 project.

4 **Q. WHAT DID SILVERLEAF BELIEVE WAS THE PROBLEM WITH**
5 **SNYDER'S CONSTRUCTION MANAGEMENT?**

6 A. The problem Silverleaf had was much more evident on the larger projects that
7 Snyder was undertaking at the time. In Silverleaf's opinion, Snyder appeared to
8 be increasingly generating a disproportionately high number and dollar value of
9 change orders on the construction projects under its control such that the
10 competitive bids initially accepted as the basis for the award bore little
11 resemblance to remuneration ultimately claimed on these jobs.

12 **Q. HOW DID SILVERLEAF RESPOND TO THIS SITUATION?**

13 A. Silverleaf actively analyzed the reasons for the change orders and the
14 reasonableness of the costs associated therewith. Silverleaf attempted to resolve
15 and negotiate or mediate the change orders and associated costs toward what its
16 analysis suggested was appropriate and reasonable. In the end, these efforts
17 proved unsuccessful. Snyder was not prepared to continue on any job at any terms
18 that Silverleaf was prepared to offer and would not accept the closer scrutiny of
19 change orders. As a result, Silverleaf and Snyder severed their business
20 relationship and Snyder ceased all work at the Resort. The well #2 project
21 corresponded to this period.

22 **Q. HOW FAR HAD THE WELL NO. 2 PROJECT PROCEEDED AT THE**
23 **TIME THE BUSINESS RELATIONSHIP WAS SEVERED?**

1 A. Snyder had done very little actual work on the project during this period apart
2 from procurement of the required materials/supplies and some minor preparatory
3 work.

4 **Q. HOW WAS SNYDER COMPENSATED?**

5 A. When Silverleaf and Snyder settled respecting this project, Snyder was
6 compensated for the materials and supplies already procured and left available for
7 completion of the project.

8 **Q. HOW WAS THE PROJECT COMPLETED?**

9 A. The subsequent contractor completed most of the site work, construction and
10 installation.

11 **Q. WAS THE WORK COMPLETED FOR THE AMOUNT REFLECTED IN
12 SNYDERS ORIGINAL BID?**

13 A. No. However, by this time, Silverleaf was confident from its experience with
14 other projects that Snyder would most likely not have delivered at the originally
15 bid price.

16 **Q. COULD SILVERLEAF HAVE FORCED SNYDER TO COMPLETE THE
17 PROJECT AT ITS ORIGINAL BID?**

18 A. No. Snyder was not prepared to complete this project, nor the other projects it
19 was working on for Silverleaf on any terms that were reasonable. Negotiation/
20 mediation and the parting of company was the most cost effective and preferred
21 solution to the disagreement. I believe Silverleaf acted efficiently, professionally,
22 responsibly and practically in its dealings with Snyder in this and all other
23 situations.

1 **Q. WHY WAS THE PLANT MOVED BY APPROXIMATELY 100 FEET?**

2 A. The move of the proposed new water plant for Well No. 2 by approximately 100ft
3 from the initially intended location was made primarily to allow for a more
4 logical, orderly, natural and preferred location of some additional dwelling units
5 that were to be added.

6 **Q. WHAT WAS REQUIRED TO MAKE THIS MOVE?**

7 A. This relocation did not necessitate any material changes to the layout and
8 configuration or components of the proposed plant itself apart from the need to
9 engineer and plan for the extra piping and valves to span the extra 100 feet. That
10 cost was relatively insignificant to the total cost of the project as installed.
11 Additionally, the cost savings occasioned by the opportunity to utilize the existing
12 well site more than made up for the potential additional cost incurred on the
13 project. Even in hindsight, the project as delivered was the most cost effective
14 and efficient solution.

15 **Q. MR. VESELY DESCRIBES SEVERAL EVENTS AS “DELAYS” THAT
16 RESULTED IN “COST OVERRUNS.” WERE THERE ANY DELAYS?**

17 A. Previous statements may have given Mr. Vesely the impression that work on the
18 Well No. 2 project work was started and stopped numerous times creating the
19 potential for unnecessary work. The reality is quite the opposite in that Silverleaf
20 was fully aware it had (and for good reason) chosen a site for the plant that
21 required the project to be more tightly coordinated with the larger development
22 activities being undertaken in the immediate vicinity and that in recognition of
23 this need to coordinate activities it also needed to closely monitor the progress of

1 the Well No. 2 project to make sure it meshed as best and efficiently as it could
2 with those other development activities. The relocation, the stop/start work orders
3 and all the other actions undertaken by Silverleaf were more an indication of its
4 efficient management of the project in recognition of the above noted requirement
5 to pace it and integrate it seamlessly into the whole development scheme and not
6 an indication of disorganization or inefficiency as may have been implied.

7 **Q. WERE ANY OF THE COSTS ASSOCIATED WITH THE WELL NO. 2**
8 **PROJECT “WASTED” OR EXPENDED WITHOUT VALUE RECEIVED**
9 **IN EXCHANGE?**

10 A. No. Nothing that transpired in the execution of the Well No. 2 project resulted in
11 costs that were wasted or for which no value was received. The design for the
12 configuration and layout and equipment at the plant did not change as a result of
13 the relocation. The relocation of the plant added only insignificantly to the total
14 cost of the project and value in terms of additional design, extra piping and valves,
15 and project management was obtained for the extra cost. The money expended
16 early on was primarily for procurement of equipment, supplies and off site
17 fabrication, etc. and was not wasted because all that was used. Any carrying cost
18 associated with such early investment was more that offset by the savings of
19 ordering and purchasing those materials earlier (e.g. inflation and additional
20 certainty of availability). Silverleaf was cognizant all along that there may be
21 some need to tweak the final particulars of the installation and intentionally paced
22 the project to give it the flexibility to make such minor adjustments. The stop

1 work and start orders were in part a demonstration of the intentional pacing and
2 control.

3 **Q. HOW DO YOU RESPOND TO STAFF WITNESS VESELY'S**
4 **ALLEGATION THAT THE CONSTRUCTION PROJECT SHOULD**
5 **HAVE BEEN COMPLETED IN SIX MONTHS?**

6 A. The notion that the plant could have been installed in six months, but yet took
7 eighteen and hence 12 months of project administration costs should be
8 disallowed ignores how this work is compensated. The costs of such services are
9 related to effort not the mere passage of time. While there may be a minor
10 element of the costs driven purely by time (keeping the file open), this is
11 insignificant. The reality is that project administration cost is driven by the need
12 to provide the labor to supply the service to administer the on site activities. This
13 cost is not linear (flat monthly) or time related as much as it is directly
14 proportional to the pace of activities on the project. If there are little to no
15 activities taking place in any particular month, then the project administration cost
16 will reflect such. If a project management contracted is awarded and for some
17 reason only nominal activities take place in the first eight months (hence nominal
18 project administration activities and costs incurred) but most activities happen
19 thereafter, it is unreasonable to disallow project administration costs incurred
20 during the period when the activities are taking place (and project management
21 activities and costs are being incurred), but allow the nominal project
22 administration costs incurred in months with nominal activities.

1 **Q. PLEASE SUMMARIZE YOUR POSITION AS TO THE COSTS FOR THE**
2 **WELL NO. 2 PROJECT.**

3 A. The project was drawn out and the project administration activities and hence cost
4 were drawn out correspondingly but they were in total still appropriate, consistent
5 with and reasonable in aggregate for the total value of the project. The drawing
6 out of the activities were likewise justified for the reasons previously articulated
7 above.

8 It may have taken longer to install the Well No. 2 project than in a more
9 simplified scenario as discussed above, but this is the reality of trying to leverage
10 the cost savings associated with using an existing well that requires more
11 flexibility as to the installation. In hindsight, it was still the most cost effective
12 location.

13 Any delays associated with the contracting issues were likewise dealt with in the
14 most cost effective, efficient and expeditious manner and no material value was
15 lost as a consequence of any delay associated therewith. The settlement
16 compensated Snyder appropriately for the supplies and material already procured
17 and for any work that had been done.

18 The discontinuation of the Silverleaf /Snyder relationship was precipitated
19 primarily by the inability of the parties to resolve what Silverleaf believed were an
20 unreasonable number change orders and high costs associated therewith that
21 Snyder was executing on Silverleaf's behalf. With the benefit of hindsight,
22 Silverleaf has every reason to believe that had Snyder continued on the job there
23 would have been additional change orders and additional costs such that the bid

1 amount was not indicative of what the job would ultimately cost. Rather than the
2 delays to which the Staff witness refers, being the cause of the inability of the low
3 bid contractor inability to complete the work, it would be more accurate to suggest
4 that the low bid contractor's lack of commitment to deliver the project at the price
5 originally bid was a cause for some of the delays and the cause of the change of
6 contractors on this, as well as other, Silverleaf projects.

7 **Q. IS SILVERLEAF AN EXPERIENCED RESORT DEVELOPER?**

8 A. Yes. Silverleaf is an experienced and prudent developer of these types of projects
9 and many other types of projects, as well as an experienced project manager.

10 Silverleaf has seen its share of difficult situations and has managed its way
11 through them. It has acted professionally, efficiently, reasonably and responsibly
12 in its execution of such projects. The Well No. 2 project was no exception, in
13 spite of the particular considerations and issues surrounding that project.

14 **Q. MUST SILVERLEAF BE MINDFUL OF THE NEEDS OF ITS**
15 **CUSTOMERS?**

16 A. Yes. As the developer and manger of the property Silverleaf must be perpetually
17 in tune with the needs and wants of its existing and prospective future residents to
18 insure that the resort meets the highest expectations of all parties. Being in touch
19 with these expectations is not just in Silverleaf's best interest (as the developer),
20 but it is also in the customers' interest as it protects the existing property owner's
21 investment and maximizes their resort stay experience. This approach extends
22 through to the more mundane matters like being acutely sensitive to resort layout
23 and making adjustments as/when needed, managing construction schedules and

1 timetables, adding additional units such that there are ever more resident to share
2 the costs and to help finance new additional amenities for the use of all. It is
3 erroneous to suggest that the relocation of a proposed structure or any
4 modification of the resort layout or periodic adjustment to previously developed
5 plans is only for the benefit of Silverleaf and has no value to the residents.

6 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

7 A. Yes.

Schedule MJB-1

Michael J. Brown

Biographical Information

Michael J. Brown joined Silverleaf Resorts, Inc. in July, 1999 and has served as Director of Engineering Development and Director of Pre-Development. His responsibilities include determining infrastructure needs and management of infrastructure construction at the resorts. He is also responsible for obtaining and complying with land use requirements for the development of facilities at each resort. Prior to joining Silverleaf, Mr. Brown was an engineering consultant and office manager for Vegrzyn, Sarver & Associates, Inc. in Dwight, Illinois from August, 1997 to June, 1999. Mr. Brown received a Bachelor of Science in Civil Engineering from Iowa State University, Ames, Iowa, in 1997.

AFFIDAVIT

STATE OF TEXAS)
)
COUNTY OF DALLAS) ss

I, Michael J. Brown, state that I am employed by Silverleaf Resorts, Inc. as its Director of Pre-Development; that the Surrebuttal Testimony attached hereto has been prepared by me or under my direction and supervision; and, that the answers to the questions posed therein are true to the best of my knowledge, information and belief.



Michael J. Brown

Subscribed and sworn to before me this 11 day of July, 2005.



Notary Public

My Commission Expires:

